

Proposed Local Law No. 17 Of 2018

County Of Ulster

A Local Law Establishing An Ulster County Human Rights Law

BE IT ENACTED, by the Legislature of the County of Ulster, as follows:

SECTION 1. TITLE.

This Local Law shall be known by and may be cited as “The Ulster County Human Rights Protection Act of 2018”.

SECTION 2. LEGISLATIVE INTENT AND FINDINGS.

The Ulster County Legislature hereby finds and declares that the County has the responsibility to act to assure that every individual within the County is afforded certain basic rights and freedoms to which all human beings are entitled, including but not limited to the right to life and liberty, freedom of thought and expression, and equality before the law.

The Ulster County Legislature recognizes, finds and determines that the laws and regulations of the United States of America and the State of New York prohibit acts of discrimination, including discrimination in employment, discrimination in public accommodations, resort and amusement, discrimination in housing accommodation, discrimination in commercial space and land transactions, and discrimination in the issuing of credit based upon impermissible considerations relating to a person’s race, color, religion, ethnicity, creed, age, national origin, alienage or citizenship status, familial status, gender, including gender identity, gender dysphoria, transgender status, group identity, marital status, sexual orientation or disability.

In enacting this local law, the County is acting to empower its citizens and to provide local assurances for the safeguarding of basic rights and freedoms and the prevention of unlawful acts of discrimination. The Ulster County Legislature finds that the adoption of this law is an appropriate exercise of the police power for the protection of the public welfare, health and peace of the people of this County.

Article XXX of the Ulster County Charter (“Charter”) provides for the establishment of a Commission of Human Rights in and for Ulster County (“Commission”). Section C-102 of the Ulster County Charter provides that “The Commission of Human Rights shall have all of the authority, responsibility, obligations, powers and duties set forth in Article 12-D of the General Municipal Law and shall also have the authority to create bylaws for its own governance, proceedings and activities.”

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The Commission exists to foster mutual respect for the rights of all citizens and to explore opportunities for improving relations among all people of Ulster County. Pursuant to Article 12-D of the General Municipal Law, the Commission is empowered to, among other things, seek the active assistance of the New York State Division of Human Rights (“State Division”) in the solution of complaints which fall within the jurisdiction of the State Division (G.M.L. Section 239-r) and where and to the extent authorized by local law, to report, but not initiate, any such complaints to the State Division (G.M.L. Section 239-q(2)(a)).

The Ulster County Legislature specifically finds and declares that it is in the interest of the County to encourage its citizens to reason together to reduce tensions within the many diverse communities in Ulster County arising from alleged acts of discrimination, prejudice and intolerance by resort to the Commission, or its authorized designee, through a process of conference, conciliation and persuasion at the local level, and that it is imperative to include within the duties and responsibilities of the Commission, or its authorized designee, the task of actively monitoring and assisting persons through the process administered by the State Division for such claimed human rights violations that have not been successfully resolved by the Commission, or its authorized designee, at the local level through mediation and conciliation.

The Ulster County Legislature’s intent in creating this local law is to empower the Ulster County Human Rights Commission pursuant to Article 12-D of the General Municipal Law to engage in processes of conference, conciliation and persuasion, with the active assistance of the State Division, if needed, in the solution of complaints which fall within the jurisdiction of the State Division, including those complaints within the scope of State Regulation 9 NYCRR §466.13 pertaining to Gender Identity, Transgender Persons, and Gender Dysphoria, as such terms are defined by the State Regulation, so as to amicably resolve such complaints, reduce tensions, build consensus and foster harmony between the various diverse communities within Ulster County, and to otherwise report, but not initiate, such complaints to the State Division, and to include within the duties and responsibilities of the Commission, or its authorized designee, the task of actively monitoring and assisting persons with claimed human rights violations through the process administered by the State Division or the Hearing Officer for such claims that have not been successfully resolved by the Commission, or its authorized designee, through mediation and conciliation, or where respondent has refused mediation and conciliation.

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SECTION 3. DEFINITIONS.

The following terms are defined as follows in the implementation hereof and any terms not specifically defined herein shall be defined by reference to New York State Executive Law Section 292:

“Place of public accommodation, resort or amusement” shall be defined as the term is defined in New York State Executive Law Section 292(9).

“Disability” shall be defined as the term is defined in New York State Executive Law Section 292(21).

“Discrimination” shall be defined as the term is defined in New York State Executive Law Section 292(19).

“Group identity” shall refer to race, color, religion, age, national origin (including ancestry), alienage or citizenship status, ethnicity, familial status, creed, gender, sexual orientation, marital status, or disability.

“Gender” shall include actual or perceived sex and shall also include a person’s gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

“Gender identity” means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.

“Transgender” is an individual who has a gender identity different from the sex assigned to that individual at birth.

“Sexual orientation” shall be defined as the term is defined in New York State Executive Law Section 292(27).

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SECTION 4. Article XXX, Section C-102 of the Ulster County Charter is hereby amended to so read:

1. The Commission of Human Rights shall have all of the authority, powers, duties and obligations expressly set forth in Article 12-D of the General Municipal Law, and shall also have the authority to engage in processes of conference, conciliation and persuasion, with the active assistance of the New York State Division of Human Rights (“State Division”), if needed, in the mediation and solution of complaints within the jurisdiction of the State Division, so as to amicably resolve such complaints, reduce tensions, build consensus, and foster harmony between the various and diverse communities within Ulster County and to otherwise report, but not initiate, any such complaints to the State Division, and shall also have the authority to create bylaws for its own governance, proceedings and activities, but shall not exercise any powers, duties or obligations not otherwise expressly set forth in General Municipal Law 12-D.

2. The Commission is authorized to receive complaints of all persons in Ulster County with claimed human rights violations arising under any New York State, Federal or Local human rights law or regulation occurring in Ulster County and to engage all interested parties who consent to do so in an effort to mutually resolve such complaints through mediation and conciliation before the Commission or its authorized designee. In the event that no members of the Commission are able or willing to engage in mediation or conciliation of a given complaint as in the case of a conflict of interest then, subject to Legislative appropriation sufficient to pay the expense thereof in a sum not to exceed \$10,000.00 per year, such complaints may be referred upon consent of all parties to the complaint, to an accredited community dispute resolution center within Ulster County operated under the auspices of Article 21-A of the Judiciary Law for the sole purpose of conducting such a non-binding mediation and conciliation as specified herein.

3. The Commission or its authorized designee shall actively monitor and assist persons with such claimed human rights violations through the process administered by the State Division, or pursuant to Section 5 hereof by the local Hearing Officer, for such claims that have not been successfully resolved by the Commission, or its authorized designee, through mediation and conciliation at the local level should such persons elect to file a discrimination claim with the State Division or the local Hearing Officer. The assistance rendered under this paragraph shall not include the rendering of legal advice or legal representation to any party.

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4. The Commission or its authorized designee shall maintain records of all complaints received by it during each calendar year and shall make a report to the County Legislature by March 31st of each year summarizing the number, type and disposition of such complaints. Such annual report shall not include names or personal identifying information of any party.

SECTION 5. Article XXX, Section C-101(B) of the Ulster County Charter is hereby amended to so read:

1. The Commission of Human Rights shall have 11 members appointed to terms of three years, three members of whom shall be appointed by the legislative Chairman, three members by the legislative minority leader, and five members by the County Executive, one of whom shall be designated by him or her as the Commission Chairman. Appointments shall be representative of the various religious, racial, ethnic and nationality groups in Ulster County's communities. No member of the Commission of Human Rights shall serve more than two consecutive terms of three years.

SECTION 6. INDEPENDENT ADMINISTRATIVE HEARING OFFICER.

1. An Independent Administrative Hearing Officer ("Hearing Officer") is hereby created, established and authorized to hear complaints of persons in Ulster County with claimed human rights violations arising under any New York State, Federal or Local human rights law or regulation occurring in Ulster County where such claims have not been successfully resolved by the Commission, or its authorized designee, through mediation and conciliation at the local level, and to issue orders assessing monetary damages or other appropriate non-monetary relief where liability is determined to exist.

2. The Hearing Officer shall be appointed by the County Executive, subject to confirmation by the Legislature, and shall serve at the pleasure of the County Executive. Any Hearing Officer so appointed shall be an attorney admitted to practice law in good standing by the State of New York having been so admitted for no less than five (5) years. Such appointments shall first be made from a panel of retired Supreme Court Justices residing in Ulster County, but if none are able or willing to serve, from any eligible attorney.

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3. The Hearing Officer has the authority to require the attendance of witnesses or the production of documentary evidence by subpoena.
4. The Hearing Officer may not accept any complaint hereunder unless it is accompanied by certification from the Commission that 30 days has passed since receipt of the complaint or that respondent has refused mediation and conciliation, whichever shall first occur, or in the alternative that mediation and conciliation of the complaint has been attempted but has not resolved the complaint, and by a waiver and relinquishment, sworn to by the complainant, of any and all rights to file a complaint with the New York State Division of Human Rights, any federal civil rights agencies, such as the Department of Housing and Urban Development ("HUD") or the Equal Employment Opportunity Commission ("EEOC"), or with the commission on human rights of any city, town or village located in Ulster County, which is based upon the same transaction or occurrence or series of transactions or occurrences which are the subject of the complaint sought to be filed. The Hearing Officer shall promulgate and make available appropriate forms of complaints, certifications and of waiver and relinquishment.
5. The Hearing Officer shall give to respondent written notice of the complaint and an opportunity to request a hearing on the complaint.
6. The written notice shall include, at a minimum:
 - (A) A concise statement of the factual basis for the complaint;
 - (B) The amount of damages claimed;
 - (C) The provisions of State, Federal or Local human rights laws or regulations alleged to have been violated by respondent;
 - (D) The right to request a hearing on the material facts and/or the amount of the damages; and
 - (E) A copy of the rules of the hearing procedures which have been promulgated by the Hearing Officer.

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The hearing shall provide a reasonable opportunity to be heard, to assert any applicable answer, affirmative defenses, cross claims or counter claims, to move to dismiss, to cross-examine witnesses, and to present evidence free from interference, coercion, restraint, discrimination, or reprisal, and the parties shall have the right to be represented by a person of his/her choice at any stage of the hearing and proceedings at their own expense.

7. If the respondent fails to appear at the hearing without good cause being shown and the complainant presents a prima facie case against the respondent, the respondent may be found in default. The motion for default and a proposed default order shall be served by the Hearing Officer on all parties, and the defaulting party shall have twenty (20) days from service thereof to reply to the motion. The proposed default order may be set aside for good cause shown in accordance with the Civil Practice Law and Rules. Default by the complainant shall result in the dismissal of the complaint with prejudice.
8. Should liability be found after a hearing, in determining the amount of monetary damages to be assessed, the Hearing Officer shall consider the seriousness of the violation(s); any history of such violations; the economic impact (benefit or harm) resulting from the violation(s) to complainant; the economic impact of the damages to be assessed to respondent; and such other factors as justice may require. Money damages, or other non-monetary relief, awarded hereunder shall constitute a judgment as that term is defined in the Civil Practice Law and Rules, which may be enforced in accordance with that statute.
9. The Hearing Officer shall establish rules and forms for discovery consistent with Article 31 of the Civil Practice Law and Rules, and for administration and implementation of this section, including procedures for conducting hearings, motion practice, and other necessary proceedings.
10. Any person against whom money damages, or other non-monetary relief, are assessed under this section may obtain judicial review of such assessment in accord with Article 78 of the Civil Practice Law and Rules.

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11. The Hearing Officer shall maintain an abstract of all complaints received each year, which abstract shall include the date and subject matter of the complaint, the names of the parties, and the disposition of the complaint.

SECTION 6. DAMAGES.

If a decision of liability is made by the Hearing Officer, money damages payable to the complaining party may be assessed of not more than \$20,000, and/or such other non-monetary relief as the Hearing Officer may deem just, proper and equitable. The Hearing Officer may not award, and each party shall bear its own, attorney fees, costs and expenses.

SECTION 7. GOVERNMENTAL IMMUNITY/NO SPECIAL DUTY CREATED.

This Local Law does not create any special duty by Ulster County. Any and all liability and consequential damage resulting from either (a) a violation of any provisions of this Local Law; or (b) the enforcement of any provisions of this Local Law is hereby disclaimed and governmental immunity is retained.

SECTION 8. SEVERABILITY.

If any word, phrase, clause, sentence, paragraph, section or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the word, phrase, clause, sentence, paragraph, section of part thereof directly involved in the controversy in which such judgment shall have been rendered.

SECTION 9. EFFECTIVE DATE.

This law shall take effect immediately upon its filing with the New York Secretary of State.