



Borough of Chambersburg

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FOR IMMEDIATE RELEASE

CHAMBERSBURG EXPLORATORY COMMITTEE TO PRESENT RECOMMENDATION AT SPECIAL COUNCIL MEETING ON WEDNESDAY SEPTEMBER 1, 2021

Chambersburg – On April 26, 2021, Town Council appointed an Exploratory Committee, comprised of three members of Town Council, to research, gather information and consider amendments to local law to codify non-discrimination in the Code of Ordinances of the Borough of Chambersburg; and further, to consider whether Chambersburg should assume responsibility for investigation, adjudication and enforcement of complaints with a separate body such as a local Human Relations Commission; and finally, to deliver a written report to Council with its recommendations.

The Committee met six times between May and July 2021 and on August 6, 2021, released a report to Town Council.

On August 9, 2021, Town Council authorized a Special Meeting to be held to review the report of the Committee and to consider whether Council wishes to adopt a Local Human Relations Ordinance pursuant to the authority to do so under the Pennsylvania Human Relations Act. The Committee recommended adopting almost the exact same law already in effect in Gettysburg Borough. A draft Ordinance for the proposed local law has been advertised in preparation for Council to consider approving it at the Special Meeting. The draft Ordinance can also be obtained on the Borough website (www.chambersburgpa.gov) by clicking on I Need To... View proposed local laws. Also, a paper copy of draft Ordinance can be obtained by visiting the Borough Secretary's office at 100 South Second Street in Chambersburg between the hours of 8:00 a.m. and 5:00 p.m.

The Special Meeting of Town Council will be held on Wednesday, September 1, 2021, at 7:00 p.m. at The Capitol Theatre at 159 South Main Street in Chambersburg. Doors open at 6:30 p.m.

Citizen in-person participation is recommended, however, since this Town Council meeting is being held at The Capitol Theatre the Borough's ability to broadcast the meeting using the Zoom meeting platform is limited. The Borough will transmit the sound and images on Zoom, but there will be no method to interact using Zoom. The images and sound will not be of high quality. If you wish to participate, you must be at the theater in-person. Pursuant to the Pennsylvania Department of Health, wearing face coverings and social distancing is recommended during indoor public events.

Topic: Chambersburg Town Council Meeting

Time: Sep 1, 2021 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/85808693893?pwd=a3pxQXB0VUR0enVxMUIvcjlyRS9oZz09>

Meeting ID: 858 0869 3893

Passcode: 162533

Furthermore, the Chambersburg Police Department will be providing support for the meeting. Chief Ron Camacho wants to urge all attendees to be aware of police attendance and to conduct themselves in a polite and respectful manner. The Council President adds, "Though the venue is The Capitol Theatre, this is an official meeting of the Chambersburg Town Council. We will hear the report of the Exploratory Committee, allow for public comment, and potentially vote on the advertised Non-Discrimination Ordinance. Orderly, civil participation will create space for everyone to be heard. One can give public commentary even if they are not a resident of the Borough of Chambersburg although Council is elected to represent Borough homes and businesses."

If you are unable to attend the meeting, please submit questions or comments via email to

boroughsecretaries@chambersburgpa.gov. Written correspondence can be mailed to Jamia Wright, Borough Secretary, Borough of Chambersburg, 100 South Second Street, Chambersburg, PA 17201

CHAMBERSBURG EXPLORATORY COMMITTEE REPORT & RECOMMENDATION

Exploratory Committee report to Chambersburg Borough Council:

Mission: Council members Kathy Leedy, Mike Herbert and Heath Talhelm were appointed by Council in late April 2021 to research, gather information and consider amendment(s) to local law to codify non-discrimination in the Code of Ordinances, and further, to consider whether Chambersburg should assume responsibility for investigation, adjudication and enforcement of complaints with a separate body such as a local human relations commission, and finally, to deliver a written report to Council with its recommendations. This is a summary of the Committee's findings and its recommendations.

Historical background: Pennsylvania in 1975 was the first state in the union to protect government workers from discrimination based on sexual orientation. Today Pennsylvania is the only state in the Northeast that does not have explicit statewide LGBTQ non-discrimination protections by law. New York and the New England states north of it, as well as Maryland and Virginia, have 100 percent legal protection for their LGBTQ population. The Fairness Act has been introduced year after year for decades in Harrisburg, but it has never actually been voted upon by the entire Pennsylvania Legislature. The proposed Fairness Act would add sexual orientation and gender identity to the protected classes in state law.

Current state law: The Pennsylvania Human Relations Commission has jurisdiction to investigate alleged acts of discrimination on the basis of race, color, sex, age (over 40), ancestry, national origin, religious creed, having a GED rather than a high school diploma, handicap or disability, or the use of a guide or support animal for disability, or relationship to a person with a disability. In August 2018, the PHRC issued guidance, saying it would interpret sex discrimination to include, among other things, sexual orientation and gender identity. However, these guidelines do not have the effect of statutes or regulations. None of the expanded protections has been codified and could go away.

The issue: Because Pennsylvania law does not explicitly and clearly include these protections, Chambersburg Borough Council has been asked to consider passing a non-discrimination ordinance (NDO). Local members of the LGBTQ community say they do not want special treatment – they want to be treated equally and for Borough Council to represent *everyone* in the Borough. Members of the LGBTQ community – and their supporters – presented Council with a petition signed by more than 350 people. A local ordinance would make it illegal to discriminate in housing, employment and public accommodation (including stores, restaurants, theaters, hotels).

Residents who oppose the adoption of a non-discrimination ordinance in Chambersburg are concerned about the unintended consequences of expanding non-discrimination protections to LGBTQ citizens and possibly eroding protections for others. They warn of potential legal challenges and the financial cost of such challenges, the impact on businesses and the fairness of a local human relations commission. They question the need for such an ordinance.

Recommendation: The Exploratory Committee recommends that Chambersburg Borough Council adopt a non-discrimination ordinance that includes all of the statewide protections that began with the Pennsylvania Human Relations Act of 1955, and that Borough Council add protections as detailed in the August 2018 PHRC-issued guidance. In our view, it is not an extreme position to have an ordinance that requires residents, businesses and organizations to treat everyone in the community equally in matters of housing, employment and public accommodation. State law already requires non-discrimination for the protected classes in the Pa. Human Relations Act, including race. About a third of Chambersburg's residents are non-white. In addition, the Borough of Chambersburg already has a policy that requires employees, elected officials, volunteers and those who do business with the Borough not to discriminate against the state law's protected classes as well as the LGBTQ community. An NDO would extend those protections to the entire community, including LGBTQ individuals. An NDO is warranted, in the Committee's opinion, because of the gap in protections in state law, as well as discussions at previous Borough Council meetings, the information provided to the Exploratory Committee, additional research and feedback from others. The Exploratory Committee recommends that Chambersburg adopt Gettysburg's non-discrimination ordinance.

Similar efforts: Chambersburg would not be alone if it adopts an NDO. Pennsylvania has the most local LGBTQ-inclusive non-discrimination ordinances (69) of any state in the nation and 35 percent of its population is now covered by such ordinances. Forty-one PA municipalities that have adopted NDOs have a smaller population than Chambersburg. Huntingdon, in December 2019, became the first rural, small town community in Pennsylvania to adopt an LGBTQ-inclusive non-discrimination ordinance. It was followed in 2020 by Shippensburg, Bloomsburg and Gettysburg. Officials from Carlisle and Gettysburg spoke favorably about their non-discrimination ordinances when they met with the Exploratory Committee, and they said no businesses left their communities because of them.

The process: Pennsylvania allows municipalities to adopt non-discrimination ordinances which may include protected classes not specified under state law, as Commonwealth Court confirmed in the *Hartman v. Allentown* case of 2005. The Borough Code, Section 1202(5) permits municipalities “to make regulations as may be necessary for the health, safety, morals, general welfare, cleanliness and beauty, convenience, comfort and safety” of the borough. These are sometimes referred to as police powers and if Chambersburg adopts an NDO, it is recommended that it do so under this authority.

If someone files a discrimination complaint, the complainant would be encouraged to dual file with the Pennsylvania Human Relations Commission at the same time. The case would first go to non-binding mediation, where a local Human Relations Commission of trained volunteers would hear from both sides. The Pennsylvania Human Relations Act specifically authorizes municipalities to establish human relations commissions with powers and duties similar to the state PHRC. These local commissions could include pastors, counselors, attorneys etc. If the local Commission is unable to resolve the matter, the state PHRC continues the case at no cost to the complainant or Borough. If the PHRC is unable to adjudicate the complaint, it would be dismissed. The complainant has the option of taking the case to court, if done within 180 days, with a borough ordinance clearly including LGBTQ individuals as among those protected (in addition to the other protected classes in state law).

The PHRC offers training for Human Relations Commission members at no charge. Other communities that have adopted NDOs report that there is little cost beyond the cost of preparing and advertising the ordinance, and the PHRC has offered to help the Borough draft an ordinance at no charge. The PHRC confirmed there is little cost. Only a small portion of local Human Relations Commissions have dedicated staff and they are in large cities: Philadelphia, Pittsburgh, Allentown, York, Reading, Erie and Allegheny counties.

Legal outlook: The Exploratory Committee recommends that religious and other exemptions that are included in the Pa. Human Relations Act be incorporated into our ordinance, if council approves a NDO. None of the 69 communities with local ordinances in PA has experienced legal challenges (other than the Allentown case). None of the 69 has rescinded ordinances once passed. The federal judiciary has issued a string of rulings expanding LGBTQ rights and banning employment discrimination on the basis of sexual identity in recent years. A significant LGBTQ legal ruling by the U.S. Supreme Court, *Bostock v. Clayton County* (Ga.), in 2020 clarified employment protections in companies with 15 or more workers. The U.S. Education Department expanded its interpretation of federal sex protections in 2021 to include transgender and gay students. Discrimination will be treated as a violation of Title IX.

The U.S. Supreme Court in 2021 ruled, in *Fulton v. City of Philadelphia*, that non-discrimination policies must have neutral application and enforcement. Philadelphia’s standard foster care contract included a clause that allowed for exceptions from non-discrimination requirements regarding sexual orientation at the City’s discretion. The court ruled against the city as a result because its NDO had the potential to be unevenly enforced.

According to the PHRC’s senior attorney, Carl Summerson, the Allentown case makes it clear the Borough has the authority to adopt a non-discrimination ordinance. Summerson, a senior attorney with 37 years of experience, has volunteered to help the Borough write its ordinance. If the state continues a case after mediation efforts fail, any legal exposure would be at the state level, he said.

Exploratory Committee meeting summaries:

May 11, 2021: Committee members discussed the purpose of the committee and its assignment. Information was shared with the committee, including similar ordinances from Carlisle, Gettysburg and Shippensburg, as well as links to Web sites. (At each committee meeting, members received copies of all e-mails and correspondence submitted to exploratorycommittee@chambersburgpa.gov. Also at each meeting, viewers on Zoom were encouraged to submit questions and concerns to that e-mail address.) About 50 people viewed this meeting via Zoom on this night.

May 26, 2021: **Jeffrey Stonehill**, Chambersburg Borough manager, and **Tyler Beaston**, of Salzman Hughes, the Borough's legal counsel, provided an overview of state law and explained that municipalities are permitted to adopt and enforce local non-discrimination ordinances. Nearly 40 people viewed this meeting via Zoom on this night.

June 16, 2021: **Charles R. Gable**, Gettysburg Borough manager, and **Sean Shultz**, Carlisle deputy mayor, discussed their community's non-discrimination ordinances. **Carl H. Summerson**, senior attorney, Pa. Human Relations Commission hearing examiner, discussed the work of the PHRC. About 35 people watched the meeting.

June 30, 2021: **Mike Ross**, president, Franklin County Area Development Corp., and **Stephen Christian**, president of the Greater Chambersburg Chamber of Commerce and executive director of Chambersburg Area Development Corp., voiced concerns about more regulation of local businesses. **Jeremy Samek**, senior counsel with Pennsylvania Family Institute and the Independence Law Center, and **Randell Wenger**, chief counsel of the Independence Law Center, explained why they oppose the adoption of an NDO. Nearly 40 people viewed the meeting via Zoom.

July 21, 2021: **Dr. Wesley Fugate**, president of Wilson College, voiced support of a local ordinance. He discussed recruiting challenges and some of his own experiences as a gay man, as well as the experiences of others at Wilson in the local LGBTQ community; **Megan Shreve**, CEO of South-Central Community Action Programs (SCCAP), and **Drs. Robert and Nicole Hewitt**, educators and facilitators, discussed focus groups with people of color that were conducted as part of the Borough's comprehensive plan outreach (Focus groups met in March before an Exploratory Committee was formed). While the focus groups did not meet to discuss racial issues, the topic kept surfacing with the 27 participants voicing concerns about racial discrimination, limited opportunities for job advancement, disparate treatment by police and inequity in schools and housing. **Scott Bowerman**, pastor of Central Presbyterian Church and co-founder of a local Racial Reconciliation group, spoke in favor of the ordinance. About 35 people viewed the meeting via Zoom.

July 28, 2021: **Jason Landau Goodman**, special policy adviser on local non-discrimination efforts and former executive director of the PA Youth Congress, and **Preston Heldibridle**, executive director of the PA Youth Congress, spoke in favor of the ordinance. **Jack Jones**, president and CEO of BOPIC (Building Our Pride in Chambersburg) Inc. and manager of the Elm Street program, presented results from several local focus groups which included people of color, Hispanic and Haitian community members and professionals. These were conducted as part of the comprehensive plan outreach. (Focus groups met in March and April before an Exploratory Committee was formed. In all, there were 19 focus groups that participated in comprehensive plan outreach efforts.) Mr. Jones said there is a need for a local NDO. **Adam Meredith**, lead pastor of Antrim Brethren in Christ Church, spoke against the adoption of an NDO. About 150 people attended via Zoom.

Prior to each Exploratory Committee meeting, the Borough of Chambersburg sent news releases about the guests, time and place and how to view the meeting by Zoom. News releases were sent to about 24 media outlets and about 1,500 residents who opted to receive information from the Borough. In addition to the attendance by Zoom, links to the recordings of the meetings were provided to those who requested such access. The Exploratory Committee received about 200 e-mails, both for and against the adoption of a non-discrimination ordinance.

The Exploratory Committee reached out to the Pa. State Association of Boroughs for its input, but the PSAB recommended that Council rely on its own legal counsel. It also extended invitations to the Pa. Municipal League and the city of Butler, which considered adopting an NDO before tabling it. Both did not respond. The Chambersburg Council of Churches is being reorganized at this time and declined an invitation.

PROPOSED CHAMBERSBURG NON-DISCRIMINATION ORDINANCE

AN ORDINANCE OF THE BOROUGH OF CHAMBERSBURG, FRANKLIN COUNTY, PENNSYLVANIA, PROHIBITING DISCRIMINATION IN EMPLOYMENT, PUBLIC ACCOMMODATION, HOUSING AND COMMERCIAL PROPERTY; ESTABLISHING THE CHAMBERSBURG BOROUGH LOCAL HUMAN RELATIONS COMMISSION, ESTABLISHING PROCEDURES FOR FILING COMPLAINTS WITH THE BOROUGH HUMAN RELATIONS COMMISSION, AND PROVIDING A MEDIATION PROCESS FOR FILED COMPLAINTS.

NONDISCRIMINATION AND LOCAL HUMAN RELATIONS COMMISSION SECTION 1. PREAMBLE.

WHEREAS, the equality of all individuals is a basic tenet of the Constitution of the United States; and

WHEREAS, the population of the Borough of Chambersburg is reflective of the general population of the United States of America, and consists of people possessing a number of different personal characteristics regarding their race, color, sex, religion, religious creed or belief, ancestry, national origin, familial status, marital status, age, veteran status, mental or physical disability or handicap or the use of service or assistance animals or the handler or trainer of such service animals; and

WHEREAS, the direct negative and secondary effects of discriminatory practices involving the personal characteristics set forth herein in matters of employment, public accommodation, housing and commercial property in this country are well known and have been extensively studied and demonstrated; and

WHEREAS, the practice or policy of discrimination against such individuals or groups is a matter of public concern that threatens the rights and privileges of the residents, guests and employees, who respectively live, visit or work in the Borough of Chambersburg; and

WHEREAS, the Town Council of the Borough of Chambersburg desires to establish and adopt an official policy of nondiscrimination within the Borough in all matters involving employment, public accommodation, housing and commercial property; and

WHEREAS, the Pennsylvania Human Relations Act, at 43 P.S. 962.1, authorizes the legislative body of a political subdivision to establish a local human relations commission with certain powers similar to those of the Pennsylvania Human Relations Commission; and

WHEREAS, the Town Council of the Borough of Chambersburg recognizes the Pennsylvania Human Relations Commission Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act as an important interpretative resource; and

WHEREAS, the Town Council of the Borough of Chambersburg desires to establish a local human relations commission pursuant to the authority set forth in 43 P.S. §962.1 of the Pennsylvania Human Relations Act.

BE IT ENACTED AND ORDAINED by the Town Council of the Borough of Chambersburg, Franklin County, Pennsylvania, by virtue of the power and authority vested in said Borough Council, as follows:

SECTION 2. SHORT TITLE.

This Ordinance may be cited as the "Borough of Chambersburg Nondiscrimination and Local Human Relations Commission Ordinance."

SECTION 3. PURPOSE; DECLARATION OF POLICY.

- A. The Borough of Chambersburg finds that it is of high public importance to adopt appropriate legislation to ensure that all persons, regardless of race, color, sex, religion, religious creed or belief, ancestry, national origin, familial status, marital status, age (except in public accommodations), veteran status, mental or physical disability or handicap or the use of service or assistance animals or the handler or trainer of such service animals, enjoy the full benefits of citizenship and are afforded equal opportunities for employment, public accommodation, housing and commercial property.
- B. The Town Council of the Borough of Chambersburg hereby declares it to be the public policy of the Borough of Chambersburg to foster equality and equal opportunity for all citizens, regardless of race, color, sex, religion, religious creed or belief, ancestry, national origin, familial status, marital status, age (except in public accommodations), veteran status, mental or physical disability or handicap or the use of service or assistance animals or the handler or trainer or such service animals, in all matters affecting employment, public accommodation, housing and commercial property, and to safeguard the right of all persons to remain free from discrimination or discriminatory practices in any of the foregoing aspects of their lives.
- C. It is the express purpose and intent of this Ordinance that all persons be treated fairly and equally and that all persons within the Borough of Chambersburg be guaranteed fair and equal treatment under law.
- D. This Ordinance shall be deemed an exercise of the police power of the Borough of Chambersburg, as provided under the Borough Code, for the protection of the public safety, welfare, health and peace of the community of the Borough of Chambersburg.

SECTION 4. DEFINITIONS.

- A. The following words and phrases when used in this Chapter shall have the meanings given to them in this section.

ACT – The Pennsylvania Human Relations Act, Act of 1955, P.L. 744, No. 222, 43 P.S. § 951 et seq., as amended.

BOROUGH - The Borough of Chambersburg, County of Franklin, Pennsylvania.

BOROUGH OFFICE – The municipal office building of the Borough of Chambersburg located at 100 South Main Street, Chambersburg, Pennsylvania 17201.

COMMISSION – The Chambersburg Borough Human Relations Commission as established by this Ordinance pursuant to 43 P.S. § 962.1 of the Pennsylvania Human Relations Act.

COMPLAINANT(S) – Any person or persons filing a complaint alleging discriminatory

acts committed in violation of this Ordinance.

DISCRIMINATION: Any discriminatory act or acts taken within the Borough of Chambersburg by any person, employer, employment agency, labor organization or public accommodation on the basis of race, color, sex, religion, religious creed or belief, ancestry, national origin, familial status, marital status, age, veteran status, mental or physical disability or handicap or the use of service or assistance animals or the handler or trainer of such service animals.

DISCRIMINATORY ACTS: Including, but not limited to, all acts set forth in the Human Relations Act, at 42 P.S. § 955, as unlawful discriminatory practices.

EMPLOYER: Any person, as defined in this section, including the Borough of Chambersburg, its departments, boards and commissions, and any other government agency or school district within its jurisdiction, employing four or more employees.

FAIR HOUSING ACT – The Fair Housing Act, P.L. 90-284, 42 U.S.C. § 3601 et seq., as amended.

GUIDANCE – The Pennsylvania Human Relations Commission Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act, issued on August 2, 2018, and any subsequent amendments thereto.

PERSON – One or more individuals, partnerships, associations, organizations, corporations, limited liability entities, or similar business entities including the Borough, its departments, authorities, boards and commissions, and other for-profit and nonprofit organizations.

PUBLIC ACCOMMODATION - Any accommodation including, but not limited to those set forth in the Pennsylvania Human Relations Act, at 43 P.S. § 954, which is open to, accepts or solicits the patronage of the general public or offers goods or services to the general public, but shall not include accommodations which are in their nature distinctly private.

RESPONDENT(S) – Any person or persons alleged to have committed discriminatory acts in violation of this Ordinance.

SEX – May refer to sex assigned at birth, sexual orientation, gender identity, gender expression, gender transition and/or transgender, defined as follows:

- (a) Sex assigned at birth – The assignment and classification of individuals at birth, including but not limited to male, female, intersex and the related physical differences between the sexes, such as pregnancy;
- (b) Sexual Orientation – An inherent or immutable enduring emotional, romantic or sexual attraction to other people, including but not limited to heterosexual, homosexual and bisexual;
- (c) Gender Identity – One’s innermost concept of self as male, female, a blend of both or neither. How individuals perceive themselves and what they call themselves. One’s gender identity can be the same or different from their sex assigned at birth.

- (d) Gender Expression – External appearance of one’s general identity, usually expressed through behavior, clothing, haircut or voice, which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.
- (e) Gender transition – The process by which some people strive to more closely align their internal knowledge of gender with its outward appearance. Some people socially transition, whereby they might begin dressing, using names and pronouns and/or be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions and procedures.
- (f) Transgender – An umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation.

TOWN COUNCIL - The Town Council of the Borough of Chambersburg, Franklin County, Pennsylvania.

- B. Any terms not expressly defined herein shall be construed in accordance with the Pennsylvania Human Relations Act and consistent with the Guidance issued by the Pennsylvania Human Relations Commission.

SECTION 5. UNLAWFUL PRACTICES/PROHIBITED ACTS.

- A. Discrimination in employment, public accommodations, housing and commercial property, within the Borough of Chambersburg, is prohibited under this Ordinance.
- B. For any individual to retaliate against any individual because such individual has opposed any practice forbidden by this Ordinance, or because such individual has made a charge, testified or assisted in any manner in any investigation or proceeding under this Ordinance is prohibited.
- C. For any individual to aide, abet, incite, compel, or coerce the doing of any act declared by this Ordinance to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this Ordinance is prohibited.

SECTION 6. EXCEPTIONS.

- A. Nothing contained herein shall apply to a religious corporation, association, educational institution or society, not supported in whole or in part by governmental appropriations, with respect to the employment of individuals of a particular religion to perform work directly connected to carrying on its religious activities.
- B. Nothing contained herein shall bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes which is operated, supervised or controlled by or in connection with a religious organization, not supported in whole or in part by governmental appropriations, from limiting admission to or giving preference to persons of the same religion or denomination with regard to the occupancy, leasing, sale or purchase of any housing accommodation.

SECTION 7. ESTABLISHMENT OF LOCAL HUMAN RELATIONS COMMISSION.

The Chambersburg Borough Human Relations Commission (hereinafter referred to as the "Commission") is hereby established pursuant to the authority set forth in 43 P.S. §962.1 of the Pennsylvania Human Relations Act.

- A. The Commission shall consist of five (5) members. The terms of office of the Commission members shall be five (5) years and the terms shall be so fixed that the term of office of one (1) member of the Commission shall expire each year, and members may succeed themselves. The membership of the Commission shall be appointed by resolution adopted by the Town Council. The Town Council may also appoint at least one, but no more than three individuals to serve as an alternate member or members of the Commission. The term of office of an alternate member shall be three (3) years. The Commission shall promptly notify the Town Council of any vacancies which occur in the membership of the Commission. Appointments by the Town Council to fill vacancies shall be only for the unexpired portion of the term of membership.
- B. Members or alternate members of the Commission must be either residents of the Borough or must be employed on a full-time basis within the Borough with their principal office or primary place of employment located within the Borough. The full membership of the Commission shall be comprised of at least three residents of the Borough. In making its appointments to the membership of the Commission, the Town Council may provide due consideration to an individual who is an attorney or who has a background of service within the legal community of the Borough and Franklin County; and may also provide due consideration to an individual from the Chambersburg area faith community. A member or alternate member of the Commission shall not hold another Borough office, either elected or appointed, and shall not be an employee of the Borough. Members or alternate members of the Commission may not hold office in any political party. Members or alternate members of the Commission shall serve without compensation, but may be reimbursed for expenses incurred in the performance of their duties.
- C. The Commission shall elect from its membership a chairperson who shall serve an annual term and, if elected, may serve successive terms as Chairperson. The Chairperson shall be responsible for setting Commission meetings, coordinating with the Borough regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commission members. The Chairperson shall report to the Town Council quarterly regarding the activities of the Commission.
- D. Members of the Commission shall, as soon after their appointment as practical, attend such training and education seminars or sessions as deemed necessary to acquaint themselves with the functioning of the Commission under this Ordinance, as well as the terms, conditions, and provisions of the Pennsylvania Human Relations Act, and the operation of the Pennsylvania Human Relations Commission. Such training and education shall be as directed by the Chairperson and may be performed in conjunction with the Pennsylvania Human Relations Commission or such other qualified trainer or educator in any such related fields to include that of mediation.
- E. The Commission shall have all authority and powers necessary to carry out the purposes of this Ordinance and the duties of the Commission hereunder, provided that such powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the

Pennsylvania Human Relations Act.

- F. The Commission shall operate within the scope of funds that may be allocated, on an annual basis, by the Town Council and shall not exceed the annual allocation in any year, except upon prior approval of the Town Council. In adopting this Ordinance, the Town Council hereby expresses its intention that the operation of the Commission shall be supported by volunteers and volunteer efforts and shall be as close to “zero cost” to the Borough as is reasonably feasible.

SECTION 8. PROCEDURES FOR FILING COMPLAINT.

- A. Any person(s) claiming to be aggrieved (the “Complainant(s)”) by discriminatory acts may make, sign and file a verified complaint alleging violations of this Ordinance, which shall include the following information:

- 1) The name, phone number, and address of the Complainant(s);
- 2) The name, phone number, and address of the person(s) alleged to have committed the discriminatory act or acts (the “Respondent(s)”);
- 3) The particulars of the facts, including pertinent dates and locations, constituting the alleged discriminatory act or acts;
- 4) If applicable, the address and a description of any residential or commercial property or public accommodation that is involved; and
- 5) Such other information as may be required by the Commission.

- B. Complaints shall be filed in person at the Borough Office or by mailing such complaints to the Borough Office.

- 1) All complaints must be received by the Borough Office within one-hundred-eighty (180) days of the alleged discriminatory act or acts in order to be considered timely. The time limits for filing a complaint or other pleading shall be subject to waiver, estoppel and equitable tolling.
- 2) All complaints shall be directed to the Borough Manager’s Office.
- 3) The Borough Manager’s Office shall convey the complaint to the Chairperson of the Commission within ten (10) days of receipt of the complaint.
- 4) The Commission will designate forms for use by persons to file a complaint; however, complaints submitted in other formats will be accepted provided that such formats include all information required in subsection A. herein relative to the filing of complaints.

SECTION 9. NOTIFICATIONS BY COMMISSION; FILING OF ANSWER.

- A. Within thirty (30) days of its receipt of a complaint, the Commission shall:

- 1) Provide a copy of the complaint to the Respondent(s);
- 2) Provide notice to the Complainant(s), confirming that the complaint has been

received. If the complaint alleges discrimination on a basis prescribed under federal or state law, the notice sent to the Complainant shall also provide information of a possible right to file with the Pennsylvania Human Relations Commission and/or with the federal Equal Employment Opportunity Commission; and

3) Provide notice to the Pennsylvania Human Relations Commission of the filing of any complaint that may be deemed to be within the jurisdiction of the Pennsylvania Human Relations Commission.

- B. Within thirty (30) days of receipt of the complaint, the Respondent(s) shall file a written verified answer. An answer to a complaint may be filed in the same manner as an original complaint. If the answer is filed with the Borough Office, it shall be conveyed by the Borough Manager to the Chairperson of the Commission within ten (10) days of filing.
- C. Within ten (10) days of receipt of the answer, the Commission shall provide a copy of the answer to the Complainant(s).
- D. Within thirty (30) days of the filing of the answer, the Commission shall provide notice to both the Complainant(s) and the Respondent(s) of the option to elect to proceed to voluntary mediation in order to attempt to resolve the matters giving rise to the complaint. The Commission shall assist in facilitating said mediation.

SECTION 10. MEDIATION.

- A. Within forty-five (45) days of receipt of an answer to a complaint or, where no answer is filed, within sixty (60) days of service of the complaint upon the Respondent(s), the Commission shall proceed in accordance with the following options, in the event that both parties have consented to mediation under section 9.D.
- B. The Commission shall refer the matter to a recognized alternative dispute- resolution service, organization or any other professional mediation service provider. Any costs or expenses that may be associated with the mediation shall be the responsibility of the parties.
- C. The parties shall jointly select the mediator; however, the Commission shall retain the authority to act as the mediator if the parties have agreed to mediation but cannot jointly agree on a mediator. A minimum of three (3) Commission members must be present in order to conduct a mediation session.
- D. Mediation sessions, whether conducted by a third-party mediator or by the Commission, shall be confidential and are not subject to public participation under the Sunshine Act (65 Pa. C.S. § 701 et seq.). Neither the mediation sessions nor the results thereof shall be subject to public access under the Right-to-Know Law (65 P.S. § 67.101 et seq.) or any other applicable law or regulation except upon written consent of all of the parties to the mediation.
- E. The mediator shall notify the Commission whether the mediation was successful in resolving the complaint.
- F. If mediation has resulted in an amicable resolution of the complaint and the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed and shall record the result of the mediation in a notice of dismissal.
- G. If mediation has not resulted in an amicable resolution of the complaint, and if the complaint alleges a violation of this Ordinance which is also prescribed under the Act, the Commission

shall notify the parties that the complaint has been dismissed and, at the election of the Complainant, may refer the complaint to the Pennsylvania Human Relations Commission for further proceedings, if allowed and authorized to do so pursuant to the Act.

- H. If the complaint has not been resolved through mediation, and the allegation is not within the jurisdiction of the PA Human Relations Commission, the Complainant(s) may elect to proceed to the Court of Common Pleas of Franklin County, Pennsylvania.
- I. In the event the complaint proceeds to either the Pennsylvania Human Relations Commission or to the Court of Common Pleas of Franklin County, the Commission shall dismiss the complaint and notify the parties that the Commission no longer has jurisdiction over the matter. The notification shall reference the filing requirements and deadlines set forth in section 962 of the Act (43 P.S. § 962), and any amendments thereto.

SECTION 11. PRIVATE RIGHT OF ACTION AND NO LIMITATION OF REMEDIES.

Nothing contained in this Ordinance shall be deemed to limit the right of any Complainant(s) from pursuing any applicable civil, state, or federal remedy following exhaustion of the administrative mediation remedy under this Ordinance.

SECTION 12. EFFECT ON OTHER FILINGS.

This Ordinance shall have no jurisdiction over matters that are the subject of pending or prior filings made by Complainant(s) before any state or federal court or agency of competent jurisdiction.

SECTION 13. VIOLATIONS AND PENALTIES.

Any person who shall violate any provision of this Ordinance may be subject to any of the penalties enumerated in the Pennsylvania Human Relations Act imposed by the Pennsylvania Human Relations Commission, the Court of Common Pleas of Franklin County or by any other court having competent jurisdiction over the matter. Because mediation is the sole administrative process provided for herein, the Chambersburg Borough Human Relations Commission shall not have jurisdiction to enter any penalty or enforce the same against a person for a violation of this Ordinance.

SECTION 14. SEVERABILITY.

The provisions of this Ordinance or Chapter are severable, and if any section, clause, part or provision hereof shall be held to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of that court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Town Council of the Borough of Chambersburg that this Ordinance would have been enacted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included in this Ordinance or Chapter.

SECTION 15. REPEALER. All other ordinances or chapters of ordinances inconsistent herewith are hereby repealed insofar as the same affect this Ordinance.

SECTION 16. EFFECTIVE DATE. This Ordinance shall take effect upon enactment.

THIS ORDINANCE DULY ENACTED AND ORDAINED according to law on this _____ day of _____, 2021, at a duly advertised special meeting of the Town Council of the Borough of Chambersburg, Franklin County, Pennsylvania.

EXPLORATORY COMMITTEE FREQUENTLY ASKED QUESTIONS

MEMORANDUM

TO: Mayor and Council Members

FROM: Exploratory Committee

SUBJECT: FAQs Regarding Chambersburg Borough's Proposed Non-Discrimination Ordinance

DATE: August 27, 2021

1. Why did Town Council decide to consider adopting a non-discrimination ordinance and forming a local human relations commission?

The question of a local non-discrimination ordinance was brought up in November of 2017. In January of 2018, a resolution was passed by an 8-2 vote of Council to support the passage of Senate Bill 613, which sought to amend the PA Human Relations Act to expand legal protections to all. In March 2021, Borough Council unanimously passed a non-discrimination policy for borough employees, contractors, elected officials, and volunteers. Discussion of a possible non-discrimination ordinance was then placed on the Town Council's agenda by Council President Alice Elia, upon request by a borough resident.

2. How was the Exploratory Committee formed? When and where did it meet?

Three Town Council members were selected for the Committee by a process of nomination and vote of Council. The committee's charge was to research, gather information, and make a recommendation to Council regarding the potential creation of a local Human Relations Commission and Non-discrimination Ordinance. It met six times over the summer of 2021. Its meetings were public, allowing public viewing by Zoom, or by watching a recording of each meeting. Members of the public were able to contribute questions, suggestions, etc., via a dedicated email address: exploratorycommittee@chambersburgpa.gov.

3. Where does a municipality get the authority to create a local human relations ordinance and/or commission?

The authority originates from the Pennsylvania Human Relations Act, which expressly authorizes local municipalities to create human relations ordinances and commissions.

The Pennsylvania Human Relation Act states that a "legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment or membership in and support of a Local Human Relations Commission."

4. The Pennsylvania Human Relations Act protects all people from discrimination as a result of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, and use or training of a guide or service dog, but does it also protect citizens from discrimination on the basis of LGBTQ+ identity?

Not explicitly. As stated in the report presented to Council by the Exploratory Committee, "In August 2018, the PHRC issued guidance, saying it would interpret sex discrimination to include, another other things, sexual orientation and gender identity. However, these guidelines do not have the effect of statutes or regulations."

5. Where did the proposed local non-discrimination ordinance come from?

The Exploratory Committee recommended the adoption of an ordinance similar to Gettysburg's, which includes the formation of a local Human Relations Commission. The proposed Chambersburg ordinance is a nearly verbatim copy of the Gettysburg Ordinance, with slight changes following consultation with Carl H. Summerson, Esq., Chief Hearing Examiner for the PA Human Relations Commission.

6. If adopted, who will serve on the new Chambersburg Human Relations Commission? Will the participants be paid? Will they receive training?

The local Human Relations Commission would have five members and one to three alternates. They will be unpaid volunteers, appointed by Town Council, as is the practice for other borough committees. The appointees will be trained by representatives of the State Human Relations Commission, at no/minimal additional cost to the Borough of Chambersburg.

7. If adopted, will the Borough of Chambersburg need to hire more employees or locate additional operating expenses?

The local Human Relations Commission would require legal counsel on an as needed basis. Otherwise, local non-discrimination ordinances and/or Human Relations Commissions structured similarly to the proposed ordinance do not require additional staffing. More generally, as the ordinance states, the local Human Relations Commission should be as close to "zero cost" as is reasonably feasible.

8. If adopted, will the Borough of Chambersburg evaluate claims of discrimination made by citizens? What happens if the Commission finds the claims credible?

The process of filing and resolving claims is laid out in the text of the ordinance. Borough staff and members of Town Council are not involved in the resolution process. The Ordinance provides voluntary mediation as the venue for amicably resolving complaints. Commission members may serve as mediators if the parties are unable to agree on a third party mediator. If mediation proves unsuccessful, whether due to lack of participation or lack of agreement on resolution, complainants may take their claim to the State Human Relations Commission or the Court of Common Pleas.

9. Are the proposed religious exceptions different from current religious exceptions in State Law?

The ordinance would mirror the existing exemptions provided for in state law for religious organizations (churches, synagogues, religiously-affiliated schools, etc.) and would not change how they operate, assuming they are otherwise acting in accordance with State Law.

10. Would adoption of the proposed local law require local businesses to treat customers the same regardless of race, religion, ethnicity, gender, sexual orientation, etc.?

Yes, just as they should be under the current Pennsylvania Human Relations Act. The local non-discrimination ordinance merely clarifies the category of sex, as consistent with the Pennsylvania Human Relations Commission's existing interpretation of the Pennsylvania Human Relations Act.