

ORDINANCE NO. ____-2019

To Enact New Chapter 539 “Discriminatory Practices, Civil Rights, Disclosure” of the Codified Ordinances of the City of Worthington to Prohibit Discrimination in Housing, Employment, Public Accommodations, and Higher Education Based on Designated Classes.

WHEREAS, state law currently prohibits discriminatory practices in housing, employment, and public accommodations based on race, sex, color, religion, ancestry, national origin, age, disability, familial status, marital status, or military status; and,

WHEREAS, the City of Columbus and the City of Bexley have adopted ordinances to ban discrimination in housing, employment and public accommodations based on race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status, or military status; and,

WHEREAS, the City of Worthington, Ohio does not currently have an ordinance prohibiting discrimination in housing, employment and public accommodations; and,

WHEREAS, it is the desire of the City Council to eliminate discrimination in Worthington based upon race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That Part Five of the Codified Ordinances of the City of Worthington, “General Offenses Code,” be and the same is hereby amended to add new Chapter 539 “Discriminatory Practices, Civil Rights, Disclosure” to read as follows:

CHAPTER 539
Discriminatory Practices, Civil Rights, Disclosure

539.01 DEFINITIONS

As used in this chapter:

- (a) “Age” means at least forty (40) years old.
- (b) “Disability” means a physical or mental impairment that substantially limits one (1) or more major life activities, including the functions of caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

- (c) “Physical or mental impairment” includes any of the following:
- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine;
 - (2) Any mental or psychological disorder, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, sickle cell, human immunodeficiency virus infection, intellectual disabilities, emotional illness, drug addiction, and alcoholism.
 - (3) “Physical or mental impairment” does not include any of the following:
 1. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;
 2. Compulsive gambling, kleptomania, or pyromania;
 3. Psychoactive substance use disorders resulting from current illegal use of controlled substance.
- (d) “Discriminate”, “Discrimination”, or “Discriminatory” includes segregated or separated or any difference in treatment.
- (e) “Employee” does not include any individual employed in the domestic service of any person
- (f) “Employer” means any person who employs four (4) or more persons, within the City of Worthington, including the City of Worthington, its departments, boards, commissions, and authorities.
- (g) “Employment agency” means any persons regularly undertaking with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.
- (h) “Familial status” means either of the following:
- (1) One (1) or more individuals who are under eighteen (18) years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;
 - (2) Any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen (18) years of age.
 - (3) “Family” includes a single individual.

(i) “Gender identity or expression” means having or being perceived as having gender-related identity, appearance, expression, or behavior, whether or not that identity, appearance, expression, or behavior is different from that traditionally associated with the person’s assigned sex at birth.

(j) “Housing accommodations” including any buildings or structure or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as a home residence or sleeping place of one (1) or more individuals, groups or families, whether or not living independently of each other; and any vacant land offered for sale or lease. It also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesman, or agent, or by any other person pursuant to authorization of the owner, by the owner, or by such person’s legal representative.

(k) “Labor organization” includes any organization which exists for the purpose, in whole or in part, of collective bargaining or for other mutual aid or protection in relation to employment.

(l) “Military status” means a person’s status in “Service in the uniformed services” as defined in Section 5923.05 of the Ohio Revised Code.

(m) “Person” includes one (1) or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, and trustees in bankruptcy, receivers, and other organized groups of persons. It also includes, but is not limited to, any owner, lesser, assignor, builder, manager, broker, salesman, agent, employee, lending institution; and the City of Worthington and all political subdivisions, authorities, agencies, boards and commissions thereof.

(n) “Place of public accommodation” means any inn, restaurant, eating house, barbershop, public conveyance by air, land or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodation advantages, facilities, or privileges thereof are available to the public.

(o) “Restrictive covenant” means any specification in a deed, land contract or lease limiting the use of any housing because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status or any limitation based upon affiliation with or approval by any person, directly or indirectly, employing race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status as a condition of affiliation or approval.

(p) “Service in the uniformed services” means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, and performance of duty or training by a

member of the Ohio organized militia pursuant to Chapter 5923 of the Ohio Revised Code. "Service in the uniformed services" includes also the period of time for which a person is absent from a position of public or private employment for the purpose of an examination to determine the fitness of the person to perform any duty described in this division.

(q) "Sex" means male or female. The terms "because of sex" and "on the basis of sex" include pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions.

(r) "Sexual orientation" means a person's actual or perceived homosexuality, bisexuality; or heterosexuality.

(s) "Uniformed services" means the Armed Forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or full-time national guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency.

(t) "Marital status" means a person's state of being single, married, separated, divorced, or widowed.

(u) "Genetic information" means the hereditary information about DNA sequence, genetic sequence, gene products, or inherited characteristics contained in chromosomal DNA or RNA that are derived from an individual or family member.

(v) "Unlawful discriminatory practice" means any act prohibited by Chapter 539 of the Worthington City Codes.

(w) "Law Director" means the Worthington Law Director or an attorney appointed to by the Worthington Law Director.

(x) "Hearing Officer" means the person appointed by the Worthington City Manager, in consultation with the Worthington Community Relations Commission.

(y) "Educational Institution" means a state university or college, state-assisted institution of higher education, nonprofit educational institution described in Chapter 1713 of the Ohio Revised Code, institution registered under Chapter 3332 of the Ohio Revised Code, or similar for profit or nonprofit institutions of higher education regardless of whether they are licensed or regulated by the state of Ohio.

539.02 FAIR HOUSING.

(a) It shall be an unlawful discriminatory practice for any person to:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, finance or otherwise deny or withhold housing accommodations from any person because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age,

disability, marital status, familial status, genetic information, or military status of any prospective owner, occupant, or user of such housing accommodations;

- (2) Represent to any person that housing accommodations are not available for inspection when in fact they are so available;
- (3) Refuse to lend money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations or otherwise withhold financing of housing accommodations from any person because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information or military status of any present or prospective owner, occupant, or user of such housing accommodations, provided such person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects of their business or incidental to their principal business and not only as a part of the purchase price of an owner occupied residence they are selling nor merely casually or occasionally to a relative or friend;
- (4) Discriminate against any person in the terms or conditions of selling, transferring, assigning, renting, leasing or, subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy or use of any housing accommodations because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of any present or prospective owner, occupant, or user of such housing accommodations;
- (5) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of any housing accommodations because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of any present or prospective owner, occupant, or user of such housing accommodations;
- (6) Print, publish, or circulate any statement or advertisement relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any housing accommodations or the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations which indicates any preference, limitation, specification, or discrimination based upon the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of any present or prospective owner, occupant, or user of such housing accommodations;
- (7) Make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning the race, sex, sexual

orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations;

(8) Include in any deed, land contract, or lease of accommodations any covenant, honor or exercise, or attempt to honor or exercise, any covenant, that would prohibit, restrict, or limit the sale, transfer, assignment, rental lease, sublease, or finance of housing accommodations to or for any person because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of any prospective owner, occupant, or user of such housing accommodations provided that prior inclusion of a restrictive covenant in the chain of title shall not be deemed a violation of this provision;

(9) Induce or solicit, or attempt to induce or solicit, any housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur in the block, neighborhood, or area in which the property is located, which change is related to the presence or anticipated presence of persons of any race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status.

(10) Induce or solicit or attempt to induce or solicit, any housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of persons of any race, sex, sexual orientation, gender identity or expression, color, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or military status in the area will or may have results such as the following:

- A. The lowering of property values;
- B. An increase in criminal or antisocial behavior in the area; or
- C. A decline in the quality of schools serving the area;
- D. Discourage or attempt to discourage the purchase by prospective purchasers of any housing accommodations by representing that any block, neighborhood, or area has or might undergo a change with respect to the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of the residents;
- E. Deny any person access to or membership or participation in any multiple listing service, real estate, brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or to discriminate against them in the terms of conditions of such access, membership, or participation, on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status.
- F. Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of

their having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section;

G. Whether or not acting under color of law, by force or threat of force willfully injure, intimidate or interfere with, or attempt to injure, intimidate, or interfere with:

1. Any person because of their race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status and because that person is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations;
2. Any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from:
 - i. Participating, without discrimination on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status in any of the activities, services, organizations, or facilities described in division (10)(G)(1) of this section.
 - ii. Affording another person or class of persons opportunity or protection so to participate; or
3. Discouraging any person from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status in any of the activities, services, organizations, or facilities described in division (10)(G)(1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate;

(11) Refuse to sell, transfer, assign, rent or lease, sublease, finance or otherwise deny or withhold a burial lot from any person because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of any prospective owner or user of such lot; or

(12) For any person to discriminate in any manner against any other person because that person has opposed any unlawful practice defined in Chapter 539 of the Worthington City Codes, or because that person has made a charge, testified, assisted, or participated in any manner, in any investigation, proceeding, or hearing under the provisions of Chapter 539 of the City of Worthington Codes.

(b) Nothing in this section shall bar any religious or denominational institution or

organization, or any nonprofit charitable or educational organization that is operated, supervised, or controlled by or in connection with a religious organization, from limiting the sale, rental, or occupancy of housing accommodations that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference in the sale, rental, or occupancy of such housing accommodations to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin.

539.03 UNLAWFUL EMPLOYMENT PRACTICES.

(a) It shall be an unlawful discriminatory practice, except where based upon applicable national security regulations established by the United States:

(1) For any employer, because of the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status to refuse to hire that person or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment;

(2) For any employer, employment agency, or labor organization to establish, announce or follow a policy of denying or limiting, the employment or membership opportunities of any person or group of persons because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status.

(3) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of that person's race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status in admission to employment in any program established to provide apprentice training;

(4) For any employer, employment agency, or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to employment or membership which indicates any preference, limitation, specifications or discrimination based upon race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status;

(5) For any person seeking employment to publish or to cause to be published any advertisement which specifies or in any manner indicates that person's race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of any prospective employer;

- (6) For any employment agency to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against any person because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status;
- (7) For any employer, employment agency, or labor organization to utilize in the recruitment or hiring of persons, any employment agency, placement service, labor organization, training school or center, or any other employee-referring source, known to discriminate against persons because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status;
- (8) For any labor organization to discriminate against any person or limit that person's employment opportunities, or otherwise adversely affect that person's status as an employee, or that person's wages, hours, or employment conditions, because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status;
- (9) For an employment agency, to comply with, accommodate, or otherwise assist with locating an employee related to, a request from an employer for referral of applicants for employment if the request indicates, directly or indirectly, that the employer fails, or may fail, to comply with Chapter 539, of the Worthington City Codes;
- (10) For any labor organization to limit or classify its membership on the basis of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status;
- (11) For any employer, employment agency or labor organization to:
- A. Elicit or attempt to elicit any information concerning the race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status of an applicant for employment or membership;
 - B. Use any form of application for employment or personnel or membership blank seeking to elicit information regarding race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status but an employer holding a contract containing a non-discrimination clause with the government of the United States or any department or agency thereof, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain such proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes.

(12) For any employer, employment agency or labor organization to discriminate against any person because that person has opposed any practice forbidden by Chapter 539, of the Worthington City Codes, or because that person has made a complaint or assisted in any manner in any investigation or proceeding under Chapter 539, of the Worthington City Codes.

(13) For any person, whether or not an employer, employment agency or labor organization, to aid, incite, compel, coerce, or participate in the doing of any act declared to be unlawful discriminatory practice by Chapter 539, of the Worthington City Codes, or to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt directly or indirectly to commit any act declared by this chapter, to be an unlawful discriminatory practice by Chapter 539, of the Worthington City Codes, or to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt directly or indirectly to commit any act declared by this chapter, to be an unlawful discriminatory practice.

(b) This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities.

539.04 UNLAWFUL PUBLIC ACCOMMODATIONS.

It shall be an unlawful discriminatory practice:

(a) For any proprietor or his employee, keeper, or manager of a place of public accommodation to deny to any person except for reasons applicable alike to all persons regardless of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status the full enjoyment of the accommodations, advantages, facilities, or privileges thereof;

(b) For any proprietor or his employee, keeper, or manager of a place of public accommodation to publish, circulate, issue, display, post or mail, either directly or indirectly, any printed or written communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, goods, products, services and privileges of any such place shall be refused, withheld or denied to any person on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status or that such person is unwelcome, objectionable, or not acceptable, desired or solicited; or

(c) For any person, whether or not included in divisions (A) and (B) in this section, to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice under this section.

(d) Nothing in this section shall prohibit a religious or denominational institution, organization, society or association or any nonprofit charitable or education organization that is operated, supervised or controlled by or in connection with a religious organization, from limiting its offerings of goods, services, facilities and accommodations to persons of the same religion, or from giving preference to such persons, provided that such offerings mentioned above are not, in fact, offered for commercial purposes or supported by public funds.

(e) Nothing in this section shall be construed to require the modification of existing facilities or the construction of new or additional facilities.

539.05 UNLAWFUL EDUCATIONAL PRACTICES.

(a) It shall be an unlawful discriminatory practice for any educational institution to discriminate against any individual on account of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, or military status:

(1) In admission or assignment to any academic program, course of study, internship, or class offered by the institution;

(2) In permitting participation in any activity that is sponsored by the institution or that takes place on property owned, operated, or controlled by the institution;

(3) In the awarding of any form of financial aid or other benefits available to students;

(4) In admission or assignment to housing or other facilities owned, operated, or controlled by the institution;

(5) In awarding of grades or granting of certificates, diplomas, or degrees offered by the institution.

(b) Nothing in this section prohibits any educational institution from establishing bona fide requirements or standards for admission or assignment to academic programs, courses, internships, or classes; for permitting participation in activities; for awarding of financial aid or other benefits; or for the granting of grades, certificates, diplomas, or degrees, which requirements or standards may include reasonable qualifications for demonstrating necessary skill, aptitude, physical capability, intelligence, and previous education.

(c) Nothing in this section requires any educational institution to construct, reconstruct, improve, enlarge, or alter any building, facility, or property owned, operated, or controlled by the institution, in any manner, for the purpose of making the building, facility, or property accessible to persons with a disability, provided that this section does not exempt an educational institution from compliance with standards adopted under section 3781.111 of the Ohio Revised Code.

539.06 COMPLAINT AND ENFORCEMENT PROCEDURE.

(a) Complaints

(1) Any person may file a charge with the City Clerk alleging that another person has engaged or is engaging in an unlawful discriminatory practice as defined in Chapter 539 of the Worthington City Codes. The charge shall be in writing and under oath and shall be filed with the City Clerk within one hundred eighty (180) days after the alleged unlawful discriminatory practice is committed. The City Clerk shall forward a copy of the charge to the respondent and to the Law Director.

(2) If the charge of discrimination alleges a violation based on race, sex, color, religion, ancestry, national origin, age, disability, genetic information, military status, and/or any other class or characteristic protected under state or federal law, then the City Clerk shall instruct the complainant to file a charge of discrimination with the Ohio Civil Rights Commission (OCRC)/Equal Employment Opportunity Commission (EEOC). The City Clerk shall provide the complainant with information about this requirement and contact information for the OCRC/EEOC within ten (10) days from the date the charge was filed with the City Clerk. The initial filing of a charge of discrimination with the City Clerk will not extend the deadlines for filing a charge of discrimination with the OCRC/EEOC.

In the event of a deferral, any complainant who timely filed a charge of discrimination under this Chapter may request the Law Director to review the final determination made by the OCRC/EEOC on charges of discrimination containing the same allegations as in the original charge filed under this Chapter. Such request for review must be made within thirty (30) days of the OCRC/EEOC's final disposition of the charge. The Law Director shall only have authority to review dismissals of complaints based on insufficient time or resources to fully investigate or a lack of jurisdiction. The Law Director shall not have authority to review dismissals based on lack of probable cause.

If a request for review is made under this section, the Law Director shall have no authority to proceed under City law unless the Law Director finds that the decision of the OCRC/EEOC was arbitrary, capricious, or not in accordance with law. Upon such finding, the Law Director shall process the charge pursuant to Sections 539.05(A)(3)-(7).

Charges of discrimination alleging a violation of this Chapter based on sexual orientation, gender identity or expression, marital status or familial status along with an allegation of discrimination based on race, sex, color, religion, ancestry, national origin, age, disability, genetic information, military status, and/or any other class or characteristic protected under state or federal law shall be subject to deferral to the OCRC as set forth in this section. If the OCRC/EEOC dismisses a charge of discrimination timely filed under this Chapter and based on sexual orientation, gender identity or expression, marital status, or familial status for lack of jurisdiction, the complainant may, within thirty (30) days of such dismissal request the charge to proceed under this Chapter.

Upon request, the Law Director shall handle the case in accordance with Sections 539.05(A)(3)-(6).

The Law Director shall have no authority to review any charge under this section if complainant or respondent has appealed the OCRC /EEOC decision to court or otherwise challenged the alleged unlawful discriminatory practices in state or federal court.

(3) For cases processed by the City without intervention of the OCRC/EEOC, the Law Director shall notify the complainant and respondent of the option for voluntary mediation. If both parties agree to voluntary mediation, a mediator designated by the Law Director shall endeavor to eliminate such alleged unlawful discriminatory practices by methods of mediation. The mediation shall be conducted in accordance with Chapter 2710 of the Ohio Revised Code. All mediation communications shall be privileged pursuant to Section 2710.03 of the Ohio Revised Code. Nothing said or done during mediation shall be made public unless the parties agree thereto in writing.

(4) Preliminary Investigation: If methods of mediation fail to effect the elimination of such alleged unlawful discriminatory practice or the state or federal government has not exercised jurisdiction and/or provided mechanism for redress, the Law Director may contract with outside counsel to perform the duties assigned under this Chapter including conducting an investigation. If the Law Director determines after such investigation, that it is not probable that unlawful discriminatory practices have been or are being engaged in, the Law Director shall notify the complainant and respondent in writing that it has been so determined, and that no other action will be initiated under this chapter.

(5) Determination Hearing: If methods of mediation fail to effect the elimination of such alleged unlawful discriminatory practice, and if the Law Director determines after preliminary investigation that it is probable that unlawful discriminatory practices have been or are being engaged in, and it is determined by the Law Director that the state or federal government has not exercised jurisdiction and/or provided mechanism for redress, the Law Director shall serve upon the respondent and complainant a notice of a determination hearing before the Hearing Officer, notifying the respondent of a hearing at a time and place therein fixed to be held not less than thirty (30) days after the service of such notice and stating the charges specified in the original charge upon which a probable cause determination has been made against the respondent. If circumstances warrant, the Law Director may serve such notice at any time during the complaint procedure. The Hearing Officer will consider any reasonable requests for extension of the hearing date and reserves the right to continue the hearing, for good cause shown, for a period of up to thirty (30) additional days.

Any such charge may be amended by the Law Director or complainant at any time prior to or during the hearing based thereon. The respondent shall have the right to file an answer or to amend an answer to the original or amended charge, and to appear to such hearing in person, or by attorney, present evidence or otherwise to examine and cross-examine witnesses.

The complainant shall be a party to the proceeding, and any person who is an

indispensable party to a complete determination or settlement of the question involved in the proceeding shall be joined. Any person who has or claims an interest in the subject of the hearing and in obtaining or presenting relief against the acts or practices complained of, may be, in the discretion of the Hearing Officer, permitted to appear for the presentation of oral or written argument.

In any proceeding, the Hearing Officer shall not be bound by the rules of evidence prevailing in the courts of law or equity, but shall in ascertaining the practices followed by the respondent, take into account all reliable, probative, and substantial evidence, statistical, or otherwise, produced at the hearing, which may tend to prove the existence of an unlawful discriminatory practice or a predetermined pattern of unlawful discriminatory practices under Section 539 of the City of Worthington Codes provided that nothing contained in this section shall be construed to authorize or require any person to observe the proportion which persons of any race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status bear to the total population or in accordance with any criterion other than the individual qualifications of the applicant.

The testimony taken at the hearing shall be under oath and before a court reporter hired by the City Manager. The transcript of the hearing shall be filed with the City Clerk.

The Hearing Officer is granted the authority to develop and implement rules and procedures to control the governance of the hearing. In conducting any hearing as provided herein, the Hearing Officer may upon request of any party subpoena as witnesses any person believed to have knowledge of the facts relevant to such hearing, compel the production of books, papers, records or other evidence relative to such hearing by the person having custody or control thereof and may administer oaths, take testimony and issue such rules as shall be necessary to effectuate an investigatory hearing under this section.

The Hearing Officer shall issue a written decision concerning the charges in the complaint. The decision shall include findings of fact and conclusions of law. Any final decision by the Hearing Officer may be appealed to the Franklin County Court of Common Pleas to the extent authorized by applicable law.

(7) Notice of Violation and Order to Cease and Desist: If upon all the evidence presented, the Hearing Officer determines that the respondent has engaged in, or is engaging in, any unlawful discriminatory practice under this chapter, whether against the complainant or others, the Hearing Officer shall issue a notice of violation, and shall issue an order to respondent to cease and desist the unlawful discriminatory practice.

In addition to issuing a cease and desist order, the Hearing Officer shall have the authority to issue the following remedies:

A. If division (a)(7)(B) or (C) of this section does not apply, a civil penalty in an amount not to exceed one thousand dollars (\$1,000);

B. If division (a)(7)(C) of this section does not apply and if the respondent has committed one violation of this Chapter during the five-year period immediately preceding the date on which a complaint was filed pursuant to division (a)(1) of this section, a civil penalty in an amount not to exceed two thousand five hundred dollars (\$2,500).

C. If the respondent has committed two or more violations of this Chapter during the five-year period immediately preceding the date on which a complaint was filed pursuant to division (a)(1) of this section, a civil penalty in an amount not to exceed five thousand dollars (\$5,000).

The notice of violation, order to cease and desist and any other penalty issued by the Hearing Officer shall be served on the respondent and complainant.

The Law Director is authorized to institute in the name of the City of Worthington any appropriate civil enforcement proceedings.

539.07 COMPLAINTS ALLEGING UNLAWFUL DISCRIMINATORY PRACTICES BY THE CITY

If a complaint is filed with the City Clerk alleging that the City, or one of its boards, commissions, departments, divisions, officials, or employees has engaged or is engaging in an unlawful discriminatory practice as defined in Chapter 539 of the Worthington Codified Ordinances, then the following additional procedures shall apply:

- (a) The Law Director shall forward a copy of the complaint to the City Council.
- (b) The City Council may appoint special counsel to conduct a preliminary investigation instead of the Law Director conducting the preliminary investigation.
- (c) The City Council may appoint a mediator to endeavor to eliminate any alleged unlawful discriminatory practices by methods of mediation instead of the Law Director appointing a mediator.
- (d) The City Council may appoint a hearing officer to conduct a determination hearing instead of the City Manager appointing the hearing officer.
- (e) If the complaint involves an employment action by the City against the complainant, then the City Council may refer the complaint to the Personnel Appeals Board for an appeal hearing concerning the alleged discriminatory practices and no further action shall be taken under this Chapter.

539.08 FAILURE TO COMPLY.

- (a) Whoever fails to comply with a subpoena issued by the Hearing Officer as provided in this Chapter is guilty of a minor misdemeanor.
- (b) Any person who commits an unlawful discriminatory practice under any of the provisions of this chapter and fails to comply with any order of the Hearing Officer to cease and desist such unlawful discriminatory practice shall be guilty of failure to comply with an unlawful discriminatory practice order, a misdemeanor of the first degree.

539.09 INTERFERING WITH CIVIL RIGHTS.

(a) No public servant, under color of his office, employment, or authority, shall knowingly deprive, or attempt to deprive any person of a constitutional or statutory right or any other protections against discriminatory conduct created by an ordinance of the City of Worthington.

(b) Whoever violates this section is guilty of interfering with civil rights, a misdemeanor of the first degree.

539.10 ETHNIC INTIMIDATION.

(a) No person shall violate Sections 2903.13, 2903.21, 2903.22, 2907.06, 2911.06, 2911.07, 2911.21, 2911.211, 2913.02, 2913.03, 2913.04, 2917.03, 2917.11, 2917.12, or 2917.21(A)(3) to (5) of the Ohio Revised Code or Sections 509.01, 509.03, 509.04, 521.08, 533.04, 537.03, 537.05, 537.06, 537.10(a)(3) to (5), 541.03, 541.04, 541.05, 541.051, 545.05, 545.06, 545.08, or 549.08 of the General Offenses Code of the Worthington Codified Ordinances, by reason of or where one of the motives is the victim's race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information or military status.

(b) In a prosecution under this section, the offenders' motive, reason or purpose may be shown by the offender's temporarily related conduct or statements before, during or after the offense, including ethnic, sexual orientation, gender identity or expression, religious or racial slurs, and by the totality of the facts, circumstances and conduct surrounding the offense.

(c) Whoever violates this section is guilty of ethnic intimidation. Ethnic intimidation is an offense of the next higher degree than the offense the commission of which is a necessary element of ethnic intimidation except as provided in subsection (d).

(d) If the underlying offense which is a necessary element of ethnic intimidation is a misdemeanor of the first degree, then the offense of ethnic intimidation is a misdemeanor of the first degree and the court shall impose a mandatory minimum sentence of at least ten (10) days in jail.

(e) This section does not apply if the facts alleged in the complaint would constitute a felony under Section 2927.12, Ohio Revised Code.

(f) The division of police shall keep and maintain records of reported violations of this section and reported incidents the motive of which is the victim's race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status.

539.11 ANNUAL REPORT.

The Law Director shall prepare an annual report to the Community Relations Commission and City Council summarizing the complaints, investigations, hearings, and enforcement proceedings involving unlawful discriminatory practices under this Chapter.

539.12 EXCLUSIONS.

The application and enforcement of the protections created herein are limited solely to the terms of this chapter and such terms shall not create nor enhance protected class status for any other purpose including public and private affirmative action program eligibility. The term “affirmative action program” shall include any program administered by any private or public entity for the purpose of providing preferential treatment for those in a protected class.

539.13 SEVERABILITY.

Chapter 539, of the Worthington City Codes, and each division of said section there under, are hereby declared to be independent divisions and sub-divisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said divisions and sub-divisions, or the application thereof to any person or circumstance is held to be invalid, the remaining divisions or sub-divisions and the application of such provision to any person or circumstances other than those to which it is held invalid shall not be affected thereby, and it is hereby declared that the remaining divisions and sub-divisions would have been passed independently of any provisions held to be invalid.

SECTION 2. Repeal Section 541.08 “Ethnic Intimidation” of the Worthington Codified Ordinances.

SECTION 3. The provisions of Chapter 539 shall become effective on July 1, 2019.

SECTION 4. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.