



Board of County Commissioners

Public Hearing
Human Rights Ordinance

May 2, 2023



Presentation Outline

2

- **Background**
- **Ordinance Review**
- **Proposed Change to 04/14/2023 Draft**
- **Action Requested**



Presentation Outline

3

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Background

4

- **Chapter 22, Orange County Code (Human Rights):**
 - **Prohibits discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation**
 - 1) **Employment**
 - **Private cause of action**
 - 2) **Public Accommodations**
 - **Private cause of action**
 - 3) **Housing**
 - **Housing Department investigation**
 - **Referrals**
 - **Private cause of action**

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
NOV 23 2010 *ecg/lc*
EFFECTIVE DATE
DEC 07 2010

ORDINANCE NO. 2010-15

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA, AMENDING CHAPTER 22 OF THE ORANGE COUNTY CODE, REGARDING HUMAN RIGHTS, BY CREATING ARTICLE I, IN GENERAL, PROVIDING FOR FINDINGS AND POLICY, DEFINITIONS, PROHIBITED ACTS, REMEDIES, AND NO WAIVER PROVISIONS; BY REPEALING ARTICLE II, FAIR HOUSING CODE AND ENACTING A NEW ARTICLE II, EMPLOYMENT DISCRIMINATION, PROVIDING FOR PURPOSE, DEFINITIONS, UNLAWFUL DISCRIMINATORY PRACTICES IN EMPLOYMENT, AND EXEMPTIONS; BY ENACTING A NEW ARTICLE III, EQUAL ACCESS TO PLACES OF PUBLIC ACCOMMODATIONS, PROVIDING FOR PURPOSE, DEFINITIONS, PROHIBITED DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS, AND EXEMPTIONS; BY ENACTING A NEW ARTICLE IV, FAIR HOUSING, PROVIDING FOR PURPOSE, DEFINITIONS, UNLAWFUL DISCRIMINATORY PRACTICES IN HOUSING, AND EXEMPTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the Orange County Board of County Commissioners (the "Board"), in enacting this Chapter, to protect and safeguard the right and opportunity of all individuals to be free from all forms of discrimination, including discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation; and

WHEREAS, the Board's purpose in enacting this Chapter is to promote the public health and welfare of all individuals who live in, visit and work in Orange County, and it is important for the Board to ensure that all individuals within Orange County have equal access to employment, housing, and public accommodations; and

WHEREAS, it is the desire of the Board to foster and encourage the growth and development of Orange County in a manner that will ensure all individuals an equal opportunity to live free of discrimination imposed by age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation; and



Background

5

- **O C Food & Beverage, LLC v. Orange Cnty., 338 So. 3d 311 (Fla. 5th DCA 2022)**
 - In 2018, two women filed suit against Rachel's under the County's Human Rights Ordinance (HRO) alleging sex discrimination by a public accommodation—denied entrance for lack of a male companion.
 - Rachel's moved to declare the County's HRO unconstitutional, and the trial court entered a final judgement denying Rachel's motion.
 - The Fifth DCA reversed the trial court's final judgement and held that the County's HRO is unconstitutional because it conflicts with the Florida Civil Rights Act of 1992 (FCRA).
 - The Fifth DCA reasoned that the County's HRO allows a party aggrieved by sex discrimination in public accommodations to proceed directly to court without first exhausting administrative remedies, while the FCRA requires the exhaustion of administrative remedies before filing an action in court.



Background

6

- O C Food & Beverage, 338 So. 3d at 315 (continued)
 - The Fifth DCA found that the Legislature intended for aggrieved parties to go through an administrative process prior to bringing a civil action in court.
 - The purpose of the administrative process is to provide the Florida Commission on Human Relations (FCHR) with the first opportunity to *investigate* the alleged discriminatory practices to permit it to perform its role in obtaining *voluntary compliance* and *promoting conciliation efforts* (emphasis added).



Background

- **BCC Discussion on February 21, 2023**
 - Discussed administrative processes at the state and federal levels.
 - Compared other counties in Florida.
 - Proposed options for consideration and a staff recommendation.
 - Board directed staff to draft an ordinance amending the HRO.



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8

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Ordinance Review

Section 22-4. Private cause of action; remedies.

(a) An aggrieved individual may, under this chapter, commence a civil action in a court of competent jurisdiction against the person alleged to have committed a discriminatory practice; provided, however, that such civil action is timely filed pursuant to this chapter and the conclusion of any applicable investigation, conciliation, or reasonable cause determination required by this chapter. ~~must be filed no later one (1) year after the discriminatory practice is alleged to have been committed.~~



Ordinance Review

- **Sections 22-30 – 22-34 & Sections 22-44 – 22-48.**
 - **Provide for an administrative investigation and conciliation process under Article II (“Employment Discrimination”) and Article III (“Equal Access to Places of Public Accommodations”), respectively.**
 - **Process is administered by the mayor’s designee (“administrator”).**
 - **Administrator investigates complaints; attempts conciliation; and coordinates with other local, state, and federal agencies.**
 - **Aggrieved person has 365 days to file complaint with administrator.**
 - **Must be in writing and signed under oath. Must contain a description of the alleged discriminatory practice.**



Ordinance Review

11

- **Sections 22-30 – 22-34 & Sections 22-44 – 22-48 (continued).**
 - **Administrator processes complaints unique to Orange County.**
 - **E.g., employers with 5 or more employees (County) vs. employers with 15 or more employees (state and federal).**
 - **Administrator refers complaints covered under other federal, state, or local law to appropriate agency.**
 - **Administrator notifies respondent and respondent has 20 days to file an answer to the complaint.**
 - **Administrator investigates the complaint and has 180 days to determine whether there is reasonable cause to believe that a discriminatory practice has occurred.**



Ordinance Review

12

- **Sections 22-30 – 22-34 & Sections 22-44 – 22-48 (continued).**
 - **During the investigation and reasonable cause determination, the administrator attempts to eliminate or correct the discriminatory practice through conciliation (i.e., voluntary compliance).**
 - **If no reasonable cause exists, then administrator dismisses the complaint.**
 - **Complainant has 35 days to appeal to a hearing officer.**
 - **Hearing officer issues written recommended order either affirming administrator's determination or remanding with instructions.**
 - **If reasonable cause does exist, but no conciliation agreement can be reached, then the administrator issues complainant a notice of right to sue authorizing the complainant to bring a civil action for enforcement within 1 year.**



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13

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Proposed Change to 04/14/2023 Draft

14

- Line 15
 - “...AMENDING SECTION 22-27 (‘DEFINITIONS’) AND SECTION 22-28 (‘UNLAWFUL EMPLOYMENT PRACTICES’)...”



Presentation Outline

15

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Action Requested

16

- **Approval and execution of an Ordinance Pertaining to Human Rights, Employment Discrimination, Equal Access to Places of Public Accommodations, and Fair Housing in Orange County, Florida; Amending Chapter 22 (“Human Rights”), Article I (“In General”); Amending Section 22-3 (“General Discriminatory Practices”), Section 22-4 (“Private Cause of Action; Remedies”), and Section 22-5 (“Sovereign Immunity; No Waiver of Rights or Remedies at Law”); Amending Chapter 22, Article II (“Employment Discrimination”); Amending Section 22-27 (“Definitions”) and Section 22-8 (“Unlawful Employment Practices”); Amending Section 22-30 through Section 22-34 to Provide for an Administrative Investigation and Conciliation Process; Amending Chapter 22, Article III (“Equal Access to Places of Public Accommodations”); Amending Section 22-41 (“Definitions”) and Section 22-42 (“Prohibition of Discrimination in Public Accommodations”); Amending Section 22-44 through Section 22-48 to Provide for an Administrative Investigation and Conciliation Process; Amending Chapter 22, Article IV (“Fair Housing”), Division 1 (“Generally”) and Division 2 (“Administration and Enforcement”); Amending Section 22-50 (“Generally”) and Section 22-59 (“Enforcement”); Providing for Repeal of Laws in Conflict; and Providing for Filing of Ordinance and Effective Date.**
- **Authorization for County staff to make changes consistent with today’s public hearing and to correct any scrivener’s errors.**