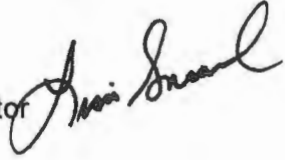




Interoffice Memorandum

April 24, 2023

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

FROM: Lisa Snead, Assistant County Administrator 

CONTACT: 407-836-7382

SUBJECT: Public Hearing – May 2, 2023
Amendments to Chapter 22, Orange County Code ("Human Rights")

On March 14, 2022, Florida's Fifth District Court of Appeal filed an opinion holding that the County's Human Rights Ordinance ("HRO") conflicts with the Florida Civil Rights Act of 1992 because the HRO allows certain parties aggrieved by discrimination to proceed directly to court without first exhausting administrative remedies. See *O C Food & Beverage, LLC v. Orange Cnty.*, 338 So. 3d 311, 314-15 (Fla. 5th DCA 2022). On August 25, 2022, Commissioner Nicole Wilson, District 1, submitted a memorandum to Mayor Demings and the County Commissioners requesting a work session to discuss amending the HRO to add an administrative precondition to be handled by a Mayoral designee. On February 21, 2023, the Board of County Commissioners held a discussion and directed staff to draft an ordinance amending the HRO.

The draft ordinance amends the HRO to create an administrative investigation and conciliation process for complaints of employment discrimination and discrimination in public accommodations. In accordance with the Fifth DCA's opinion in the *O C Food & Beverage* case cited above, the draft ordinance also amends the HRO to require complainants of discrimination in employment and public accommodations to go through the County's administrative investigation and conciliation process prior to filing any civil actions for enforcement.

ACTION REQUESTED: 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.

Attachments

cc: Byron W. Brooks, AICP, County Administrator
Jeffrey J. Newton, County Attorney
Carla Bell Johnson, AICP, Deputy County Administrator
Dylan Schott, Assistant County Attorney

ORDINANCE NO. 2023-__

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.

WHEREAS, the Florida Civil Rights Act of 1992 ("FCRA") prohibits certain discriminatory practices in employment and places of public accommodation on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and provides for administrative and civil remedies; and

WHEREAS, on November 23, 2010, the Orange County Board of County Commissioners adopted Ordinance No. 2010-15 amending Chapter 22 of the Orange County Code ("Human Rights Ordinance" or "HRO") in its entirety to prohibit certain discriminatory practices in employment, public accommodations, and housing and to provide for a private cause of action for an individual aggrieved by such unlawful discriminatory practice; and

48 **WHEREAS**, on March 14, 2022, the Fifth District Court of Appeal of Florida filed an
opinion holding that the County's Human Rights Ordinance conflicts with the Florida Civil Rights
50 Act of 1992 and is therefore unconstitutional. *See O C Food & Beverage, LLC v. Orange Cnty.*,
338 So. 3d 311, 314-15 (Fla. 5th DCA 2022), *reh'g denied* (May 6, 2022), *review denied sub*
nom. Orange Cnty., Florida v. O C Food & Beverage, LLC, SC22-657 (Fla. Sept. 13, 2022); and

52 **WHEREAS**, the Court reasoned that the FCRA and the HRO conflict because the FCRA
54 requires satisfaction of certain conditions precedent before filing a civil action whereas the HRO
allows aggrieved parties to proceed directly to court without first exhausting administrative
56 remedies; and

58 **WHEREAS**, specifically, the Court found that the Legislature intended for aggrieved
parties to go through an administrative process prior to bringing a civil action in court so as to
60 provide an administrative agency with the first opportunity to investigate the alleged
discriminatory practice and obtain voluntary compliance and promote conciliation efforts; and

62 **WHEREAS**, the FCRA authorizes a complainant to file a civil action in court only after a
64 determination has been made that there is reasonable cause to believe that a discriminatory practice
has occurred or when such determination fails to be made by the Florida Commission on Human
66 Relations ("FCHR") within 180 days after the filing of the administrative complaint; and

68 **WHEREAS**, in accordance with the FCRA and the *O C Food & Beverage* case cited
above, the Board desires to amend the Human Rights Ordinance to require an administrator to
70 investigate and conciliate certain complaints of discriminatory practices and endeavor to determine
whether there is reasonable cause to believe that a discriminatory practice has occurred, and, if so,
72 to authorize a complainant to bring a civil action in court after said administrative process has
concluded.

74 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE
76 COUNTY, FLORIDA:

Section 1. Recitals. The recitals set forth above are hereby adopted and incorporated
78 into the body of this ordinance as if fully set forth herein.

Section 2. Amendments to Chapter 22, Article I. Chapter 22 ("Human Rights"),
80 Article I ("In General") of the Orange County Code of Ordinances is hereby amended as follows
with additions being shown by underlines and deletions being shown by strike-throughs:

82 **CHAPTER 22. HUMAN RIGHTS**

ARTICLE I. IN GENERAL

84 * * *

Section 22-3. ~~Reserved. General discriminatory practices.~~

~~In addition to those discriminatory practices made unlawful by this chapter, the following discriminatory practices shall be unlawful:~~

~~(1) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a practice prohibited by this chapter or prohibited by existing federal or state law prohibiting discrimination; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceedings, hearing or conference under this chapter or under any federal or state law prohibiting discrimination.~~

~~(2) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.~~

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.~~

(b) If, in a civil action commenced under this chapter, the court finds that a discriminatory practice has been committed or is about to be committed, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the discriminatory practice including, but not limited to, a temporary or permanent injunction or other equitable relief, a temporary restraining order, an award of actual damages, including back pay, punitive damages, an award of reasonable attorney's fees, interest, and costs, or other such relief as the court deems appropriate.

* * *

Section 22-5. Sovereign immunity; no waiver of rights or remedies at law.

- (a) Pursuant to Article X, Section 13, Florida Constitution, and Section 768.28, Florida Statutes, as amended, nothing in this chapter shall be deemed to be a provision for bringing suit against the state or otherwise be deemed to be a waiver of sovereign immunity.
- (b) Nothing in this chapter shall be construed to prohibit any sovereignly immune entity from adopting its own internal policies and rules to prohibit discriminatory practices and acts and to resolve allegations or complaints of such discriminatory practices and acts to the extent allowed by law.
- (c) Nothing in this chapter shall be deemed to modify, impair, or otherwise affect any other right or remedy conferred by the constitution or laws of the United States or the State of Florida, and the provisions of this chapter shall be deemed to be in addition to those provided by such other laws. Nothing in this chapter shall constitute an administrative prerequisite to another action or remedy available under a separate federal, state, or local law.
- (d) County employees tasked with the administration of this chapter shall be afforded all of the protections of absolute and qualified immunity to the furthest extent allowed by law. Nothing in this chapter shall be deemed to authorize a civil action against an individual County employee, or otherwise be deemed to be a waiver of absolute or qualified immunity.

Section 3. Amendments to Chapter 22, Article II. Chapter 22 ("Human Rights"),

Article II ("Employment Discrimination") of the Orange County Code of Ordinances is hereby amended as follows with additions being shown by underlines and deletions being shown by strike-throughs:

CHAPTER 22. HUMAN RIGHTS

* * *

ARTICLE II. EMPLOYMENT DISCRIMINATION

* * *

Section 22-27. Definitions.

The following words, terms and phrases when used in this article, shall have the following meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator shall mean that person designated pursuant to section 22-30 or their duly authorized agent.

* * *

Section 22-28. Unlawful employment practices.

* * *

(g) In addition to those discriminatory practices made unlawful by this section, the following discriminatory practices shall be unlawful:

(1) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a discriminatory employment practice prohibited by this article or by an existing federal or state law prohibiting employment discrimination; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceedings, hearing or conference under this chapter or under any federal or state law prohibiting employment discrimination.

(2) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

* * *

Section 22-30. Administrative authority; powers and duties.

214 (a) Administrative authority. The provisions of this article shall be
administered by the mayor or the mayor's designee who shall
hereinafter be referred to as the "administrator."

216 (b) Powers and duties. The administrator's powers and duties
218 include the following:

220 (1) Receive, initiate, and investigate written complaints as
provided by this article relative to alleged discriminatory
222 practices;

224 (2) Upon receiving a written complaint, make such
investigations as provided by this article;

226 (3) Endeavor to resolve complaints through conciliation in
228 accordance with this article;

230 (4) Cooperate with, provide referrals to, and render technical
assistance to federal, state, local, and other public and private
232 agencies, organizations, and institutions which are
formulating or carrying on programs to prevent or eliminate
234 the unlawful discriminatory practices covered by the
provisions of this article; and

236 (5) Conduct educational and public information activities that
238 are designed to promote the policy of this article.

240 **Section 22-31. Complaint; jurisdiction; answer.**

242 (a) Complaint. Any person aggrieved by an unlawful discriminatory
practice in violation of this article may, within three hundred
244 sixty-five (365) calendar days after the alleged violation has
occurred, file a complaint with the administrator naming the
246 employer, employment agency, labor organization, or other
person responsible for the alleged violation and describing the
248 alleged violation.

250 (1) A complaint shall be in writing, signed under oath, on a form
to be supplied by the administrator and shall contain the
252 following:

254 i. The identity, name, and address of the respondent(s);

256 ii. The date of the alleged violation and the date of the filing
of the complaint;

iii. A general statement of facts describing the alleged violation including the classification category or categories of discrimination upon which the complaint is based;

iv. The name, address, and signature of the complainant; and

v. Any other information as may be deemed relevant by the administrator.

(2) The administrator shall not process a complaint that fails to provide all of the information required by this section or is outside of the administrator's jurisdiction.

(b) Jurisdiction. A complaint is outside the jurisdiction of the administrator if:

(1) The complaint has been filed more than 365 calendar days after the alleged violation occurred;

(2) The complainant has previously filed a complaint with the administrator pursuant to this article alleging the same grievance that is the subject of the current complaint and the previous complaint was dismissed or authorized for civil action or otherwise resolved as determined by the administrator; or

(3) Another administrative agency under any other federal, state, or local law has jurisdiction over the alleged unlawful discriminatory practice that is the subject of the complaint and said agency is legally authorized to investigate and enforce the complaint.

(c) Answer. Within five (5) calendar days of receiving a timely and complete complaint that is within the administrator's jurisdiction, the administrator shall transmit a copy of said complaint to each respondent named in the complaint via certified mail, return receipt requested.

(1) In addition to a copy of the complaint, the administrator shall include a notice identifying the alleged unlawful discriminatory practice and a list of procedural rights and obligations contained in this article.

(2) The respondent may file a written, verified answer to the complaint within twenty (20) calendar days of the date of receipt of the complaint from the administrator.

(3) The respondent shall mail a copy of any answer that it files with the administrator to the complainant.

(d) A complaint or answer may be amended at any time when it would be fair and reasonable to do so, as determined by the administrator, and the administrator shall furnish a copy of each amended complaint or answer to the respondent or complainant, respectively, as promptly as practicable.

(e) The administrator shall provide technical assistance related to the process of filing complaints or answers, or any amendments thereto or response to such amendments.

(f) The administrator shall inform complainants of their procedural rights and options as provided for in this article.

Section 22-32. Investigation; reasonable cause; conciliation; cooperation.

(a) Investigation. The administrator shall investigate complaints that have been filed in accordance with this article as appropriate to ascertain facts to determine whether there is reasonable cause to believe that an unlawful discriminatory practice has occurred in violation of this article.

(b) Reasonable cause. Within one hundred eighty (180) calendar days of the filing of the complaint, the administrator shall endeavor to determine whether there is reasonable cause to believe that a discriminatory practice has occurred in violation of this article.

(1) The administrator may determine, upon conclusion of the investigation, that:

i. There is reasonable cause to believe that a discriminatory practice has occurred in violation of this article; or

ii. There is no reasonable cause to believe that a discriminatory practice has occurred in violation of this article; or

350 iii. The complaint is not within the jurisdiction of the
351 administrator.

352 (2) If the administrator determines that there is no reasonable
353 cause to believe that a discriminatory practice has occurred
354 in violation of this article, or that the complaint is not within
355 the jurisdiction of the administrator, then the administrator
356 shall dismiss the complaint.

358 (3) The administrator shall issue a reasonable cause
359 determination in writing, signed and dated by the
360 administrator. The administrator shall promptly notify the
361 complainant and the respondent of the administrator's
362 reasonable cause determination via certified mail and inform
363 the parties of the options available under this article.

364 (c) Conciliation. If a complaint is within the jurisdiction of the
365 administrator, then the administrator shall simultaneously, with
366 its other duties described in this article, attempt to eliminate or
367 correct the alleged discrimination by informal methods of
368 conference, conciliation, and persuasion.

370 (1) The administrator may initiate dispute resolution
371 procedures, including voluntary arbitration or mediation.

372 (2) If the parties desire to conciliate, the terms of the conciliation
373 shall be reduced to writing in the form approved by the
374 administrator, and must be signed and verified by the
375 complainant and respondent and approved by the
376 administrator. The conciliation agreement is for conciliation
377 purposes only and does not constitute admission by any
378 party that the law has been violated.

380 (d) Cooperation.

382 (1) Complainant. All complainants and aggrieved persons shall
383 at all times cooperate with the administrator throughout any
384 investigation, conciliation, or reasonable cause
385 determination. Cooperation includes communicating with
386 the administrator as requested and actively participating
387 throughout the investigation, conciliation, and reasonable
388 cause determination process. Failure of any complainant or
389 aggrieved person to cooperate as required by this section
390 may result in the administrator determining that the
391 complainant or aggrieved person has abandoned the
392 complaint and may result in the complaint being dismissed.
393

396 (2) Respondent. Cooperation by respondents with the
398 administrator is essential to the County's ability to provide
400 fair and efficient investigations and conciliations. Failure of
402 any respondent to cooperate with the administrator's
404 investigation may result in the issuance of a determination
406 based solely upon the facts that the administrator's
investigation has disclosed concerning the alleged unlawful
discriminatory practice; such a determination may be one of
reasonable cause based on the unchallenged evidence
submitted by a complainant.

408 **Section 22-33. Notice of right to sue; private cause of**
410 **action.**

410 (a) Notice of right to sue. If the administrator determines that there
412 is reasonable cause to believe that a discriminatory practice has
414 occurred in violation of this article, and the administrator has
416 been unable to obtain voluntary compliance with this article
418 through conciliation (including a respondent's breach of an
applicable conciliation agreement), then the administrator will
issue the complainant a notice of right to sue on the basis of the
complaint. The notice of right to sue must include:

420 (1) Authorization to the complainant or aggrieved person to
422 bring a civil action under this article within one (1) year from
424 the issuance of such authorization;

426 (2) Information concerning the institution of such civil action by
428 the person claiming to be aggrieved, where appropriate;

430 (3) A copy of the complaint and any applicable conciliation
432 agreement; and

434 (4) A copy of the administrator's determination of reasonable
436 cause.

438 (b) Private cause of action. Upon receiving a notice of right to sue
from the administrator in accordance with this section, the
complainant or aggrieved party may bring a civil action against
the person named in the complaint in any court of competent
jurisdiction pursuant to this section and chapter 22, article I of
this code including, but not limited to, section 22-4.

440 (c) If the administrator fails to conciliate and determine reasonable
442 cause on a complaint within 180 calendar days after the filing of
444 the complaint:

446 (1) The administrator will promptly notify the complainant of
448 the failure to conciliate and determine reasonable cause;

450 (2) The administrator will issue the complainant a notice of right
452 to sue; and

454 (3) The complainant may proceed with a private cause of action
456 under this section as if the administrator had determined that
458 there was reasonable cause to believe that a discriminatory
460 practice had occurred in violation of this article.

462 **Section 22-34. Appeal from determination of no reasonable**
464 **cause; dismissal.**

466 (a) Appeal. If, after concluding an investigation, the administrator
468 determines that there is no reasonable cause to believe that a
470 violation of this article has occurred, the complainant shall have
472 the right to appeal such determination to a hearing officer. In
474 order to exercise the right to appeal, the complainant must file a
476 written statement with the administrator requesting an appeal,
478 and describing the basis for the appeal, within thirty-five (35)
480 calendar days of the date of the administrator's determination.

482 (1) The administrator shall promptly notify the respondent of the
484 complainant's request to appeal in writing.

486 (2) The administrator shall promptly schedule a hearing in front
488 of a hearing officer and notify the parties of the date, time,
490 and location of the hearing. The hearing must be conducted
492 in a manner to ensure that the complainant is afforded due
494 process including, but not limited to, an opportunity to be
496 heard.

498 (b) In the event of an appeal, the hearing officer will promptly
500 consider and act upon such appeal by issuing a written
502 recommended order either:

504 (1) Affirming the administrator's determination; or

506 (2) Remanding the complaint to the administrator with
508 appropriate instructions.

486 (c) Dismissal. In the event that no appeal is taken, or such appeal
488 results in the affirmation of the administrator's determination, or
490 if remanded on appeal and on remand the administrator still
492 determines that no reasonable cause exists, the determination of
494 the administrator shall be final; the complaint will be closed with
a ministerial finding of no reasonable cause, and the
administrator will promptly notify the complainant and
respondent of the finding in writing, via certified mail, return
receipt requested, and the complaint shall be dismissed.

496 ~~***Secs. 22-35—22-39. Reserved. Sees. 22-30—22-39. Reserved.***~~

Section 4. *Amendments to Chapter 22, Article III.* Chapter 22 ("Human Rights"),

498 Article III ("Equal Access to Places of Public Accommodations") of the Orange County Code is
hereby amended to read as follows with additions being shown by underlines and deletions being
500 shown by strike-throughs:

CHAPTER 22. HUMAN RIGHTS

502 * * *

ARTICLE III. EQUAL ACCESS TO PLACES OF PUBLIC 504 ACCOMMODATIONS

* * *

506 *Section 22-41. Definitions.*

508 The following words, terms and phrases when used in this
510 article, shall have the following meanings ascribed to them in this
section, except where the context clearly indicates a different
512 meaning:

514 Administrator shall mean that person designated pursuant
to section 22-44 or their duly authorized agent.

516 * * *

518 *Section 22-42. Prohibition of discrimination in public accommodations.*

520 * * *

(c) In addition to those discriminatory practices made unlawful by this section, the following discriminatory practices shall be unlawful:

(1) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a discriminatory practice prohibited by this article or by an existing federal or state law prohibiting discrimination in public accommodations; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceedings, hearing or conference under this chapter or under any federal or state law prohibiting discrimination in public accommodations.

(2) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

* * *

Section 22-44. Administrative authority; powers and duties.

(a) Administrative authority. The provisions of this article shall be administered by the mayor or the mayor's designee who shall hereinafter be referred to as the "administrator."

(b) Powers and duties. The administrator's powers and duties include the following:

(1) Receive, initiate, and investigate written complaints as provided by this article relative to alleged discriminatory practices;

(2) Upon receiving or filing a written complaint, make such investigations as provided by this article;

(3) Endeavor to resolve complaints through conciliation in accordance with this article;

(4) Cooperate with, provide referrals to, and render technical assistance to federal, state, local, and other public and private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this article; and

(5) Conduct educational and public information activities that are designed to promote the policy of this article.

Section 22-45. Complaint; jurisdiction; answer.

(a) Complaint. Any person aggrieved by an unlawful discriminatory practice in violation of this article may, within three hundred sixty-five (365) calendar days after the alleged violation has occurred, file a complaint with the administrator naming the public accommodation, operator, or other person responsible for the alleged violation and describing the alleged violation.

(1) A complaint shall be in writing, signed under oath, on a form to be supplied by the administrator and shall contain the following:

- i. The identity, name, and address of the respondent(s);
- ii. The date of the alleged violation and the date of the filing of the complaint;
- iii. A general statement of facts describing the alleged violation including the classification category or categories of discrimination upon which the complaint is based;
- iv. The name, address, and signature of the complainant; and
- v. Any other information as may be deemed relevant by the administrator.

(2) The administrator shall not process a complaint that fails to provide all of the information required by this section or is outside of the administrator's jurisdiction.

(b) Jurisdiction. A complaint is outside the jurisdiction of the administrator if:

- 614 (1) The complaint has been filed more than 365 calendar days
 after the alleged violation occurred;
- 616 (2) The complainant has previously filed a complaint with the
618 administrator pursuant to this article alleging the same
 grievance that is the subject of the current complaint and the
620 previous complaint was dismissed or authorized for civil
 action or otherwise resolved as determined by the
622 administrator; or
- 624 (3) Another administrative agency under any other federal,
 state, or local law has jurisdiction over the alleged unlawful
626 discriminatory practice that is the subject of the complaint
 and said agency is legally authorized to investigate and
628 enforce the complaint.
- 630 (c) Answer. Within five (5) calendar days of receiving a timely and
 complete complaint that is within the administrator's
632 jurisdiction, the administrator shall transmit a copy of said
 complaint to each respondent named in the complaint via
634 certified mail, return receipt requested.
- 636 (1) In addition to a copy of the complaint, the administrator shall
 include a notice identifying the alleged unlawful
638 discriminatory practice and a list of procedural rights and
 obligations contained in this article.
- 640 (2) The respondent may file a written, verified answer to the
 complaint within twenty (20) calendar days of the date of
642 receipt of the complaint from the administrator.
- 644 (3) The respondent shall mail a copy of any answer that it files
 with the administrator to the complainant.
- 646 (d) A complaint or answer may be amended at any time when it
648 would be fair and reasonable to do so, as determined by the
 administrator, and the administrator shall furnish a copy of each
650 amended complaint or answer to the respondent or complainant,
 respectively, as promptly as practicable.
- 652 (e) The administrator shall provide technical assistance related to
654 the process of filing complaints or answers, or any amendments
 thereto or response to such amendments.
- 656 (f) The administrator shall inform complainants of their procedural
658 rights and options as provided for in this article.

Section 22-46. Investigation; reasonable cause; conciliation; cooperation.

(a) Investigation. The administrator shall investigate complaints that have been filed in accordance with this article as appropriate to ascertain facts to determine whether there is reasonable cause to believe that an unlawful discriminatory practice has occurred in violation of this article.

(b) Reasonable cause. Within one hundred eighty (180) calendar days of the filing of the complaint, the administrator shall endeavor to determine whether there is reasonable cause to believe that a discriminatory practice has occurred in violation of this article.

(1) The administrator may determine, upon conclusion of the investigation, that:

i. There is reasonable cause to believe that a discriminatory practice has occurred in violation of this article; or

ii. There is no reasonable cause to believe that a discriminatory practice has occurred in violation of this article; or

iii. The complaint is not within the jurisdiction of the administrator.

(2) If the administrator determines that there is no reasonable cause to believe that a discriminatory practice has occurred in violation of this article, or that the complaint is not within the jurisdiction of the administrator, then the administrator shall dismiss the complaint.

(3) The administrator shall issue a reasonable cause determination in writing, signed and dated by the administrator. The administrator shall promptly notify the complainant and the respondent of the administrator's reasonable cause determination via certified mail and inform the parties of the options available under this article.

(c) Conciliation. If a complaint is within the jurisdiction of the administrator, then the administrator shall simultaneously, with its other duties described in this article, attempt to eliminate or

correct the alleged discrimination by informal methods of conference, conciliation, and persuasion.

(1) The administrator may initiate dispute resolution procedures, including voluntary arbitration or mediation.

(2) If the parties desire to conciliate, the terms of the conciliation shall be reduced to writing in the form approved by the administrator, and must be signed and verified by the complainant and respondent and approved by the administrator. The conciliation agreement is for conciliation purposes only and does not constitute admission by any party that the law has been violated.

(d) Cooperation.

(1) Complainant. All complainants and aggrieved persons shall at all times cooperate with the administrator throughout any investigation, conciliation, or reasonable cause determination. Cooperation includes communicating with the administrator as requested and actively participating throughout the investigation, conciliation, and reasonable cause determination process. Failure of any complainant or aggrieved person to cooperate as required by this section may result in the administrator determining that the complainant or aggrieved person has abandoned the complaint and may result in the complaint being dismissed.

(2) Respondent. Cooperation by respondents with the administrator is essential to the County's ability to provide fair and efficient investigations and conciliations. Failure of any respondent to cooperate with the administrator's investigation may result in the issuance of a determination based solely upon the facts that the administrator's investigation has disclosed concerning the alleged unlawful discriminatory practice; such a determination may be one of reasonable cause based on the unchallenged evidence submitted by a complainant.

Section 22-47. Notice of right to sue; private cause of action.

(a) Notice of right to sue. If the administrator determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of this article, and the administrator has been unable to obtain voluntary compliance with this article

750 through conciliation (including a respondent's breach of an
752 applicable conciliation agreement), then the administrator will
issue the complainant a notice of right to sue on the basis of the
754 complaint. The notice of right to sue must include:

756 (1) Authorization to the complainant or aggrieved person to
bring a civil action under this article within one (1) year from
758 the issuance of such authorization;

760 (2) Information concerning the institution of such civil action by
the person claiming to be aggrieved, where appropriate;

762 (3) A copy of the complaint and any applicable conciliation
764 agreement; and

766 (4) A copy of the administrator's determination of reasonable
cause.

768 (b) *Private cause of action.* Upon receiving a notice of right to sue
770 from the administrator in accordance with this section, the
complainant or aggrieved party may bring a civil action against
772 the person named in the complaint in any court of competent
jurisdiction pursuant to this section and chapter 22, article I of
774 this code including, but not limited to, section 22-4.

776 (c) If the administrator fails to conciliate and determine reasonable
cause on a complaint within 180 calendar days after the filing of
778 the complaint:

780 (1) The administrator will promptly notify the complainant of
the failure to conciliate and determine reasonable cause;

782 (2) The administrator will issue the complainant a notice of right
784 to sue; and

786 (3) The complainant may proceed with a private cause of action
under this section as if the administrator had determined that
788 there was reasonable cause to believe that a discriminatory
practice had occurred in violation of this article.

790 **Section 22-48. Appeal from determination of no reasonable**
792 **cause; dismissal.**

794 (a) *Appeal.* If, after concluding an investigation, the administrator
determines that there is no reasonable cause to believe that a
violation of this article has occurred, the complainant shall have

796 the right to appeal such determination to a hearing officer. In
798 order to exercise the right to appeal, the complainant must file a
800 written statement with the administrator requesting an appeal,
and describing the basis for the appeal, within thirty-five (35)
calendar days of the date of the administrator's determination.

802 (1) The administrator shall promptly notify the respondent of the
804 complainant's request to appeal in writing.

806 (2) The administrator shall promptly schedule a hearing in front
808 of a hearing officer and notify the parties of the date, time,
and location of the hearing. The hearing must be conducted
810 in a manner to ensure that the complainant is afforded due
process including, but not limited to, an opportunity to be
heard.

812 (b) In the event of an appeal, the hearing officer will promptly
814 consider and act upon such appeal by issuing a written
recommended order either:

816 (1) Affirming the administrator's determination; or

818 (2) Remanding the complaint to the administrator with
820 appropriate instructions.

822 (c) Dismissal. In the event that no appeal is taken, or such appeal
results in the affirmation of the administrator's determination, or
824 if remanded on appeal and on remand the administrator still
determines that no reasonable cause exists, the determination of
826 the administrator shall be final; the complaint will be closed with
a ministerial finding of no reasonable cause, and the
828 administrator will promptly notify the complainant and
respondent of the finding in writing, via certified mail, return
830 receipt requested, and the complaint shall be dismissed.

832 ~~Sec. 22-49. Reserved. Sees. 22-44 22-49. Reserved.~~

834 *Section 5. Amendments to Chapter 22, Article IV.* Chapter 22 ("Human Rights"),
Article IV ("Fair Housing") of the Orange County Code is hereby amended to read as follows with
additions being shown by underlines and deletions being shown by strike-throughs:

836 **CHAPTER 22. HUMAN RIGHTS**

* * *

ARTICLE IV. FAIR HOUSING

DIVISION 1. GENERALLY

Section 22-50. Generally.

(a) The general purpose of this article is to promote through fair, orderly, and lawful procedure the opportunity for each individual so desiring to obtain housing of such individual's choice in Orange County without regard to race, color, religion, national origin, disability, marital status, familial status, lawful source of income, sex, sexual orientation, or actual or perceived status as a victim of domestic violence, dating violence, or stalking, and, to that end, to prohibit discrimination in housing by any person.

(b) In addition to those discriminatory practices made unlawful by this article, the following discriminatory practices shall be unlawful:

(1) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a discriminatory practice prohibited by this article or by an existing federal or state law prohibiting discrimination in housing; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceedings, hearing or conference under this chapter or under any federal or state law prohibiting discrimination in housing.

(2) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

* * *

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

* * *

Section 22-59. Enforcement.

880 (a) Where pursuant to a failure of conciliation, any complaint
882 presented by the complainant, and where in the manager's
884 opinion such action is warranted, all evidence gathered relevant
to any alleged violation of this article may be submitted to the
proper state or federal authorities for further investigation or
appropriate legal action.

886 (b) The aggrieved person may commence a civil action, pursuant to
888 this section and article I of this chapter, in any appropriate court
against the respondent named in the complaint to enforce the
890 rights granted or protected by division 1 of this article and is not
required to exhaust administrative remedies before commencing
892 such action. If an action filed in court under this section comes
to trial, the manager shall immediately terminate all efforts to
894 obtain voluntary compliance.

896 (1) An aggrieved person may commence a civil action no later
than 2 years after an alleged discriminatory housing practice
898 has occurred. However, the court shall continue a civil case
brought under this section before bringing it to trial if the
900 court believes that the conciliation efforts of the manager are
likely to result in satisfactory settlement of the
902 discriminatory housing practice complained of in the
complaint made to the manager and which practice forms the
904 basis for the action in court. Any sale, encumbrance, or
rental consummated before the issuance of any court order
906 issued under this chapter and involving a bona fide
purchaser, encumbrancer, or tenant without actual notice of
908 the existence of the filing of a complaint or civil action under
this chapter is not affected.

910 (2) An aggrieved person may commence a civil action under this
section and article I of this chapter regardless of whether a
912 complaint has been filed with the manager under section 22-
57 and regardless of the status of any such complaint. If the
914 manager has obtained a conciliation agreement with the
consent of an aggrieved person under section 22-58, the
916 aggrieved person may not file any action under this section
regarding the alleged discriminatory housing practice that
918 forms the basis for the complaint except for the purpose of
enforcing the terms of the conciliation agreement.

920 **Section 6. Repeal of Laws in Conflict.** All local laws and ordinances in conflict with

922 any provision of this ordinance are hereby repealed to the extent of such conflict.

Section 7. Filing of Ordinance and Effective Date. This ordinance shall take effect

924 pursuant to general law.

926 ADOPTED THIS ____ DAY OF _____, 20__.

928

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

930

932

By: _____
Jerry L. Demings
Orange County Mayor

934

936 ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

938

By: _____
Deputy Clerk

940

942

S:\DSchott\County Administrator\Human Rights Ordinance Amendments 2023\Draft Ordinances