

ORDINANCE NO. 2018 -

**BOROUGH OF PHOENIXVILLE
CHESTER COUNTY, PENNSYLVANIA**

AN ORDINANCE OF THE BOROUGH OF PHOENIXVILLE, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 6 “CONDUCT”, PART 11 “ANTIDISCRIMINATION” OF THE CODE OF ORDINANCES OF THE BOROUGH OF PHOENIXVILLE.

The Council of the Borough of Phoenixville, Chester County, Pennsylvania, hereby ORDAINS that:

Section 1:

1. The Code of Ordinance of the Borough of Phoenixville, as amended, Chapter 6 “Conduct”, Part 11 “Antidiscrimination” Section 6-1102 “Definitions”. is hereby amended as indicated by the black line and strikeout interlineations below, with strikeout indicating deletions of language and underlined interlineations indicating insertions of language:

A. The following words and phrases appearing with initial capital letters when used in this chapter shall have the meanings given to them in this subsection. Unless stated otherwise, terms in the ordinance shall have the meanings given to them, as defined in the Pennsylvania Human Relations Act (PHRA).

ACT

Shall mean the Pennsylvania Human Relations Act.

EMPLOYEE

Does not include any individuals who, as a part of their employment, reside in the personal residence of the employer. Does not include independent contractors, seasonal or temporary employees.

EMPLOYER

Any person who employs ~~one or more employees~~ four or more persons, including the Borough, its departments, boards and commissions, and any other government agency within its jurisdiction.

B. To the extent words and phrases appearing in this chapter are not expressly defined herein, the words and phrases shall be defined in accordance with the meaning given to such term in the Act.

Section 2:

1. The Code of Ordinance of the Borough of Phoenixville, as amended, Chapter 6 “Conduct”, Part 11 “Antidiscrimination” Section 6-1105 “Establishment of Human Relations Commission,” is hereby amended as indicated by the black line and strikeout interlineations below, with strikeout indicating deletions of language and underlined interlineations indicating insertions of language:

C. ~~One of the Commission's members shall be appointed as the Chairperson of the Commission by the Council President.~~ The Commission shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Chairperson will be responsible for setting Commission meetings, coordinating with the Borough Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners or to paid staff, if applicable.

D. ~~The Borough Council hereby grants to the Borough Human Relations Commission all of the powers necessary to execute its duties (as set forth below), provided that those powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.~~ Borough Council shall grant the Phoenixville Human Relations Commission powers and duties similar to those now exercised by the Pennsylvania Human Relations Commission under the provisions of the Act so it may enforce the present Antidiscrimination Ordinance and prohibit discriminatory acts as defined herein.

Section 3:

1. The Code of Ordinance of the Borough of Phoenixville, as amended, Chapter 6 “Conduct”, Part 11 “Antidiscrimination” Section 6-1106 “Procedures,” is hereby amended as indicated by the black line and strikeout interlineations below, with strikeout indicating deletions of language and underlined interlineations indicating insertions of language:

A. Filing a complaint.

(2) Complaints may be filed in person at the Borough Manager's office, or by mailing such complaints to the Borough Manager's office or to the Chairperson of the Human Relations Commission. All complaints must be received by the Borough Manager's office or by Human Relations Commission within ~~300~~ 90 days of the alleged act of discrimination to be considered timely. The timelines established under this Antidiscrimination Ordinance shall by no means toll the timelines set forth in the Pennsylvania Human Relations Act or other applicable state or

federal statute.

- (3) The Borough Manager's office shall convey all original complaints received by that Office to the Chairperson of the Human Relations Commission within 10 days of the office's receipt of such complaints.
 - (4) In accordance with 43 P.S. 962. 1(e), The local Human Relations Commission shall notify the Pennsylvania Human Relations Commission of complaints received involving discriminatory acts within that Commission's jurisdiction.
- G. Expanded procedures: investigation. The Commission shall, within 30 days begin to in a timely fashion, investigate the allegations of discrimination set forth in the complaint. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, as necessary to assist in its investigation.
- J. Expanded procedures: public hearing.
- (3) At the public hearing, the case in support of the complaint shall be presented to the Commission by counsel for the complainant or by Commission staff. The case in support of the complaint may instead be presented by the complainant's attorney, if the complainant is represented. Both the complainant and the respondent may appear at the hearing with or without counsel, and provide testimony. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses, and may submit documentary evidence. The Commission and the parties shall not be bound by the strict rules of evidence at the hearing.
 - (4) The Commission shall use the services of a court stenographer so that a record of the hearing can be made.
- K. Expanded procedures: findings. If upon consideration of all of the evidence at the hearing, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory act as defined in this chapter, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such additional action as the Commission deems appropriate. The Commission shall have the authority to order any remedies available to the Pennsylvania Human Relations Commission under 53 P.S. 959 of the Pennsylvania Human Relations Act. The Commission has no authority to issue remedies beyond those provided by the PHRA

Section 4:

1. The Code of Ordinance of the Borough of Phoenixville, as amended, Chapter 6

“Conduct”, Part 11 “Antidiscrimination” Section 6-1107 “Private Right of Action and non-limitation of remedies ,” is hereby amended as indicated by the black line and strikeout interlineations below, with strikeout indicating deletions of language and underlined interlineations indicating insertions of language:

§6-1107. Private right of action and non-limitation of remedies.

A. ~~Any person(s) aggrieved by a violation of this chapter shall have a right of action in the Chester Court of Common Pleas or any other court of competent jurisdiction, and may recover for each violation the following remedies:~~

~~(1) Back pay, front pay and other actual damages;~~

~~(2) Emotional distress damages;~~

~~(3) Exemplary damages;~~

~~(4) Reasonable attorney's fees and court costs; and~~

~~(5) Such other relief, including injunctive relief, as the court may deem appropriate.~~

B. ~~The right of action created by this chapter may be brought upon receipt by the aggrieved person(s) of notice that the Commission has dismissed the complaint or if no such notice is received, after one year from the date of the filing of the complaint. If the person aggrieved has received notice that the Commission has dismissed the complaint, an action under this chapter must be brought by the aggrieved person within one year from the date of receipt of said notice or it will be barred. Equitable principles such as waiver, estoppel and equitable tolling shall apply to the time limitations for the filing of any complaint or other pleading under this chapter.~~

C. ~~Nothing in this chapter limits the right of an aggrieved person to recover under any other applicable law or legal theory.~~

Section 5: Officer Authorization. The appropriate officers of the Borough are authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Ordinance.

Section 6: Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, parts, or sections hereof. It is hereby declared as the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, part or section thereof not been included herein.

Section 7: Repealer. All ordinances or parts of ordinances conflicting or inconsistent herewith are hereby repealed.

Section 8: Effective Date. This Ordinance shall become effective upon enactment as provided by law.

PASSED by Borough Council this 13th Day of March, 2018.

By: _____
James C. Kovaleski
President, Borough Council

APPROVED by the Mayor, this 13th Day of March, 2018.

By: _____
Peter J. Urscheler
Mayor

ENACTED this 13th Day of March, 2018.

By: _____
E. Jean Krack
Borough Manager/Secretary

I HEREBY CERTIFY that the foregoing is a true and correct copy of the said Ordinance duly adopted at a regular meeting of Borough Council held on the 13th Day of March, 2018.

By: _____
E. Jean Krack
Borough Manager/Secretary