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Title: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination on the basis of a person’s height or weight in opportunities of employment, housing, and access to public accommodations

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Attachments: 1. Summary of Int. No. 2389, 2. Int. No. 2389, 3. August 26, 2021 - Stated Meeting Agenda with Links to Files, 4. Hearing Transcript - Stated Meeting 8-26-21, 5. Minutes of the Stated Meeting - August 26, 2021

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Int. No. 2389

By Council Members Lander, Dromm, Louis, Menchaca, Cornegy, Rosenthal, Ayala, Levin and Riley

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination on the basis of a person’s height or weight in opportunities of employment, housing, and access to public accommodations

Be it enacted by the Council as follows:

Section 1. Section 8-101 of the administrative code of the city of New York, as amended by local law number 20 for the year 2019, is amended to read as follows:

§ 8-101 Policy.

In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on

race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, uniformed service, height, weight, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. The council further finds and declares that gender-based harassment threatens the terms, conditions and privileges of employment. A city agency is hereby created with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination, sexual harassment and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§ 2. Paragraphs (a), (b), (c) and (d) of subdivision 1 of section 8-107 of the administrative code of the city of New York, as amended by local law number 20 for the year 2019, are amended to read as follows:

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight or alienage or citizenship status of any person:

(1) To represent that any employment or position is not available when in fact it is available;

(2) To refuse to hire or employ or to bar or to discharge from employment such person; or

(3) To discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services, including by representing to such person that any employment or position is not available when in fact it is available, or in referring an applicant or applicants for its services to an employer or employers.

(c) For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight or alienage or citizenship status of any person, to exclude or to expel from its membership such person, to represent that membership is not available when it is in fact available, or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(d) For any employer, labor organization or employment agency or an employee or agent thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

§ 3. Subdivision 1 of section 8-107 of the administrative code of the city of New York is amended by adding new paragraphs g and h to read as follows:

(g) Bona fide occupational qualification” (1) As used in this subdivision, the term “bona fide occupational qualification” means only those vocational qualifications that are reasonably necessary to the

normal operation of the particular business, enterprise, or apprentice or other training program.

(2) Notwithstanding any other provision of this subdivision and subdivision 2 of this section, it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, based on height or weight requirements in those certain instances where height or weight is a bona fide occupational qualification.

(3) If a covered entity asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, that party shall have the burden of proving:

(A) That the alleged discriminatory practice is in fact a necessary result of a bona fide occupational qualification; and

(B) That there exists no less discriminatory means of satisfying the occupational qualification.

(h) Nothing in this subdivision shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

§ 4. Paragraphs b, c, and d of subdivision 2 of section 8-107 of the administrative code of the city of New York, as amended by local law number 20 for the year 2019, is amended to read as follows:

(b) To deny to or withhold from any person because of such person's actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight, alienage or citizenship status or status as a victim of domestic violence or as a victim of sex offenses or stalking the right to be admitted to or participate in a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program, or to represent that such program is not available when in fact it is available.

(c) To discriminate against any person in such person's pursuit of such program or to discriminate against

such a person in the terms, conditions or privileges of such program because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight, alienage or citizenship status or status as a victim of domestic violence or as a victim of sex offenses or stalking.

(d) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for such program or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual and reproductive health decisions, sexual orientation, uniformed service, height, weight, alienage or citizenship status or status as a victim of domestic violence or as a victim of sex offenses or stalking, or any intent to make any such limitation, specification or discrimination.

§ 5. Paragraph a of subdivision 4 of section 8-107 of the administrative code of the city of New York, as amended by local law number 119 for the year 2017, is amended to read as follows:

a. It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation:

1. Because of any person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service, height, weight or alienage or citizenship status, directly or indirectly:

(a) To refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation; or

(b) To represent to any person that any accommodation, advantage, facility or privilege of any such place or provider of public accommodation is not available when in fact it is available; or

2. Directly or indirectly to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that:

(a) Full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, facilities and privileges of any such place or provider of public accommodation shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service, height, weight or alienage or citizenship status; or

(b) The patronage or custom of any person is unwelcome, objectionable, not acceptable, undesired or unsolicited because of such person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service, height, weight or alienage or citizenship status.

§ 6. Subdivision 4 of section 8-107 of the administrative code of the city of New York, is amended by adding a new paragraph g, to read as follows:

g. The provisions of this subdivision shall not apply, with respect to height or weight, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public health and safety.

§ 7. Subparagraphs 1 and 2 of paragraph a of subdivision 5 of section 8-107 of the administrative code of the city of New York, as amended by local law number 119 for the year 2017, is amended to read as follows:

(a) Housing accommodations. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof:

(1) Because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, height, weight, marital status, partnership status, or alienage or citizenship status

of any person or group of persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons:

(a) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any such person or group of persons such a housing accommodation or an interest therein;

(b) To discriminate against any such person or persons in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith; or

(c) To represent to such person or persons that any housing accommodation or an interest therein is not available for inspection, sale, rental or lease when in fact it is available to such person.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, height, weight, marital status, partnership status, or alienage or citizenship status, or any lawful source of income, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.

§ 8. Section 23-1201 of the administrative code of the city of New York, as added by local law number 247 for the year 2017, is amended by amending the definition of “identifying information” to read as follows:

Identifying information. The term "identifying information" means any information obtained by or on behalf of the city that may be used on its own or with other information to identify or locate an individual, including, but not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from

an individual's income tax records, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the police department, motor vehicle information or license plate number, biometrics such as fingerprints and photographs, height, weight, languages spoken, religion, nationality, country of origin, place of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the administration for children's services, the department of correction, or the police department, any scheduled court appearances, or any scheduled appointments with any employee, contractor, or subcontractor.

§ 9. Subparagraph f-5 of paragraph 48 of subdivision a of section 27-2004 of the administrative code of the city of New York, as added by local law number 48 for the year 2018, is amended to read as follows:

f-5. threatening any person lawfully entitled to occupancy of such dwelling unit based on such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, height, weight, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking, lawful source of income or because children are, may be or would be residing in such dwelling unit, as such terms are defined in sections 8-102 and 8-107.1 of the code;

§ 10. This local law takes effect 180 days after it becomes law, except that the chairperson of the New York city commission on human rights may take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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