City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

TO: The Honorable Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division Staff

DATE: September 7, 2020

RE: **Hair Bias Discrimination and *The Crown Act***

Council President Pro Tem Sheffield asked the Legislative Policy Division (LPD) to "opine on the feasibility and legality of creating local legislation that prohibits hair based discrimination within the City of Detroit, as an employer" as well as to "draft a resolution expressing support for federal, state, and local school district policy or legislation prohibiting race-based hair discrimination in the workplace or at school." This memorandum addresses that request. A draft of the aforementioned resolution is attached for your review and consideration.

Background

The CROWN Coalition, is a national alliance (https://www.thecrownact.com/) founded by Dove, the National Urban League, Color of Change and the Western Center on Law & Poverty, and leads the nationwide campaign for passage of the *CROWN Act*, "to ensure protection against discrimination based on race-based hairstyles by extending statutory protection to texture and protective styles such as braids, locs, twists, and knots in the workplace and public schools." The *CROWN Act*, short for Creating a Respectful and Open World for Natural Hair, has been passed (as of June 28, 2020) in seven states – California, New York, New Jersey Virginia, Colorado, Washington, and Maryland – and is pending in nine other states including Michigan. In December 2019, Representative Cedric Richmond of Louisiana and Senator Cory Booker of New Jersey introduced similar legislation at the national level, entitled the "CROWN Act of 2019". See, H.R. 5309 and S. 3167.

Legislative Action

Jurisdictions that have adopted *The CROWN Act* have largely accomplished it by amending existing civil rights laws to specifically include discrimination against race-based hairstyles among their enumerated prohibited activities. For example, in July 2019, Michigan State Representative Sarah Anthony of Lansing, representing the 68th House District, introduced House Bill 4811, proposing an amendment to Michigan's Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* The basic premise of the ELCRA is found in its initial section, *i.e.*, "recognition and declaration of civil right":

> (1) The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right. MCL 37.2102.

HB 4811 adds "race" to MCL 37.2103, the definitions section, as follows:

> "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. For purposes of this definition, "protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

Pending federal legislation (H.R. 5309 and S. 3167), similarly, recognizes that race-based hairstyle discrimination is part and parcel of race discrimination. The identical bills propose to amend federal civil rights laws prohibiting race discrimination in federally assisted programs (42 USC 2000d *et seq.)*, housing programs (42 USC 3601 *et seq.*), public accommodations (42 USC 2000a *et seq.*), employment (42 USC 2000e *et seq.*), and guaranteeing equal rights under the law (42 USC 1981), to specifically include race-based hairstyle discrimination.

Supporting and working toward the passage of federal and state statutes prohibiting race-based hairstyle discrimination are the most effective means of creating this protection because federal and state civil rights statutes carry the weight and history of **enforcement** authority of our civil rights laws. But more importantly, they have created a private cause of action for those aggrieved, *i.e.*, an individual who has been the victim of discrimination can sue for monetary and other damages.

The City's Human Rights ordinance, Chapter 23 of the Detroit City Code, empowers the Human Rights Department (now Civil Rights, Inclusion, and Opportunity Department - "CRIO") to accept complaints of discrimination, conduct investigations and where appropriate, refer complaints to federal or state civil rights agencies, as well as taking action against entities operating pursuant to City-issued licenses. While the ordinance can be amended to specifically delineate race-based hairstyle discrimination as included in a finding of race discrimination, the City is precluded under state law from creating a private cause of action for an individual to claim discrimination by the City. (See, *Linda Mack v City of Detroit*, 467 Mich 186 (2002)) Adding the protections of The CROWN Act to the City Code would codify the policy and give

CRIO a tool to address complaints of hairstyle discrimination, but with the limited enforcement authority inherent in the structure of the department as permitted by state law.

The requested resolution accompanies this memo. Should the Council have further questions, LPD will respond.

Attachment

BY PRESIDENT PRO TEM MARY SHEFFIELD

RESOLUTION IN SUPPORT OF ADOPTION OF *THE CROWN ACT* OR OTHER LEGISLATION PROHIBITING RACE-BASED HAIR DISCRIMINATION IN THE WORKPLACE AND AT SCHOOL IN DETROIT AND MICHIGAN

WHEREAS, A national movement to address the effects of long-term, insidious race discrimination in reaction to hairstyles and textures commonly associated with communities of color is being spearheaded by the CROWN Coalition, a national alliance founded by Dove, the National Urban League, Color of Change and the Western Center on Law & Poverty; and

WHEREAS, With the assistance of the Coalition, a wave of legislation has been enacted across the country over the last twelve to fourteen months, both at the federal and state level, which specifically adds race-based hair discrimination to the legal definition of race discrimination; and

WHEREAS, Beginning in California in July 2019, *The CROWN Act* ("Creating a Respectful and Open Workplace for Natural Hair") has now been adopted in seven states and legislation is under consideration in more than twenty other states, as well as in Congress; and

WHEREAS, In Michigan, State Representative Sarah Anthony of Lansing introduced House Bill 4811 in July 2019, to amend Michigan's Elliott Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*, to include the definition of "race" as "inclusive of traits historically associated with race, including . . . hair texture and protective hairstyles . . . "; and

WHEREAS, At the federal level, and Representative Cedric Richmond and Senator Cory Booker introduced the "CROWN Act of 2019", in the form of H.R. 5309 in December 2019 and S. 3167 in January 2020, respectively, which would amend a panoply of existing federal civil rights law prohibiting race discrimination in federally assisted programs, housing programs, public accommodations, employment, and access to equal rights under the law. The stated purpose of the identical bills is "to institute definitions of race and national origin for Federal civil rights laws that effectuate the comprehensive scope of protection Congress intended to be afforded by such laws and Congress' objective to eliminate race and national origin discrimination in the United States"; and

WHEREAS, The pending federal bills include an initial section of Congressional "findings", providing an eloquent and compelling argument for the necessity of the proposed Act, as follows:

> (1) Throughout United States history, society has used (in conjunction with skin color) hair texture and hairstyle to classify individuals on the basis of race.
>
> (2) Like one's skin color, one's hair has served as a basis of race and national origin discrimination.
>
> (3) Racial and national origin discrimination can and do occur because of longstanding racial and national origin biases and stereotypes associated with hair texture and style.

(4) For example, routinely, people of African descent are deprived of educational and employment opportunities because they are adorned with natural or protective hairstyles in which hair is tightly coiled or tightly curled, or worn in locs, cornrows, twists, braids, Bantu knots, or Afros.

(5) Racial and national origin discrimination is reflected in school and workplace policies and practices that bar natural or protective hairstyles commonly worn by people of African descent.

(6) For example, as recently as 2018, the United States Armed Forces had grooming policies that barred natural or protective hairstyles that servicewomen of African descent commonly wear and that described these hairstyles as "unkempt".

(7) In 2018, the United States Armed Forces rescinded these policies and recognized that this description perpetuated derogatory racial stereotypes.

(8) The United States Armed Forces also recognized that prohibitions against natural or protective hairstyles that African-American servicewomen are commonly adorned with are racially discriminatory and bear no relationship to African-American servicewomen's occupational qualifications and their ability to serve and protect the Nation.

(9) As a type of racial or national origin discrimination, discrimination on the basis of natural or protective hairstyles that people of African descent are commonly adorned with violates existing Federal law, including provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), section 1977 of the Revised Statutes (42 U.S.C. 1981), and the Fair Housing Act (42 U.S.C. 3601 et seq.). However, some Federal courts have misinterpreted Federal civil rights law by narrowly interpreting the meaning of race or national origin, and thereby permitting, for example, employers to discriminate against people of African descent who wear natural or protective hairstyles even though the employment policies involved are not related to workers' ability to perform their jobs.

(10) Applying this narrow interpretation of race or national origin has resulted in a lack of Federal civil rights protection for individuals who are discriminated against on the basis of characteristics that are commonly associated with race and national origin.

(11) In 2019, State legislatures and municipal bodies throughout the United States have introduced and passed legislation that rejects certain Federal courts' restrictive interpretation of race and national origin, and expressly classifies race and national origin discrimination as inclusive of discrimination on the basis of natural or protective hairstyles commonly associated with race and national origin.

WHEREAS, It is the Detroit City Council's responsibility to advocate on behalf of all of Detroit's citizens, and the Council recognizes, as espoused by the CROWN Act of 2019, that "clear, consistent, and enforceable legal standards must be provided to redress the widespread

incidences of race and national origin discrimination based upon hair texture and hairstyle in schools, workplaces, housing . . . and other contexts" and to "explicitly prohibit the adoption or implementation of grooming requirements that disproportionately impact people of African descent." **NOW, THEREFORE, BE IT**

RESOLVED, That the Detroit City Council fully supports prompt legislative action in Michigan as well as in Congress to advance and pass into law the CROWN Act as proposed; **AND BE IT FURTHER**

RESOLVED, The Detroit City Clerk is directed to send copies of this resolution to the Detroit delegation to the Michigan Legislature, Governor Gretchen Whitmer, Michigan Senators Debbie Stabenow and Gary Peters, and Congressperson Rashida Tlaib.

September 7, 2020