

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING CHAPTER 10," FAIR HOUSING" OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA,

BE IT ORDAINED, BY THE CITY Council of the City of Fayetteville, North Carolina, that,

Section 1. Chapter 10, Fair Housing is here is hereby deleted in its entirety and substituted with the following.

CHAPTER 10 - FAIR HOUSING

Sec. 10-1. Title.

This chapter shall be known and may be cited as the "City's Fair Housing Ordinance".

Sec. 10-2. Definitions.

Except where the context clearly indicates otherwise, the following terms as used in this chapter shall have the following meanings:

Aggrieved Person includes any person that (1) claims to have been injured by a discriminatory housing practice; (2) believes that such person will be injured by a discriminatory housing practice that is about to occur; or (3) includes children and other family members who reside with the aggrieved person.

Board means the fair housing board which is made up of five members: One (1) must be a licensed realtor in good standing and one (1) must be a practicing attorney.

City Manager means the City's highest ranking employee.

City Manager's Designee means a member of the City Manager's Office (Deputy or Assistant City Manager).

Charge means the statement of facts issued by the City of Fayetteville's human relations department under this chapter has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

Complaint means a written complaint filed with the City of Fayetteville's human relations department in accordance with the provisions of Chapter 10, city's fair housing ordinance.

Complainant means the person (including the secretary of HUD or the department ~~board~~) who files a complaint under this chapter.

Conciliation or Conciliation Process means the attempted resolution of issues by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the city's human relations department.

Conciliation Agreement means a written agreement setting forth the resolution of the issues of conciliation.

Conciliation Failure means any failure to obtain a conciliation agreement between the parties to the discrimination charge or a breach thereof.

Covered Multifamily Dwellings means buildings comprised of four (4) or more residential units if the building has one (1) or more elevators; and ground floor residential units or buildings comprised of four (4) or more residential units.

Department means the City of Fayetteville's human relations department.

Director means the director of the human relations department.

Director's Designee means an employee of the human relations department.

Discrimination means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, handicap, familial status, national origin or sex, or the aiding, abetting, inciting, coercing or compelling thereof.

Discriminatory Housing Practice means an act that is unlawful under this title. Under this chapter it is unlawful to discriminate against a person on the basis of race, color, religion, sex, handicap, familial status, or national origin.

Dormitory means a residential dwelling located on the premises of a college, business college, trade school or university for the purpose of housing students registered and attending such an institution or private dormitory within the meaning of chapter 30, article 30-9, of the Fayetteville City Code.

Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more individuals and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Election means the process of determining whether a case will appear before the fair housing board or superior court.

Fair Housing Board means that body of citizens duly appointed by the city council to adjudicate cases of discriminatory housing practices.

Familial Status means one or more persons who have not attained the age of 18 years being domiciled with:

1. A parent or another person having legal custody of the person or persons; ~~or~~
2. The designee of such parent or other person having custody, provided the designee has the written permission of the parent or other person; or
3. The protections against discrimination on the basis of familial status shall apply to any person who is pregnant, planning on pregnancy or is in the process of securing legal custody of any person who has not attained the age of 18 years.

Family includes a single individual.

Financial Institution means any banking corporation or trust company, savings and loan association, credit union, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds for residential real property.

Handicap, Disability, or Handicapping Condition means with respect to a person:

1. A physical or mental impairment which substantially limits one or more of such person's major life activities; or
2. A record of having such an impairment; or
3. Being regarded as having such an impairment; and
4. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (21 USC 802).

Hearing means a proceeding conducted to receive evidence or argument on a matter before the department.

Housing Accommodation means any improved or unimproved real property, or part thereof, which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of one or more individuals.

Person includes one or more individuals, corporations, partnerships, political subdivision, associations, labor organizations, trustee legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy cases under Title 11 of the United States Code, or other legal or commercial entity, the state, or governmental entity or agency, receivers, and fiduciaries.

Real Estate Broker or Salesman means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, leases, or manages real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these persons.

Real Estate Operators or Persons Engaging in Real Estate Transactions means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations; trustees in bank-mutual companies, trustee in bankruptcy, receivers or other legal or commercial entity; the city or county or any of its agencies or any owner of real property that is engaged in the business of selling, purchasing, exchanging, renting, leasing, or managing real estate, or the improvements thereof, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental, lease or management of real estate; or an individual employed by or acting on behalf of any of these.

Real Estate Transaction means the making or purchasing of loans or providing other financial assistance for purchase, constructing, improving, repairing or maintaining a dwelling; or secured by residential real estate; the sale, exchange, rental, management, broking or appraising or lease of residential real property.

Real Property means a building, structure, real estate, land, tenement, leasehold, interest in real estate cooperatives, condominium, and hereditament, corporeal and incorporeal, or any interest therein.

Respondent means (1) the person(s) or other entity(s) accused in a complaint of a discriminatory housing practice; and (2) any other person(s) or entity(s) identified in the course of investigation(s) and notified as required with respect to respondents so identified under Section 810 of the Federal Fair Housing Act.

To Rent includes to lease, to sublease, to let and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

Sec. 10-3. Purposes; Construction; Effect.

a. The general purposes of this chapter are:

- (1) To provide for execution within the city the policies embodied in Title VIII of the Federal Civil Rights Act of 1968 as amended; and
- (2) To safeguard all individuals within the city from discrimination in housing opportunities because of race, color, religion, handicap, familial status, national origin or sex.

- b. Nothing contained in this chapter shall be deemed to repeal any other law of this city relating to discrimination because of race, color, religion, handicap, familial status, national origin or sex.

Sec. 10-4. Unlawful Housing Practices.

It is an unlawful practice for an owner(s) or any other person(s) engaging in a housing transaction or residential real estate-related transaction because of race, color, religion, handicap, familial status, national origin or sex:

1. To refuse to sell, exchange, rent or lease or otherwise deny to or withhold real property from an individual;
2. To discriminate against an individual in terms, conditions of privileges of the sale, exchange, rental or lease of real property or in the furnishing of facilities or services in connection therewith;
3. To refuse to receive or transmit a bona fide offer to purchase, rent or lease real property from an individual;
4. To refuse to negotiate for the sale, rental or lease of real property to an individual;
5. To represent to an individual that real property is not available for inspection, sale, rental or lease when in fact it is so available, or to refuse to permit an individual to inspect real property;
6. To make, print, publish, circulate, post or mail, or cause to be printed, circulated, posted or mailed, an advertisement or sign, or to use a form of application for the purchase, rental or lease of real property, or to make a record of inquiry in connection with the prospective purchase, rental or lease of real property, which indicates, directly or indirectly, a limitation, specification or discrimination as to race, color, religion, handicap, familial status, national origin or sex or an intent to make such a limitation, specification or discrimination;
7. To offer, solicit, accept, use or retain a listing of real property for sale, rental or lease with the understanding that an individual may be discriminated against in the sale, rental or lease of that real property or in the furnishing of facilities or services in connection therewith;
8. For any person, because of race, color, religion, sex, handicap, familial status, or national origin, to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development;

9. For any person, because of race, color, religion, sex, handicap, familial status, or national origin, to harass or to attempt any act, practice, activity or procedure related directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons;
10. To refuse to permit, at the expense of a person who is handicap, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to the person with a handicap full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted;
11. To refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a person with a handicap equal use and enjoyment of a dwelling;
12. To fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:
 - a. The dwellings have at least one (1) building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or
 - b. With respect to dwellings with a building entrance on an accessible route:
 - (1) The public and common use portions are readily accessible to and usable by persons who are handicap;
 - (2) There is an accessible route into and through all dwellings and units;
 - (3) All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;
 - (4) Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
 - (a) Bathroom walls are reinforced to allow later installation of grab bars; and
 - (b) Kitchens and bathrooms have space for an individual in a wheelchair to maneuver;
- ~~13.~~ To otherwise deny to or withhold real property from an individual; or
- ~~14.~~ To violate any provision of 42 USC 3604-3606.

Sec. 10-5. Other Unlawful Practices.

a. Restrictive covenants and conditions:

- (1) Every provision in an oral agreement or a written instrument relating to real property, which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof to individuals of a specified race, color, religion, handicap, familial status, national origin or sex, is a discriminatory practice and is void;
- (2) Every condition, restriction or prohibition, including a right to entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, color, religion, handicap, familial status, national origin or sex, is a discriminatory practice and is void, except a limitation of use, on the basis of religion, of real property held by a religious or charitable organization operated, supervised or controlled by a religious institution or organization, and used for religious or charitable purposes; and
- (3) It is an unlawful practice to insert, in a written instrument relating to real property, a provision that is void under this section, or to honor or attempt to honor such a provision in the chain of title.

b. It is unlawful discriminatory housing practice to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this Chapter.

Sec. 10-6. Blockbusting.

It is an unlawful practice for a real estate owner or operator, a real estate broker, a real estate salesman, a financial institution, an employee of any of these, or any other person, for the purpose of inducing a real estate transaction from which he/she may benefit financially:

1. To represent that a change has occurred or will or may occur in the composition with respect to race, color, religion, handicap, familial status, national origin **or sex** of the owners or occupants in the block, neighborhood or area in which the real property is located; or
2. To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood or area in which the real property is located.

Sec. 10-7. Exemptions from Housing Provisions.

a. Nothing in section 10-4 shall:

- (1) Apply to the rental of housing accommodations in a building which contains housing accommodations for not more than four families living independently of each other, if the owner or a member of his/her family resides in one of the housing accommodations; or
 - (2) Apply to the rental of one room or one rooming unit in a housing accommodation by an individual if he/she or a member of his/her family resides therein; or
 - (3) Prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such a religion is restricted on account of race, color, sex, national origin, handicap, familial status; or
 - (4) Exclude single sex dormitory rental property from the provisions of this chapter which relate to discrimination based on sex; or
 - (5) Prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members; or
 - (6) Limit the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling; or
 - (7) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C 802).
- b. Nothing in chapter 10, other than sections 10-4.6 and 10-4.10, applies to the sale or rental of any single-family house by an owner, provided the following conditions are met:
- (1) The owner does not own or have any interest in more than three (3) single-family houses at any one (1) time; or
 - (2) The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in paragraph b(1) of this section applies only to one (1) such sale in any twenty-four-month period.
- c. Nothing in chapter 10, regarding discrimination based on familial status applies with respect to housing for older persons. As used in this section, housing for older persons means housing:

- (1) Provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program).
- (2) Intended for, and solely occupied by, persons sixty-two (62) years of age or older-and the housing satisfies the requirements of this section even though:
 - (a) There are persons residing in such housing on September 13, 1988, who are under sixty-two (62) years of age or older;
 - (b) There are unoccupied units, provided that such units are reserved for occupancy by persons sixty-two (62) years of age or older; or
 - (c) There are units occupied by employees of the housing (and family members residing in the same unit) who are under sixty-two (62) years of age provided they perform substantial duties directly related to the management or maintenance of the housing.
- (3) Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this paragraph until twenty-five (25) percent of the units in the facility are occupied; and
 - (a) At least eighty percent (80%) of the units in the housing facility are occupied by at least one (1) person fifty-five (55) years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this paragraph until twenty-five percent (25%) of the units in the facility are occupied; and
 - (b) The publication of, and adherence to, policies and procedures which demonstrate intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older; and
 - (c) The owner or manager complies with rules issued by the Secretary of the United States Department of Housing and Urban Development pursuant to the Housing for Older Peoples Act of 1995 (24 C.F.R., Part 100, Subpart E – Housing for Older Persons) for verification of occupancy, which provides for verification by reliable surveys and affidavits; and include examples of the types of procedures relevant to the determination of compliance with section 10-7.c. (3) (b). Such surveys and affidavits shall be admissible in administrative and judicial proceedings under this division for the purposes of such verification.
- (4) Housing which otherwise satisfies the requirements of section 10-7.c. (3) shall not fail to meet the requirement of housing for older persons even though:

- (a) On September 13, 1988, under eighty percent (80%) of the occupied units in the housing facility are occupied by at least one (1) person fifty-five (55) years of age or older per unit, provided that at least eighty percent (80%) of the units that are occupied by new occupants after September 13, 1988, are occupied by at least one (1) person fifty-five (55) years of age or older.
- (b) There are unoccupied units, provided that at least eighty percent (80%) of such units are reserved for occupancy by at least one (1) person fifty-five (55) years of age or older.
- (c) There are units occupied by employees of the housing (and family members residing in the same unit) who are under fifty-five (55) years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

Sec. 10-8. Discrimination in financial practices.

It shall be unlawful for any person(s) or other entity(s) whose business includes engaging in residential real estate-related transactions to discriminate against any person(s) in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. Unlawful conduct under this section includes, but is not limited to, as follows:

- 1. To discriminate against the applicant(s) because of race, color, religion, sex, handicap, familial status, or national origin.
- 2. To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification or discrimination as to race, color, religion, sex, handicap, familial status, or national origin.
- 3. To fail or refuse to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.
- 4. With respect to a person(s) or entity(s) engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, or national origin.

5. With respect to a person(s) or entity(s) engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, or national origin.

Sec. 10-9. Discrimination in the provision of brokerage services.

It is a discriminatory practice for any person(s) or other entity(s) whose business includes engaging in the selling, brokering or appraising of residential real property to deny any person(s) who is otherwise qualified by state law, access to, or membership or participation in, any real estate broker's organization, multiple listing service or other service, organization or facility relating to the business of engaging in real estate transactions, or to discriminate against any person(s) in the terms or conditions of such access, membership, or participation, making available such services, or in the performance of such services, because of race, color, sex, religion, handicap, familial status or national origin.

Sec. 10-10. Provisions for Enforcement.

- a. The city manager shall designate the human relations director as the agent to investigate complaints filed under this section, make determinations, and seek to conciliate.
- b. Any aggrieved person(s) or the director on behalf of the department who claims to have been injured by an unlawful discriminatory housing practice or who reasonably believes that he/she will be irrevocably injured by an unlawful discriminatory housing practice may file a complaint with the human relations department.
- c. The director shall have the power to adopt rules and regulations for carrying out the administrative and enforcement functions of the fair housing ordinance of the Fayetteville City Code. Such rules and regulations shall be approved by the fair housing board and shall be adopted, amended, or rescinded after the board holds a public hearing. A copy of the text of the proposed rule, amendment or decision shall be available for public inspection and copying at the office of the human relations department.
- d. Any person(s) claiming to be aggrieved by a discriminatory housing practice, his/her agent, or the director, may file a written complaint with the department no later than one (1) year after the alleged discriminatory housing practice occurred, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the director or his/her designee to identify the person(s) charged [hereinafter the "respondent(s)"]. Notice of the complaint, including the date, place, and circumstances of the alleged discriminatory housing practice shall be served by the department upon the respondent(s) by certified mail within ten (10) days after filing.
- e. Complaints shall be in writing, shall state the facts upon which the allegation(s) of a discriminatory housing practice is based, and shall contain such other information and be in

such form as the ~~fair housing board~~ or human relations department requires. The signature and affirmation may be made at any time during the investigation. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."

- f. The department shall assist complainants in reducing complaints to writing and shall assist in setting forth the information in the complaint as may be required in an official HUD complaint. Each complaint shall include, but not limited to, the following information:
 - (1) The name and address of the aggrieved person(s);
 - (2) The name and address of the respondent(s);
 - (3) A description and the address of the dwelling which is involved, if appropriate; and
 - (4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.
- g. Upon the filing of a complaint, the director or his/her designee shall serve by certified mail or personal service upon each aggrieved person(s) on whose behalf the complaint was filed a notice acknowledging the filing and advising each aggrieved person(s) of the time limits and choice of forums provided under the law.
- h. Within ten (10) days after receipt of the complaint, the director or his/her designee of the human relations department shall serve on the respondent a copy of the complaint by certified mail or personal service, a notice advising the respondent of his/her procedural rights and obligations under this chapter, and a notice identifying the alleged discriminatory housing practice. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under this chapter, as a person who is alleged to be engaged, to have engaged, or to be about to engage in a discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this chapter within ten (10) days of the identification.
- i. Within ten (10) days after receipt of the complaint, the director or his/her designee of the human relations department shall serve on the complainant a notice acknowledging the filing of the complaint and informing the complainant of his/her time limits and choice of forums under this chapter.
- j. Within thirty (30) days of the filing of a complaint, the director or his/her designee will initiate an investigation. Investigations are to be completed within one hundred (100) days after filing of the complaint unless it is deemed impractical to do so.
- k. If the department is unable to complete the investigation within one hundred (100) days after the filing of the complaint, the department shall notify the complainant(s) and respondent(s) in writing of the reasons for not doing so.

- l. At the end of each investigation under this section, the department shall prepare a final investigative report containing:
 - (1) The names and dates of contacts with witnesses;
 - (2) A summary and the dates of correspondence and other contacts with the aggrieved person(s) and the respondent(s);
 - (3) A summary description of other pertinent records;
 - (4) A summary of witness statements;~~and~~
 - (5) Answers to interrogatories; and
 - (6) A final investigative report will be prepared, and will be made available to the aggrieved person(s) and the respondents(s), upon request.
- m. The city may file a civil action in Cumberland County Superior Court or have the case brought to hearing before the fair housing board for appropriate remedies to enforce the provisions of this chapter including temporary restraining orders and mandatory and prohibitory injunctions.
- n. If the superior court or the fair housing board finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such judge or fair housing board shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person(s) and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent(s):
 - (1) In an amount not exceeding \$11,000.00 if the respondent(s) has not been adjudged to have committed any prior discriminatory housing practice;
 - (2) In an amount not exceeding \$27,500.00 if the respondent(s) has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and
 - (3) In an amount not exceeding \$55,000.00 if the respondent(s) has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge.

Sec. 10-11. Agency No Defense in Proceeding Against Real Estate Dealer.

It shall be no defense to a violation of this chapter by a real estate owner or operator, real estate broker, real estate salesman, a financial institution, or other person subject to the provisions of this chapter, that the violation was requested, sought or otherwise procured by a person not subject to the provisions of this chapter.

Sec. 10-12. Determination and Effect.

- a. If the director determines that the respondent(s) has not engaged in an unlawful discriminatory housing practice, the director shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint with a no reasonable cause determination. The director shall issue a short and plain written statement of the facts upon which the no reasonable cause determination was based on, and notify all parties by certified mail or personal service. A copy of the order shall be delivered to the city attorney and such other public officers and persons as the director deems proper.
- b. If the director determines that reasonable cause exists, the director will immediately issue a charge under this chapter, on behalf of the aggrieved person(s), and shall notify the aggrieved person(s) and the respondent(s) of this determination by certified mail or personal service.
- c. *Such charge:*
 - (1) Shall consist of a short and plain statement of the facts upon which the director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (2) Shall be based on the final investigative report; and
 - (3) Need not be limited to the facts or grounds alleged in the complaint filed under section 10-10.b. Provided that the director will not issue a charge based upon facts or grounds not alleged in the complaint unless the record of the investigation shows that the respondent has been given notice and an opportunity to respond to the allegation.
 - (4) May be amended as a matter of right prior to the filing of a civil action under section 10-10.h., or pursuant to rules and regulations adopted for administrative enforcement under section 10-10.c. if an election has not been made pursuant to section 10-14.b.; provided that the charge shall not be amended based upon facts or grounds not alleged in the complaint unless the record of the investigation shows that the respondent has been given notice and an opportunity to respond to the allegation, and further provided that the director may reopen the investigation to give the respondent an opportunity to respond to the allegation.
- d. Together with the service of the charge, the director shall provide the aggrieved person(s) and the respondent(s) the following:
 - (1) Information as to how to make an election under section 10-14.b., and the effect of such an election; and
 - (2) A notice of an opportunity for a hearing under section 10-14.d. (5) at a time and place specified in the notice unless that election is made.

Sec. 10-13. Procedures for Conciliation.

- a. Conciliation efforts are initiated at the time a complaint is filed and continues until the complaint is officially dismissed **or closed**.
- b. In conciliating a complaint, the director or his/her designee will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent(s) will satisfactorily remedy any violations of the rights of the aggrieved person(s), and take such actions as will assure the elimination of discriminatory housing practices, or the prevention of their occurrences, in the future.
- c. The terms of a settlement of a complaint will be reduced to a written conciliation agreement. Any conciliation agreement arising out of conciliation efforts by the department shall be between the complainant(s) and the respondent(s) and shall be subject to the approval of the director. The conciliation agreement shall seek to protect the interests of the aggrieved person(s), other persons similarly situated, and the public interest. Each conciliation agreement shall be made public unless the complainant(s) and the respondent(s) otherwise agree and the director determines that disclosure is not required to further the purposes of this chapter.
- d. A conciliation agreement negotiated as provided in this section may include, but is not limited to:
 - (1) Sale, exchange, lease, rental, assignment, or sublease of real property to a person;
 - (2) Extension to all persons of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent;
 - (3) Reporting as to the manner of compliance;
 - (4) Posting of notices in conspicuous places in the respondent's place of business in a form prescribed by Title VIII; or
 - (5) Payment to the complainant(s) of actual damages, including compensation for humiliation and embarrassment, and reasonable attorney fees.
- e. At any time, but not later than one (1) year from the date of a conciliation agreement, the director or his/her designee shall investigate whether the terms of the agreement are being complied with by the respondent(s). Upon deciding that the terms of the agreement are not being complied with by the respondent(s), the director shall take informal action to seek voluntary compliance with the agreement. If informal action does not result in compliance, the city attorney or his/her designee, on behalf of the director, shall file a civil action for the enforcement of the terms of the conciliation agreement.

- f. Nothing that is said or done in the course of conciliation under this section may be made public or used as evidence in subsequent hearings under this section without the written consent of the persons concerned.
- g. It is an unlawful practice for a person(s), as a party to a conciliation agreement made under this chapter, to violate the terms of the agreement.

Sec. 10-14. Fair Housing Board.

- a. The city council shall establish a fair housing board consisting of five (5) members, preferably one of whom shall be a representative of the real estate industry, and one of whom shall be a licensed attorney.
- b. If an election is not made with respect to a charge filed under section 10-14.c., the director shall provide for an opportunity for a hearing on the record with respect to said charge. The city attorney or his/her designee shall delegate the conduct of the hearing to the board. The hearing shall be conducted after proper notice to the parties under rules and procedures issued by the city attorney or his/her designee.
- c. If a charge is issued, an aggrieved person(s) or respondent(s) may elect to file a civil action in superior court. The election must be made no later than twenty (20) days after receipt of service of the charge. The person making the election shall give notice to the director and all other complainants and respondents to whom the charge relates. The notification will be filed and served in accordance with the procedures established by the department. If a timely election is made for a civil action in lieu of the administrative hearing, the city shall commence and maintain the civil action seeking relief on behalf of the aggrieved person(s). If a timely election is not made in accordance with this division, the department shall provide an opportunity for an administrative hearing by the fair housing board based on the charge. Fair housing board hearings are open to the public.
- d. With respect to a hearing under this section:
 - (1) *Rights of parties.* At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross examine witnesses, and obtain the issuance of subpoenas under section 10-15.b., conciliate all matters in controversy and enter into binding conciliation agreements, make final findings of fact and conclusions of law, and enter all orders necessary to the conduct of hearings held under this section.
 - (2) The director shall have the authority to promulgate rules and regulations providing for expedited discovery.
 - (3) The board shall have the authority to conduct hearings under this section, issue subpoenas under section 10-15.b., conciliate all matters in controversy and enter into binding conciliation agreements, make final findings of fact and conclusions of law, and enter all orders necessary to the conduct of hearings held under this section.

- (4) If the fair housing board determines that the respondent(s) has engaged or is about to engage in an unlawful discriminatory housing practice, it shall state its findings of fact and conclusions of law and if a conciliation agreement cannot be negotiated, the board shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person(s) and injunctive or other equitable relief and a reasonable attorney's fee to an aggrieved person(s) intervening in the proceeding. Such order may include, to vindicate the public interest, a civil penalty payable to the City of Fayetteville:
- (a) In an amount not exceeding \$11,000.00 if the respondent(s) has not been adjudged to have committed any prior discriminatory housing practice;
 - (b) In an amount not exceeding \$27,500.00 if the respondent(s) has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and
 - (c) In an amount not exceeding \$55,000.00 if the respondent(s) has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge.

Except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice then the civil penalties set forth in subparagraphs (b) and (c) above may be imposed without regard to the period of time with any subsequent discriminatory housing practice occurred; and except that no such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this chapter.

- (5) The board shall commence the hearing under this section no later than one hundred twenty (120) days following the issuance of the charge, unless it is impracticable to do so. If the board is unable to commence the hearing within one hundred twenty (120) days after the issuance of the charge, the board shall notify the director, the aggrieved person(s) on whose behalf the charge was filed, and the respondent(s), in writing of the reasons for not doing so.
- (6) The board shall make findings of fact and conclusions of law within sixty (60) days after the end of the hearing under this section, unless it is impracticable to do so. If the board is unable to make findings of fact and conclusions of law within such period, or any succeeding sixty (60) day period thereafter, the board shall notify the director, the aggrieved person(s) on whose behalf the charge was filed, and the respondent(s) in writing of the reasons for not doing so.
- (7) The City Manager or his/her designee shall have the authority to review any findings, conclusions, or orders issued under this section no later than thirty (30) days after the

findings, conclusions, or orders are issued, otherwise the findings, conclusions, or orders become final.

- (8) The City Manager or his/her designee shall cause any findings of fact and conclusions of law made with respect to any final orders for relief under this section, together with a copy of such order, to be served upon each aggrieved person(s) and each respondent(s) in the proceeding by certified mail or personal service.
- e. Venue for an action filed in superior court is in Cumberland County.
 - f. In an action brought in the superior court for violation of this division, the court may grant any relief, as it deems appropriate, including, but not limited to, the following:
 - (1) Award actual and punitive damages;
 - (2) Reasonable attorney's fees;
 - (3) Court costs;
 - (4) Award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this section as necessary to assure the full enjoyment of the rights granted by this chapter;
 - (5) Punitive damages may be awarded;
 - (6) Civil actions brought in superior court are for trial de novo. The parties to the action shall have the right to trial by jury as provided for by the North Carolina Rules of Civil Procedure;

Sec. 10-15. Investigations, Powers, Records.

- a. In conducting an investigation, the human relations department shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation; provided, however, that the department first complies with the provisions of the Fourth Amendment to the United States Constitution relating to unreasonable searches and seizures.
- b. The city attorney or his/her designee on behalf of the director, shall issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent(s), to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the superior court. The subpoena shall state the name, title, capacity and address of its issuer; the authority under which it is issued; the identity of the person to whom and the place, date and time at which it is returnable; the nature of the evidence to be

examined or copied; and the date and time when access is requested. The director may in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this chapter. A subpoena shall be returnable to the department.

- c. Any person served with a subpoena who fails to comply therewith may, within five (5) business days (excluding Saturdays, Sundays, and legal holidays) after the date of service of the subpoena upon him/her, directly petition the Cumberland County Superior Court to revoke or modify the subpoena. For purposes of this section, service shall be made and proof thereof established pursuant to Rule 45 of the North Carolina Rules of Civil Procedures.
- d. In case of contumacy or refusal to obey a subpoena, the city attorney or his/her designee on behalf of the director may petition for its enforcement in the superior court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

Sec. 10-16. Conspiracy to Violate This Chapter Unlawful.

It shall be an unlawful practice for a person, or for two or more persons to conspire:

- 1. To retaliate or discriminate in any manner against a person because he/she has opposed a practice declared unlawful by this chapter, or because he/she has made a charge, filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter;
- 2. To aid, abet, incite, compel or coerce a person to engage in any of the acts or practices declared unlawful by this chapter;
- 3. To obstruct or prevent a person from complying with the provisions of this chapter or any order issued thereunder; or
- 4. To resist, prevent, impede or interfere with the enforcing agent, the department and its employees, the fair housing board or any of its members or representatives in the lawful performance of duty under this chapter.

Sec. 10-17. Miscellaneous Provisions.

- a. Every person subject to this chapter shall make, keep, and preserve records relevant to the determination of whether discriminatory housing practices have been or are being committed, such records being maintained and preserved in a manner and to the extent required under the Civil Rights Act of 1968 and any regulations promulgated thereunder. Nothing in this chapter shall be interpreted to require the making, keeping, and preserving of records other than and except as required under the Federal Act of 1968, 42 U.S.C.A. § 3601 et seq., and any regulations promulgated thereunder.
- b. Neither a complaint filed pursuant to this chapter, nor the results of the human relations department attempts at conciliation, in whatever form prepared and preserved, shall be

subject to inspection, examination, or copying under G.S. 132-1 et seq. and G.S. 143-318.9 et seq.

- d. No portion of this chapter shall be construed to authorize the department to make a final determination concerning the allegations of a complaint. The department's authority and power shall not exceed receiving, investigating and attempting to conciliate complaints, monitoring compliance with the terms of conciliation agreements, and where warranted, commencing an action in the court or hearing alleging the violation of this chapter and any other powers granted, in sections 10-10.b. and 10-10.c, of this chapter.

Sec. 10-18. Judicial review and court enforcement of final decision.

a. *Judicial review.*

- (1) Any party aggrieved by a final order for relief under this chapter granting or denying in whole or in part the relief sought may obtain a review of such order under N.C.G.S. 150B-43 through N.C.G.S. 150B-52.
- (2) Notwithstanding such chapter, venue of the proceeding shall be in the county in which the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall not be later than thirty (30) days after the order is entered.

b. *Court enforcement of administrative order upon petition by director.*

- (1) The city attorney or his/her designee, on behalf of the director shall petition any superior court for the county in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the board and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.
- (2) The city attorney or his/her designee, on behalf of the director, shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the director to the parties to the proceeding before the board.

c. *Relief which may be granted.* Upon the filing of a petition under this section, the court may:

- (1) Grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;
- (2) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and
- (3) Enforce such order to the extent that such order is affirmed or modified.

- d. Any party to the proceeding before the board may intervene in the superior court.

- e. No objection not made before the board shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

Sec. 10-19. Civil action.

Any aggrieved person may file a civil action in court no later than two (2) years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief as set forth in section 10-18.c. of this chapter.

Section 2. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

Adopted this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk