

CHAPTER 93: DISCRIMINATION AND HUMAN RELATIONS

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GENERAL PROVISIONS

§ 93.001 PURPOSE; FINDINGS OF FACT.

Discrimination in social, cultural and economic life in Fort Wayne against any person or persons because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation, is contrary to American principles and is harmful to the social, cultural, and economic life of the city. Discrimination, particularly in employment opportunities, public accommodations and housing, increases the burden and cost of government; and, such discrimination contributes to increased crime, vice, juvenile delinquency, fires and other evils, thereby affecting the public safety, public health, and general welfare of the community. It is therefore deemed to be in the best interests of the city to create a metropolitan Commission to administer and enforce any anti-discrimination legislation and ordinances, all as authorized by the Indiana Civil Rights Act.

('74 Code, § 15-1) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-16-01, passed 11-13-01; Am. Ord. G-20-03, passed 5-27-03)

§ 93.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

AGE. Age or age discrimination shall have the same meaning as defined in IC 22-9-2-1.

DISABILITY. Physical or mental impairment which substantially limits one or more of a person's major life activities, or a record of such an impairment and includes a person who is regarded as having such an impairment.

DISCRIMINATION. Any difference in treatment based on race, sex, color, religion, disability, ancestry, national origin, place of birth or sexual orientation. **DISCRIMINATION** also shall mean the

exclusion of a person from or failure or refusal to extend to a person equal opportunities because of race, sex, religion, color, disability, ancestry, national origin, place of birth or sexual orientation.

LABOR ORGANIZATION. Any organization which exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

NEIGHBORHOOD. A group of residences which are in relative proximity of each other within the metropolitan area of Fort Wayne, Indiana.

OWNER. The lessor, sublessor, assignor or managing agent or other person having the right of ownership or possession or the right to sell, rent, or lease any housing accommodation.

PERSON. An association, partnership or corporation, as well as a natural person. **PERSON**, as applied to partnerships or other associations, includes their members, and as applied to corporations, includes their officers and Director. The term person also includes any individual acting in a fiduciary or representative capacity, whether appointed by the court or otherwise. The term shall include the City of Fort Wayne and all other units of local government within the territorial jurisdiction of said city, including Fort Wayne Community Schools, the Allen County Welfare Department and all other county departments within said territorial jurisdiction.

REAL ESTATE BROKER. Any person as defined herein, who, for a fee or other valuable consideration, sells, purchases, exchanges, or rents or negotiates the sale, purchase, exchange or rental of the real property of another, or holds himself or herself out as engaged in the business of selling, purchasing, exchanging, or renting the real estate of another, or collects rental for the use of real property of another.

REASONABLE ACCOMMODATION. May include:

(1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

RETALIATION. The actions of any person in discrimination against any other person with regard to or denying any other person access to or opportunities in employment, because any such other person has opposed any practice made unlawful by this chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this chapter.

SEXUAL ORIENTATION. Male or female homosexuality, heterosexuality and bisexuality, real or perceived, by orientation or practice.

('74 Code, § 15-3) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-22-00, passed 8-8-00; Am. Ord. G-16-01, passed 11-13-01; Am. Ord. G-20-03, passed 5-27-03)

§ 93.003 APPLICATION OF ADMINISTRATIVE ADJUDICATION AND COURT REVIEW.

Whenever the Metropolitan Human Relations Commission conducts proceedings to determine the rights or liabilities of particular persons, proceedings conducted to determine these rights and liabilities shall be conducted in conformity with IC 4-21.5 et seq. Judicial review of the proceedings or the application by the agency for judicial enforcement of its orders shall be in conformity with IC 4-21.5 et seq.; except where IC 4-21.5 et seq. requires notice to be served upon the attorney general of Indiana or requires the participation of the attorney general of Indiana, the agency or party seeking review or enforcement shall instead give notice to the city attorney or the city attorney shall participate.

('74 Code, § 15-19) (Ord. G-21-78, passed 7-25-78)

§ 93.004 EXEMPTIONS.

(A) With respect to employment discrimination, employers of five or fewer employees are exempt from the provisions of this chapter.

(B) It shall not be deemed discrimination for any not-for-profit corporation or association organized exclusively for religious purposes or for any school, educational or charitable institution, owned, conducted or affiliated with a church or religious institution to devote its resources to its own religion or denomination or to give preference to members of such institution or educationally to promote exclusively the religious principles for which it is established or maintained.

(C) It shall not be deemed discrimination on account of handicap for any governmental agency or not for-profit corporation established for the purpose of offering or providing education, training or other social services and benefits to handicapped persons to devote its resources to such handicapped persons or to give a preference to handicapped persons with respect to such education, training or social services and benefits.

('74 Code, § 15-4) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-22-00, passed 8-8-00)

UNLAWFUL PRACTICES

§ 93.015 DISCRIMINATION PROHIBITED.

It shall be unlawful for any person to commit any act of discrimination or engage in any discriminatory practices herein defined.

('74 Code, § 15-9) (Ord. G-21-78, passed 7-25-78) [Penalty, see § 93.999](#)

§ 93.016 DISCRIMINATION IN EMPLOYMENT.

It shall be unlawful for any:

(A) Person to discriminate against any person by treating any such person differently or by excluding from or failing or refusing to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

(B) Employer to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped employee or prospective employee or to fail to make reasonable accommodations to the religious observance or practice of any employee or prospective employee unless such employer can demonstrate that the accommodation would impose an undue

hardship on the conduct of the employers' business.

(C) Person to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

(D) (1) It shall be unlawful for any:

(a) Person to discriminate against any person by treating any such person differently or by excluding from or failing or refusing to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

(b) Employer to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled employee or prospective employee or to fail to make reasonable accommodations to the religious observance or practice of any employee or prospective employee unless such employer can demonstrate that the accommodation would impose an undue hardship on the conduct of the employers' business.

(c) Person to make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

(d) To engage in any form of retaliation against an employee for the exercise of the employee's rights pursuant to this chapter or Title VII of the Civil Rights Act of 1964.

('74 Code, § 15-12) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-22-00, passed 8-8-00; Am. Ord. G-20-03, passed 5-27-03) [Penalty, see § 93.999](#)

§ 93.016A EMPLOYMENT DISCRIMINATION AGAINST PERSONS WITH DISABILITIES PROHIBITED.

(A) *Definitions.* As used in this title:

(1) **COMMISSION.** The Fort Wayne Metropolitan Human Relations Commission.

(2) **COVERED ENTITY.** An employer, employment agency, labor organization, or joint labor-management committee.

(3) **DIRECT THREAT.** A significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) **EMPLOYEE.** A person hired by a covered entity, a former employee, or an applicant for employment.

(5) **ILLEGAL USE OF DRUGS.**

(a) In general. The use of drugs, the possession or distribution of which is unlawful under

the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law.

(b) **DRUGS.** A controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act.

(6) **QUALIFIED INDIVIDUAL WITH A DISABILITY.** An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employers judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(7) **REASONABLE ACCOMMODATION.** May include:

(a) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(b) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(8) **UNDUE HARDSHIP.**

(a) An action requiring significant difficulty or expense, when considered in light of the factors set forth in subdivision (b).

(b) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and cost of the accommodation needed under this Act;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) The type of operation or operations of the covered entity, including the

composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(B) *Discrimination on the basis of disability prohibited.*

(1) *General rule.* No covered entity shall discriminate against a qualified individual with a

disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(2) *Construction.* As used in subdivision (1), the term discriminate includes:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(b) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(c) Utilizing standards, criteria, or methods of administration:

(i) That have the effect of discrimination on the basis of disability; or

(ii) That perpetuate the discrimination of others who are subject to common administrative control;

(d) Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(e) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(f) Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(g) Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;

(h) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure); and,

(i) Retaliating against an employee for reporting a complaint to a governmental agency or otherwise engaging in a lawful exercise of the employees rights, regardless of whether or not the

employee's complaint is determined by an agency of the government or court of law to be without sufficient merit or evidence.

(3) *Medical examinations and inquiries.*

(a) In general. The prohibition against discrimination as referred to in subdivision (a) shall include medical examinations and inquiries.

(b) Pre-employment.

(i) Prohibited examination or inquiry. Except as provided in subdivision (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(ii) Acceptable inquiry. A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(c) Employment entrance examination. A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if:

(i) All entering employees are subjected to such an examination regardless of disability;

(ii) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and government officials investigating compliance with this Act shall be provided relevant information on request; and the results of such examination are used only in accordance with this title.

(d) Examination and inquiry.

(i) Prohibited examinations and inquiries. A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(ii) Acceptable examinations and inquiries. A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(iii) Requirement. Information obtained under subdivision (ii) regarding the medical condition or history of any employee are subject to the requirements of subdivisions (c)(ii) and (iii).

(C) *Defenses.*

(1) *In general.* It may be a defense to a charge of discrimination under this Act that an alleged

application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(2) *Qualification standards.* The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(3) *Religious entities.*

(a) In general. This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Religious tenets requirement. Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(4) *Persons with infectious and communicable diseases.*

(a) In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the United States Secretary of Health and Human Services pursuant to Section 103(d) of the Americans with Disabilities Act, and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(b) Construction. Nothing in this section shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services pursuant to Section 103(d) of the Americans with Disabilities Act.

(D) *Illegal use of drugs and alcohol.*

(1) Qualified individual with a disability. For purposes of this title, the term qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(2) *Rules of construction.* Nothing in subdivision (a) shall be construed to exclude as a qualified individual with a disability an individual who:

(a) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(b) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(c) Is erroneously regarded as engaging in such use, but is not engaging in such use; except

that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subdivision (a) or (b) is no longer engaging in the illegal use of drugs.

(3) *Authority of covered entity.* A covered entity:

(a) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(b) May require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(c) May require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(d) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

(4) *Drug testing.*

(a) In general. For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(b) Construction. Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(Ord. G-22-00, passed 8-8-00)

§ 93.017 DISCRIMINATION BY LABOR ORGANIZATIONS.

It shall be unlawful for a labor organization to:

(A) Exclude or expel from its membership, or otherwise to discriminate against any individual because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

(B) Limit, segregate, or classify its membership, or applicants for membership, or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or as an applicant for employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

(C) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(74 Code, § 15-13) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-20-03, passed 5-27-03) [Penalty, see § 93.999](#)

§ 93.018 DISCRIMINATION IN PUBLIC ACCOMMODATIONS.

It shall be unlawful for any person or establishment which caters or offer its services or facilities or goods to the general public to discriminate against anyone because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

('74 Code, § 15-14) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-20-03, passed 5-27-03) [Penalty, see § 93.999](#)

§ 93.019 DISCRIMINATION IN EDUCATION.

It shall be unlawful for any person, establishment or governmental agency regularly engaged in the offering of educational services to discriminate against anyone because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.

('74 Code, § 15-15) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-20-03, passed 5-27-03) [Penalty, see § 93.999](#)

§ 93.020 OTHER UNLAWFUL PRACTICES.

It shall be unlawful for any person to:

(A) Aid, abet, incite, compel, or coerce the doing of any act declared by this chapter to be unlawful.

(B) Knowingly obstruct the fair and lawful enforcement of this chapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act made unlawful herein, or by destroying any records, documents or other evidence relevant to any alleged unlawful discriminatory practice as defined herein, after such person has received actual notice of a discrimination charge or has been served notice of a complaint filed.

(C) To discriminate against any other person with regard to, or to deny any other person access to or opportunities in employment, real estate transactions, education or public accommodations because any such other person has opposed any practice made unlawful by this chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this chapter.

('74 Code, § 15-16) (Ord. G-21-78, passed 7-25-78) [Penalty, see § 93.999](#)

§ 93.021 LIMITED POWERS FOR COMPLAINTS OF SEXUAL ORIENTATION DISCRIMINATION.

With respect to complaints of discrimination based on sexual orientation, the Commission's authority shall be limited to power to accept such complaints, notify respondents of the complaint(s) and attempt voluntary investigation(s) and voluntary mediation(s).

(Ord. G-16-01, passed 11-13-01)

DISCRIMINATION BY FIRMS, PERSONS UNDER MUNICIPAL CONTRACT

§ 93.035 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

DISABILITY. A condition that can mean or be described as:

- (1) Any physical or mental impairment which substantially limits one or more of a person's major life activities; or
- (2) A record of such an impairment;
- (3) A person who is regarded as having such an impairment.

DISCRIMINATES, DISCRIMINATING and **DISCRIMINATORY** mean and include:

- (1) To promote segregation or separation in any manner, to treat any person differently, or to exclude from or fail or refuse to extend to any person equal opportunities with respect to hiring, termination, compensation, or other terms, conditions or privileges of employment, because of race, sex, color, religion, disability, ancestry, national origin, place of birth, age, or sexual orientation.
- (2) To fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified employee as set forth in § 93.016A;
- (3) To fail to make reasonable accommodations to the religious observance or practice of any employee or prospective employee unless the employee can demonstrate that the accommodation would impose an undue hardship on the conduct of the employer's business;
- (4) To make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to employment that indicates a preference, limitation, specification or discrimination based on race, sex, color, religion, disability, ancestry, national origin, place of birth, age, and sexual orientation.

The following practices are not included in the meaning of **DISCRIMINATION**:

- (1) For any not-for-profit association, incorporated or otherwise, organized exclusively for fraternal or religious purposes, to devote its resources to its own religion or denomination, or to give employment preference to its own members;
- (2) For any not-for-profit association, incorporated or otherwise, established for the purpose of offering or providing education, training or other social services and benefits to handicapped persons, to devote its resources to such handicapped persons, or to give a preference to handicapped persons with respect to such education, training or social services and benefits.

OBSTRUCT. The action of any person knowingly obstructing the fair and lawful enforcement of this chapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act of discrimination as defined herein; after such person has received actual notice of a discrimination charge, or has been served notice of a complaint filed.

RETALIATION. The actions of any person in discriminating against any other person with regard to or denying any other person access to or opportunities in employment, because any such other person has opposed any practice made unlawful by this chapter, or because such other person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this chapter.

('74 Code, § 15-17(a)) (Ord. G-34-78, passed 12-12-78; Am. Ord. G-22-00, passed 8-8-00; Am. Ord. G-20-03, passed 5-27-03)

§ 93.036 MANDATORY COVENANTS.

Every contract for or on behalf of the city for the construction, alteration or repair of any public building or public work, or the performance of any other work or service, shall contain provisions by which the contractor agrees, as follows:

(A) That in the performance of work under such contract or any subcontract thereunder, the contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, will not discriminate against any person who is qualified and available to perform the work to which the employment relates.

(B) That such contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor will not obstruct the enforcement of this section.

(C) That such contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor will not retaliate against any person.

('74 Code, § 15-17(b)) (Ord. G-34-78, passed 12-12-78) [Penalty, see § 93.999](#)

§ 93.037 ENFORCEMENT.

Enforcement of this chapter shall be through order of the Board of Public Works in the following manner:

(A) Whenever any member of the Board of Public Works, or whenever the affirmative action officer who is assigned to help watch over public contracts has reason to believe that any of the provisions hereof have been violated, the matter may be referred to the Metropolitan Human Relations Commission for investigation and initiation of discrimination charges against the contractor or subcontractor. Cases over which the Commission has no jurisdiction shall be investigated by said affirmative action officer.

(B) A final order of the Metropolitan Human Relations Commission shall be forwarded to the Board of Public Works, which may invoke one of the remedies set forth in § 93.038. It is a matter over which the Metropolitan Human Relations Commission has no jurisdiction; the Board of Public Works shall conduct a hearing to determine whether there has been a breach of this chapter. In so doing, the Board may call upon the Commission for consultation.

('74 Code, § 15-17(c)) (Ord. G-34-78, passed 12-12-78)

§ 93.038 REMEDIES.

Upon finding that a contractor or subcontractor or any person acting on behalf of such contractor or

subcontractor has violated a provision or provisions of this section, whether discriminating, obstructing, retaliating, or otherwise, the Board of Works may:

(A) Deduct from the amount payable to the contractor by the city under such contract a penalty of not less than \$10 per day per violation, nor more than \$1,000 per day per violation. Each day on which a continuous violation exists shall be deemed a separate offense; or

(B) The Board of Works may cancel or terminate the contract, and all money due or to become due thereunder may be forfeited, for a second or any subsequent violation of this chapter.

('74 Code, § 15-17(d)) (Ord. G-34-78, passed 12-12-78)

§ 93.039 COPY OF PROVISIONS TO BE INCLUDED IN CONTRACTS TO CONSTITUTE COMPLIANCE.

A verbatim copy of §§ 93.035 through 93.038 may be attached as an exhibit to and incorporated in and made a part of any contract made by or on behalf of the city for any public work, which shall constitute compliance with § 93.036.

('74 Code, § 15-18) (Ord. G-34-78, passed 12-12-78)

HUMAN RELATIONS COMMISSION

§ 93.050 ESTABLISHMENT; MEMBERSHIP; VACANCIES.

(A) To assist in the elimination of discrimination in Fort Wayne there is hereby created a Commission to be known as the Metropolitan Human Relations Commission.

(B) The Commission shall consist of seven members. Three of whom shall be appointed by the Common Council and four of whom shall be appointed by the Mayor.

(C) Terms shall last three years except for one Commissioner appointed by Common Council for his or her original term and one Commissioner appointed by the Mayor for his or her original term, and the appointee as designated by either Common Council or the Mayor shall be for a period of two years. The effect of this original appointment is to establish a staggering of terms such that there will never be a complete turnover of Commissioners at the end of any given three year term. There shall be no limitation to the number of consecutive terms to which a Commissioner may be appointed.

(D) As of the time of the establishment of this Commission, all seven Commission positions are vacant and therefore Common Council shall appoint members to fill three of the vacancies, and thereafter shall be responsible for appointing their successors, and the Mayor shall appoint members to fill the remaining four vacancies, and shall thereafter be responsible for appointing their successors.

('74 Code, § 15-5) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96; Am. Ord. G-03-97, passed 2-25-97)

§ 93.051 QUALIFICATIONS OF MEMBERS.

(A) All members shall be residents of Fort Wayne. The Mayor and Common Council shall make only those appointments which insure:

(1) That members are persons who have demonstrated a commitment to the purpose for which the Commission is created; and

(2) That the Commission is broadly representative of the community in regard to race, religion, national origin, sex, and abilities;

(3) The appointment shall be in such manner that the number of members of the Commission belonging to one of the two major political parties shall not exceed by more than one the number of those belonging to the other major political party, and the Mayor and the Common Council shall take this into consideration in making their respective appointments; provided, however, that if they cannot agree upon the manner in which such representation is to be attained, the Mayor shall make that appointment which shall result in one of the major political parties having the greater number of members on the Board.

(B) It shall be the duty of the Mayor and the Council publicly to solicit suggestions for Commission appointments from organizations having an interest in the improvement of inter-group relations in the community, and to give thoughtful consideration to the appointment of persons so suggested.

('74 Code, § 15-6) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96)

§ 93.052 OFFICERS.

(A) At the first meeting of the Commission, which shall be called by the Mayor, the Commissioners shall elect one of their number to serve as chairman, and also shall elect such other officers as the Commission shall desire from among its members.

(B) The Commission shall select an Executive Director who shall serve as Secretary, who shall not be required to meet the qualifications for membership on the Commission, and who shall be compensated for his services, and such other employees as may be authorized.

('74 Code, § 15-7(a), (b)) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96)

§ 93.053 DEATH; INCAPACITY OR RESIGNATION OF MEMBER; REMOVAL.

(A) In the event of a death, incapacity, or resignation of any member, his or her successor shall be appointed by the one who appointed such member and the newly appointed member shall serve for the unexpired period of the term of the one replaced.

(B) Either the Mayor or the Common Council shall, at any time, have the right to remove any member of the Commission appointed by him or it, with cause.

('74 Code, § 15-7(c), (d)) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96; Am. Ord. G-03-97, passed

2-25-97)

§ 93.054 POWERS AND DUTIES.

(A) The Commission shall have all powers that may lawfully be conferred upon it pursuant to the applicable provisions of Indiana law, including the power to:

(1) Investigate, conciliate and hear complaints;

(2) Subpoena and compel the attendance of witnesses or production of pertinent documents and records, and make use of such other discovery techniques as shall be necessary to complete investigations or conduct full hearings as provided for in IC 4-21.5 et seq., and Rule 28 of the Indiana Rules of Trial Procedure;

(3) Administer oaths;

(4) Examine witnesses;

(5) Appoint hearing examiners or panels;

(6) Make findings and recommendations;

(7) Issue cease and desist orders requiring remedial action;

(8) Order payment of actual damages, except that damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commissions or fringe benefits;

(9) Institute action for appropriate legal or equitable relief in an appropriate court;

(10) Employ an Executive Director and other staff personnel;

(11) Adopt rules and regulations;

(12) Initiate complaints, except that no person who initiates complaints may participate as a member of the agency in the hearing or disposition of the complaint; and

(13) Conduct programs and activities to carry out the purposes of the Metropolitan Human Relations Commission provided for in this chapter within the territorial boundaries of the city;

(B) The Commission shall hold a regular meeting each month. All meetings and notice thereof shall be conducted in conformity with IC 5-14-1.5-1 et seq.;

(C) The Commission shall endeavor to keep itself fully informed concerning the studies and findings of private organizations in respect to the practices falling within the Commission's jurisdiction;

(D) The Commission shall render an annual report of its doings to the Mayor and to the Common Council, and shall render such other additional reports as the Mayor or the Common Council may from time to time request. The reports shall describe in detail the investigations and conciliation proceedings it has conducted and their outcome, the progress made and any other work performed and achievement toward the elimination of discrimination.

('74 Code, § 15-8) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96)

§ 93.055 RESPONSIBILITIES.

(A) Study the relationship between persons of various races, sexes, creeds, abilities, and nationalities within the city and to advise and assist the various city departments in matters involving relationships between such groups to the end that prejudice, intolerance, bigotry, and discrimination will be eliminated in Fort Wayne;

(B) Eliminate discrimination in education, employment, public accommodation and housing based upon sex, race, religion, handicap, ancestry, national origin or place of birth;

(C) Study, investigate and take action in regard to any condition having an adverse effect upon relations between persons of various races, sexes, creeds, abilities and nationalities;

(D) Institute and conduct educational and other programs intended to promote the equal rights and opportunities of all persons;

(E) Solicit the cooperation of the various racial, ethnic, handicapped, women's rights, and religious groups within the community in order to improve the quality of communications and understanding within the community;

(F) Stimulate private and governmental department and agencies to develop and foster meaningful programs in support of the objectives and purposes of the Metropolitan Human Relations Commission;

(G) Ensure the equal protection of all persons and the full availability of all rights and privileges of citizenship to all persons.

('74 Code, § 15-2) (Ord. G-21-78, passed 7-25-78; Am. Ord. G-30-96, passed 12-17-96; Am. Ord. G-31-96, passed 12-17-96)

FAIR HOUSING

§ 93.065 PURPOSE.

The purpose of this subchapter is to:

(A) Provide for fair housing practices within the city.

(B) Create a procedure for investigating and conciliating complaints of discriminatory housing practices.

(C) Provide rights and remedies substantially equivalent to those granted under state and federal law.

(Ord. G-33-92, passed 7-15-92)

§ 93.066 COMMISSION OF DISCRIMINATORY ACT BECAUSE OF FAMILIAL STATUS.

A discriminatory act is committed because of familial status if the act is committed because a person who is the subject of discrimination is:

- (1) Pregnant;
- (2) Domiciled with an individual younger than 18 years of age in regard to whom the person:
 - (a) Is the parent or legal custodian; or
 - (b) Has the written permission of the parent or legal custodian for domicile with person; or
- (3) In the process of obtaining legal custody of an individual younger than 18 years of age.

(Ord. G-33-92, passed 7-15-92)

§ 93.067 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGGRIEVED PERSON. Any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that the person will be injured

by a discriminatory housing practice that is about to occur.

COMMISSION. The Fort Wayne Metropolitan Human Relations Commission.

COMPLAINANT. A person, including the Commission, who files a complaint under § 93.087.

CONCILIATION. The attempted resolution of issues raised by a complaint or by the investigation of a complaint, through informal negotiation involving the aggrieved person, the respondent, and the Commission.

CONCILIATION AGREEMENT. A written agreement setting forth the resolution of the issues in conciliation.

DISCRIMINATORY HOUSING PRACTICE. An act prohibited under §§ 93.081 through 93.088.

DRUGS. A controlled substance, as defined in schedules I through V of section 202 of the federal Controlled Substances Act.

DWELLING.

(1) Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one or more families; or

(2) Any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described by division (1) of this definition.

FAMILY. The meaning of family includes a single individual.

HANDICAP. With respect to a person:

- (1) A physical or mental impairment that substantially limits one or more of the person's major life activities;
- (2) A record of having an impairment described in division (1) of this definition; or
- (3) Being regarded as having an impairment described in division (1) of this definition.

The 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)).

The term does not include an individual solely because that individual is a transvestite.

ILLEGAL USE OF DRUGS. The use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law.

PERSON. One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

RESPONDENTS.

- (1) The person accused of a violation of this subchapter in a complaint of discriminatory housing practice; or
- (2) Any person identified as an additional or a substitute respondent under § 93.092 or an agent of an additional or a substitute respondent.

TO RENT. This can also mean to lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(Am. Ord. G-22-00, passed 8-8-00)

§ 93.068 SALE OR RENTAL OF SINGLE-FAMILY HOUSES; ROOMS OR UNITS IN CERTAIN DWELLINGS EXEMPT.

(A) Subject to division § 93.081(C), § 93.081 does not apply to the following:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(a) The owner does not:

1. Own more than three single-family houses at any one time; or

2. Own any interest in, nor is there owned or reserved on the owner's behalf, under any express or voluntary agreement, title to, or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and

(b) The house was sold or rented without:

1. The use of the sales or rental facilities or services of a real estate broker, an agent, or a salesman licensed under IC 25-34.1, or of an employee or agent of a licensed broker, an agent, or a salesman, or facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or

2. The publication, posting, or mailing of a notice, a statement, or an advertisement prohibited by § 93.082.

(B) (1) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if their owner maintains and occupies one of the living quarters as the owner's residence.

(2) The exemption in division (A)(1) of this section applies to only one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental.

(Ord. G-33-92, passed 7-15-92)

§ 93.069 RELIGIOUS ORGANIZATIONS EXEMPT.

This subchapter does not prohibit a religious organization, an association, or a society or a nonprofit institution or an organization operated, supervised, or controlled by or in conjunction with a religious organization, an association or a society from:

(A) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or

(B) Giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

(Ord. G-33-92, passed 7-15-92)

§ 93.070 PRIVATE CLUBS EXEMPT.

This subchapter does not prohibit a private club not open to the public that, as an incident to the club's primary purpose, provides lodging that the club owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to the members or from giving preference to the members, unless membership in the club is restricted because of race, color, or national origin.

(Ord. G-33-92, passed 7-15-92)

§ 93.071 HOUSING FOR OLDER PERSONS EXEMPT.

(A) As used in this subchapter, *HOUSING FOR OLDER PERSONS* means housing that the Commission determines is:

(1) Specifically designed and operated to assist elderly persons under federal or state program:

(2) Intended for and solely occupied by persons at least 62 years of age; or

(3) Intended and operated for occupancy by at least one person at least 55 years of age in each unit.

(B) Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirement of division (A)(2) or (A)(3) of this section does not fail to meet the requirements for housing older persons if:

(1) The unoccupied units are reserved for persons who meet the age requirements of division (A)(2) or (A)(3) of this section; or

(2) The occupants who do not meet the age requirement of division (A)(2) or (A)(3) of this section have resided in the housing since September 13, 1988 or an earlier date, and the persons who became occupants after September 13, 1988 meet the age requirements of division (A)(2) or (A)(3) of this section.

(C) The Commission shall adopt rules under IC 4-22-2 to establish criteria for matching determinations under division (A) of this section. These rules must include at least the following provisions:

(1) Except as provided in division (C)(2) of this section, the housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons.

(2) If the provision of the facilities and services described in division (C)(1) of this section is not practicable, the housing must be necessary to provide important housing opportunities for older persons.

(3) At least 80% of the units must be occupied by at least one person who is at least 55 years of age.

(4) The owner or manager of the housing must publish and adhere to provide housing for persons who are at least 55 years of age.

(D) The provisions of § 93.065(B), relating to familial status, do not apply to housing for older persons.

(Ord. G-33-92, passed 7-15-92)

§ 93.072 APPRAISALS OF PROPERTY EXEMPT.

This subchapter does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, or national origin.

(Ord. G-33-92, passed 7-15-92)

§ 93.073 HEALTH OR SAFETY RESTRICTIONS; OTHER LAWS NOT AFFECTED.

(A) This subchapter does not affect a reasonable local, or state restriction on the maximum number of occupants permitted to occupy a dwelling or restriction relating to health or safety standards.

(B) This subchapter does not affect requirement of nondiscrimination in any other local, state or

federal law.

(Ord. G-33-92, passed 7-15-92)

§ 93.074 COMMISSION TO ADMINISTER.

The Fort Wayne Metropolitan Human Relations Commission shall administer this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.075 ADOPTIONS OF RULES.

The Commission may adopt rules under IC 4-22-2 necessary to implement this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.076 ACTION ON COMPLAINTS ALLEGING VIOLATION.

As provided by § 93.087 the Commission shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.077 DELEGATION OF POWERS AND DUTIES TO EXECUTIVE DIRECTOR.

The Commission may, by rule, authorize the Executive Director of the Commission to exercise the Commission's powers and perform the Commission's duties under this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.078 COOPERATION WITH OTHER ENTITIES.

The Commission shall cooperate with and, as appropriate, may provide technical and other assistance to federal, state, local, and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices.

(Ord. G-33-92, passed 7-15-92)

§ 93.079 SUBPOENAS AND DISCOVERY PROVISIONS.

(A) The Commission may issue subpoenas and order discovery as provided by this section in aid of investigations and hearings under this subchapter.

(B) Subpoenas and discovery in aid of investigations may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in a circuit or superior court. Subpoenas and discovery in aid or hearings are subject to IC 4-21.5.

(Ord. G-33-92, passed 7-15-92)

§ 93.080 ACCEPTANCE OF GIFTS AND GRANTS.

The Commission may accept gifts and grants from any public or private source for the purpose of

administering this subchapter

(Ord. G-33-92, passed 7-15-92)

§ 93.081 DISCRIMINATION IN CONNECTION WITH SALE OR RENTAL OF DWELLINGS PROHIBITED; EXCEPTION.

(A) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, handicap, or national origin.

(B) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, familial status, handicap, or national origin.

(C) This subchapter does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

(Ord. G-33-92, passed 7-15-92)

§ 93.082 NOTICES, STATEMENTS, OR ADVERTISING.

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination.

(Ord. G-33-92, passed 7-15-92)

§ 93.083 REPRESENTATIONS REGARDING AVAILABILITY OF DWELLING FOR INSPECTION.

A person may not represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

(Ord. G-33-92, passed 7-15-92)

§ 93.084 REPRESENTATION REGARDING ENTRY OF CERTAIN PERSONS INTO NEIGHBORHOOD.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, handicap, familial status, or national origin.

(Ord. G-33-92, passed 7-15-92)

§ 93.085 HANDICAPPED PERSONS.

A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

(A) The buyer or renter;

(B) A person residing in or intending to reside in the dwelling after the dwelling is sold, rented, or made available; or

(C) (1) Any person associated with the buyer or renter.

(2) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a handicap of:

(a) The person;

(b) A person residing in or intending to reside in the dwelling after the dwelling is sold, rented or made available; or

(c) Any person associated with the person.

(3) For the purpose of this division only, **DISCRIMINATION** includes the following:

(a) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises.

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.

(c) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

1. The public use and common use parts of the dwellings are readily accessible to and usable by handicapped persons;

2. All the doors are designed to allow passage into and within all premises within the dwellings and are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

3. All premises within the dwellings contain the following features of adaptive design:

a. An accessible route into and through the dwelling;

b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

c. Reinforcements in bathroom walls to allow later installations of grab bars; and

d. Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

4. As used in division (C)(3) of this section, **COVERED MULTIFAMILY**

DWELLINGS means:

a. Buildings consisting of four or more units if the buildings have one or more elevators; and

b. Ground floor units in other buildings consisting of four or more units.

5. Compliance with the rules of the fire prevention and building safety Commission that incorporate by reference the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (ANSI A117.1) satisfies the requirements of division (C)(3)(c)3. of this section.

6. This section does not require that a dwelling be made available to an individual whose tenancy would result in substantial physical damage to the property of others.

(Ord. G-33-92, passed 7-15-92)

§ 93.086 LOANS OR FINANCIAL ASSISTANCE.

(A) As used in this section, **RESIDENTIAL REAL ESTATE RELATED TRANSACTION** means the

following:

(1) Making or purchasing loans or providing other financial assistance;

(a) To purchase, construct, improve, repair, or maintain a dwelling; or

(b) To secure residential real estate.

(2) Selling, brokering, or appraising residential real property.

(B) A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions, of a real estate related transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(Ord. G-33-92, passed 7-15-92)

§ 93.087 BROKERS ORGANIZATIONS, SERVICES, OR FACILITIES.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers, organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, handicap, familial status or national origin.

(Ord. G-33-92, passed 7-15-92)

§ 93.088 COERCION, INTIMIDATION, THREATS, OR INTERFERENCE.

A person may not coerce, intimidate, threaten, or interfere with any other person:

(A) In the exercise or enjoyment of any right granted or protected by this subchapter; or

(B) Because the person has exercised or enjoyed, or has encouraged another person in the exercise or enjoyment of, any right granted or protected by this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.089 DUTY OF COMMISSION TO INVESTIGATE, FILE COMPLAINTS, AMENDMENTS, NOTICES OF DISCRIMINATORY HOUSING PRACTICES.

(A) The Commission shall investigate alleged discriminatory housing practices.

(B) A complaint concerning an alleged discriminatory housing practice must be:

(1) In writing;

(2) Under oath; and

(3) In the form prescribed by the Commission.

(C) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the Commission alleging the discriminatory housing practice.

(D) Not later than one year after an alleged discriminatory housing practice has occurred or terminates whichever is later, the Commission may file the Commission's own complaint.

(E) A complaint under this subchapter may be amended at any time.

(F) When a complaint is filed under this subchapter the Commission shall do the following:

(1) Give the aggrieved person notice that the complaint has been received.

(2) Advise the aggrieved person of the time limit and choice of forums under this subchapter.

(3) Not later than 20 days after filing of the complaint or the identification of an additional respondent under § 93.092, serve on each respondent:

(a) A notice identifying the alleged discriminatory practice and advising the respondent of the procedural rights and obligations of a respondent under this subchapter; and

(b) A copy of the original complaint.

(Ord. G-33-92, passed 7-15-92)

§ 93.090 ANSWER TO COMPLAINT.

(A) Not later than ten days after receipt of notice and a copy of the complaint under § 93.089 (F)

(3), respondent shall file an answer to the complaint.

(B) An answer must be:

- (1) In writing; and
- (2) In the form prescribed by the Commission.

(C) An answer may be amended at any time.

(D) An answer does not inhibit the investigation of a complaint.

(Ord. G-33-92, passed 7-15-92)

§ 93.091 INVESTIGATION OF COMPLAINTS REFERRED BY FEDERAL GOVERNMENT.

(A) If the federal government has referred a complaint to the Commission or has deferred jurisdiction over the subject matter of the complaint to the Commission, the Commission shall promptly investigate the allegations set forth in the complaint.

(B) The Commission shall investigate all complaints, filed under this subchapter and except as provided by division (C) of this section, shall complete an investigation not later than 100 days after the date the complaint is filed, or if the Commission is unable to complete the investigation within the 100 day period, shall dispose of all administrative proceedings related to the investigation not later than one year after the date the complaint is filed.

(C) If the Commission is unable to complete an investigation within the time periods prescribed by division (B) of this section, the Commission shall notify the complainant and the respondent in writing of the reasons for the delay.

(Ord. G-33-92, passed 7-15-92)

§ 93.092 JOINDER OF ADDITIONAL OR SUBSTITUTE RESPONDENTS.

(A) The Commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation the Commission determines that the person should be accused of a discriminatory housing practice.

(B) In addition to the information required in the notice under § 93.089(F)(3), the Commission shall include in a notice to a respondent joined under this subchapter an explanation of the basis for determination that the person is properly joined as respondent.

(Ord. G-33-92, passed 7-15-92)

§ 93.093 CONCILIATION AGREEMENTS.

(A) The Commission shall, during the period beginning with the filing of a complaint, to the extent feasible, engage in conciliation with respect to the complaint.

(B) A conciliation agreement is an agreement between a respondent and the complainant and is subject to Commission approval.

(C) A conciliation agreement may provide for binding arbitration or other methods of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

(D) A conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the Commission determines that disclosure is not necessary to further the purpose of this subchapter.

(E) Nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.

(F) After completion of the Commission's investigation, the Commission shall make available to the aggrieved person and the respondent, information derived from the investigation and the final investigation report relating to that investigation.

(Ord. G-33-92, passed 7-15-92)

§ 93.094 ACTION FOR TEMPORARY OR PRE- LIMINARY RELIEF.

(A) If the Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the Commission may file a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint in the County Circuit Court or County Superior Court.

(B) A temporary restraining order or other order granting temporary or preliminary relief under this subchapter is governed by the Indiana Rules of Trial Procedure.

(C) The filing of a civil action under this subchapter does not affect the initiation or continuation of administrative proceedings under § 93.102.

(Ord. G-33-92, passed 7-15-92)

§ 93.095 FINAL INVESTIGATIVE REPORT.

(A) The Commission shall prepare a final investigative report showing the following:

(1) The names and dates of contacts with witnesses.

(2) A summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts.

(3) A summary description of other pertinent records.

(4) A summary of witness statements.

(5) Answers to interrogatories.

(B) A final report under this subchapter may be amended if additional evidence is discovered.

(Ord. G-33-92, passed 7-15-92)

§ 93.096 DETERMINATION OF REASONABLE CAUSE.

(A) The Commission shall determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

(B) The Commission shall make the determination under division (A) of this section not later than 100 days after the date a complaint is filed unless:

(1) It is impracticable to make the determination; or

(2) The Commission has approved a

conciliation agreement relating to the complaint.

(C) If it is impracticable to make the determination within the time period provided by division (B) of this section, the Commission shall notify the complainant and respondent in writing of the reasons for the delay.

(D) If the Commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall immediately issue a finding of reasonable cause on behalf of the aggrieved person.

(Ord. G-33-92, passed 7-15-92)

§ 93.097 FINDING OF REASONABLE CAUSE.

(A) A finding of reasonable cause issued under § 93.096:

(1) Must consist of a concise statement on which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Must be based on the final investigative report; and

(3) Need not be limited to the facts or grounds alleged in the complaint.

(B) Not later than 20 days after the Commission issues a finding of reasonable cause, the Commission shall send a copy of the finding of reasonable cause with information concerning the election under § 93.099 to the following:

(1) Each respondent, together with a notice of the opportunity for a hearing provided by § 93.099.

(2) Each aggrieved person on whose behalf the complaint was filed.

(Ord. G-33-92, passed 7-15-92)

§ 93.098 DISMISSAL OF COMPLAINT.

(A) If the Commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall promptly dismiss the

complaint.

(B) The Commission shall make available for public disclosure each dismissal under this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.099 FINDING OF REASONABLE CAUSE PRECLUDED AFTER COMMENCEMENT OF CIVIL ACTIONS.

The Commission may not issue a finding of reasonable cause under this subchapter regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

(Ord. G-33-92, passed 7-15-92)

§ 93.100 ELECTION TO HAVE CLAIMS DECIDED IN CIVIL ACTION.

(A) A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in a finding of reasonable cause decided in civil action as provided by § 93.101.

(B) The election must be made not later than 20 days after the date of receipt by the electing person of service under § 93.98(B) or, in the case of the Commission, not later than 20 days after the date the finding of reasonable cause was issued.

(C) The person making the election shall give notice to the Commission and to all other complainants and respondents to whom the finding of reasonable cause relates.

(Ord. G-33-92, passed 7-15-92)

§ 93.101 FILING OF CIVIL ACTION; INTERVENTION BY AGGRIEVED PERSONS; GRANTING OF RELIEF.

(A) If a timely election is made under this section the Commission shall, not later than 30 days after the election is made, file a civil action on behalf of the aggrieved person seeking relief under this subchapter in the County Circuit Court or County Superior Court.

(B) An aggrieved person may intervene in the action.

(C) If the court finds that a discriminatory practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under § 93.108.

(D) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.

(Ord. G-33-92, passed 7-15-92)

§ 93.102 HEARING.

(A) If a timely election is not made under § 93.100, the Commission shall provide for a hearing on the finding of reasonable cause.

(B) Except as provided by division (C), IC 4-21.5 governs a hearing and appeal of a hearing under this subchapter.

(C) A hearing under this subchapter may not continue regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing practice.

(Ord. G-33-92, passed 7-15-92)

§ 93.103 ORDER FOR APPROPRIATE RELIEF.

(A) If the Commission determines at a hearing under § 93.102 a respondent has engaged or is about to engage in a discriminatory housing practice, the Commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

(B) The Commission may sue to recover a civil penalty due under this subchapter.

(Ord. G-33-92, passed 7-15-92) [Penalty, see § 93.999\(B\)](#)

§ 93.104 CERTAIN CONTRACTS, SALES, ENCUMBRANCES, OR LEASES UNAFFECTED BY ORDER.

A Commission order under [§ 93.103](#) does not affect a contract, a sale, an encumbrance, or a lease that:

(A) Was consummated before the Commission issued the order; and

(B) Involved a bona fide purchaser, an encumbrancer, or a tenant who did not have actual notice of the finding of reasonable cause filed under this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.105 RESPONDENTS SUBJECT TO LICENSING OR REGULATION BY GOVERNMENTAL AGENCIES.

If the Commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the Commission shall, not later than 30 days after the date of the issuance of the order:

(A) Send copies of the findings and the order to the governmental agency; and

(B) Recommend to the governmental agency appropriate disciplinary action.

(Ord. G-33-92, passed 7-15-92)

§ 93.106 ISSUANCE AND FORWARDING OF ORDERS.

If the Commission issues an order against a respondent against whom another order was issued

within the preceding five years under [§ 93.103](#), the Commission shall send a copy of each order issued under that section to the attorney general.

(Ord. G-33-92, passed 7-15-92)

§ 93.107 FILING OF ACTION BY AGGRIEVED PERSON.

(A) An aggrieved person may file a civil action in the County Circuit Court or County Superior Court not later than one year after the occurrence of the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this subchapter whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

(B) The one year period does not include any time during which an administrative hearing under this subchapter is pending with respect to a complaint or finding of reasonable cause under this subchapter based on the discriminatory housing practice. This division does not apply to actions arising from a breach of a conciliation agreement.

(C) An aggrieved person may file an action under this subchapter whether or not a complaint has been filed under [§ 93.089](#) and without regard to the status of any complaint filed under [§ 93.089](#).

(D) If the Commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under this subchapter with respect to the alleged discriminatory housing practice that forms the basis for the complaint except to enforce the terms of the agreement.

(E) An aggrieved person may not file an action under this subchapter with respect to an alleged discriminatory housing practice that forms the basis of a finding of reasonable cause issued by the Commission if the Commission has begun a hearing on the record under this subchapter with respect to the finding of reasonable cause.

(Ord. G-33-92, passed 7-15-92)

§ 93.108 AWARD OF RELIEF.

If the court finds that a discriminatory housing practice has occurred or is about to occur in an action under this subchapter the court may award to the prevailing party the following:

(A) Actual and punitive damages.

(B) Reasonable attorney's fees.

(C) Court costs.

(D) Subject to § 93.109, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

(Ord. G-33-92, passed 7-15-92)

§ 93.109 CERTAIN CONTRACTS, SALES, ENCUMBRANCES, OR LEASES UNAFFECTED BY RELIEF GRANTED.

Relief granted under this subchapter does not affect a contract, a sale, an encumbrance, or a lease that:

(A) Was consummated before the granting of the relief; and

(B) Involved a bona fide purchaser, an encumbrancer, or a tenant who did not have actual notice of the filing of a complaint or a civil action under this subchapter.

(Ord. G-33-92, passed 7-15-92)

§ 93.110 INTERVENTION BY THE COMMISSION.

(A) The Commission may intervene in an action under this subchapter if the Commission determines that the case is of general public importance.

(B) The Commission may obtain the same relief available under § 93.108.

(Ord. G-33-92, passed 7-15-92)

§ 93.111 FILING OF CIVIL ACTION

(A) The Commission may file a civil action for appropriate relief if the Commission has reasonable cause to believe that:

(1) A person has engaged in a pattern or practice of resistance to the full enjoyment of any right granted by this subchapter; or

(2) A person has been denied any right granted by this subchapter and that denial raises an issue of general public importance.

(C) An action under this subchapter may be filed in the County Circuit Court or County Superior Court.

(Ord. G-33-92, passed 7-15-92)

§ 93.112 INTERVENTION IN CIVIL ACTION.

A person may intervene in an action filed under [§ 93.111](#) if the person is:

(A) An aggrieved person to the discriminatory housing practice; or

(B) A party to a conciliation agreement concerning the discriminatory housing practice.

(Ord. G-33-92, passed 7-15-92)

§ 93.113 AWARD OF RELIEF.

In an action filed under § 93.112, the court may do the following:

(A) Award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this subchapter as necessary to ensure the

full enjoyment of the rights granted by this subchapter.

(B) Award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs.

(Ord. G-33-92, passed 7-15-92) Penalty, see § 93.999(C)

§ 93.114 ATTORNEY'S FEES AND COURT COSTS.

A court in a civil action brought under this subchapter or the Commission in an administrative hearing under § 93.102 may award reasonable attorney's fees to the prevailing party and assess court costs against the non-prevailing party.

(Ord. G-33-92, passed 7-15-92)

§ 93.115 VIOLATION.

A person commits a Class "A" misdemeanor if the person, whether or not acting under color of law, by force or threat of force intentionally intimidates or interferes with or attempts to intimidate or interfere with a person:

(A) Because of a person's race, color, religion, sex, handicap, familial status, or national origin and because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental financing, or occupation of any dwelling, or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

(B) Because the person is or has been, or to intimidate the person from:

(1) Participating, without discrimination because of race, color, religion, sex, handicap, familial status, or national origin, in an activity, a service, an organization, or a facility described in division (A) of this section; or

(2) Affording another person opportunity or protection to participate in an activity, a service, an organization, or a facility described in division (A) of this section;

(3) Lawfully aiding or encouraging other persons to participate, without discrimination because of race, color, religion, sex, handicap, familial status, or national origin, in an activity, a service, an organization, or a facility described in division (A).

(Ord. G-33-92, passed 7-15-92)

§ 93.999 PENALTY.

(A) Any person violating any of the provisions of this chapter for which no other penalty is set forth, shall, upon conviction thereof, be fined in the sum not to exceed \$500. Each day of violation shall be deemed a separate offense. ('74 Code, § 15-20) (Ord. G-21-78, passed 7-25-78)

(B) (1) To vindicate the public interest, the Commission may assess a civil penalty against the respondent in § 93.103 in an amount that does not exceed the following:

(a) \$10,000 if the respondent has not been adjudged by order of the Commission or a court to have committed a prior discriminatory housing practice.

(b) Except as provided by division (B)(2), \$25,000 if the respondent has been adjudged by order of the Commission or court to have committed one discriminatory housing practice during the five year period ending on the date of the filing of the finding of reasonable cause.

(c) Except as provided by division (B)(2), \$50,000 if the respondent has been adjudged by order of the Commission or a court to have committed two or more discriminatory housing practices during the seven year period ending on the date of the filing of the finding of reasonable cause.

(2) If the acts constituting the discriminatory housing practice that is the object of the finding of reasonable cause are committed by the same individual in § 93.103, who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in divisions (B) (1)(b) and (B)(1)(c) may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(C) To vindicate the public interest, the court in § 93.113 may assess a civil penalty against the respondent in an amount that does not exceed the following:

- (1) \$50,000 for a first violation.
- (2) \$100,000 for a second or subsequent violation.

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