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METROPOLITAN HUMAN RELATIONS COMMISSION

ARTICLE I. PRACTICE AND PROCEDURE BEFORE THE COMMISSION

Rule 1. Definitions

1-1.1 Applicability

The definitions in this rule apply throughout Articles I, II, and III unless the context clearly indicates or requires a different meaning. Articles II and III contain additional definitions that are applicable to the purpose of those articles.

1-1.2 Definition of terms

(a) **“Administrative law judge”** means a Commissioner or non-Commissioner designated or delegated by the chair or vice chair to:

- (1) conduct public hearings
- (2) conduct appeal hearings; and
- (3) rule on motions.

(b) **“Appeal hearing”** means a hearing with the Commission held subsequent to a no probable cause finding which is open to the public.

(c) **“Appeal Hearing Panel”** means a Panel of Commissioners or non-Commissioners, or a combination of both, designated or delegated by the chair or vice chair to hear evidence and rule on motions at an appeal hearing.

(d) **“Chair”** means the person elected chair of the Commission in accordance with the provisions of the Ordinance.

(e) **“Commission”** means the Metropolitan Human Relations Commission of the City of Fort Wayne.

(f) **“Commissioner”** means an individual appointed as a Commissioner pursuant to the Ordinance.

(g) **“Complainant”** means a person or persons, the Commission, or the Director claiming to be aggrieved by a discriminatory practice or act contrary to the provisions of the Ordinance.

(h) **“Complaint”** means a written statement submitted to the Commission sufficiently precise to identify the parties, and to describe generally the action or practices complained of.

(i) **“Day”** means a calendar day unless the context clearly requires otherwise, provided, however, that when any period in which action must be taken under these rules expires on a Saturday, Sunday, national or state holiday, or a day upon which the Commission is closed for business, such period shall be extended to the next business day, provided further, that all periods of notice or time for taking action prescribed by these rules or the Ordinance shall be calculated by excluding the day from which the period begins to run and including the day on which the notice is effective or the action must be taken.

(j) **“Determination Hearing”** means a non-public session where an investigator submits all pertinent information gathered during an investigation to the Determination Hearing Panel for a finding.

(k) **“Determination Hearing Panel”** means no more than two Commissioners approved by the chair to issue findings at a Determination Hearing and carry out other duties as required by these rules.

(l) **“Director”** means the Executive Director of the Metropolitan Human Relations Commission or a designee.

(m) **“Discrimination”** means any difference in treatment based on race, sex, color, religion, disability, age, ancestry, national origin, place of birth, familial status, or sexual orientation. Discrimination also means the exclusion of a person from or failure or refusal to extend to a person equal opportunities because of race, sex, religion, color, disability, age, ancestry, national origin, place of birth, familial status, or sexual orientation.

(n) **“Disparate treatment”** means an evidentiary theory of intentional discrimination.

(o) **“Disparate impact”** means an evidentiary theory of unintentional discrimination, generally involving facially neutral practices or criteria that disproportionately affect members of a particular protected group, and the practices or criteria are not justified by business necessity.

(p) **“Dual filed case”** means a complaint filed with the Commission and the Equal Employment Opportunity Commission or the Commission and the Department of Housing and Urban Development.

(q) **“Final order”** means an order issued by the Commission following the exhaustion of the administrative appeal process.

(r) **“Finding of no probable cause”** means a written finding issued by the Commission that probable cause does not exist to believe that an unlawful discriminatory practice occurred.

(s) **“Finding of probable cause”** means a written finding issued by the Commission that probable cause exists to believe that a discriminatory practice occurred.

(t) **“Order by default”** means an order issued by the Commission, after proper notice, against

a respondent that has failed to answer a complaint within the time provided by these rules, against a party that has failed to appear at a public hearing, or against a party that has otherwise failed to comply with the Ordinance or these rules. An order by default shall have the same scope and effect as a final order issued by the Commission subsequent to a public hearing.

(u) **“Ordinance”** means City of Fort Wayne General Ordinance G-21-78, G-22-00, G-16-01, G-34-78, and G-33-92, as amended.

(v) **“Party”** means a complainant, a respondent, an intervener, or, where appropriate, the Commission, or Director or deputy Director of the Commission, acting in his or her official capacity.

(w) **“Person”** means person as defined by the Ordinance.

(x) **“Presiding officer”** means the administrative law judge, or, if more than one administrative law judge has been appointed for a given complaint, it means that administrative law judge selected by the chair or the vice chair to preside over a public hearing and shall rule on all motions. In those instances where a presiding officer has not been appointed, the chair or the vice chair shall perform all the duties of the presiding officer until such time as a presiding officer is duly appointed.

(y) **“Probable cause”** means such an apparent state of facts established by personal knowledge or by information from others reasonably accepted as true, as would lead a person of normal intelligence and prudence to believe that an unlawful discriminatory practice has occurred.

(z) **“Public hearing”** means a hearing open to the public designed to enable the Commission to take evidence and hear arguments on pending charges.

(a1) **“Rebuttal”** means a written statement from the complainant which may be necessary to aid in the investigation of the complaint.

(b1) **“Respondent”** means any person against whom a complaint has been filed.

(c1) **“Vice chair”** means the person elected vice chair of the Commission in accordance with the provisions of the Ordinance.

Rule 2. General Information

1-2.1 Applicability of rules

These rules apply to administrative adjudications conducted before the Commission. “Administrative adjudication” means the administrative investigation, hearing, and resolution of controversies between persons over whom the agency has jurisdiction.

1-2.2 Authority to promulgate rules

The Commission's authority to adopt rules and regulations is derived from Title IX, Chapter 93, § 93.054 of the Ordinance.

1-2.3 When effective

Upon completion of the following steps, these rules, and any amendments thereto, shall become effective:

- (1) Notice of the availability of the first draft for public scrutiny shall be published in a newspaper of local publication and distribution. Such notice shall state the time and place of a hearing to receive public discussion and input, stating the general subject matter, and that copies shall be available for inspection at the Commission's office prior to the hearing. The notice shall be published at least twenty-one days prior to the public hearing and a copy of the notice shall also be posted upon the entrance doorway to the Commission offices, during the same twenty-one day period. Copies of the notice shall be sent to the Mayor, Common Council, and City Attorney, giving them a twenty-one day opportunity to comment.
- (2) The Commission shall hold a hearing to receive comments and suggestions from citizens and attorneys, and from other officials of government, including the Mayor, Common Council, and City Attorney.
- (3) After considering the comments received from interested citizens, the Commission shall adopt these rules with or without amendment by majority vote at a public meeting.
- (4) The original and one copy of the rules as adopted and signed shall be filed with the City Clerk.

1-2.4 Availability to public

Once these rules are adopted, a copy may be available on-line and shall be available at the Commission's office anytime during the regular business hours for public inspection. A member of the public may make handwritten notes or the Commission may copy the rules or portions thereof, if the person pays a uniform fee to cover the reasonable cost of duplication and handling, to be established by the Commission through its Director.

1-2.5 Civil rights within Commission jurisdiction

The civil rights within the jurisdiction of the Commission shall be those guaranteed by the Ordinance. These include the defined prohibitions against discrimination on account of race, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, age, or disability in the areas of labor and employment, public accommodations, and education. The Ordinance further prohibits discrimination in the areas of housing and real estate related transactions on account of race, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, age, disability, or familial status. There is a further requirement under the Ordinance to provide reasonable accommodation to religious expressions and disability in employment and for reasonable accommodation and modification for disability in housing and real estate related transactions. The

Ordinance also includes prohibitions against aiding, abetting, inciting, compelling, or coercing discrimination, obstruction of witnesses, destroying relevant documents or retaliating against complainants or other participants in the investigations or proceedings under the Ordinance.

1-2.6 Election of forum

A party to a case before the Commission may elect, in writing, to proceed before a court of competent jurisdiction. If an election is made, the Commission shall dismiss the case, without prejudice. Such dismissal shall be sufficient to exhaust all administrative remedies in the case. Complaints that are dual filed with the Commission and the Equal Employment Opportunity Commission (EEOC) can only proceed to a court of competent jurisdiction upon the issuance of a Notice of Right to Sue by the EEOC. Elections can be made at any time prior to the initiation of a public hearing for non dual filed Commission complaints. Housing and real estate related transactions complaints have an election requirement set forth in Article III.

Rule 3. Filing a Complaint

1-3.1 Contents of a complaint

- (a) A complaint is a written statement submitted to the Commission sufficiently precise to identify the parties, and to describe generally the action or practices complained of.
- (b) The Commission's staff may provide assistance in drafting and filing a complaint.

1-3.2 When to file a complaint

- (a) All complaints alleging discrimination in employment, public accommodation, and education must be filed within 180 days of the last alleged date of harm.
- (b) All complaints alleging discrimination in housing and real estate related transactions must be filed within 365 days of the last alleged date of harm. Article two contains additional provisions for housing and real estate related transactions complaints.
- (c) Complaints alleging employment discrimination against employers with fifteen or more employees must be filed within 300 days of the last alleged date of harm. Complaints filed with the Commission within the 300 day filing requirement may be subsequently transferred to the Equal Employment Opportunity Commission for processing if such complaints are received by the Commission after 180 days of the last alleged date of harm. This prolonged 300 day filing rule is a requirement of Title VII of the Civil Rights Act of 1964 which designates the entire state of Indiana as a deferral jurisdiction, meaning a jurisdiction authorized to enforce Title VII related federal statutes.

1-3.3 Who may file a complaint

- (a) Any person claiming to be aggrieved or on behalf of a person claiming to be aggrieved by a discriminatory practice or act contrary to the provisions of the Ordinance may make, sign, and file a complaint with the Commission.

(b) The Director or deputy Director, in his or her official capacity, may initiate a complaint when he or she has reason to believe that an act of discrimination has been committed against a person or a class of people in order to vindicate the policy of the city as defined in the Ordinance. A Director-initiated complaint shall not be subject to the 180 day filing limitation if the signatory considers that justice and the public policy of the City of Fort Wayne will be furthered by filing a complaint which does not meet the limitation.

(c) The Commission may initiate a complaint when it has reason to believe that an act of discrimination has been committed against a person or a class of people in order to vindicate the policy of the city as defined in the Ordinance. A Commission-initiated complaint shall not be subject to the 180 day filing limitation if the signatory considers that justice and the public policy of the City of Fort Wayne will be furthered by filing a complaint which does not meet the limitation.

(d) Where a complaint is filed in accordance with this article, and the Director or deputy Director, in the course of the investigation, determines that relief for more than the individual complainant is appropriate, he or she, in his or her official capacity, may file a separate complaint with respect to the acts of discrimination against such other individuals. Such separate complaint may be consolidated with the original or amended complaint for purposes of all subsequent proceedings or may be docketed separately at the discretion of the Director or deputy Director.

1-3.3 Where to file a complaint

(a) Complaints may be filed with the Commission at its Fort Wayne office by personal delivery, mail, or Internet.

(b) The complaint shall be deemed filed as of the date of receipt at the Commission's office.

1-3.4 Complaints filed with other agencies; federal findings

(a) A complaint deferred to the Commission by the United States Equal Employment Opportunity Commission (EEOC) or by the United States Department of Housing and Urban Development (HUD) pursuant to federal civil rights laws shall be deemed filed with the Commission as of the date it was received by the EEOC or HUD, provided the complaint conforms to the requirements of the Ordinance.

(b) In instances where separate complaints are filed with the EEOC, HUD, and the Commission, alleging substantially equivalent facts and violations of substantially equivalent laws, the Commission may issue a finding adopting the result reached by the EEOC or HUD pertaining to such complaint. A no cause finding issued under this section shall be subject to the procedural provisions of these rules with the requirement that such review or inquiry be only limited to whether there is a material difference between federal law and the local Ordinance to warrant additional investigation or issuance of a finding different from that issued by the EEOC or HUD.

1-3.5 Withdrawal of complaint; notice

(a) Who May Withdraw. A complaint, or any part thereof, may be voluntarily withdrawn by the complainant only upon written request as hereinafter set forth:

(i) If the request for withdrawal is made before the case has been set for a determination

hearing, the complaint may be withdrawn at the discretion of the complainant. The complainant must execute a written statement which declares that the withdrawal is done voluntarily, without any threats, coercion or intimidation.

(ii) If the Director is satisfied that the withdrawal is being done voluntarily without any threats, coercion or intimidation, then he or she shall execute an approval which so states. The Commission shall accept this document as the final disposition of the complaint. If the Director refuses to execute an approval, the Commission will hear and determine the sole issue of whether the withdrawal was secured through threats, coercion or intimidation. If, on these grounds, the Commission refuses to accept the withdrawal, the case shall proceed as if no withdrawal had been executed.

(iii) If the request for withdrawal is made after the case has been set for hearing, the written consent of a majority of the Commissioners shall be obtained.

(b) Notice Of Withdrawal. All parties shall be notified in writing of a withdrawal.

Rule 4. Processing a Complaint

1-4.1 Docketing; notice; selection of investigator

(a) Each complaint shall be given a case number in sequential order by date of filing with the Commission.

(b) Each respondent shall be notified and given a copy of the complaint and a statement of the respondents' procedural rights and obligations within ten days of filing. Service shall be deemed sufficient if accomplished in accordance with 1-6.2.

(c) The Director or deputy Director may conduct the investigation of a complaint or assign all or any part thereof to a member of the staff.

1-4.2 Answers; relief; time limits; default; replies; rebuttals

(a) A respondent may choose not to file an answer and, in the alternative, may offer relief to a complainant within twenty days after service upon the respondent of a copy of the complaint. If a complainant accepts the offer of relief and the relief offered is acceptable to the Commission as a just resolution of the complaint, such complaint will be dismissed subject to full performance by the respondent of the terms of the respondent's proposed offer.

(b) A respondent may answer by filing an answer to the complaint in accordance with this section. An answer shall state the defenses to each claim asserted or in the allegations set forth in the complaint.

(c) The respondent may file an answer not later than twenty days after receipt of the notice described in 1-4.1. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

(d) If a respondent fails to grant immediate relief pursuant to subsection (a) and the respondent fails to file an answer to the complaint within twenty days after service upon such respondent of a copy of the complaint, the Commission will deem this failure to answer an admission to the truth of the allegations set forth in the complaint and, upon its own motion or the motion of any party in accordance with this article, the Commission may issue an order by default.

- (e) Any new allegation raised in an answer shall be deemed denied without the necessity of a reply.
- (f) The Commission may serve the complainant with a copy of the respondent's answer if the Commission determines that the complainant's rebuttal to the answer is necessary for a complete investigation of the complaint. A rebuttal, when deemed necessary, shall be submitted within ten days after service.
- (g) Upon application, the Commission, for good cause shown, may extend the time within which the answer or rebuttal may be filed.

1-4.3 Amendments to pleadings

- (a) At any time prior to the issuance of a finding pursuant to a determination hearing, a complaint may be amended as a matter of a right by the complainant. Otherwise, a complainant may amend the complaint only by leave of the Commission, and such leave shall be given when justice so requires.
- (b) A complaint may be amended to cure technical defects or omissions, including failure to verify the complaint, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional discriminatory practices or acts contrary to the provisions of the Ordinance related to or growing out of the subject matter of the original charge will relate back to the date the complaint was first received.
- (c) An answer may be reasonably and fairly amended at any time with the consent of the Commission.
- (d) Each party shall be served with a copy of each amendment to a pleading.
- (e) When issues not raised in the pleadings filed by the parties are heard by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after final order, but failure to so amend shall not affect the adjudication of the hearing. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the pleadings, the presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to show that the admission of such evidence would prejudice such party in maintaining a claim or defense on the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

1-4.4 Investigation and finding

- (a) If a respondent chooses to defend against a complaint, the Director shall initiate a full investigation of such complaint. Based on the results of the investigation, the Determination Panel shall determine whether probable cause exists to support an inference of discrimination or whether no probable cause exists.
- (b) If the Commission issues a written finding under this section pursuant to a determination hearing, notice of such finding shall be served upon all parties.
- (c) The Determination Panel may issue findings dismissing complaints for the reasons stated below. The findings in this subsection are either appealable or non-appealable.
 - (1) Appealable Findings.

- (A) No probable cause.
 - (B) The complainant has failed to present a claim with substantial likelihood of merit.
 - (C) The complainant has unreasonably failed to cooperate with the Commission's staff.
- (2) Non-Appealable Findings.
- (A) The Commission's staff has been unable to locate the complainant.
 - (B) The Commission lacks jurisdiction over a person necessary to the just adjudication of the case.
 - (C) The Commission lacks jurisdiction over the subject matter of the complaint.
 - (D) The Commission lacks jurisdiction over the particular case.
 - (E) The Commission finds that dismissal of a complaint will serve the public interest and further finds that each respondent in a case has received a discharge of its debts under the United States Bankruptcy Code and that such discharge is effective to discharge all monetary claims under the Ordinance.
 - (F) The Commission finds that dismissal of a complaint will serve the public interest and further finds that there is no substantial likelihood of payment of relief that has been or may be ordered by the Commission.
 - (G) The complainant has requested and been issued of a Notice of Right to Sue by the Equal Employment Opportunity Commission.

1-4.5 Appeal and dismissal

- (a) A party who is aggrieved by an appealable finding of the Determination Hearing Panel, may file, within ten days after receipt of notice of such finding, a written motion for appeal of such finding with the Commission. Notice of the right to request an appeal and of the aggrieved party's right to submit additional documentary evidence shall be contained in the notice of each appealable finding issued by the Commission.
- (b) The Director shall serve each respondent with a copy of the written request for appeal and notice of the right to submit written objections to the appeal within ten days.
- (c) The Determination Hearing Panel will review and rule on each request for appeal. The Panel shall base its decision on the investigation results submitted by the Commission as supplemented by any other documentary evidence submitted by the parties.
- (d) If the Panel grants the request for appeal, all parties will be notified of the decision and the date, time, and location for the appeal hearing.
- (e) If the Panel determines that the original finding should be upheld, the request for an appeal hearing will be denied. The complaint shall be dismissed and the parties shall be served with notice of such dismissal.
- (f) If the Panel declines to grant the request for an appeal hearing and declines to uphold the original finding, then the Panel shall refer the complaint for further investigation. Such a referral shall have the effect of setting aside the original finding pending the further investigation requested after which the Panel may once again make a determination whether probable cause exists, taking any new evidence into consideration.
- (g) If the appeal hearing is granted, the Appeal Hearing Panel may hear additional evidence at the appeal hearing upon proper motion specifically listing the evidence which is to be presented. A

party or the Commission itself may make a transcript of the oral testimony heard at the appeal hearing at their own expense and file it with the Commission, whereupon it will become part of the record.

(h) A simple majority vote of the appeal hearing panelists is needed for any action or disposition taken at an appeal hearing.

(i) Upon the exhaustion of the administrative appeal process, the dismissal of a complaint shall be the Commission's final order, with prejudice.

(j) All notices of appeal hearings shall state the date, time, place of hearing, and that parties shall appear with or without counsel at the hearing. Notice of appeal hearings shall be delivered or mailed no less than fifteen days prior to the date of the hearing to all parties.

1-4.6 Conciliation conference

Upon a finding of probable cause, the Commission will schedule a conciliation conference with all parties. If a case is scheduled for a conciliation conference, all parties must attend such conference and participate in good faith. All settlement discussions made in the course of a conciliation conference shall be confidential, and no admissions made against interest during the course of such conciliation conference shall be admissible as evidence in a public hearing held by the Commission or in any other legal proceeding. If the conciliation conference is successful and an agreement between the parties is reached, the consent agreement shall be in accordance with 1-4.7.

1-4.7 Consent agreements

During the processing of any complaint, the parties may enter into a consent agreement. The Director or legal staff or such person as the Director designates may sign a consent agreement with regard to settlement in any case. A consent agreement approved by the Director and/or legal staff shall be binding on the Commission and shall be enforceable as a final order by the Commission against any party signing such agreement. The Commission may enforce such agreement by action brought in a court of competent jurisdiction upon a showing that such party:

- (1) has failed to comply with one or more terms or conditions of the consent agreement;
- (2) is subject to the Commission's jurisdiction; and
- (3) resides or transacts business in the jurisdiction in which the petition for enforcement is brought.

1-4.8 Appointment of administrative law judges and presiding officer; appointments by presiding officer

The chair or, if the chair is unavailable, a Commissioner, shall appoint an administrative law judge or judges to conduct a public hearing and to rule on all motions. When more than one administrative law judge is appointed for a public hearing, the chair shall designate which administrative law judge shall be the presiding officer. The parties shall be notified of such appointment.

1-4.9 Ruling on motions

When a party files a motion, and a presiding officer has not been appointed, the chair, vice chair, or, if both are unavailable, any Commissioner, shall rule on the motion. If a presiding officer has been appointed pursuant to this article, the presiding officer shall rule on the motion.

Rule 5. Discovery

1-5.1 Discovery

(a) Prior to the issuance of a probable cause finding, only the Commission can make use of such discovery techniques necessary to complete investigations. Any such techniques may be used to supplement any other investigation methods the Commission may utilize to complete investigations. Such discovery techniques are not bound by the formal requirements of Indiana Trial Rule 26 through Rule 37.

(b) Any party to the proceeding shall be entitled to conduct discovery upon issuance of a finding of probable cause. Subsequent to a finding of probable cause, discovery shall be conducted pursuant to the rules of procedure governing discovery set forth in the Indiana Rules of Trial Procedure. Upon the request of any party, the presiding officer, or, if no presiding officer has been appointed, any Commissioner, may, or upon a motion may, issue subpoenas and discovery orders, including protective orders, in accordance with the Indiana Rules of Trial Procedure. The presiding officer, or, if a presiding officer has not been appointed, any Commissioner, may limit the conduct of discovery as justice requires. Nothing contained in this section limits the Commission's authority to issue a subpoena at any time.

(c) Failure to comply with a subpoena or other discovery order issued by the presiding officer, under the authority of § 93.054 of the Ordinance, may result in the issuance of sanctions, including a citation of contempt by the Commission. In the alternative, the Commission may petition a court of competent jurisdiction in Allen County for action in non-compliance with Commission orders and subpoenas.

(d) Trial Rule 26 through Rule 37 of the Indiana Rules of Trial Procedure, as they may be hereafter modified or amended, are incorporated by reference into these Commission rules, except that initially, all motions, requests, documents, and responses shall be filed before the Commission and all rulings and orders shall be issued by the Commission, rather than the court.

(e) The original of any request for discovery or response thereto shall be maintained by the party originating the request or response until filed with the Commission or until the case has been finally resolved and the parties have exhausted all rights to appeal.

(f) In the event it is made to appear to the satisfaction of the Commission that the original of a deposition or request for discovery or response thereto cannot be filed with the Commission when required, the Commission may allow use of a copy instead of the original.

Rule 6. Service of Process

1-6.1 Filing

(a) Complaints filed with the Commission shall be filed as provided in this article. All other pleadings, motions, petitions, requests, and other instruments shall be filed by delivering in person the original and one copy during regular business hours, by mailing the original instrument and one copy thereof to the office of the Commission in Fort Wayne, or by electronic means (facsimile or electronic mail) provided that the original and one copy is delivered to the office of the Commission within five business days of the electronic receipt. All such instruments shall be signed by the party on whose behalf they are filed or by such party's attorney. Subsequent to a probable cause finding, such instruments may be signed by the Commission's staff attorney. All such instruments shall show the party's address and phone number and the address and phone number of the attorney filing the instrument.

(b) All notices, orders, and other documents provided for in these rules shall be served on all parties. If a party is represented in the proceedings by an attorney of record, all notices, orders, and other documents shall be served on such party's attorney with a copy of such document sent to the party.

(c) With respect to a local governmental organization, the requirements of subsection (b) may be satisfied by delivery or mailing of process to:

- (1) its attorney as provided by statute;
- (2) a governmental executive thereof; or
- (3) the officer holding the office if suit is against the officer or an office.

(d) When a Commission staff attorney is presenting the case in support of the complaint, all notices, orders, and other documents shall be served on the Commission's staff attorney with a copy sent to the complainant. Service may be by regular mail or personal delivery unless otherwise ordered.

(e) Service shall be deemed complete upon mailing; however, whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other document upon him or her by mail, three days shall be added to the prescribed period. Proof of mailing of any document shall constitute prima facie proof of service of such document. A signed certificate affirming that the signatory placed a document in the mail shall constitute proof of mailing of such document for purposes of these rules.

(e) In all cases in which the Commission is the moving party, all notices provided for in this section shall be in writing, and shall be given at least five days prior to the event of which notice is given, unless a longer period of notice is prescribed in this article. Every notice shall set forth a statement of the fact or law involved to advise the person notified of the matters at issue to be heard or determined by the Commission together with the time and place of any hearing or the time before which any action called for or permitted by the notice must be taken. Such statement may be informal and need not conform to the requirements of a pleading in court.

(f) An application to the Commission to take any action or to enter any order after the filing of the initial complaint or answer shall be by motion that, unless made during a hearing, shall:

- (1) be made in writing;
- (2) state specifically the grounds therefore; and
- (3) set forth the action or order sought.

Each motion made in writing, or reduced to writing at the request of the Commission, shall be filed with the Commission and notice thereof shall be served upon all parties.

1-6.2 Subpoenas

- (a) The Commission may issue subpoenas on its own motion or upon request of any party.
 - (b) A subpoena issued by the Commission may be served by a sheriff, the sheriff's deputy, a party, or any person. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy thereof to the person named in the subpoena, or an individual acting in a representative capacity for such person, by:
 - (1) sending a copy of the subpoena by registered or certified mail or other public means by which a written acknowledgement of receipt may be requested and obtained to his or her residence, place of business, or place of employment;
 - (2) delivering a copy of the subpoena personally;
 - (3) leaving a copy of the subpoena at his or her dwelling house or usual place of abode; or
 - (4) serving his or her agent as provided by rule, statute, or valid agreement.
- Whenever service is made under division (3) or (4), the person making the service shall also send a copy of the subpoena by first class mail to the last known address of the person being served and this fact shall be shown upon the return.
- (c) Subpoenas issued by the Commission shall be signed by the Director under the seal of the Commission and shall state the following:
 - (1) The name of the Commission.
 - (2) The title of the action without naming more than the first named complainant and respondent.
 - (3) The docket number.
 - (d) A subpoena may command the person named in the subpoena to appear and give testimony at a time and place as specified.
 - (e) A subpoena may command the person named in the subpoena to produce books, papers, documents, or tangible things as designated.
 - (f) The chair, vice chair, or, if both are unavailable, any Commissioner, or, if a presiding officer has been appointed pursuant to this article, the presiding officer, upon a timely motion may:
 - (1) quash or modify the subpoena if it is unreasonable or oppressive; or
 - (2) condition denial of the motion to quash upon the advancement by the person on whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.
 - (g) If any person named in a subpoena shall fail to appear before the Commission, to answer any question, or to produce any book, record, paper, or other document as commanded by such subpoena, or shall otherwise disobey such subpoena, such contumacy or refusal shall constitute contempt. Failure to comply with a subpoena issued by the Commission, under the authority of § 93.054 of the Ordinance, may result in the issuance of sanctions, including a citation of contempt by the Commission. In the alternative, the Commission may petition a court of competent jurisdiction in Allen County for action in non-compliance with Commission orders and subpoenas.
 - (h) Nothing in this article shall be construed as making public or requiring the production of records or information made privileged or confidential by law.
 - (i) When a subpoena is served by the sheriff or the sheriff's deputy, his or her return shall be proof

of service. When served by any other person, service must be shown by affidavit. No fees or costs for the service of a subpoena shall be collected or charged as costs except when service is made by the sheriff or the sheriff's deputy.

Rule 7. Default Orders

1-7.1 Failures constituting default; default orders

When a party has:

- (1) failed to plead or otherwise defend as provided by these rules; or
- (2) failed to appear for a public hearing after proper notice; or
- (3) failed to respond or comply with an order of the Commission;

such party is in default. Upon a showing that a party is in default, the Commission may enter an order by default in accordance with the procedures set forth in the Ordinance.

1-7.2 Vacation of default order

Setting Aside Default. Upon application within a reasonable time and upon a showing of mistake, surprise, excusable neglect, or other good cause, the Commission may set aside on Order by Default.

Rule 8. Parties

1-8.1 Substitution of parties; relation back

(a) An amendment changing or substituting the person against whom a complaint is filed relates back if, such person:

- (1) has received such notice of the institution of the action that he or she will not be prejudiced in maintaining a defense on the merits; and
- (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him or her within the time period prescribed by 1-3.2.

1-8.2 Intervention

(a) The Director or deputy Director, in his or her official capacity, may intervene as a party in any case during the processing of any complaint. Nothing in this section shall be construed as limiting the right of the Director or deputy Director to initiate or join any proceeding or case as provided elsewhere in these rules.

(b) The Ordinance and any and all applicable state law shall govern all motions for intervention by any person(s) other than the Director or deputy Director.

1-8.3 Joinder of parties; indispensable parties

(a) A person who is subject to service or process shall be joined as a party before the Commission if:

- (1) in such person's absence, complete relief cannot be accorded among those already parties; or
- (2) such person claims an interest relating to the subject of the action and is so situated that the disposition of the action in his or her absence may:
 - (A) as a practical matter, impair or impede his or her ability to protect that interest; or
 - (B) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of such absent person's claimed interest.

If such a person has not been so joined, the presiding officer shall order that he or she be made a party. If, in accordance with the foregoing, a person should join as a complainant, but refuses to do so, such person may be made a respondent.

(b) Notwithstanding subsection (a), when a person described in clause (a) is not made a party, the presiding officer may treat the absent person as not indispensable and allow the action to proceed without such absent person, or the presiding officer may treat such absent person as indispensable and dismiss the action if such person is not subject to process. In determining whether or not a person is indispensable, the presiding officer shall consider the following factors:

- (1) The extent to which a judgment rendered in the person's absence might be prejudicial to him or her or to those already parties.
- (2) The extent to which, by protective provisions in the final order, by the shaping of relief, or by other measures the prejudice can be lessened or avoided.
- (3) Whether a final order rendered in the person's absence will be adequate.
- (4) Whether the complainant will have an adequate remedy if the complaint is dismissed for nonjoinder.

Rule 9. Practice Before the Commission

1-9.1 Representation of parties

(a) Any person may appear before the Commission, or presiding officer on his or her own behalf, or by an attorney admitted to practice and in good standing before the Indiana bar.

(b) A complainant may appear before the Commission, or presiding officer, in person, by an attorney, or by a legal intern pursuing an education in a legal institution and engaged in a program certified by the supreme court of Indiana.

(c) In the event the complainant does not appear in person, by an attorney, or by a legal intern pursuing an education in a legal institution and engaged in a program certified by the supreme court of Indiana, the case in support of the complaint may be presented by the Commission's staff attorney. In such case, the Commission's staff attorney represents the public interest and does not enter into an attorney-client relationship with a complainant. In the event the Commission's staff attorney presents the case in support of the complaint and the complainant's interest conflicts with the public interest, the Commission's attorney is bound to pursue the public interest.

(d) In the event a complainant appears in person or by an attorney or a legal intern pursuing an education in a legal institution and engaging in a program certified by the supreme court of Indiana, the Commission's staff attorney may present the case in support of the complaint for purposes of furthering the public interest. In such case, the Commission's staff attorney represents the public interest and does not enter into an attorney-client relationship with a complainant. In the event the Commission's staff attorney presents the case in support of the complaint and the complainant's interest conflicts with the public interest, the Commission's attorney is bound to pursue the public interest.

(e) The Commission may grant leave for special appearances to attorneys admitted to practice in states other than Indiana, conditioned upon their willingness and ability to attend all public hearings, and ancillary proceedings as promptly and expeditiously as would local counsel. The Commission reserves the option to rescind such leave at any time during the proceedings, and to require a party to employ local counsel.

(f) The Commission expects all attorneys practicing before it to adhere to the Indiana Rules of Professional Conduct, including but not limited to Rule 3.1. Meritorious Claims and Contentions, Rule 3.2. Expediting litigation, Rule 3.3. Candor Toward the Tribunal, Rule 3.4. Fairness to Opposing Party and Counsel, and 3.5. Impartiality and Decorum of the Tribunal. Failure to comply with these rules may prompt the Commission to forward such noncompliance to the Indiana Attorney Disciplinary Commission.

1-9.2 Venue

It is the policy of the Commission to maintain an objective neutral forum equally accessible to all participants in the proceeding before the Commission. In order to preserve this policy, hearings shall be held in Fort Wayne unless otherwise ordered by the Commission.

Rule 10. Pre-Hearing Conference

1-10.1 Prehearing conference; report; continuing duty to make discovery

(a) In the event that a public hearing is required under these rules, the presiding officer may direct the parties, the attorneys for the parties, and, where appropriate, the Commission's staff attorney to appear before him or her for a prehearing conference to consider the following:

(1) The simplification of the issues.

(2) The necessity or desirability of amendments to the pleadings.

(3) The possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof.

(4) A limitation of the number of witnesses.

(5) An exchange of names of witnesses to be called during the hearing and the general nature of their expected testimony.

(6) An exchange of exhibits.

(7) Such other matters as may aid in the disposition of the action.

(b) Unless otherwise ordered by the Commission, a prehearing conference may be called at any time after the issuance of a finding of probable cause.

(c) Where a party is represented by counsel, at least one attorney planning to take part in the

hearing shall appear for such party and participate in the prehearing conference. Where, pursuant to these rules, the Commission's staff attorney is presenting the case in support of the complaint, the Commission's staff attorney may appear at the prehearing conference on behalf of such complaint. However, when a party chooses to proceed without counsel before the Commission at a final hearing, that party shall appear personally at the prehearing conference.

(d) Each attorney shall completely familiarize himself or herself with all aspects of the case in advance of the prehearing conference and shall be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible.

(e) If, after the prehearing conference, counsel discovers additional information required to be disclosed, this information shall immediately be furnished to opposing counsel and the presiding officer.

(f) If necessary or advisable, the presiding officer may adjourn the prehearing conference from time to time or may order additional prehearing conferences.

(g) The presiding officer shall issue a written order that:

(1) recites the action taken at each prehearing conference;

(2) recites the amendments allowed to the pleadings;

(3) recites the agreements made by the parties as to any of the matters considered; and

(4) limits the issues before the Commission to those not disposed of by admission or agreement at the prehearing conference.

Such order shall control the subsequent course of action unless modified thereafter to prevent manifest injustice. At the start of the hearing, after witnesses have been sworn and preliminary motions considered, the presiding officer may read into the record the order regarding the scope of the hearing. Objections to the order may be noted on the record for appeal purposes.

(h) If the respondent and complainant are represented by counsel, nothing in these rules prohibit them from entering into a written stipulation of facts and exhibits without the participation of the Commission's staff attorney or presiding officer. Such stipulations are subject to final approval by the presiding officer. In the event the complainant is not represented by counsel, this subsection does not apply.

Rule 11. Notice of Public Hearing

1-11.1 Notice of public hearing

(a) If, pursuant to these rules, a public hearing is required, the complaint shall be set for public hearing by the presiding officer, or, if no presiding officer has been appointed, by the Director. Notice thereof shall be served upon all parties.

(b) All notices of public hearing shall state the date, time, place of hearing, and that parties shall appear with or without counsel at the hearing to answer the complaint and submit testimony with respect to the alleged discriminatory practice. All notices shall advise each party that the failure to appear will result in an adverse order by default pursuant to this article.

(c) Notice of public hearing shall be delivered or mailed no less than thirty days prior to the date of the hearing.

1-11.2 Continuances prior to public hearing

Prior to a public hearing, the chair, vice chair, or, if both are unavailable, any Commissioner for good cause shown may extend the date on which a hearing has been set. If a presiding officer has been appointed pursuant to these rules, the presiding officer shall rule on such application.

Rule 12. Hearings

1-12.1 Rules of practice governing hearings

(a) All parties to the proceeding may appear in person or by counsel and shall be allowed to present and cross examine witnesses and to submit evidence.

(b) No evidence shall be received at any hearing except upon reasonable opportunity for all parties to be present. Each party shall, unless excused by the presiding officer, be present in person at each hearing and may be represented by counsel if he or she desires.

(c) The presiding officer may, among other things:

(1) administer oaths and affirmations;

(2) issue subpoenas;

(3) rule on offers of proof and receive relevant oral or documentary evidence;

(4) take or cause depositions to be taken;

(5) conduct conferences for the settlement or simplification of the issues by consent of the parties; and

(6) dispose of procedural motions and similar matters.

(d) The presiding officer may, within his or her discretion, order the separation of witnesses.

(e) The presiding officer may exclude from the hearing room or from further participation in the proceeding, any person, who engages in improper conduct before the presiding officer.

(f) The presiding officer may grant a continuance on the motion of either party, for good cause shown. If a continuance is granted, costs incurred on account of the continuance may be assessed against the party moving for the continuance at the discretion of the presiding officer.

(g) The presiding officer may at any time order a continuance upon his or her own motion if the interests of justice so require. When all parties are present, such oral notice shall constitute final notice of such continued hearing.

(h) At any hearing upon a complaint or upon any matter connected therewith, evidence shall be admissible as to any retaliatory action against any person because:

(1) he or she filed the complaint, which is the basis for the hearing;

(2) he or she testified at any hearing before the Commission in connection with such complaint; or

(3) he or she assisted the Commission in any manner in connection with its investigation of the complaint.

Such evidence shall be admissible in the discretion of the presiding officer, whether or not allegations of such retaliatory acts are contained in the complaint. The presiding officer shall give the respondent such opportunity to prepare a defense to previously undisclosed allegations of retaliation as justice requires, and for that purpose the presiding officer may continue such hearing.

1-12.2 Reopening hearings

Motion To Reopen Hearing. At any time after a hearing has been closed, but prior to an issuance of recommended findings, the Commission may on its own motion, or upon motion by any party, reopen the proceeding to receive further evidence or argument.

1-12.3 Briefs; proposed findings, conclusions, and order

(a) Who May File. Briefs may be filed by a party, or any interested person, either before or during the course of a public hearing, or within such time thereafter as the presiding officer shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

(b) At The Close Of Hearing. At the close of the public hearing the presiding officer may order the parties to submit a suggested decision to the Commission. A suggested decision shall include suggested findings of fact, conclusions of law, and the final order by the Commission which the party desires.

Rule 13. Complainants

1-13.1 Duties

(a) Each complainant has the duty to diligently prosecute his or her case before the Commission. Such duty includes, without limitation, the following obligations:

(1) To promptly notify the Commission of any change in address or telephone number.

(2) To provide in good faith truthful answers to all questions from any member of the Commission's staff pursuant to the conduct of an investigation by the Commission.

(3) To provide any and all documents within his or her control that are requested by any member of the Commission's staff and are reasonably related to the conduct of an investigation by the Commission.

(4) To execute any documents requested by any member of the Commission's staff that are reasonably necessary to the conduct of an investigation by the Commission, including, without limitation, documents authorizing the release of confidential medical information.

(5) To claim any and all certified or registered mail from the Commission.

(6) To respond, in a timely manner, to any and all requests by members of the Commission's staff that are reasonably necessary to the conduct of an investigation by the Commission.

(b) Failure by a complainant to fulfill his or her duty to diligently prosecute a complaint may result in issuance of a finding that complainant did not proceed and a dismissal of the complaint with prejudice, in accordance with this article.

Rule 14. Respondents

1-14.1 Responsibilities

(a) Each respondent has the following obligations:

- (1) To provide a written answer to the complaint within twenty days of receiving it. Housing complaints must be answered within ten days.
- (2) To supply and explain all relevant information, data, or papers to the investigator, upon request.
- (3) To answer all telephone or mail inquiries from the Commission.
- (4) To consider conciliation requests from the complainant or Commission.

Rule 15. Confidentiality

(a) Neither the Commission nor its staff or other agents shall make available to members of the public any document, written statement or summary of interviews, tapes of other records relating to a complaint or pre-charge counseling without the express approval and consent of the affected parties, except in the following circumstances:

- (1) Where a request under the federal or state public record disclosure laws has been granted.
 - (2) Information relating to a case may be communicated to agents of other public civil rights enforcement or monitoring organizations who are subject to confidentiality requirements similar to the Metropolitan Human Relations Commission.
 - (3) At any stage in the processing of a complaint a person may review all records, tapes, or interview notes, which record the content of any testimony or witness statement supplied by the person or by the entity for which the person is an agent. Likewise the person may review any document which the person supplied to the Commission or which was supplied by the corporation for which the person is an agent.
- (b) Where the Commission has issued a gag order on a case, failure to comply may result in sanctions in accordance with 1-7.1 or other actions deemed appropriate by the Commission.

Rule 16. Perjury

1-16.1 Perjury

(a) The Commission defines perjury in accordance with IC 35-44-2-1.

1-16.1 Commission action

(a) When any party commits perjury before the Commission, the Commission may issue sanctions, including a citation of contempt by the Commission, under the authority of § 93.054 of the Ordinance. In the alternative, the Commission may petition a court of competent jurisdiction in Allen County.

Rule 17. Disqualification of Commissioners, Staff, and Other Persons

1-17.1 Disqualification

(a) No Commissioner or other person shall be qualified to participate in the processing or

discussion involving the rights of the parties before the Commission if:

- (1) the Commissioner or other person has a direct or indirect personal interest in the final outcome of the case, through an ownership, partnership, or employment relationship to one of the parties or otherwise; or
- (2) the Commissioner or other person is in relationship to a person who has an interest in the outcome, such that the judgment or objectivity of the Commissioner or other person might be impaired; or
- (3) the Commissioner or other person has initiated the complaint or has performed any of the investigative or prosecutory functions of the agency in the case to be heard or in a factually related case. A Commissioner or staff person may perform an investigative role or prosecutory function in two or more factually or legally related cases without being disqualified, provided that the person does not have a judicial role in either case; or
- (4) the Commissioner or other person's objectivity or impartiality would be impaired for any reason.

Rule 18. Construction of Regulations

1-18.1 Construction of rules; severability

- (a) Broadly. These regulations shall be broadly construed to accomplish the purposes and the policies of the Commission as provided for in the Ordinance. The Commission reserves the right to modify the provisions of these rules, where such modifications are necessary to provide reasonable accommodations and equal access to persons with disabilities within the meaning of the Ordinance
- (b) Partial Invalidity. If any provision of these rules or the application of a provision to any person or circumstances shall be held invalid, the remainder of these rules or the application of a rule to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

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METROPOLITAN HUMAN RELATIONS COMMISSION

ARTICLE II. EMPLOYMENT DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

Rule 1. Purpose; Applicability

2-1.1 Purpose

The purpose of this article is to implement the Ordinance § 93.016A that requires equal employment opportunities for qualified individuals with disabilities.

2-1.2 Applicability

This article applies to covered entities as defined in the Ordinance § 93.016A.

Rule 2. Definitions

2-2.1 Applicability

The definitions in this rule apply throughout this article.

(a) **“Commerce”** has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(b) **“Direct threat”** means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a direct threat shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge or on the best available objective evidence. In determining whether an individual would pose a direct threat, the following factors must be considered:

- (1) The duration of the risk.
- (2) The nature and severity of the potential harm.
- (3) The likelihood that the potential harm will occur.
- (4) The imminence of the potential harm.

(c) **“Disability”**

(1) This term does not include an individual currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use. The following definitions apply to this definition:

(A) **“Drug”** means a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) “Illegal use of drugs” means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act as periodically updated by the Food and Drug Administration. The term does not include the use of a drug taken under the supervision of a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of federal law.

(2) The term may not exclude 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 the illegal use of drugs;

(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. It shall not be a violation of this article 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 division (2) is no longer engaging in the illegal use of drugs.

(3) The term does not include the following:

(A) Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.

(B) Compulsive gambling, kleptomania, or pyromania.

(C) Psychoactive substance use disorders resulting from current illegal use of drugs.

(4) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this article.

(d) “Employment agency” has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(e) “Essential functions”

(1) This term means the fundamental job duties of the employment position the individual with a disability holds or desires. The term does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including, but not limited to, the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

- (C) The amount of time spent on the job performing the function.
- (D) The consequences of not requiring the incumbent to perform the function.
- (E) The terms of a collective bargaining agreement.
- (F) The work experience of past incumbents in the job.
- (G) The current work experience of incumbents in similar jobs.

(f) **“Has a record of such impairment”** means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(g) **“Is regarded as having such an impairment”** means:

- (1) has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation;
- (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or
- (3) has none of the impairments defined in section (k) of this rule but is treated by a covered entity as having a substantially limiting impairment.

(h) **“Industry affecting commerce”** has the meaning as set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(i) **“Major life activity”** means a function, such as the following:

- (1) Caring for oneself.
- (2) Performing a manual task.
- (3) Walking.
- (4) Seeing.
- (5) Hearing.
- (6) Speaking.
- (7) Breathing.
- (8) Learning.
- (9) Working.

(j) **“Person”** has the meaning as set forth in the Ordinance.

(k) **“Physical or mental impairment”** means the following:

- (1) Any physiological disorder, condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
 - (A) Neurological.
 - (B) Musculoskeletal.
 - (C) Special sense organs.
 - (D) Respiratory, including speech organs.
 - (E) Cardiovascular.
 - (F) Reproductive.
 - (G) Digestive.
 - (H) Genito-urinary.
 - (I) Hemic and lymphatic.

- (J) Skin.
- (K) Endocrine.
- (2) Any mental or psychological disorder, such as the following:
 - (A) Mental retardation.
 - (B) Organic brain syndrome.
 - (C) Emotional or mental illness.
 - (D) Specific learning disabilities.

(l) **“Qualification standards”** means the personal and professional attributes, including:

- (1) skill;
- (2) experience;
- (3) education;
- (4) physical;
- (5) medical;
- (6) safety; and
- (7) other requirements;

established by a covered entity as requirements that an individual must meet in order to be eligible for the position held or desired.

(m) **“Qualified individual with a disability”**

(1) This term means an individual with a disability:

- (A) who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires; and
- (B) with or without reasonable accommodation, can perform the essential functions of such position.

(2) The term does not include individuals currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use. The following definitions apply throughout this definition:

(A) **“Drug”** means a controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) **“Illegal use of drugs”** means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act as periodically updated by the Food and Drug Administration. The term does not include the use of a drug taken under the supervision of a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of federal law.

(3) The term may not exclude 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 the illegal use of drugs;

(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.

(4) It shall not be a violation of this article 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 division (3) is no longer engaging in the illegal use of drugs.

(5) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this article.

(n) “Reasonable accommodation”

(1) This term means modifications or adjustments:

(A) to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;

(B) to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(C) that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(2) The term may include, but is not limited to, the following:

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

(B) Job restructuring.

(C) Part-time or modified work schedules.

(D) Reassignment to a vacant position.

(E) Acquisition or modifications of equipment or devices.

(F) Appropriate adjustment or modifications of examinations, training materials, or policies.

(G) The provision of qualified readers or interpreters.

(H) Other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(o) “Substantially limits”

(1) This term means the following:

(A) An individual is unable to perform a major life activity that the average person in the general population can perform.

(B) An individual is significantly restricted as to the condition, manner, or duration under which he or she can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(A) The nature and severity of the impairment.

(B) The duration or expected duration of the impairment.

(C) The permanent or long term impact, or the expected permanent or long term

impact, of or resulting from the impairment.

(3) With respect to the major life activity of working, the term means an individual is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. The following factors may also be considered in determining whether an individual is substantially limited in the major life activity of working:

(A) The geographical area to which the individual has reasonable access.

(B) The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills, or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs).

(C) The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills, or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

(p) “Undue hardship”

(1) With respect to the provision of an accommodation, the term means significant difficulty or expense incurred by a covered entity when considered in light of the factors as set forth in subsection (n) of this rule.

(2) In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include the following:

(A) The nature and net cost of the accommodation needed under this rule, taking into consideration the availability of tax credits and deductions or outside funding.

(B) 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, and the effect on expenses and resources.

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

(D) The type of operation or operations of the covered entity, including the following:

(i) Composition, structure, and function of the workforce of such entity.

(ii) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(E) The impact of the accommodation upon the operation of the facility, including the following:

(i) The impact on the ability of other employees to perform their duties.

(ii) The impact on the facility's ability to conduct business.

Rule 3. General Provisions

2-3.1 Discrimination prohibited

(a) It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to the following:

- (1) Recruitment, advertising, and job application procedures.
- (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring.
- (3) Rates of pay or any other form of compensation and changes in compensation.
- (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
- (5) Leave of absence, sick leave, or any other leave.
- (6) Fringe benefits available by virtue of employment, whether or not administered by the covered entity.
- (7) Selection and financial support for training, including the following:
 - (A) Apprenticeships.
 - (B) Professional meetings, conferences, and other related activities.
 - (C) Selection for a leave of absence to pursue training.
- (8) An activity sponsored by a covered entity, including social and recreational programs.
- (9) Any other term, condition, or privilege of employment.

(b) As used in this section, “discrimination” includes, but is not limited to, the acts described in sections 2 through 10 of this rule.

2-3.2 Limiting; segregating; classifying

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

2-3.3 Contractual or other arrangements

(a) It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this article.

(b) As used in this section, “contractual or other arrangement or relationship” includes, but is not limited to, the following:

- (1) A relationship with an employment or referral agency.
- (2) A labor union, including collective bargaining agreements.
- (3) An organization providing fringe benefits to an employee of the covered entity.
- (4) An organization providing training and apprenticeship programs.

(c) This section applies to a covered entity, with respect to its own applicants or employees, whether the entity offered the contract or initiated the relationship, or whether the entity accepted the contract or acceded to the relationship. A covered entity is not liable for the actions of the other party or parties to the contract that only affect that other party's employees or applicants.

2-3.4 Standards, criteria, or methods of administration

It is unlawful for a covered entity to use standards, criteria, or methods of administration, which are not job-related and consistent with business necessity, and that:

- (1) have the effect of discriminating on the basis of disability; or
- (2) perpetuate the discrimination of others who are subject to common administrative control.

2-3.5 Relationship or association with an individual with a disability

It is unlawful for a covered entity to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association.

2-3.6 Not making reasonable accommodation

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this article because of any failure to receive technical assistance authorized by Section 506 of the Americans with Disability Act, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

(d) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity, or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

2-3.7 Qualification standards, tests, and other selection criteria

It is unlawful for a covered entity to use 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, on the basis of disability, 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.

2-3.8 Administration of tests

It is unlawful for a covered entity to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the 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).

2-3.9 Retaliation and coercion

(a) It is unlawful to discriminate against any individual because that individual has opposed any act or practice made unlawful by this article or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this article.

(b) It is unlawful to coerce, intimidate, threaten, harass, or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this article.

2-3.10 Prohibited medical examinations and inquiries

(a) Except as permitted by section 11 of this rule, it is unlawful for a covered entity to conduct a medical examination of an applicant or to make inquiries as to whether an applicant is an individual with a disability or as to the nature or severity of such disability.

(b) Except as permitted by section 11 of this rule, it is unlawful for a covered entity to require a medical examination of an employee or to make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

2-3.11 Medical examinations and inquiries specifically permitted

(a) A covered entity may:

(1) make preemployment inquiries into the ability of an applicant to perform job-related functions; or

(2) ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(b) A covered entity may:

(1) require a medical examination (or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties; and

(2) condition an offer of employment on the results of such examination (or inquiry), if all entering employees in the same job category are subjected to such an examination (or inquiry) regardless of disability.

(c) Information obtained under subsection (b) regarding the medical condition or history of the applicant shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, with the following exceptions:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work

or duties of the employee and necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) Government officials investigating compliance with this article shall be provided relevant information on request.

The results of such examination shall not be used for any purpose inconsistent with this article.

(d) Medical examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an employee or employees with disabilities as a result of such an examination or inquiry, the exclusionary criteria must be job-related and consistent with business necessity, and performance of the essential job functions cannot be accomplished with reasonable accommodation as required in this article.

(e) A covered entity may:

(1) require a medical examination (or inquiry) of an employee that is job-related and consistent with business necessity; and

(2) make inquiries into the ability of an employee to perform job-related functions.

(f) Information obtained under subsection (e) regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, with the following exceptions:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) Government officials investigating compliance with this article shall be provided relevant information on request.

(g) Information obtained under subsection (e) regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this article.

(h) A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories that are part of an employee health program available to employees at the work site.

(i) Information obtained under subsection (h) regarding the medical condition or history of any employee shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record, with the following exceptions:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(2) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(3) Government officials investigating compliance with this part shall be provided relevant information on request.

(j) Information obtained under subsection (h) regarding the medical condition or history of any employee shall not be used for any purpose inconsistent with this article.

2-3.12 Defenses

Defenses to an allegation of discrimination under this section may include, but are not limited to, the following:

- (1) It may be a defense to a charge of disparate treatment brought under sections 1 through 5 and 8 through 9 of this rule that the challenged action is justified by a legitimate, nondiscriminatory reason.
- (2) It may be a defense to a charge of discrimination, as described in section 7 of this rule, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies 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 with reasonable accommodation, as required in this article.
- (3) It may be a defense to a charge of discrimination brought under this article that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion, or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this article.
- (4) It may be a defense to a charge of discrimination, as described in section 6 of this rule, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.
- (5) It may be a defense to a charge of discrimination under this article that:
 - (A) a challenged action is required or necessitated by a federal law or regulation; or
 - (B) a federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this article.
- (6) It may be a defense to a charge of discrimination under this article that the alleged discriminatory action is specifically permitted by section 11 or 13 of this rule.

As used in this definition, "qualification standard" may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace.

2-3.13 Specific activities permitted

A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual who satisfies the permitted religious criteria because of his or her disability.

2-3.14 Alcohol and drugs

With regard to alcohol and drugs, a covered entity may do the following:

- (1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all

employees.

(2) Require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace.

(3) Require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).

(4) 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 to which the entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism.

2-3.15 Drug testing

(a) For purposes of this section, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such a drug test by a covered entity to a job applicant or employee is not a violation of section 10 of this rule. However, this section does not encourage, prohibit, or authorize a covered entity to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make an employment decision based on such test results.

(b) This section does not encourage, prohibit, or authorize the otherwise lawful exercise by entities of local government of authority to do the following:

(1) Test employees of entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol.

(2) Remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol under division (1).

(c) Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to section 11 of this rule.

2-3.16 Smoking

A covered entity may prohibit or impose restrictions on smoking in places of employment. Such restrictions do not violate any provision of this article.

2-3.17 Infectious and communicable diseases; food handling jobs

(a) If an individual with a disability is disabled by one of the infectious or communicable diseases 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 if the risk of transmitting the disease associated with the handling of food 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. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(b) This section does not preempt, modify, or amend any state, county, or local law, ordinance, or rule applicable to food handling that is:

- (1) in accordance with the list referred to in subsection (a) of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services; and
- (2) designed to protect the public health from individuals who pose a significant risk to the health or safety of others, where that risk cannot be eliminated by reasonable accommodation.

2-3.18 Health insurance; life insurance; other benefit plans

- (a) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with state law.
- (b) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with state law.
- (c) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to state laws that regulate insurance.
- (d) The activities described in this subsection are permitted unless these activities are being used as a subterfuge to evade the purposes of this article.

Rule 4 Construction

2-4.1 Construction

- (a) Except as otherwise provided in this article, this article does not apply a lesser standard than the standards applied under Title V of the Rehabilitation Act of 1973 (29 U.S.C. 790-794a), or the regulations issued by federal agencies pursuant to that title.
- (b) This article does not invalidate or limit the remedies, rights, and procedures of any state law or political subdivision of the state or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this article.

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METROPOLITAN HUMAN RELATIONS COMMISSION

ARTICLE III. FAIR HOUSING COMPLAINTS

Rule 1. Definitions

3-1.1 Definitions

The following definitions apply throughout this article:

(a) **“Director”** means the Director of the Metropolitan Human Relations Commission or a designee.

(b) **“Disabled”** or **“disability”** is used interchangeably with handicapped or handicap. For definition of disability, see 3-3.2(n).

(c) **“Familial status”** means one or more individuals (who have not attained the age of 18 years) being domiciled with-

(1) a parent or another person having legal custody of such individual or individuals;
or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Rule 2. General Information

3-2.1 Scope

(a) It is the policy of the Commission to provide for fair housing throughout the city of Fort Wayne. No person shall be subjected to discrimination because of race, color, religion, sex, age (except where exempt under the Ordinance), disability, familial status, sexual orientation, ancestry, place of birth, or national origin in the sale, rental, or advertising of a dwelling, in the provision of brokerage services, or in the availability of a residential real estate related transaction.

(b) This article provides the Commission's interpretation of the coverage and application of the Ordinance regarding discrimination related to the sale or rental of a dwelling, the provision of services in connection therewith, including any and all post acquisition matters, and the availability of a residential real estate related transaction.

Rule 3. Filing a Complaint

3-3.1 Contents of a complaint

(a) The form and content of a complaint shall be as follows:

(1) Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or, if the complaint is filed by the Commission, by the Director. 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."

(2) The Commission may require complaints to be made on a prescribed complaint form. A complaint form will be available in the office of the Commission. Notwithstanding any requirement for use of a prescribed complaint form, the Commission will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the Ordinance.

(3) Each complaint shall contain substantially the following information:

(A) The name and address of the aggrieved person.

(B) The name and address of the respondent.

(C) A description and the address of the dwelling which is involved, if appropriate.

(D) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

3-3.2 When to file a complaint

Complaints filed under Article III shall be filed in accordance with 1-3.2. Further, a complaint is filed when it is received by the Commission, or dual filed with the Commission through the United States Department of Housing and Urban Development.

3-3.3 Who may file a complaint

(a) The Commission shall receive information concerning an alleged discriminatory housing practice from any person. Where the information constitutes a complaint within the meaning of the Ordinance and this section and is furnished by an aggrieved person, it shall be considered to be filed. Where additional information is required for purposes of perfecting a complaint under these rules, the Commission will advise what additional information is needed and will provide appropriate assistance in filing the complaint.

(b) Any aggrieved person or the Commission may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

3-3.4 Who may be a respondent

(a) A complaint may be filed against the following:

(1) Any person alleged to be engaged, to have engaged, or to be about to engage in a

discriminatory housing practice.

(2) Any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of a dwelling or the provision of brokerage services relating to the sale or rental of a dwelling if that other person, acting within the scope of his or her authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage in a discriminatory housing practice.

3-3.5 Where to file a complaint

(a) A complaint may be filed in accordance with 1-3.3.

Rule 4. Processing a Complaint

3-4.1 Purpose; applicability

(a) This rule contains the procedures established by the Commission for the investigation and conciliation of a complaint under the Ordinance § 93.089.

(b) This rule applies to the following:

(1) A complaint alleging discriminatory housing practices because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin. Sexual orientation complaints will be processed in accordance with the Ordinance § 93.021.

(c) Article I Rule 12 governs the administrative proceedings of a public hearing following a reasonable cause determination.

3-4.2 Docketing; notice; selection of investigator

(a) Complaints filed under Article III shall be docketed, notice shall be given, and selection of an investigator shall be done in accordance with 1-4.1.

(b) Further, the parties will also be notified of the aggrieved person(s) right to commence a civil action in an appropriate state court, not later than one year after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this one year period excludes any time during which a proceeding is pending under these rules with respect to a complaint based on the alleged discriminatory housing practice.

3-4.3 Answers

Answers under Article III shall be filed in accordance with 1-4.2, with the exception that they are to be filed within ten days after service upon the respondent of a copy of the complaint.

3-4.4 Amendments to pleadings

(a) Pleadings under Article III shall be amended in accordance with 1-4.3.

(b) A person who is not named as a respondent in a complaint, but who is identified in the course

of the investigation as a person who is alleged to be engaged, to have engaged, or to be about to engage in the 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 rule within ten days of the identification.

(c) Subsection (b) of this rule supplements Rule 8 of Article I.

3-4.5 Investigation procedures

(a) Upon filing a complaint under Article III, the Commission will initiate an investigation in accordance with 1-4.4 and prepare a final investigative report in accordance with the Ordinance.

(b) Unless it is impracticable to do so, the Commission shall complete the investigation of the alleged discriminatory housing practice within one hundred days of filing the complaint. If the Commission is unable to complete the investigation within the one hundred day period, the Commission shall notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.

3-4.6 Conciliation

(a) During the period beginning with filing the complaint the Commission will, to the extent feasible, attempt to conciliate the complaint. Any consent agreement reached will be in accordance with 1-4.7 and the Ordinance.

3-4.7 Issuance of finding

(a) Upon the completion of the investigation and if a conciliation agreement has not been executed under these rules, the Determination Hearing Panel, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by the complainant and respondent and otherwise disclosed during the investigation.

(b) Findings other than reasonable cause shall be issued in accordance with 1-4.4.

3-4.8 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 the complaint decided in a civil action.

(b) The election must be made not later than twenty days after the receipt of service of the reasonable cause determination.

(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.

(d) If an election is not made under this section, the Commission will set the matter for a public hearing in accordance with Rules 10, 11, and 12 of Article I.

3-4.9 Judicial action

If, at any time following the filing of a complaint, the Commission concludes that prompt judicial action is necessary to carry out the purposes of the Ordinance the Commission may commence a civil action. The commencement of a civil action under this section shall not affect the initiation or continuation of proceedings under these rules.

3-4.10 Other action

In addition to the actions described in section 14(a) of this rule, the Commission may pursue one or more of the following courses of action:

- (1) Refer the matter to the appropriate prosecuting attorney for appropriate action, for example, enforcement of criminal penalties under any federal, state, or local laws.
- (2) Refer the matter to the appropriate licensing or regulatory agency under Indiana Code.
- (3) Inform any other federal, state, or substantially equivalent local agency with an interest in the enforcement of the respondent's obligations with respect to nondiscrimination in housing.

Rule 5. Discriminatory Housing Practices

3-5.1 Real estate practices prohibited

(a) This rule provides the Commission's interpretation of conduct that is unlawful housing discrimination under the Ordinance.

(b) It shall be unlawful to do the following:

- (1) Refuse to sell or rent a dwelling after a bona fide offer has been made, refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, sexual orientation, ancestry, place of birth, or national origin, or discriminate in the sale or rental of a dwelling because of disability.
- (2) Discriminate 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 sale or rental, because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
- (3) Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
- (4) 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 because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (5) Represent to any person because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin that a dwelling is not

available for sale or rental when such dwelling is in fact available.

(6) Engage in blockbusting practices, as described in section 7 of this rule, in connection with the sale or rental of dwellings because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(7) Deny access to, or membership or participation in, or discriminate against any person in his or her access to, or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions of access or membership or participation, because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(c) The application of the Ordinance with respect to any person with a disability is discussed in Article II.

3-5.2 Unlawful refusal to sell, rent, or negotiate for the sale or rental

(a) It shall be unlawful for a person to refuse:

(1) to sell or rent a dwelling to a person who has made a bona fide offer because of race, color, religion, sex, familial status, sexual orientation, ancestry, place of birth, or national origin; or

(2) to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, sexual orientation, ancestry, place of birth, or national origin.

(b) It shall be unlawful for a person to discriminate against any person in the sale or rental of a dwelling because of disability.

(c) Prohibited actions under this section include, but are not limited to, the following:

(1) Failing to accept or consider a bona fide offer because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(2) Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(3) Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(4) Using different qualification criteria, applications, or sale or rental standards or procedures such as:

(A) income standards;

(B) application requirements;

(C) application fees;

(D) credit analyses;

(E) sale or rental approval procedures; or

(F) other requirements;

because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(5) Evicting tenants because of their race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin or because of the race, color,

religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin of a tenant's guest.

3-5.3 Discrimination in terms, conditions, privileges, services, and facilities

(a) It shall be unlawful to impose different terms, conditions, or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(b) Prohibited actions under this section include, but are not limited to, the following:

(1) Using different provisions in a lease or contract of sale, such as those relating to rental charges, security deposits, and terms of a lease and those relating to down payment and closing requirements because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(4) Limiting the use of privileges, services, or facilities associated with a dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin of an owner, tenant, or person associated with him or her.

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors.

3-5.4 Other prohibited sale and rental conduct

(a) It shall be unlawful:

(1) 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

(2) to discourage or obstruct choices in a community, neighborhood, or development; because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(b) It shall be unlawful to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to any person because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(c) Prohibited actions under subsection (a)(1) of this rule, which are generally referred to as unlawful steering practices, include, but are not limited to, the following:

(1) Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin or because of the race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin of any person

in a community, neighborhood, or development.

(2) Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

(3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(4) Assigning any person to a particular section of a community, neighborhood, or development, or to a particular floor of a building, because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(d) Prohibited activities relating to dwellings under subsection (a)(2) of this rule include, but are not limited to, the following:

(1) Discharging or taking other adverse action against an employee, broker, or agent because he or she refused to participate in a discriminatory housing practice.

(2) Employing codes or other devices to segregate or reject applicants, purchasers, or renters:

(A) refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin; or

(B) refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(3) Denying or delaying processing an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

3-5.5 Discriminatory advertisements, statements, and notices

(a) It shall be unlawful to 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 which indicates any preference, limitation, or discrimination because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin, or an intention to make any such preference, limitation, or discrimination.

(b) The prohibition in this section shall apply to anyone that participates in any fashion in the making, printing, or publishing of real estate advertising.

(c) The prohibition in this section shall apply to all written or oral notices or statements by a person engaged in the making, printing, or publishing of any notice, statement, or advertisement with respect to the sale or rental of a dwelling. Written notices, statements, and advertisements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or documents used

with respect to the sale or rental of a dwelling.

(d) Discriminatory notices, statements, and advertisements include, but are not limited to, the following:

(1) Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(2) Expressing to agents, brokers, employees, prospective sellers, renters, or any other person a preference for or limitation on any purchaser or renter because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(3) Selecting media or locations for advertising the sale or rental of a dwelling which denies particular segments of the housing market information about housing opportunities because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(4) Refusing to publish advertising for the sale or rental of a dwelling or requiring a different charge or term for such advertising because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(e) Rule 3-8.1-7 provides information to assist a person in advertising a dwelling in a nondiscriminatory manner and describes some issues the Commission may review in evaluating compliance with the Ordinance and in investigating complaints alleging discriminatory housing practices involving advertising.

3-5.6 Discriminatory representations on the availability of dwellings

(a) It shall be unlawful to provide inaccurate or untrue information about the availability of a dwelling for sale or rental because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(b) Prohibited actions under this section include, but are not limited to, the following:

(1) Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(2) Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of a dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin preclude the sale or rental of such dwelling to a person.

(3) Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(4) Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale, or rental because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(5) Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing because of race, color, religion, sex, age, disability, familial status, sexual

orientation, ancestry, place of birth, or national origin.

3-5.7 Blockbusting

- (a) It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, sexual orientation, ancestry, place of birth, or national origin or with a disability.
- (b) In establishing a discriminatory housing practice under this section, it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.
- (c) Prohibited actions under this section include, but are not limited to, the following:
 - (1) Engaging, for profit, in conduct (including an uninvited solicitation for a listing) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, disability, familial status, sexual orientation, ancestry, place of birth, or national origin of a person residing in it, in order to encourage a person to offer a dwelling for sale or rental.
 - (2) Encouraging, for profit, any person to sell or rent a dwelling through an assertion that the entry or prospective entry of a person of a particular race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin can or will result in undesirable consequences for the project, neighborhood, or community such as any of the following:
 - (A) Lowering property values.
 - (B) An increase in criminal or antisocial behavior.
 - (C) A decline in the quality of schools or other services or facilities.

3-5.8 Discrimination in the provision of brokerage services

- (a) It shall be unlawful:
 - (1) to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings; or
 - (2) to discriminate against any person in the terms or conditions of such access, membership, or participation; because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
- (b) Prohibited actions under this section include, but are not limited to, the following:
 - (1) Setting different fees for access to or membership in a multiple-listing service because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
 - (2) Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
 - (3) Imposing different standards or criteria for membership in a real estate sales or rental organization because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
 - (4) Establishing geographic boundaries or office location or residence requirements for

access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, brokers' organization, or facility relating to the business of selling or renting a dwelling because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

3-5.9 Discrimination in residential real estate related transactions

It shall be unlawful for any person or other entity whose business includes engaging in a residential real estate related transaction to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

3-5.10 “Real estate related transaction” defined

As used in this rule, “residential real estate related transaction” means the following:

- (1) Making or purchasing a loan or providing other financial assistance for:
 - (A) purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (B) securing residential real estate.
- (2) Selling, brokering, or appraising residential real property.

3-5.11 Discrimination in making a loan and providing other financial assistance

(a) It shall be unlawful for any person or entity whose business includes engaging in a residential real estate related transaction to discriminate against any person in making available a loan or other financial assistance for a dwelling, or a loan or other financial assistance which is to be secured by dwelling, because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(b) Prohibited practices under this section include, but are not limited to, the following:

- (1) Failing or refusing 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.
- (2) Providing information which is inaccurate or different from that provided others because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

3-5.12 Discrimination in purchasing loans

(a) It shall be unlawful for any person or entity engaged in purchasing 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:

- (1) to refuse to purchase such loans, debts, or securities; or
- (2) to impose different terms or conditions for such purchases; because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

- (b) Unlawful conduct under this section includes, but is not limited to, the following:
- (1) Purchasing loans or other debts or securities which relate to or are secured by dwellings in certain communities or neighborhoods but not in others because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin of persons in such neighborhoods or communities.
 - (2) Pooling or packaging loans or other debts or securities which relate to or are secured by dwellings differently because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
 - (3) Imposing or using different terms or conditions on marketing or selling securities issued on the basis of loans or other debts or securities which relate to or are secured by dwellings because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
- (c) This section does not prevent consideration in purchasing a loan of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this section does not preclude consideration employed in a normal and prudent transaction, provided that no such factor may in any way relate to race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

3-5.13 Discrimination in terms and conditions for making available loans or other financial assistance

- (a) It shall be unlawful for any person or entity engaged in making a loan or other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of a dwelling or which is secured by residential real estate to impose different terms or conditions for the availability of such a loan or other financial assistance because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
- (b) Unlawful conduct under this section includes, but is not limited to, the following:
- (1) Using different policies, practices, or procedures in evaluating or determining creditworthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.
 - (2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling or fixing the amount, interest rate, duration, or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

3-5.14 Unlawful practices in selling, brokering, or appraising residential real property

- (a) It shall be unlawful for any person or other entity whose business includes engaging in selling, brokering, or appraising residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(b) As used in this rule, “appraisal” means an estimate or opinion of the value of specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate related transaction, whether the appraisal is oral, written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

(c) Nothing in this rule prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(d) Practices which are unlawful under this rule include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

Rule 6. Disabilities; Prohibition Against Discrimination

3-6.1 Purpose

The purpose of this rule is to effectuate the Ordinance.

3-6.2 Definitions

The following definitions apply throughout this rule:

(a) “**Accessible**”, when used with respect to the public and common use areas of a building containing covered multiple-family dwellings, means that the public or common use area of the building can be approached, entered, and used by individuals with physical disabilities. “Readily accessible to and usable by” is synonymous with accessible. A public or common use area that complies with the appropriate requirements of accessibility laws.

(b) “**Accessibility laws**” means Section 504 of the Rehabilitation Act of 1974, the Fair Housing Act of 1968, and the Architectural Barriers Act of 1968.

(c) “**Accessible route**” means a continuous, unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of accessibility laws.

(d) “**Building**” means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

(e) “**Building entrance on an accessible route**” means an accessible entrance to a building that is

connected by an accessible route to public transportation stops, accessible parking and passenger loading zones, or public streets or sidewalks, if available.

(f) “Common use areas” means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of a building or the guests thereof. These areas include, but are not limited to, the following:

- (A)** Hallways.
- (B)** Lounges.
- (C)** Lobbies.
- (D)** Laundry rooms.
- (E)** Refuse rooms.
- (F)** Mail rooms.
- (G)** Recreational areas.
- (H)** Passageways among and between buildings.

(g) “Controlled substance” means any drug or other substance defined as a controlled substance in any local, state, or federal laws.

(h) “Covered multiple-family dwellings” means buildings consisting of the following:

- (A)** Four or more dwelling units if such buildings have one or more elevators.
- (B)** Ground floor dwelling units in other buildings consisting of four or more dwelling units.

(i) “Dwelling” as defined by the Ordinance also means dwelling unit. Dwelling unit means a single unit of residence for a family or one or more persons. The following are examples of dwelling units:

- (A)** A single-family home.
- (B)** An apartment unit within an apartment building.
- (C)** Any other type of dwelling in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling.
- (D)** Rooms in which people sleep, for example, dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

(j) “Entrance” means any access point to a building or portion of a building used by a resident for the purpose of entering.

(k) “Exterior” means all areas of the premises outside an individual dwelling unit.

(l) “First occupancy” means a building that has never before been used for any purpose.

(m) “Ground floor” means a floor of a building with an entrance on an accessible route. A building may have more than one ground floor.

(n) **“Disability”**

(A) Disability means, with respect to a person:

- (i) a physical or mental impairment which substantially limits one or more major life activities;
- (ii) a record of such an impairment; or
- (iii) being regarded as having such impairment.

(B) The term does not include current illegal use of or addiction to a controlled substance.

(C) For purposes of this subdivision, an individual shall not be considered to have a disability solely because that individual is a transvestite.

(o) **“Has a record of such an impairment”** means the person has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(p) **“Interior”** means the spaces, parts, components, or elements of an individual dwelling unit.

(q) **“Is regarded as having an impairment”** means the person has:

- (A) a physical or mental impairment that does not substantially limit one or more major life activities, but that is treated by another person as constituting such a limitation;
- (B) a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (C) none of the impairments defined in subsection (t) but is treated by another person as having such an impairment.

(r) **“Major life activities”** means functions such as the following:

- (A) Caring for one's self.
- (B) Performing manual tasks.
- (C) Walking.
- (D) Seeing.
- (E) Hearing.
- (F) Speaking.
- (G) Breathing.
- (H) Learning.
- (I) Working.

(s) **“Modification”** means any change to the public or common use areas of a building or any change to a dwelling unit.

(t) **“Physical or mental impairment”** includes either of the following:

- (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems:
 - (i) Neurological.
 - (ii) Musculoskeletal.
 - (iii) Special sense organs.
 - (iv) Respiratory including speech organs.

- (v) Cardiovascular.
- (vi) Reproductive.
- (vii) Digestive.
- (viii) Genito-urinary.
- (ix) Hemic and lymphatic.
- (x) Skin.
- (xi) Endocrine.

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes, but is not limited to, such diseases and conditions as follows:

- (i) Orthopedic.
- (ii) Visual.
- (iii) Speech and hearing impairments.
- (iv) Cerebral palsy.
- (v) Autism.
- (vi) Epilepsy.
- (vii) Muscular dystrophy.
- (viii) Multiple sclerosis.
- (ix) Cancer.
- (x) Heart disease.
- (xi) Diabetes.
- (xii) Human immunodeficiency virus infection.
- (xiii) Mental retardation.
- (xiv) Emotional illness.
- (xv) Drug addiction, other than addiction caused by current illegal use of a controlled substance.
- (xvi) Alcoholism.

(u) **“Premises”** means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(v) **“Public use areas”** means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(w) **“Site”** means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

3-6.3 General prohibitions

(a) It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

- (1) the buyer or renter;
- (2) a person residing in or intending to reside in the dwelling after it is so sold, rented, or made available; or

- (3) any person associated with the buyer or renter.
- (b) It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
- (1) the buyer or renter;
 - (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (3) any person associated with the buyer or renter.
- (c) It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling (a person intending to reside in the dwelling after it is so sold, rented, or made available or any person associated with such person) has a disability or to make an inquiry as to the nature or severity of a disability of such person. However, this subsection does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have disabilities:
- (1) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy.
 - (2) Inquiry to determine whether an applicant is qualified for a dwelling available only to a person with disabilities or to a person with a particular type of disability.
 - (3) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to a person with disabilities or a person with a particular type of disability.
 - (4) Inquiry to determine whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance.
 - (5) Inquiry to determine whether an applicant has been convicted of illegal manufacture or distribution of a controlled substance.
- (d) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others.

3-6.4 Reasonable modifications of existing premises

- (a) It shall be unlawful for any person to refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises, occupied or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for persons with a disability any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for restoration at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of restoration. The interest in any such account shall accrue to the benefit of the tenant.
- (b) A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that any required building permits will be obtained.
- (c) The application of subsection (a) may be illustrated by the following examples:
- (1) A tenant with a disability asks his or her landlord for permission to install grab bars in

the bathroom at his or her own expense. It is necessary to reinforce the walls with blocking between studs in order to affix the grab bars. It is unlawful for the landlord to refuse to permit the tenant, at the tenant's own expense, to make the modifications necessary to add the grab bars. However, the landlord may condition permission for the modification on the tenant agreeing to restore the bathroom to the condition that existed before the modification, reasonable wear and tear excepted. It would be reasonable for the landlord to require the tenant to remove the grab bars at the end of the tenancy. The landlord may also reasonably require that the wall to which the grab bars are to be attached be repaired and restored to its original condition, reasonable wear and tear excepted. However, it would be unreasonable for the landlord to require the tenant to remove the blocking, since the reinforced walls will not interfere in any way with the landlord's or the next tenant's use and enjoyment of the premises and may be needed by some future tenant.

(2) An applicant for rental housing has a child who uses a wheelchair. The bathroom door in the dwelling unit is too narrow to permit the wheelchair to pass. The applicant asks the landlord for permission to widen the doorway at the applicant's own expense. It is unlawful for the landlord to refuse to permit the applicant to make the modification. Further, the landlord may not, in usual circumstances, condition permission for the modification on the applicant paying for the doorway to be narrowed at the end of the lease because a wider doorway will not interfere with the landlord's or the next tenant's use and enjoyment of the premises.

3-6.5 Reasonable accommodations

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

(b) The application of subsection (a) may be illustrated by the following examples:

(1) A blind applicant for rental housing wants to live in a dwelling unit with a dog guide. The building has a no pets policy. It is a violation of this section for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a dog guide because, without the dog guide, the blind person will not have an equal opportunity to use and enjoy a dwelling.

(2) Progress Gardens is a three hundred unit apartment complex with four hundred fifty parking spaces which are available to tenants and guests of Progress Gardens on a first come first served basis. John applies for housing in Progress Gardens. John is mobility impaired and unable to walk more than a short distance and therefore requests that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of this section for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space far from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstance.

3-6.6 Design and construction requirements

(a) Covered multiple-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multiple-family dwelling shall be deemed to be designed and constructed for the first occupancy on or before March 13, 1991, if:

- (1) the dwelling is occupied by March 13, 1991; or
- (2) the last building permit or renewal thereof for the covered multiple-family dwelling is issued by a state, county, or local government on or before July 13, 1990.

The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of subsection (a) may be illustrated by the following examples:

(1) A real estate developer plans to construct six covered multiple-family dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter any of the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

(2) A real estate developer plans to construct a building consisting of ten units of multiple-family housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

(3) A real estate developer plans to construct a multiple-family housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with one hundred five units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than one hundred dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multiple-family dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall be designed and constructed in such a manner that:

- (1) the public and common use areas are readily accessible to and usable by a disabled person;
- (2) all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by a disabled person in a wheelchair; and
- (3) all premises within a covered multiple-family dwelling unit contain the features of adaptable design such as:
 - (A) an accessible route into and through the covered dwelling unit;
 - (B) light switches, electrical outlets, thermostats, and other environmental controls

in accessible locations;

(C) reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall, and shower seat where such facilities are provided; and

(D) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of subsection (c) may be illustrated by the following examples:

(1) A developer plans to construct a one hundred unit condominium apartment building with one elevator. In accordance with subsection (c), the building has at least one accessible route leading to an accessible entrance. All one hundred units are covered multiple-family dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of section 6 of this rule.

(2) A developer plans to construct thirty garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the ground floor units are covered multiple-family units. The ground floor is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of section 6 of this rule and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of the accessibility laws suffices to satisfy the requirements of section 6 of this rule.

(f) Compliance with a duly enacted state or local law that includes the requirements of subsection (e) and section 6 of this rule satisfies the requirements of section 6 of this rule.

(g) It is the policy of the Commission to encourage units of city and county government to include, in their existing procedures for the review and approval of newly constructed covered multiple-family dwellings, determinations as to whether the design and construction of such dwellings are consistent with the following:

(1) City and county government may review and approve newly constructed multiple-family dwellings for the purpose of making determinations as to whether the requirements of subsection (e) and section 6 of this rule are met.

(2) Determination of compliance or noncompliance by a city or county government under this section are not conclusive in enforcement proceedings under the Ordinance.

(h) This section does not limit any city or county Ordinance that requires a dwelling to be designed and constructed in a manner that affords a disabled person greater access than is required by this section.

Rule 7. Housing for Older Persons

3-7.1 Purpose

The purpose of this rule is to effectuate the exemption in the Ordinance § 93.071 that relates to housing for older persons.

3-7.2 Exemption

(a) The provisions regarding familial status in this rule do not apply to housing which satisfies the

requirements of sections 3 through 5 of this rule.

(b) Nothing in this rule limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

3-7.3 State and federal elderly housing programs

The provisions regarding familial status in this rule shall not apply to housing provided under any federal or state program that is specifically designed and operated to assist elderly persons as defined in the state and federal program.

3-7.4 Housing programs; 62 or over

(a) The provisions regarding familial status in this rule shall not apply to housing intended for, and solely occupied by, persons sixty-two (62) years of age or older provided that the housing satisfies the requirements of this section even though:

(1) there were persons residing in such housing on September 13, 1988, who were under sixty-two (62) years of age, provided that all new occupants are persons sixty-two (62) years of age or older;

(2) there are unoccupied units, provided that such units are reserved for occupancy by persons sixty-two (62) years of age or over; or

(3) there are units occupied by employees of the housing facility (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 facility.

(b) The following examples illustrate the application of subsection (a):

(1) John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons sixty-two (62) years of age or older. John is sixty-two (62) years of age. Mary is fifty-nine (59) years of age. If Vista Heights wishes to retain its “62 or over” exemption, it must refuse to rent to John and Mary because Mary is under sixty-two (62) years of age. However, if Vista Heights rents to John and Mary, it might qualify for the “55 or over” exemption in section 5 of this rule.

(2) The Blueberry Hill retirement community has one hundred dwelling units. On September 13, 1988, fifteen units were vacant and thirty-five units were occupied with at least one person who is under sixty-two (62) years of age. The remaining fifty units were occupied by persons who were all sixty-two (62) years of age or older. Blueberry Hill can qualify for the “62 or over” exemption as long as all units that were occupied after September 13, 1988, are occupied by persons who are sixty-two (62) years of age or older. The people under sixty-two (62) in the thirty-five units previously described need not be required to leave for Blueberry Hill to qualify for the “62 or over” exemption.

3-7.5 Housing for persons who are at least 55 years of age

(a) The provisions regarding familial status shall not apply to housing intended and operated for persons fifty-five (55) years of age or older.

(b) For purposes of this rule, “housing facility or community” means any dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions. A portion or

portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to, the following:

- (1) A condominium association.
 - (2) A cooperative.
 - (3) A property governed by a homeowners' or resident association.
 - (4) A municipally zoned area.
 - (5) A leased property under common private ownership.
 - (6) A mobile home park.
 - (7) A manufactured housing community.
- (c) For purposes of this rule, "older person" means a person who is at least fifty-five (55) years of age.

3-7.6 80 percent occupancy

(a) In order for a housing facility or community to qualify as housing for older persons under the Ordinance, at least eighty percent (80%) of its occupied units must be occupied by at least one person who is at least fifty-five (55) years of age.

(b) For purposes of this rule, "occupied unit" means:

- (1) a dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or
- (2) a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(c) For purposes of this section, "occupied by at least one person who is at least fifty-five (55) years of age" means that on the date the exemption for housing designed for persons who are at least fifty-five (55) years of age is claimed:

- (1) at least one occupant of the dwelling unit is at least fifty-five (55) years of age; or
- (2) if the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was at least fifty-five (55) years of age.

(d) Newly constructed housing for first occupancy after March 12, 1989, need not comply with the requirements of this section until at least twenty-five percent (25%) of the units are occupied. For purposes of this section, "newly constructed housing" includes a facility or community that has been wholly unoccupied for at least ninety days prior to reoccupancy due to renovation or rehabilitation.

(e) Housing satisfies the requirements of this section even though, as follows:

- (1) On September 13, 1988, under eighty percent (80%) of the occupied units in the housing facility or community were occupied by at least one person who is at least fifty-five (55) years of age, provided that at least eighty percent (80%) of the units occupied by new occupants after September 13, 1988, are occupied by at least one person who is at least fifty-five (55) years of age.
- (2) There are unoccupied units, provided that at least eighty percent (80%) of the occupied units are occupied by at least one person who is at least fifty-five (55) years of age.
- (3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under fifty-five (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the

facility or community.

(4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by 2-3.5 and who are under fifty-five (55) years of age.

(5) For a period expiring one year from the effective date of this section, there are insufficient units occupied by at least one person who is at least fifty-five (55) years of age, but the housing facility or community, at the time the exemption is asserted:

(A) has reserved all unoccupied units for occupancy by at least one person who is at least fifty-five (55) years of age until at least eighty percent (80%) of the units are occupied by at least one person who is at least fifty-five (55) years of age; and

(B) meets the requirements of sections 5 and 7 through 9 of this rule.

(f) For purposes of the transition provision described in subsection (e)(5), a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least eighty percent (80%) of the occupied units by at least one person who is at least fifty-five (55) years of age.

(g) Where application of the eighty percent (80%) rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person who is at least fifty-five (55) years of age.

(h) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person who is at least fifty-five (55) years of age, so long as the housing facility or community complies with section 7 of this rule.

3-7.7 Intent to operate as housing designed for persons who are at least 55 years of age

(a) In order for a housing facility or community to qualify as housing designed for persons who are at least fifty-five (55) years of age, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons who are at least fifty-five (55) years of age. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

(1) The manner in which the housing facility or community is described to prospective residents.

(2) Any advertising designed to attract prospective residents.

(3) Lease provisions.

(4) Written rules, regulations, covenants, deed, or other restrictions.

(5) The maintenance and consistent application of relevant procedures.

(6) Actual practices of the housing facility or community.

(7) Public posting in common areas of statements describing the facility or community as housing for persons who are at least fifty-five (55) years of age.

(b) Phrases such as “adult living,” “adult community,” or similar statements in any written advertisement or prospectus are not consistent with an intent to operate as housing for persons at least fifty-five (55) years of age.

(c) If there is language in deeds or other community or facility documents which is inconsistent with the intent to provide housing for persons who are fifty-five (55) years of age or older, the Commission shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this

section in conjunction with other evidence of intent.

(d) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of section 6 of this rule and subsection (a).

3-7.8 Verification of occupancy

(a) In order for a housing facility or community to qualify as housing for persons who are at least fifty-five (55) years of age, it must be able to produce, in response to a complaint filed under this article, verification of compliance with section 6 of this rule through reliable surveys and affidavits.

(b) A facility or community shall, within one hundred eighty days of the effective date of this section, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is at least fifty-five (55) years of age. Such procedures may be part of a normal leasing or purchasing arrangement.

(c) The procedures described in subsection (b) must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two (2) years. A survey may include information regarding whether any units are occupied by persons described in section 6(e)(1), 6(e)(3), and 6(e)(4) of this rule.

(d) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

(1) Driver's license.

(2) Birth certificate.

(3) Passport.

(4) Immigration card.

(5) Military identification.

(6) Any other state, local, national, or international official documents containing a birth date of comparable reliability.

(7) A certification in a lease, application, affidavit, or other document signed by any member of the household eighteen years of age or older asserting that at least one person in the unit is at least fifty-five (55) years of age.

(e) A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(f) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

(g) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person who is at least fifty-five (55) years of age. Such evidence may include the following:

(1) Government records or documents, such as a local household census.

(2) Prior forms or applications.

(3) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(h) Surveys and verification procedures which comply with the requirements of this section shall

be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

(i) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

3-7.9 Good faith defense against money damages

(a) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this rule.

(b) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

(c) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons at least fifty-five (55) years of age in order for such person to claim the defense.

(d) For purposes of this section, “authorized representative,” of a housing facility or community, means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this rule.

(e) For purposes of this section, “person” means a natural person.

(f) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons at least fifty-five (55) years of age. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in subsection (b).

Rule 8. Interference; Coercion; Intimidation

3-8.1 Prohibitions

(a) This rule provides the Commission’s interpretation of conduct that is unlawful under the Ordinance § 93.088.

(b) It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this rule.

(c) Unlawful conduct under this rule includes, but is not limited to, the following:

(1) Coercing a person, orally, in writing, or by other means to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate related transaction because of race, color, religion, sex, disability, familial status, sexual orientation, ancestry, place of birth, or national origin.

(2) Threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin of such person or of visitors or associates of such persons.

Rule 9. Fair Housing Advertising

3-9.1 Policy

The Ordinance § 93.082 makes it unlawful for a person to 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 because of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin or an intention to make any such preference, limitation, or discrimination. However, these prohibitions regarding familial status do not apply with respect to housing for older persons as defined in the Ordinance.

3-9.2 Purpose

The purpose of this rule is to assist all advertising media, advertising agencies, and other persons who use advertising to make, print, or publish or cause to be made, printed, or published advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Ordinance. This rule also describes the matters the Commission will review in evaluating compliance with the Ordinance in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

3-9.3 Scope

(a) This rule provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of this rule will be considered by the Commission in making a determination as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(b) A failure by a person placing an advertisement to use the criteria contained in this rule, when found in connection with the investigation of a complaint alleging making or using discriminatory advertisements, shall be considered by the Commission in making a determination of reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(c) Nothing in this rule shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

3-9.4 Use of words, phrases, symbols, and visual aids

The words, phrases, symbols, and forms listed in this section typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Ordinance, the Commission will normally consider the use of the following comparable words, phrases, symbols, and forms to indicate a possible violation of the Ordinance and to establish a need for further proceedings on the complaint if it is apparent from the context of the usage that discrimination within the meaning of the Ordinance is likely to result:

(1) Words descriptive of dwelling, landlord, and tenants, including, but not limited to, the following:

- (A) White private home.
- (B) Colored home.
- (C) Jewish home.
- (D) Hispanic residence.
- (E) Adult building.

(2) Words indicative of race, color, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin, including, but not limited to, the following:

(A) Words indicative of race, including, but not limited to:

- (i) Negro.
- (ii) Black.
- (iii) Caucasian.
- (iv) Oriental.
- (v) American Indian.

(B) Words indicative of color, including, but not limited to, the following:

- (i) White.
- (ii) Black.
- (iii) Colored.

(C) Words indicative of religion, including, but not limited to, the following:

- (i) Protestant.
- (ii) Christian.
- (iii) Catholic.
- (iv) Jew.
- (v) Muslim.

(D) Words indicative of national origin, ancestry, or place of birth, including, but not limited to, the following:

- (i) Mexican American.
- (ii) Puerto Rican.
- (iii) Philippine.
- (iv) Polish.
- (v) Hungarian.
- (vi) Irish.
- (vii) Italian.
- (viii) Chicano.
- (ix) African.
- (x) Hispanic.
- (xi) Chinese.
- (xii) Indian.
- (xiii) Latino.
- (xiv) Burmese.
- (xv) Middle Eastern.
- (xvi) American.

(E) The exclusive use of words in advertisements, including those involving the

rental of separate units in a single-family or multiple-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where sharing living areas is involved. Nothing in this rule restricts advertisement of a dwelling used exclusively for dormitory facilities by educational institutions.

(F) Words indicative of disability, including, but not limited to, the following:

- (i)** Crippled.
- (ii)** Blind.
- (iii)** Deaf.
- (iv)** Mentally ill.
- (v)** Mentally retarded.
- (vi)** Impaired.
- (vii)** Handicapped.
- (viii)** Physically fit.
- (iv)** Disabled.

Nothing in this rule restricts the inclusion of information about the availability of accessible housing in advertising a dwelling.

(G) Words indicative of familial status, including, but not limited to, the following:

- (i)** Adults.
- (ii)** Children.
- (iii)** Singles.
- (iv)** Mature persons.
- (v)** Empty nesters.

Nothing in this rule restricts advertisement of a dwelling which is intended and operated for occupancy by older persons and which constitutes housing for older persons as defined in the Ordinance.

(H) Words indicative of sexual orientation, including, but not limited to, the following:

- (i)** Homosexual.
- (ii)** Gay.
- (iii)** Lesbian.
- (iv)** Partner.
- (v)** Alternative lifestyle.
- (vi)** Straight.
- (vii)** Bisexual.

(I) Words and phrases, such as any of the following used in a discriminatory context should be avoided:

- (i)** Restricted.
- (ii)** Exclusive.
- (iii)** Private.
- (iv)** Integrated.
- (v)** Traditional.
- (vi)** Board approval.
- (vii)** Membership approval.

(3) A symbol or logotype which implies or suggests any of the following:

- (A) Race.
 - (B) Color.
 - (C) Religion.
 - (D) Sex.
 - (E) Disability.
 - (F) Familial status.
 - (G) National origin.
 - (H) Sexual orientation.
 - (I) Ancestry.
 - (J) Place of birth.
 - (K) Age (except where exempt under the Ordinance).
- (4) Words or phrases used regionally or locally which imply or suggest any of the following:
- (A) Race.
 - (B) Color.
 - (C) Religion.
 - (D) Sex.
 - (E) Disability.
 - (F) Familial status.
 - (G) National origin.
 - (H) Sexual orientation.
 - (I) Ancestry.
 - (J) Place of birth.
 - (K) Age (except where exempt under the Ordinance).
- (5) Directions which imply a discriminatory preference, limitation, or exclusion. The following are examples:
- (A) A reference to a real estate location made in terms of a significant landmark of racial or national origin such as:
 - (i) an existing black development which may be a signal to blacks; or
 - (ii) an existing development known for its exclusion of minorities which may be a signal to whites.
 - (B) Specific directions which make a reference to a significant area of racial or national origin may indicate a racial preference.
 - (C) A reference to a synagogue, congregation, or parish may indicate a religious preference.
- (6) Names of facilities which cater to a particular racial, national origin, or religious group such as country club or private school designations or names of facilities which are used exclusively by one sex may indicate a preference.

3-9.5 Selective use of advertising media or content

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Ordinance. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such

area, there are also available non-English language or other minority media may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisement which may be discriminatory:

- (1) Selective geographic advertisement may involve the following:
 - (A) Strategic placement of billboards.
 - (B) Brochure advertisements distributed within a limited geographic area by hand or in the mail.
 - (C) Advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community.
 - (D) Displays or announcements available only in selected sales offices.
- (2) Selective use of an equal opportunity slogan or logotype. When placing advertisements, use may involve placing the equal housing opportunity slogan or logotype in advertising reaching some geographic areas but not others or with respect to some properties but not others.
- (3) Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex or at persons without children. Such selective advertising may involve the use of human models of members of only one sex or of adults only in displays, photographs, or drawings to indicate preferences for one sex or the other or for adults to the exclusion of children.

3-9.6 Fair housing policy and practices

(a) In the investigation of complaints, the Commission will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Ordinance.

(b) All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home-seeking public that the property is available to all persons regardless of race, color, age, religion, sex, age, disability, familial status, sexual orientation, place of birth, ancestry, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising in regularly printed media such as newspapers or magazines, on the size of the advertisement. Section 7(b) of this rule provides suggested use of the logotype, statement, or slogan and size of the logotype. Section 7(c) of this rule contains examples of the suggested Equal Housing Opportunity logotype, statement, or slogan.

(c) Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, age, religion, sex, age, disability, familial status, ancestry, place of birth, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used,

should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, age, religion, sex, age, disability, familial status, sexual orientation, place of birth, ancestry, or national origin, and is not for the exclusive use of one such group.

(d) Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any federal or local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of a dwelling.

(e) All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental, or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(f) All publishers of advertisements and advertising agencies shall:

(1) post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising; and

(2) have copies available for all firms and persons using their advertising services.

(g) All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in section 7(d) of this rule. The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental, or financing of a dwelling.

3-9.7 Suggested use of logotypes, statements, slogans, or publisher's notices for advertising

(a) This section contains information which may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, or publisher's notice for advertising.

(b) A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan, including the following:

(1) In all space advertising (advertising in regularly printed media such as newspapers or magazines), the following standards shall be used:

Size of Advertisement	Size of Logotype in Inches
1/2 page or larger	2 × 2
1/8 page up to 1/2 page	1 × 1
4 column inches to 1/8 page	1/2 × 1/2
Less than 4 column inches	(¹)

(2) In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logotype should be a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, three percent (3%) to five percent (5%) of an advertisement may be devoted to a statement of the equal housing opportunity policy.

(3) In space advertising which is less than four column inches (one column four inches long or two columns two inches long) of a page in size, the Equal Housing Opportunity slogan

should be used. Such an advertisement may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, age, religion, sex, age, disability, familial status, sexual orientation, place of birth, ancestry, or national origin.

(c) The following are illustrations of logotypes, statements, or slogans with the Equal Housing Opportunity logotype:

(1) An example of the Equal Housing Opportunity statement shall be, "We are pledged to the letter and spirit of the State of Indiana's policy for the achievement of equal housing opportunity throughout the state. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, age, religion, sex, age, disability, familial status, sexual orientation, ancestry, place of birth, or national origin."

(2) An example of the Equal Housing Opportunity slogan shall be, "Equal Housing Opportunity."

(d) The following are illustrations of a media notice or publisher's notice:

(1) "All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise any preference, limitation, or discrimination because of race, color, age, religion, sex, age, disability, familial status, place of birth, ancestry, or national origin or intention to make any such preference, limitation, or discrimination."

(2) "We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis."

Rule 10. Fair Housing Poster

3-10.1 Fair housing poster

(a) This rule contains procedures established by the Commission with respect to the display of a fair housing poster by persons subject to the Ordinance.

(b) All persons subject to the Ordinance shall post and maintain a fair housing poster at all their places of business that participate in the covered activities.

(c) All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate related transactions or brokerage services as contemplated by the Ordinance.

(d) The fair housing poster shall be eleven inches by fourteen inches and shall bear the following legend:



EQUAL HOUSING OPPORTUNITY
We Do Business In Accordance With
The Fair Housing Act
(The Indiana Civil Rights Law)
(Fort Wayne General Ordinance G-33-92)

IT IS ILLEGAL TO DISCRIMINATE AGAINST
ANY PERSON BECAUSE OF RACE, COLOR,
AGE, RELIGION, SEX, SEXUAL ORIENTATION, DISABILITY,
FAMILIAL STATUS (HAVING ONE OR MORE CHILDREN),
PLACE OF BIRTH, ANCESTRY, OR NATIONAL ORIGIN

- In the sale or rental of housing or residential lots
- In advertising the sale or rental of housing
- In the financing of housing
- In the appraisal of housing
- In the provision of real estate brokerage services

Anyone who feels he or she has been discriminated against should contact:
Metropolitan Human Relations Commission
One East Main Street, Room 680
Fort Wayne, Indiana 46802

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