

CHAPTER 28

Fair Housing Ordinance

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|---------------|--|
| Section 28.1 | Title |
| Section 28.2 | Policy |
| Section 28.3 | Definitions |
| Section 28.4 | Prohibitions; applicability; exceptions |
| Section 28.5 | Exemptions |
| Section 28.6 | Discrimination in sale or rental of housing and other prohibited practices |
| Section 28.7 | Discrimination in residential real estate related transactions |
| Section 28.8 | Discrimination in provision of brokerage services |
| Section 28.9 | Interference, coercion, or intimidation |
| Section 28.10 | Administration |
| Section 28.11 | Enforcement |
| Section 28.12 | Right to examine and copy evidence |
| Section 28.13 | BLANK |
| Section 28.14 | Enforcement by mayor |

Section 28.1 Title

This chapter shall be known and may be cited as the "Fair Housing Ordinance". (Ordinance No. 8 of 1993)

Section 28.2 Policy

(a) The municipal governing authority finds and declares that persons in this municipality who seek a place to live should be able to find such housing whenever it is available. Further, there may be housing shortages. All persons should therefore be able to compete for available housing on an open, fair, and equitable basis, regardless of race, color, religion, sex, handicap, familial status, or national origin.

(b) It is therefore declared to be the policy of the municipality that there is a legitimate governmental interest in protecting the welfare of the people of the municipality by enacting a fair housing ordinance to discourage discriminatory housing practices.

(c) It is the policy of the municipality to provide, within state and federal constitutional limitations, for fair and open housing throughout the municipality. (Ordinance No. 8 of 1993)

Section 28.3 Definitions

As used in this chapter:

- (1) "Aggrieved person" includes any person who either:
 - (i) Claims to have been injured by a discriminatory housing practice.
 - (ii) Believes that he will be injured by a discriminatory housing practice that is about to occur.

(2) "Complainant" means that person who files a charge pursuant to section 28.11.

(3) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the mayor or his designee.

(4) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(5) "Discriminatory housing practice" means an act that is unlawful pursuant to sections 28.6 through 28.9.

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

(7) (i) "Familial status" means one or more individuals, who have not attained the age of eighteen years, being domiciled with either:

(A) A parent or another person having legal custody of such individual or individuals.

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

(ii) 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 eighteen years.

(8) "Family" includes a single individual.

(9) (i) "Handicap" means, with respect to a person either:

(A) A physical or mental impairment which substantially limits one or more of such person's major life activities.

(B) A record of having such an impairment.

(C) Being regarded as having such an impairment.

(ii) However, the term does not include current, illegal use of, or addiction to a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(11) "Respondent" means the person or other entity accused in a complaint of a

discriminatory housing practice, or, any other person or entity identified in the course of an investigation and notified that they are a respondent who shall be joined in the complaint.

(12) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises owned by the occupant. (Ordinance No. 8 of 1993)

Section 28.4 Prohibitions; applicability; exceptions

(a) Subject to the provisions of subsection (b) of this section and section 28.5, the prohibitions against discrimination in the sale or rental of housing set forth in section 28.6 shall apply to:

(1) Dwellings owned or operated by the federal government, the state, or by any political subdivision of this state.

(2) Dwellings financed in whole or in part with the aid of loans, advances, grants, or contributions made by:

(i) This state or any political subdivision of this state.

(ii) The federal government under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968.

(3) Dwellings provided in whole or in part by loans insured, guaranteed, or otherwise secured by the credit of the federal government under agreements entered into after November 20, 1962, unless payment thereon has been made in full prior to April 11, 1968. However, nothing contained in paragraphs (2) and (3) of this subsection shall be applicable to dwellings solely by virtue of the fact that they are subject to mortgages held by an institution insured by the Federal Deposit Insurance Corporation.

(4) Dwellings provided by the development or the redevelopment of real property purchased, rented, or otherwise obtained from a state or local public agency receiving federal financial assistance for slum clearance or urban renewal with respect to such real property under loan or grant contracts entered into after November 20, 1962.

(5) All other dwellings except as exempted by subsection (b) of this section.

(b) Nothing in section 28.6, except paragraph (a)(3) thereof, shall apply to any of the following dwellings:

(1) Any single-family house sold or rented by an owner, provided that:

(i) such private individual owner does not own more than three such single-family houses at any one time;

(ii) In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this paragraph shall apply only with respect to one such sale within any twenty-four month period.

(iii) Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than

three such single-family houses at any one time.

- (iv) The sale or rental of any such single-family house shall be excepted from the application of this provision only if such house is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker or salesperson, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, salesperson, or person and without the publication, posting, or mailing of any advertisement or written notice in violation of section 28.6(a)(3), but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters at his residence.

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if any of the following situations exist:

- (1) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein.
- (2) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein.
- (3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families. (Ordinance No. 8 of 1993)

Section 28.5 Exemptions

(a) Nothing in this chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(b) Nothing in this chapter shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(c) Nothing in this chapter limits the applicability of any reasonable municipal, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling, nor does any provision in this chapter regarding familial status apply with respect to dwellings provided under any municipal, state, or federal program specifically designed and operated to assist elderly persons, as defined in the municipal, state, or federal program, or to housing for older persons. As

used in this subsection, "housing for older persons" means housing communities consisting of dwellings either:

(1) (i) Intended for, and at least eighty percent occupied by, at least one person who is fifty-five years of age or older per unit and providing significant facilities and services specifically designed to meet the physical or social needs of such persons.

(ii) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years or older.

(2) Intended for and occupied solely by persons sixty-two years of age or older. (Ordinance No. 8 of 1993)

Section 28.6 Discrimination in sale or rental of housing and other prohibited practices

(a) As made applicable by section 28.4, and except as exempted by subsection (b) thereof and section 28.5, it is unlawful:

- (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.
- (3) 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 based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.
- (4) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.
- (6)(i) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of either:
 - (A) That buyer or renter.
 - (B) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.
 - (C) Any person associated with that buyer or renter.
- (ii) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of either:
 - (A) That person.
 - (B) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available.
 - (C) Any person associated with that person.

- (iii) For purposes of this paragraph, discrimination includes either:
- (A) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, 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.
 - (B) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
 - (C) In connection with the design and construction of covered multifamily dwellings for first occupancy after April 1, 1993, a failure to design and construct those dwellings in such a manner that:
 - 1. The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons.
 - 2. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs.
 - 3. All premises within such dwellings contain the following features of adaptive design:
 - a. An accessible route into and through the dwelling.
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
 - c. Reinforcements in bathroom walls to allow later installation of grab bars.
 - d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (iv) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of section 28.6(a)(b)(iii)(C)3.
- (v) For purposes of paragraph (6), the term "covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators, and ground floor units in other buildings consisting of four or more units.

(b) Nothing in this section shall be construed to invalidate or limit any municipal ordinance that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this section.

(c) 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 whose tenancy would result in substantial physical damage to the property of others. (Ordinance No. 8 of 1993)

Section 28.7 Discrimination in residential real estate related transactions

(a) It is unlawful for any person or other entity whose business includes engaging in residential real estate related transactions 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, handicap, familial status, or national origin.

(b) As used in this section, the term "residential real estate related transaction" means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance:
 - (i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (ii) Secured by residential real estate.
- (2) The selling, brokering, or appraising of residential real property.

(c) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status. (Ordinance No. 8 of 1993)

Section 28.8 Discrimination in provision of brokerage services

It is unlawful 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 to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin. (Ordinance No. 8 of 1993)

Section 28.9 Interference, coercion, or intimidation

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter. (Ordinance No. 8 of 1993)

Section 28.10 Administration

(a) The authority and responsibility for administering this chapter are with the mayor.

(b)(1) The mayor may delegate the functions, duties, and powers with respect to mediating, investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this chapter. In developing mediation procedures to resolve complaints filed pursuant to this chapter, the mayor may request the assistance of members of the real estate and housing industry and other interested persons.

(2) For purposes of mediation, under this chapter, the mayor shall appoint a panel, consisting of three members who are municipal employees, who shall serve at his pleasure.

(c) All municipal departments, officers, and employees shall administer their programs and activities relating to housing and urban development in a manner to further the purposes of this chapter and shall cooperate with the mayor to further these purposes.

(d) The mayor may:

(1) Make studies with respect to the nature and extent of discriminatory housing practices throughout the municipality.

(2) Publish and disseminate reports, recommendations, and information derived from such studies.

(3) Cooperate with and render technical assistance to federal, state, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices.

(4) Cooperate with and enter into agreements with the United States Department of Housing and Urban Development and other United States agencies and enter into intergovernmental agreements with state and local agencies interested in practices governed by this chapter, accept monies from these agencies and carry out and perform the covenants and conditions of any written agreement with such agencies not inconsistent with or beyond the provisions of this chapter.

(5) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of this chapter. (Ordinance No. 8 of 1993)

Section 28.11 Enforcement

(a) An aggrieved person claiming to have been injured by a discriminatory housing practice, or who believes that he will be injured by a discriminatory housing practice that is about to occur, may file a complaint with the mayor. On receipt of the complaint, the mayor shall:

(1) Give the aggrieved person notice that the complaint has been filed and advise the aggrieved person of the time limits and choice of forums under this chapter.

(2) Not later than ten days after the filing of the complaint, serve the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter, together with a copy of the original complaint.

(b) A complaint pursuant to subsection (a) of this section shall be filed not later than one year after the alleged discriminatory housing practice occurs. A complaint shall be in writing and shall state the facts on which the allegations of a discriminatory housing practice are based. The complaint shall contain any other information and be in the form that the mayor requires. The complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him not later than the tenth day after receipt of the notice and copy pursuant to paragraph (a)(2) and, with the consent of the mayor, which shall be granted if it would be reasonable and fair to do so, may amend his answer at any time. The mayor may require both complaints and answers to be verified.

(c)(1) Within ten days after the receipt of the respondent's answer or, if no answer is filed

within the time prescribed in subsection (b), within five days after the expiration of such time, the mayor, if the complaint has been referred pursuant to this subsection, must refer the complaint to a mediation panel under this subsection. If the parties agree to a settlement through mediation, and the mediated settlement is in writing and signed by both parties, the mayor shall dismiss the complaint, if the mayor approves the agreement and finds it to be in the public interest.

(2) If the complaint has not been resolved through mediation within thirty days after referral to the mediation panel, it must be returned to the mayor for investigation, which shall commence immediately. If the complaint is returned to the mayor, he shall investigate the complaint and may proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and mediation. If the mayor determines after investigation that there is not reasonable cause to believe that the complaint is true, he shall enter an order dismissing the complaint and shall notify the complainant and the respondent of his action. If the mayor determines after investigation that there is reasonable cause to believe that the complaint is true, he shall enter an order containing his findings of fact and shall endeavor to eliminate the alleged unlawful housing practice by informal methods of conference, conciliation, and persuasion.

(3) Nothing said or done in the course of these informal endeavors may be made public, provided that if a civil action resulting from a complaint is commenced in any federal or state court, evidence collected by or submitted to the mayor during investigation of the complaint and the source of the evidence are discoverable by the parties to the civil action in accordance with applicable rules of evidence, procedure, and discovery.

(d) All conciliation agreements shall provide that the complainant waives, releases, and covenants not to sue the respondent or claim against the respondent in any forum with respect to the matters which were alleged as complaints filed with the mayor, subject to performance by the respondent of the promises and representations contained in the conciliation agreement. All conciliation agreements shall be in writing and agreed to by the complainant, the respondent, and the mayor or his designee.

(e) The mayor shall complete the investigation of an alleged discriminatory housing practice within one hundred days after the filing of the complaint unless it is impracticable to do so.

(f) If the mayor is unable to complete the investigation within the time period set forth in subsection F, the mayor shall notify the parties in writing of the reasons for not doing so. (Ordinance No. 8 of 1993)

Section 28.12 Right to examine and copy evidence

(a) In conducting an investigation, employees authorized by the mayor shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation.

(b) Any person appearing before the mayor may be represented by counsel.

(c) Complaints, orders, and other process and papers of the mayor or his agent may be served either personally or by certified mail. The verified return by the individual serving the complaints, orders, process, or papers, setting forth the manner of the service, is proof of service. The return post office receipt, if certified and mailed as provided in this subsection, is proof of service. (Ordinance No. 8 of 1993)

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Section 28.14 Enforcement by mayor

(a) If, after investigation of a complaint filed pursuant to section 28.11, the mayor finds reasonable cause to believe that any person or group of persons is engaged in resistance to the full enjoyment of any of the rights granted pursuant to this chapter or that any person or group of persons has been denied any of the rights granted pursuant to this chapter, and the complainant, the respondent, and the mayor have not entered into a conciliation agreement, he shall bring a civil action in the appropriate state district court requesting relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for the resistance or denial of rights.

(b) If the mayor concludes at any time following the filing of a complaint that a discriminatory housing practice has occurred or is about to occur, he shall promptly commence and maintain a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. (Ordinance No. 8 of 1993)