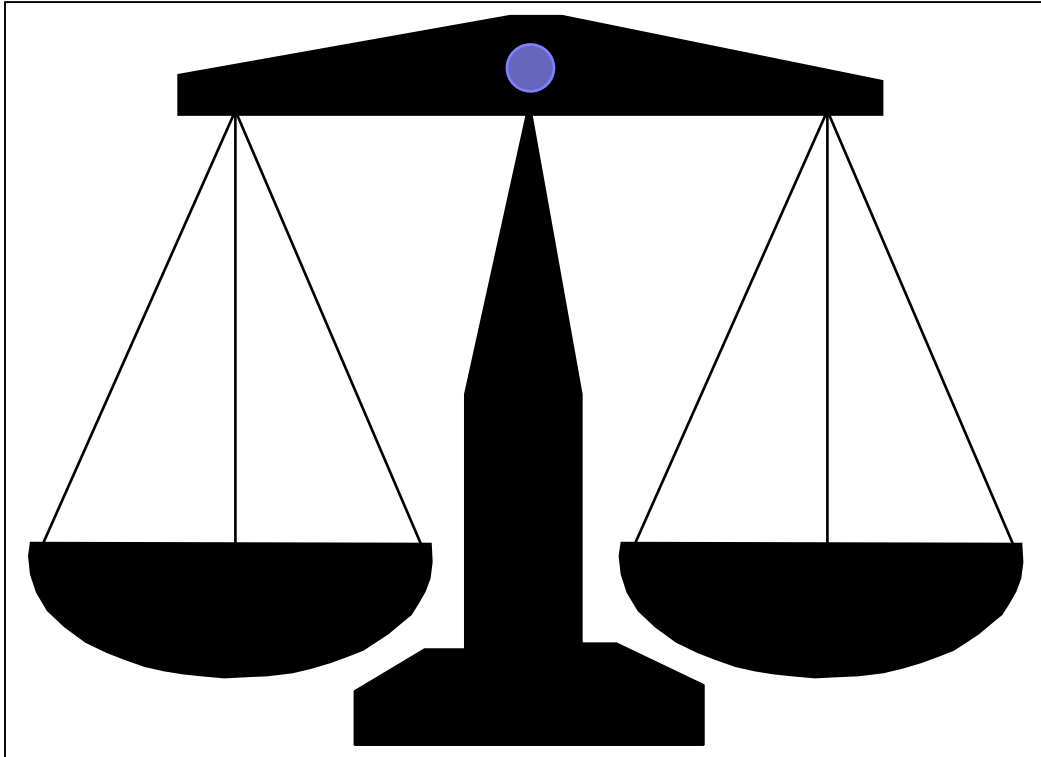


**COUNTY OF ORANGE  
NORTH CAROLINA**



**CIVIL RIGHTS ORDINANCE**

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**ARTICLE I TITLE**

**SECTION 1.1** This Ordinance shall be known and may be cited as the Orange County Civil Rights Ordinance.

**ARTICLE II FINDINGS OF FACT, PURPOSE, CONSTRUCTION, AND SEVERABILITY**

**SECTION 2.1 FINDINGS OF FACT**

(a) The Orange County Board of Commissioners created the Orange County Human Relations Commission to: (1) study and make recommendations concerning problems in the field of human relationships; (2) anticipate and discover practices and customs most likely to create animosity and unrest and to seek solutions to problems as they arise; (3) make recommendations designed to promote goodwill and harmony among groups in the County irrespective of their race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability, age, marital status or status with regard to public assistance; (4) monitor complaints involving discrimination; (5) address and attempt to remedy the violence, tensions, polarization, and other harm created through the practices of discrimination, bias, hatred, and civil inequality; and (6) promote harmonious relations within the county through hearings and due process of law; and

(b) The Orange County Human Relations Commission duly organized, advertised, and conducted public hearings on discrimination in the areas of, among others, employment, housing, and public accommodations; and

(c) The Orange County Human Relations Commission has determined that discrimination exists in Orange County in the areas of, among others, employment, housing, and public accommodations on the basis of, or because of, race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation and veteran status.

**SECTION 2.2 PURPOSE**

(a) It is the purpose of this Ordinance and the policy of Orange County to promote the equal treatment of all individuals; to prohibit discrimination in Orange County based on race, color, religion, sex, national origin, age, disability, familial status, and veteran status; to protect residents' lawful interests and their personal dignity so as to make available to the County their full productive and creative capacities, and to prevent public and domestic strife, crime, and unrest within Orange County.

(b) It is the further purpose of this Ordinance to carry out in Orange County the policies provided for in various federal rules, regulations, and laws prohibiting discrimination in, among other areas, housing, employment, and public accommodations.

**SECTION 2.3 CONSTRUCTION**

(a) This Ordinance shall be liberally construed according to the fair import of its terms, with full and careful consideration given to its humanitarian nature and remedial purpose.

(b) Words importing the masculine gender shall include the feminine and words importing the feminine gender shall include the masculine.

**SECTION 2.4 SEVERABILITY**

Should any provision of this Ordinance be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Ordinance, and such action shall not effect the enforceability of the remaining provisions of the Ordinance.

**ARTICLE III DEFINITIONS**

Unless otherwise defined, as used in this Ordinance:

“*Because of age*” or “*on the basis of age*” applies to persons 40 years of age or older.

“*Because of sex*” or “*on the basis of sex*” includes, but is not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions.

“*Board*” means the Orange County Board of Commissioners.

“*Commission*” means the Orange County Human Relations Commission.

“*Commission staff*” means the person or persons employed by Orange County to administer this Ordinance.

“*Complainant*” means a person who has filed a written, signed, and verified Complaint with the Commission pursuant to this Ordinance.

“*Covered entity*” means an employer, employment agency, labor organization, or joint labor-management committee.

“*Covered multifamily dwelling*” means

- a. a building, including all units and common use areas, in which there are four or more units if the building has one or more elevators; or
- b. ground floor units and ground floor common use areas in a building with four or more units.

“*Direct threat*” means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

“*Disability*” means, with respect to an individual:

- a. a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- b. a record of having such an impairment; or
- c. being regarded as having such an impairment as described in a. or b. of this definition.

“*Drug*” means a controlled substance as defined by section 202 of the Controlled Substances Act (21 U.S.C. § 812).

“*Employer*” means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person. Employer does not include:

- a. The State of North Carolina, any of its agencies or departments;
- b. The United States or a corporation wholly owned by the government of the United States;
- c. An Indian Tribe; or
- d. A bona fide private membership club (other than a labor organization) which is exempt under section 501(c) of the Internal Revenue Code.

“*Employment agency*” means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

“*Familial status*” means one or more persons who have not attained the age of 18 years being domiciled with:

- a. A parent or another person having legal custody of the person or persons; or
- b. The designee of the parent or other person having such custody, provided the designee has the written permission of the parent or other person.

The protections 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.

“*Family*” includes a single individual.

“*Financial institution*” means any banking corporation or trust company, savings and loan association, credit union, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds;

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

“*Illegal use of drugs*” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. § 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law.

“*Labor organization*” means a labor organization and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

“*Person*” means any individual, association, corporation, partnership, labor union, legal representative, receiver, fiduciary, mutual company, joint stock company, trust, trustee in bankruptcy, unincorporated organization, or other legal or commercial entity.

“*Public accommodation*” means any place or facility, of whatever nature, located in Orange County which is open to the public.

“*Qualified individual with a disability*” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds, desires, or held. For purposes of this Ordinance, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

“*Real estate transaction*” means the sale, exchange, rental or lease of real property, or any policy, practice, decision, act, or failure to act that affects the availability of real property or the conditions under which real property is available or is occupied for residential purposes.

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

“*Reasonable accommodation*” means:

- a. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- b. Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

“*Religion*” means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

“*Respondent*” means a person, employer, employment agency, labor organization, joint labor-management committee, or other entity against whom a Complaint has been filed pursuant to this Ordinance.

“*Right-to-sue letter*” means a letter issued by the Commission to a Complainant which authorizes the Complainant to bring a civil action against the Respondent in the Superior Court.

“*Superior Court*” means the Orange County Superior Court.

“*Undue hardship*” means an action requiring significant difficulty or expense, when considered in light of the following factors:

- a. The nature and cost of the accommodation needed under this Ordinance;
- 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; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- c. The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- d. The type of operation or operations of the covered entity, including the composition, structure, and functions of the work force of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

“*Veteran status*” means past service as an employee or member of the United States military, or any agency, or subdivision thereof. Nothing contained in this Ordinance shall be construed to repeal or modify any local law or policy creating special rights or preferences for veterans. Nothing contained in this Ordinance shall be construed to repeal, modify, or prevent any employer practice creating special rights or preferences for veterans.

## **ARTICLE IV UNFAIR EMPLOYMENT**

### **SECTION 4.1 UNLAWFUL EMPLOYMENT PRACTICES**

- (a) It is unlawful for an employer:
  - (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to that individual’s compensation, terms, conditions, or privileges of employment, because of



such individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

- (2) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status;
- (3) To reduce the wage rate of any employee in order to comply with this Article; or
- (4) To discriminate against any woman affected by pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

(b) It is unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of the individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status, or to classify or refer for employment any individual on the basis of race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

(c) It is unlawful for a labor organization to:

- (1) Exclude or to expel from its membership, or otherwise to discriminate against, any individual because of the individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status;
- (2) Limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect such individual's status as an employee or as an applicant for employment, because of the individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status; or
- (3) Cause or attempt to cause an employer to discriminate against an individual in violation of this Ordinance.

(d) It is unlawful for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the individual's race, color, religion, sex, national origin, age, disability, familial status, or veteran status in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) It is unlawful for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training

programs, to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer, or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, national origin, age, disability, familial status, or veteran status. Notwithstanding the foregoing, an employer may indicate a preference based on disability or veteran status.

(f) It is unlawful for an employer to discriminate against any employee or applicant for employment, for an employment agency or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he or she has opposed any practice made an unlawful employment practice by this Ordinance, or because he or she has filed a Complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Ordinance.

Furthermore, it is unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of such individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Ordinance.

(g) It is unlawful for a covered entity to discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. As used in this subsection, the term “discriminate” includes:

- (1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of the applicant or employee;
- (2) participating in a contractual or other relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this Ordinance. Such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs;
- (3) using standards, criteria, or methods of administration that:
  - a. have the effect of discrimination on the basis of a disability; or
  - b. perpetuate the discrimination of others who are subject to common administrative control;
- (4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;
- (5) not making reasonable accommodations to the known physical or mental

limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

- (6) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;
- (7) using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question, is consistent with business necessity, and cannot be accomplished by reasonable accommodation as required under this Ordinance;
- (8) failing to select and administer tests concerning employment in the most effective manner to ensure that when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant, except where such skills are the factors that the test purports to measure;
- (9) conducting a medical examination or making inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.
- (10) a covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant, and may condition an offer of employment on the results of the examination, provided that:
  - a. All entering employees are subjected to such an examination regardless of disability;
  - b. Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:
    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; and

3. Government officials investigating compliance with this section shall be provided relevant information on request;
  - c. The results of the examination are used only in accordance with this section; and
- (11) a covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity.
  - (12) a covered entity may, however, make inquiries into the ability of an employee to perform job-related functions, and may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the work site. Information obtained in such medical examinations or medical histories is subject to the same restrictions and requirements as information obtained pursuant to pre-employment medical examinations, as described in subsections 10(b) and 10(c) of this section.

#### **SECTION 4.2 EXEMPTIONS AND DEFENSES**

- (a) Notwithstanding any other provision of this Article, it is not unlawful for:
  - (1) a covered entity to employ, admit, classify, or refer any individual on the basis of religion, sex, national origin, age, familial status, or veteran status, in those certain instances where religion, sex, national origin, age, familial status, or veteran status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
  - (2) a covered entity to print or publish, or caused to be printed or published, any notice or advertisement indicating any preference, limitation, specification, or discrimination, based on religion, sex, national origin, age, familial status, or veteran status, in such instances when religion, sex, national origin, age, disability, familial status, or veteran status is a bona fide occupation qualification for employment.
  - (3) a school, college, university, or other educational institution, or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
  - (4) an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, so long as the

differences are not the result of an intention to discriminate because of race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

- (5) an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, familial status, or veteran status.
- (6) an employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of the employer if the differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(d)).
- (7) a covered entity to refuse to assign or continue to assign an individual to a job involving food handling in any case in which such individual has an infectious or communicable disease that is: (i) transmitted to others through the handling of food; (ii) is included on the list developed by the Secretary of the United States Department of Health and Human Services pursuant to section 103(d) of the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101, *et seq.*); and (iii) cannot be eliminated by reasonable accommodation. Nothing in this subsection shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling.

(b)(1) For purposes of this Article the term “qualified individual with a disability” shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use. However, an individual shall not be excluded as a qualified individual with a disability who:

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

(b)(2) It is not a violation of this Ordinance for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subdivision (a) or (b) of this subsection is no longer engaging in the illegal use of drugs.

(c) A covered entity may:

- (1) prohibit the illegal use of drugs and the use of alcohol at the workplace by employees;
- (2) require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
- (3) require that employees behave in conformance with the requirements

established under the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et. seq.);

- (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 that the entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of the employee; and
- (5) with respect to federal regulations regarding alcohol and the illegal use of drugs, require that employees comply with the standards established in federal regulations of the Department of Defense, the Nuclear Regulatory Commission, and/or the Department of Transportation, if the employees of the covered entity are employed in an industry subject to the regulations of any such federal agency.

(d) For the purposes of this Ordinance, a test to determine the illegal use of drugs shall not be considered a medical exam. Furthermore, nothing in this Ordinance shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) The prohibitions in this Ordinance against discrimination based upon disability shall not be construed to prohibit or restrict:

- (1) An insurer, hospital, medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or
- (2) A person or organization covered by this Ordinance from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering those risks that are based on or not inconsistent with State law; or
- (3) A person or organization covered by this Ordinance from establishing, sponsoring, observing, or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Subsections (1), (2), and (3) of this section shall not be used as a subterfuge to evade the purposes of this Ordinance.

(f) Nothing in this Ordinance shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept;

(g) Nothing contained in this Ordinance shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he or she is an Indian living on or near a reservation.

(h) Nothing contained in this Ordinance shall apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(i) Nothing contained in this Ordinance shall be interpreted to require any covered entity to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, national origin, age, familial status, or veteran status of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, national origin, age, familial status, or veteran status referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, national origin, age, familial status, or veteran status in the community, State, section, or other area.

(j) With respect to discrimination based on age, it is not unlawful for a covered entity to take any action otherwise prohibited under subsections (a), (b), (c), (d) or (e) of Section 4.1 of this Article:

- (1) Where the differentiation is based on reasonable factors other than age;
- (2) Where such practices involve an employee in a workplace in a foreign country, and compliance with those subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located; or
- (3) To observe the terms of a bona fide seniority system that is not intended to evade the purposes of this Article, except that no such seniority system shall require the involuntary retirement of any individual who is at least 40 years of age because of the age of such individual; or
- (4) To observe the terms of a bona fide employee benefit plan:
  - a. Where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, Title 29, Code of Federal Regulations, as in effect on June 22, 1989; or
  - b. That is a voluntary early retirement incentive plan consistent with the relevant purposes of this Ordinance.
  - c. Notwithstanding the provisions of subsection a. or b. of this subdivision, no employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual age 40 or older, because of the age of such individual. A covered entity acting under subdivision (3) or subdivision (4) of this section, shall have the burden of proving that

such actions are lawful in any proceeding brought pursuant to this Ordinance; or

(5) To discharge or otherwise discipline an individual for good cause.

(k) Notwithstanding the provisions of subdivision (4) of subsection (j) above:

(l)(1) Nothing in this Ordinance shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if such employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least such amount as is prescribed in the Age Discrimination Act of 1967 as amended from time to time (this amount is \$44,000 on the effective date of this Ordinance).

(l)(2) In applying the retirement benefit test of subdivision (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity, with no ancillary benefits, or if employees contribute to any such plan or make rollover contributions, the benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, pursuant to 29 U.S.C. § 631(c)(2), so that the benefit is the equivalent of a straight life annuity with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions are made.

(m) An unlawful employment practice based on disparate impact is established under this Ordinance only if:

(1) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, national origin, age, disability, familial status, or veteran status and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(2) the complaining party makes a demonstration with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice. A “demonstration with respect to an alternative employment practice” shall be in accordance with the law as it existed on June 4, 1989.

(3)a. With respect to demonstrating that a particular employment practice causes a disparate impact as described herein, the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent’s decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice.

(3)b. If the respondent demonstrates that a specific employment practice does not



cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(n) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this Ordinance.

(o) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of Section 812 of the Controlled Substances Act (21 U.S.C. §812) other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act or any other provision of Federal law, shall be considered an unlawful employment practice under this Ordinance only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

(p) Except as otherwise provided in this Article, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, national origin, age, disability, familial status, or veteran status was a motivating factor for any employment practice, even though other factors also motivated the practice.

(q) On a claim in which an individual proves a violation under subsection (p) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court:

- (1) may grant declaratory relief, injunctive relief and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section (p); and
- (2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, as described in Article VIII of this Ordinance.

(r) Nothing contained in this Article shall be construed to affect court entered remedies, affirmative action, or conciliation agreements, that are in accordance with the law.

## **ARTICLE V UNFAIR HOUSING**

### **SECTION 5.1 UNLAWFUL HOUSING PRACTICES**

(a) It is an unlawful discriminatory housing practice for any person, because of race, color, religion, sex, national origin, age, disability, familial status, or veteran status to:

- (1) Refuse to engage in a real estate transaction;
- (2) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) Refuse to permit, at the expense of a qualified individual with a disability,

reasonable modifications of existing premises occupied or to be occupied by the individual if the modifications are necessary to such individual's full enjoyment of the premises; except that, in the case of a rental unit, the landlord may, where it is reasonable to do so, condition permission for modifications on agreement by the renter to restore the interior of the premises to the condition that existed before the modifications, reasonable wear and tear excepted.

- (4) Refuse to make reasonable accommodations in rules, policies, practices, or services, when these accommodations may be necessary to a disabled person's equal use and enjoyment of a dwelling, including public and common use areas;
- (5) Fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:
  - a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or
  - b. With respect to dwellings with a building entrance on an accessible route:
    1. The public and common use portions are readily accessible to and usable by individuals with a disability;
    2. There is an accessible route into and through all dwellings and units;
    3. All doors designed to allow passage into, within, and through these dwellings and individual units are wide enough for wheelchairs;
    4. Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
    5. Bathroom walls are reinforced to allow later insulation of grab bars; and
    6. Kitchens and bathrooms have space for an individual in a wheelchair to maneuver.
  - c. 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" as amended or revised from time to time) suffices to satisfy the requirements of Section 5.1(a)(5) of this Ordinance.
- (6) Refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction;
- (7) Refuse to negotiate for a real estate transaction;
- (8) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or fail to bring a property listing to such person's attention, or refuse to permit such person to inspect real property;

- (9) Make, print, circulate, post, or mail, or cause to be so published, a statement, advertisement, or sign, or use a form or application for a real estate transaction, or make a record or inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly, an intent to make a limitation, specification, preference, or discrimination with respect thereto;
- (10) Offer, solicit, accept, use, or retain a listing of real property with the understanding that any person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; or
- (11) Otherwise make unavailable or deny housing.

(b) It is an unlawful discriminatory housing practice 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, because of race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

As used in this subsection, “residential real estate related transaction” means:

- (1) The making or purchasing of loans or providing financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling, or (ii) where the security is residential real estate; or
- (2) The selling, brokering, or appraising of residential real estate.

The provision of this subsection shall not prohibit any financial institution from using a loan application which inquires into a person’s financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

(c) It is an unlawful discriminatory housing practice for a person to induce or attempt to induce another to enter into a real estate transaction from which such person may profit:

- (1) By representing that a change has occurred, or may occur in the composition of the residents of the block, neighborhood, or area in which the real property is located with respect to the race, color, religion, sex, national origin, age, disability, familial status, or veteran status of the owners or occupants; or
- (2) By representing that a change has resulted, or may or will result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

(d) It is an unlawful housing practice to deny any person, who is otherwise qualified by State law, access to or membership or participation in any real estate brokers’ organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate in the terms or conditions of such access, membership, or participation because of race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

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

## **SECTION 5.2 PROOF OF VIOLATION**

(a) It is a violation of this Article if:

- (1) A person by his or her act or failure to act intends to discriminate against a person. A person intends to discriminate if, in committing an unlawful housing practice in Section 5.1 of this Article he or she was motivated in full, or in any part at all, by race, color, religion, sex, national origin, age, disability, familial status, or veteran status. An intent to discriminate may be established by direct or circumstantial evidence; or
- (2) A person's act or failure to act has the effect, regardless of intent, of discriminating, as set forth in Section 5.1 of this Article, against a person of a particular race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

(b) However, it is not a violation of this Article if a person whose action or inaction has an unintended discriminatory effect, proves that his or her action or inaction was motivated and justified by business necessity.

(c) It shall be no defense to a violation of this Ordinance that the violation was requested, sought, or otherwise procured by another person.

## **SECTION 5.3 EXEMPTIONS**

(a) Nothing in this Article (other than subsection (9) of Section 5.1(a)) shall apply to the following:

- (1) The rental of 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 as the owner's residence;
- (2) 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 of the same religion, unless membership in such religion is restricted on account of race, color, or national origin.
- (3) Private clubs, not in fact open to the public, which as an incident to their primary purpose or purposes provide lodging which they own or operate 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.

(b) Nothing in Subsection (a)(3), (4), or (5) of Section 5.1 of this Article shall require 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.

(c) No provision of this Ordinance limits the applicability of any lawful local or state restriction regarding the maximum number of occupants permitted to occupy a dwelling unit.

(d) Nothing in this Ordinance shall be deemed to nullify any provisions of the North Carolina Building Code applicable to the construction of residential housing for the handicapped.

(e) No provision of this Ordinance regarding familial status applies with respect to housing for older persons. "Housing for older persons" mean housing:

- (1) Provided under any state or federal program specifically designed and operated to assist elderly persons as defined in the program;
- (2) Intended for and solely occupied by person 62 years or older. Housing satisfies the requirements of this subdivision even though there are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants after September 13, 1988, are 62 years or older; or
- (3) Intended for and operated for occupancy by at least one person 55 years of age or older per unit as shown by such mandatory factors as (i) the existence of significant facilities and services specifically designed to meet the physical and social needs of older persons or, if this is not practicable, that the housing provides important housing opportunities for older persons; (ii) at least eighty percent (80%) of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. Housing satisfies the requirements of this subdivision even though on September 13, 1988, under eighty percent (80%) of the units in the housing facility are occupied by at least one person 55 years or older per unit, provided that eighty percent (80%) of the units that are occupied by new tenants after September 13, 1988, are occupied by at least one person 55 years or older per unit such time as eighty percent (80%) of all the units in the housing facility are occupied by at least one person 55 years or older. Housing facilities newly constructed for first occupancy after March 12, 1989, shall satisfy the requirements of this subdivision if (i) when twenty-five percent (25%) of the units are occupied, eighty percent (80%) of the occupied units are occupied by at least one person 55 years or older, and thereafter (ii) eighty percent (80%) of all newly occupied units are occupied by at least one person 55 years or older until such time as eighty percent (80%) of all the units in the housing facility

are occupied by at least one person 55 years of age or older.

Housing satisfies the requirements of subdivisions (2) and (3) of this subsection even though there are units occupied by employees of the housing facility who are under the minimum age or family members of the employees residing in the same unit who are under the minimum age, provided the employees perform substantial duties directly related to the management of the housing.

## **ARTICLE VI PUBLIC ACCOMMODATIONS**

### **SECTION 6.1 DEFINITIONS**

A place of public accommodation includes, but is not limited to, each of the following establishments located in Orange County which caters or offers its services or facilities or goods to the general public:

- (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests;
- (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, bar, or other establishment engaged in the selling or serving of food or drink;
- (3) any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
- (4) any auditorium, convention center, lecture hall, or other place of public gathering;
- (5) any bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
- (6) any laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;
- (7) any terminal, depot, or other station used for specified public transportation;
- (8) any museum, library, gallery, or other place of public display or collection;
- (9) any park, zoo, amusement park, or other place of recreation;
- (10) any nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;
- (11) any day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment;
- (12) any gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.
- (13) any establishment offering the viewing, sale, use, lease, or hire of printed matter, audiotapes, videotapes, phonograph records, compact discs, videotape or film loops, or other such establishment;
- (14) any area or structure provided for the purpose of storing personal property; and
- (15) any other establishment which is (a)(i) physically located within the premises

of any establishment otherwise covered by this section, or (ii) within the premises of which is physically located any such covered establishment, and (b) which holds itself out as serving patrons of such establishment.

## **SECTION 6.2 PROHIBITED PRACTICES**

(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the basis of race, color, religion, sex, national origin, age, disability, familial status, or veteran status.

(b) It shall be an unlawful discriminatory practice under this Ordinance for any person to (1) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person of any right or privilege secured by subsection (a) of this section, or (2) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by subsection (a) of this Section, or (3) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by subsection (a) of this Section.

## **SECTION 6.3 EXEMPTIONS**

The provisions of this Article shall not apply to a private club or other establishments not in fact open to the public.

## **ARTICLE VII OTHER PROHIBITED DISCRIMINATORY ACTS**

- (a) It shall be unlawful for any person to intentionally or knowingly:
- (1) Perform or attempt to perform any act which directly or indirectly results in an individual's bodily injury or property damage where such act is directed at an individual or a group of individuals because of that person's or that group's perceived or actual race, color, religion, sex, national origin, age, disability, familial status, or veteran status in the United States armed services.
  - (2) Solicit, encourage, compensate, assist, or conspire with another to perform or attempt to perform any act which directly or indirectly results in an individual's bodily injury or property damage where such act is directed at an individual or a group of individuals because of that person's or that group's perceived or actual race, color, religion, sex, national origin, age, disability, familial status, or veteran status in the United States armed services.

(b) No person shall be found to have violated this Article solely on the basis of the content of any speech or communication used by such person.

## **ARTICLE VIII      ENFORCEMENT**

### **SECTION 8.1    FILING OF COMPLAINT AND INVESTIGATION**

(a) Any person who claims to have been injured, or claims he or she is currently being injured, or who reasonably believes that he or she will be injured, by any practice made unlawful under this Ordinance may file a Complaint with the Commission.

(b) Complaints shall be in writing, signed and verified by the Complainant. Complaints shall state the facts upon which the allegation of an unlawful discriminatory practice is based and shall contain such other information and be in such form as the Commission requires.

Commission staff shall assist Complainants, if necessary, in reducing Complaints to writing and shall assist in setting forth the information in the Complaint as may be required by the Commission.

(c)(1) A Complaint that alleges an unlawful employment practice under this Ordinance must be filed with the Commission no later than 180 days after the occurrence, or cessation of the alleged unlawful employment practice.

(c)(2) A Complaint that alleges any practice made unlawful under this Ordinance, other than an unlawful employment practice, must be filed with the Commission no later than one (1) year from the date of the occurrence, or cessation of the alleged unlawful practice.

(d) The Commission staff shall serve upon the Respondent and Complainant, in accordance with the North Carolina Rules of Civil Procedure, a copy of the Complaint and a notice advising the Respondent and Complainant of his or her procedural rights and obligations under this Ordinance within ten (10) days after the Complaint is filed with the Commission.

(e) A Respondent may file an answer to the Complaint within ten (10) days after receiving a copy of the Complaint. Answers shall be signed and verified by the Respondent and shall be filed with the Commission.

(f) With leave of the Commission staff, which leave shall be granted whenever it would be reasonable and fair to do so, Complaints and Answers may be amended at any time. Amendments shall be reduced to writing, signed, verified, and filed with the Commission. Amendments shall relate back to the date the original Complaint or Answer was filed.

(g) The Commission staff shall, within 30 days after the filing of a Complaint, commence an investigation into the allegations contained in the Complaint.

(h) In conducting an investigation, the Commission staff shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence to ascertain the factual basis of the allegations contained in the Complaint.



Further, the Commission staff may examine, record, and copy such materials and take and record the testimony or statements of such persons as reasonably necessary for the furtherance of the investigation.

(i) In conducting an investigation, the Commission staff may, in accordance with the North Carolina Rules of Civil Procedure:

- (1) issue subpoenas compelling access to or production of documents, materials, or other evidence;
- (2) issue subpoenas compelling witnesses, including any party, to appear and give testimony before the Commission staff;
- (3) issue subpoenas compelling witnesses, including any party, to appear and give testimony at a deposition;
- (4) take depositions of witnesses, including any party; and
- (5) issue interrogatories to a Respondent.

(j) Upon written application to the Commission staff, a Respondent shall be entitled to the issuance of interrogatories directed to the Complainant, to the issuance of a reasonable number of subpoenas for the taking of depositions, and to the issuance of a reasonable number of subpoenas for the production of evidence.

(k) In the case of refusal to obey a subpoena, answer an interrogatory, answer a question propounded in a deposition, or answer a question propounded during an interview conducted by the Commission staff pursuant to this section, the Commission staff or the Respondent may make a motion in the Superior Court to compel a person to obey the subpoena, answer the interrogatory, or answer the question. The North Carolina Rules of Civil Procedure shall apply to the making of such motions. If a person fails to obey an order issued pursuant to this subsection, the court may apply any or all of the sanctions available in Rule 37 of the North Carolina Rules of Civil Procedure.

(l) Whenever the Commission staff concludes on the basis of a preliminary investigation of a Complaint that prompt judicial action is necessary to carry out the purposes of this Ordinance, the Commission may commence a civil action in the Superior Court for injunctive relief pending final disposition of the Complaint. Any injunctive relief shall be ordered in accordance with Rule 65 of the North Carolina Rules of Civil Procedure.

The commencement of a civil action to obtain injunctive relief shall not affect the continuation of the Commission staff's investigation or the initiation of a separate civil action provided for in this Ordinance.

(m) Complaints may be resolved at any time by informal conference, conciliation, or persuasion. Nothing said or done in the course of such informal procedure may be made public by the Commission or used as evidence in any subsequent proceeding without the written consent of the person concerned. However, all resolutions of complaints shall be reduced to writing, shall be signed by the Complainant, the Respondent, and by the Commission staff and shall be enforceable

as a binding contract by the Commission pursuant to the applicable provisions of North Carolina law, statutory and common.

## **SECTION 8.2 REASONABLE CAUSE, CONCILIATION EFFORTS, AND RIGHT TO SUE LETTERS**

(a) If the Complaint is not sooner resolved, the Commission staff shall, upon completion of the investigation, determine whether or not there is reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is going to occur.

(b) The Commission staff shall make its determination on reasonable cause as promptly as possible and, so far as practicable, no later than 100 days after the Complaint was filed. If the Commission staff is unable to complete the investigation within 100 days after the filing of the complaint the Commission staff shall notify the complainant and respondent in writing of the reasons for not doing so.

(c) At the end of each investigation, a final investigative report will be prepared and, notwithstanding the prohibitions and requirements with respect to disclosure of information, the report will be made available to the parties upon request.

(d) If the Commission staff determines that there is not reasonable cause to believe that an unlawful discriminatory practice has occurred, is occurring, or is going to occur, it shall dismiss the Complaint and notify the Complainant and the Respondent of its decision. At the same time, the Commission staff shall issue a right-to-sue letter to the Complainant.

(e) In the event the Commission staff determines that reasonable cause does not exist, the Complainant may make a written request to the Commission that such decision be reconsidered. Such request shall be filed with the Commission staff within thirty (30) days of the date the Commission staff issued its finding of no reasonable cause. The request for reconsideration shall be heard by a panel of three Commission members. The panel members shall be selected by the Commission. As a prerequisite to serving on this panel, the Commission member shall receive appropriate training by the North Carolina Human Relations Commission. Such training shall include ordinance coverage and scope, how to prove if discrimination has occurred, and how to determine appropriate remedies if discrimination is proved.

(f) If the Commission staff, or the Commission panel following request by the Complainant to the Commission for reconsideration of the Commission staff finding of no reasonable cause, determines that reasonable cause exists, the Commission staff shall notify the Complainant and the Respondent and shall attempt to resolve the Complaint by conference, conciliation, and/or persuasion.

(g) All conciliation agreements shall be signed by the Complainant and the Respondent and shall be recognized as a legally enforceable contract. The Commission shall also be a party to all conciliation agreements which resolve Complaints. The Commission shall have the authority to enforce conciliation agreements pursuant to the applicable provisions of North Carolina law,

statutory and common law. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of this Ordinance.

(h) If the Commission staff, after a finding of reasonable cause, is unable to resolve the Complaint by conference, conciliation, or persuasion, it shall issue a written declaration that conciliation efforts have failed.

(i) If the Commission staff issues a written declaration that conciliation efforts have failed, the Commission staff shall, upon written request of the Complainant, issue a right-to-sue letter to the Complainant. Such written request shall be filed with the Commission staff by the Complainant within fifteen (15) days of the date the declaration of conciliation failure is served on the Complainant.

(j)(1) Upon making a declaration of conciliation failure, the Commission staff may, in cases arising under Article IV (Fair Employment), Article VI (Public Accommodations), and Article VII (Other Prohibited Discriminatory Acts) apply to the Director of the Office of Administrative Hearings, pursuant to N.C.G.S. §7A-758, for the designation of an administrative law judge to preside at a hearing of the case.

(j)(2) In cases arising under Article V (Fair Housing) in which the Commission has issued a declaration of conciliation failure, the Commission must apply to the Director of the Office of Administrative Hearings, pursuant to N.C.G.S. §7A-758, for the designation of an administrative law judge to preside at a hearing of the case.

(j)(3) In the event the Commission makes application to the Office of Administrative Hearings, it shall do so within thirty (30) days of the date the Commission staff issued its written declaration of conciliation failure.

(k) If within 130 days from the date the Complaint was filed, the Commission staff has failed to make a determination on the issue of reasonable cause, the Commission staff shall, upon written request of the Complainant, issue a right-to-sue letter to the Complainant.

(l) If within one year from the date the Complaint was filed, the Commission has not made its final administrative disposition of the complaint, it must notify the Complainant and the Respondent in writing of reasons for delay.

### **SECTION 8.3 REFERRAL TO OFFICE OF ADMINISTRATIVE HEARINGS**

#### **Subdivision 8.3.1 Hearings**

(a) Election of Judicial Determination. -- When a charge is filed under Article V, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under Article X in lieu of a

hearing under this section. The election must be made not later than 20 days after the receipt by the electing person of service under Section 8.2(f). The person making such election shall give notice of doing so to the Secretary and to all other complainants and respondents to whom the charge relates.

(b) Civil Action for Enforcement When Election Is Made for Such Civil Action. -- If an election is made under subsection (a), the Commission shall authorize, and not later than 30 days after the election is made the County Attorney shall commence and maintain, a civil action on behalf of the aggrieved person in Superior Court seeking relief under this Ordinance.

(c) Upon receipt of an application for a hearing from the Commission, the Director of the Office of Administrative Hearings shall, without undue delay, assign an administrative law judge to hear the case. Under this subsection, references to “parties” means “the Commission” and “the Respondent” and any other party the administrative law judge permits to intervene. It shall be within the sound discretion of the administrative law judge to allow or disallow such motion.

(d) All hearings under this Ordinance shall be de novo, open to the public, and shall be conducted in an impartial manner.

(e) Venue of cases heard by an administrative law judge under this Ordinance shall be in Orange County.

(f) If at any time after the commencement of a hearing of a case under this section, but before the administrative law judge issues a final decision, the parties successfully conciliate the Complaint, the Commission shall file a stipulation of settlement or notice of voluntary dismissal with the presiding administrative law judge. Upon receipt of such stipulation or notice, the administrative law judge and the Office of Administrative Hearings shall take no further action regarding the Complaint.

(g) All hearings held before an administrative law judge shall, except as provided elsewhere in this Ordinance, be held in accordance with the provisions of Article 3, Chapter 150B (Administrative Procedures Act) and in accordance with Chapter 3 of Title 26 of the North Carolina Administrative Code.

(h) The case in support of the Commission shall be presented at the hearing by the Commission’s attorney.

(i) The administrative law judge shall make a recommended decision, which shall contain findings of fact, conclusions of law, and recommended relief if appropriate.

(j)(1) A panel consisting of three members of the Commission shall review the findings of fact, conclusions of law, and relief granted, if any, set forth in the administrative law judge’s recommended decision and affirm, modify or reverse the recommended decision. Such decision by the Commission panel shall constitute the final agency decision of the Commission. Prior to making its final decision, the Commission panel shall permit the Complainant and Respondent the

opportunity to submit written exceptions to the recommended decision and shall permit them to present oral argument as to why the recommended decision should be affirmed, modified, or reversed. The decision of the administrative law judge shall become final and binding unless the Commission acts within 30 days of the date of the recommended decision to modify or reverse it.

(j)(2) In the event the Commission panel modifies or reverses the recommended decision of the administrative law judge, it shall set forth in writing the specific reasons it has reached a decision different from that of the administrative law judge.

(j)(3) The panel members shall be selected by the Commission. As a prerequisite to serving on this panel, a Commission member shall receive appropriate training by the North Carolina Human Relations Commission. Such training shall include ordinance coverage and scope, how to prove if discrimination has occurred, and how to determine appropriate remedies if discrimination is proved.

(j)(4) No Commission member shall participate in the review of the recommended decision of the administrative law judge in any Complaint if, in the same Complaint, that Commission member has previously served on the three member panel reviewing a determination of no reasonable cause under Section 8.2(e) of this Ordinance.

(k) The Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) The administrative law judge's recommended decision.

(l) The Office of Administrative Hearings shall forward the official record to the Commission and shall forward a copy of its recommended decision to each party.

(m) The Commission shall have the authority to enforce any award made to a Complainant pursuant to the applicable provisions of North Carolina law, statutory and common.

### **Subdivision 8.3.2 Remedies**

(a) If the administrative law judge, in his or her recommended decision, finds that a Respondent has violated, is violating, or is about to violate any provision of this Ordinance, the administrative law judge may recommend such affirmative action as may be appropriate, including:

- (1) Injunctive relief as provided for in Rule 65 of the North Carolina Rules of Civil Procedure;
- (2) compensatory damages;
- (3) punitive damages;

- (4) civil penalties for violations of Article V; and
- (5) any other relief as the administrative law judge deems appropriate.

(b) Punitive damages against a respondent (other than a government, government agency or political subdivision) may be recommended by the administrative law judge only if the complaining party (or parties) demonstrate(s) that the Respondent engaged in a practice made unlawful under this Ordinance with malice or with reckless indifference to the protected rights of the Complainant.

(c) In the case of a finding by the administrative law judge that the Respondent has committed an unfair employment practice, then the following provisions shall also apply:

- (1) the administrative law judge may recommend, in addition to any of the remedies set forth above, any one or more of the following:
  - a. reinstatement or hiring of an employee;
  - b. back pay; provided that it shall not accrue from a date more than two years prior to the filing of the complaint with the Commission; and provided further that interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall operate to reduce the back pay otherwise allowable.
- (2) Compensatory damages shall not include backpay or interest on backpay.
- (3) The sum of the amount of compensatory damages allowed for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other pecuniary losses, and the amount of punitive damages awarded under this section shall not exceed, for each complaining party:
  - a. In the case of a Respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$50,000; and
  - b. In the case of a Respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$100,000; and
  - c. In the case of a Respondent who has more than 200 and fewer than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$200,000; and
  - d. In the case of a Respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, \$300,000.
- (4) In cases where an unlawful employment practice involves the provision of a reasonable accommodation, neither compensatory nor punitive damages may be awarded where the Respondent demonstrates good faith efforts, in consultation with the person with the disability who has informed the covered entity that accommodation is needed, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the

operation of the Respondent's business.

(d) In the case of a finding that the Respondent has committed, with malice or with reckless indifference to the protected rights of the Complainant, a violation of this Ordinance, then the following provisions shall also apply:

- (1) the amount of civil penalties awarded under this section shall not exceed, for each complaining party:
  - a. In an amount not exceeding ten thousand dollars (\$10,000) if the Respondent has not been adjudged to have committed any prior unlawful discriminatory act;
  - b. In an amount not exceeding twenty-five thousand dollars (\$25,000) if the Respondent has been adjudged to have committed one other unlawful discriminatory acts during the five-year period ending on the date of the filing of the Complaint; or
  - c. In an amount not exceeding fifty thousand dollars (\$50,000) if the Respondent has been adjudged to have committed two or more unlawful discriminatory acts during the seven-year period ending on the date of the filing of the complaint.

If the act constituting an unlawful violation is committed by the same natural person who has been previously adjudged to have committed an act or acts constituting an unlawful discriminatory practice in violation of this Ordinance, then the punitive damages set forth above may be imposed without regard to the period of time within which any subsequent discriminatory practice or act occurred.

## **ARTICLE IX JUDICIAL REVIEW**

(a) Judicial review of the final decision of the Commission shall be in accordance with the provisions provided for judicial review of agency decisions as set forth in Article 4, § 150B of the North Carolina General Statutes.

(b) In reviewing the final decision of the Commission, the court may affirm the decision or remand the case for further proceedings. It may also reverse or modify the final decision of the Commission if the substantial rights of the petitioner may have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence; or
- (6) Arbitrary or capricious.

(c) The court in a review proceeding may:

- (1) Affirm, modify, or reverse the Commission's decision;

- (2) Remand the case to the Commission for further proceedings;
- (3) Grant to any party such temporary relief, restraining order, or other order as it deems appropriate; or
- (4) Issue an order to enforce the Commission's decision to the extent that the decision is affirmed or modified.

(d) A party to a review proceeding in Superior Court may appeal to the appellate division from the final judgment of the Superior Court as provided in G.S. §7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the decision that is the subject of the appeal, as appropriate.

## **ARTICLE X      CIVIL ACTIONS**

(a) Civil actions brought by a Complainant after the issuance of a right-to-sue letter by the Commission shall be filed in the Superior Court no later than one (1) year after issuance of the right-to-sue letter.

(b) Parties to a civil action brought pursuant to this Article shall have the right to a jury trial as provided for by the North Carolina Rules of Civil Procedure.

(c) Upon application by the Complainant and in such circumstances as the court may deem just, the court may authorize the commencement of the action without the payment of fees, costs, or security.

(d) The court may award court costs and reasonable attorney's fees to the prevailing party with the following limitations:

- (1) Attorney's fees may not be awarded to the Commission; and
- (2) A prevailing Respondent may be awarded court costs and reasonable attorney's fees only upon a showing that the case is frivolous, unreasonable, or without foundation.

(e) If the court finds that the Respondent has violated, is violating, or is about to violate this Ordinance, it may order such affirmative action as may be appropriate, including each of the remedies that may be recommended by an administrative law judge under this Ordinance.

(f) No order of the court shall require the admission or reinstatement, or promotion of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to the individual of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, national origin, age, disability, familial status, or veteran status in the United States armed services.



## **ARTICLE XI      EFFECTIVE DATE**

Articles I, II, III, V, VI, VII, VIII, IX and X shall take effect and be in force on January 1, 1995;

Article IV shall take effect and be in force on January 1, 1996.