

CHAPTER 37: HUMAN RIGHTS COMMISSION

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§ 37.01 DECLARATION OF POLICY.

The city desires to implement a policy to protect all individuals within the city from discrimination in certain contexts because of disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth. Certain practices must be prohibited within the areas of employment, housing, public accommodations, resort or amusement as necessary to protect an individual's personal dignity and insure freedom from humiliation; to make available to the city all full productive capacities; to secure the city against strife and unrest which would menace its democratic institutions; and to preserve the public safety, health, and general welfare.

(Ord. O-20-03, passed 4-29-03)

§ 37.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. These definitions shall be superseded by KRS 344.010(4) and KRS 344.030(1) and applicable federal and state law that may be in effect at the time of a violation.

AGE. Age 40 years and over.

ANCESTRY. The national origin of an individual's ancestors.

CANVASSING. Includes door-to-door solicitation by the use of circular advertisements or any other means where the canvasser or his employer has not been requested by the owner to obtain a listing of any housing accommodation or to confer with the owner regarding a transaction involving a housing accommodation.

COLOR. The hue or pigmentation of the human skin that distinguishes individuals as being members of a particular race or races.

COMMISSION. The Covington Human Rights Commission.

COMMISSIONER. A member of the Human Rights Commission.

COMMITTEE. The Covington Fair Housing Strategy Committee, consisting of the Neighborhood Services Coordinator, the Housing Development Director, the Section 8 Supervisor, and the EEO/ Contract Compliance Officer.

DISABLED INDIVIDUAL. Any person who:

(1) Has a physical or mental impairment that substantially limits one or more of the person's major life activities;

(a) **MAJOR LIFE ACTIVITIES** means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(b) **SUBSTANTIALLY LIMITS** means unable to perform a major life activity that the average person in

the general population can perform; or significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

(2) Has a record of the impairment; or

(3) Is regarded as having an impairment but 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).

DISCRIMINATION. Any direct or indirect act or practice of exclusion, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing or compelling thereof made unlawful under this chapter.

EMPLOYEE. Any person employed by an employer, but not including an individual employed by his or her parents, spouse, or child, or an individual employed to render services as a nurse, domestic, or personal companion in the home of the employer.

EMPLOYER. Any person who has eight or more employees in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such person.

EMPLOYMENT AGENCY. Any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any agent of such person.

FAMILIAL STATUS. One or more individuals who have not attained the age of 18 years being domiciled with:

(1) A parent or another person having legal custody of the individual or individuals; or

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

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

FINANCIAL INSTITUTION. Any person, as defined herein, engaged in the business of lending money or guaranteeing losses.

GENDER IDENTITY. Manifesting an identity not traditionally associated with one's biological maleness or femaleness.

HOUSING ACCOMMODATION.

(1) Any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous, located in the city, used for the building of one or more housing or rooming units or for mobile homes or mobile home parks owned by or otherwise subject to the control of one or more persons;

(2) Any real property, including vacant land intended for sale or lease, or any interest therein, located in the city; or

(3) Any single-family dwelling or multiple-family dwelling, or any portion thereof, including a housing unit or a rooming unit, or any interest therein, located in the city, which is used or occupied, or intended, arranged, assigned, or designated to be used or occupied, as the home, homesite, residence, or sleeping place of one or more persons.

HOUSING UNIT. A single room, suite of rooms, or apartment, containing cooking and kitchen facilities, occupied or intended for occupancy as living quarters, by a person, a family, or a group of persons living together.

LABOR ORGANIZATION. Any labor organization and an agent of such organization, including an organization of any kind, an 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 a conference, general committee, joint or system board, or joint counsel so engaged, which is subordinate to a national or international labor organization.

MEMBER OF HIS OR HER FAMILY. The owner and his or her spouse and any son, daughter, parent or grandparent of the owner or his or her spouse.

MINOR CHILD. A person under 18 years of age.

NATIONAL ORIGIN. The country where a person was born, or, more broadly, the country from which his or

her ancestors came. (Note: This chapter is designed to prevent discrimination against people based upon ethnic distinctions commonly recognized at the time of discrimination. National origin does not include the concept of United States regionalism.)

OWNER. A lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right of ownership or possession, or the right to sell, rent, or lease any housing accommodation.

PERSON or INDIVIDUAL. An individual and any group of one or more natural persons such as, but not limited to, labor unions, joint apprenticeship committees, partnerships, associations, corporations, unincorporated organizations, mutual companies, joint-stock companies, trusts, legal representatives, trustees, trustees in bankruptcy, receivers, any individuals acting in a financial or representative capacity, either appointed by a court or otherwise, the city and county or any of its agencies, and any other legal, governmental, or commercial entity, as well as a natural person or persons. **PERSONS**, when applied to any of the foregoing includes members, representatives, officers and directors.

PHYSICAL OR MENTAL DISABILITY. A physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded having such impairment. The term excludes current use of alcohol or drugs or other disabilities that prevent a person from acquiring, renting, or maintaining property, that would constitute a direct threat to the property or safety of others, or that would prevent performance of job responsibilities.

PLACE OF PUBLIC ACCOMMODATION, RESORT or AMUSEMENT and EXEMPTION. Any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds; except that a private club is not a place of public accommodation, resort or amusement if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests. The exemptions to a place of public accommodation, resort or amusement shall be the same as those contained in KRS 344.130.

PURCHASER. Includes any occupant, prospective tenant, assignee, prospective assignee, buyer, or any other person seeking the right of ownership or possession, or any agent of any of these.

RACE. A subdivision of mankind having a relatively constant set of physical traits, such as color of skin and eyes, stature, texture of hair, and so forth.

REAL ESTATE BROKER or REAL ESTATE SALESPERSON. An individual, whether licensed or not, who for a fee, commission, salary, or other valuable consideration or who with the intention or expectation of receiving or collecting consideration, lists, sells, purchases, exchanges, rents, or leases any housing accommodation, including options thereupon, or who negotiates, rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds oneself out as engaged in such activities; or who negotiates or attempts to negotiate a loan secured by a mortgage or other encumbrance on transfer of any housing accommodation or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby a person undertakes to promote the sale, purchase, exchange, rental, or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

REAL PROPERTY. Includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal.

ROOMING UNIT. Any room or group of rooms forming a single, habitable unit used for living or sleeping, but which does not contain cooking and kitchen facilities.

SEXUAL ORIENTATION. An individual's actual or imputed heterosexuality, homosexuality, or bisexuality.

(Ord. O-20-03, passed 4-29-03)

§ 37.03 HUMAN RIGHTS COMMISSION.

(A) The City of Covington Human Rights Commission is established. The Commission shall consist of nine members appointed by the city Board of Commissioners at a regular meeting for three-year terms, or a lesser term as necessary to stagger the terms, and shall include as much as practicable, members reflecting the various social, economic, ethnic, racial, and religious segments of the city.

(B) The Board of Commissioners may remove any member of the Human Rights Commission by majority vote for a conflict of interest violation, any other violation of applicable law, regulation or policy, nonattendance to duty, failure to attend three consecutive regularly scheduled meetings without a leave of absence approved by a majority of the Board or Commission, or any other cause.
(Ord. O-20-03, passed 4-29-03)

§ 37.04 FUNCTIONS OF THE HUMAN RIGHTS COMMISSION.

(A) The functions of the Human Rights Commission are to foster mutual respect and understanding and to create an atmosphere conducive to the promotion of amicable relations among all members of the city's community, to serve as a vehicle through which citizens can convey their suggestions on city policies with respect to social problems, to be sensitive to the social needs of citizens, and to advise and assist the city government in relating human and social services to the needs of the city residents. It is also the responsibility of the Commission to use due diligence to enforce the provisions of this chapter, to receive and investigate complaints of discrimination, and to seek the elimination of injustice created by discriminatory practices.

(B) In addition to other tasks that the Board of Commissioners may assign to it, the Commission shall:

(1) Study, prepare and recommend to the Board of Commissioners and City Manager a plan for long- and short-range priorities and specific legislation or programs to alleviate problems of human relations including programs administered by the city to promote better human relations.

(2) Upon request of the Board of Commissioners or the City Manager, or upon its own initiative, advise the Board of Commissioners or City Manager on the social and human relations impact of proposals to be acted upon by the Board of Commissioners, or upon areas to which the Board of Commissioners' attention should be directed.

(3) Develop and conduct programs and activities, alone or in cooperation with government agencies or community groups, designed to increase good will among citizens of the city, eliminate discrimination, and open new opportunities for all citizens in all phases of community life.

(4) Oversee and manage hearings and issue orders as provided for herein and in KRS 344.320.

(5) Advise, coordinate, and consult with the City Manager on programs and activities concerning the city's departments and the human rights ordinance and §§ 152.40 through 152.44 of this code, and complement and assist those programs and activities.

(6) Conduct public hearings and inquire into incidents of division and conflict on issues of human rights and attempt to correct them by issuing public reports and recommending to appropriate agencies, public and private, implementation of actions necessary or helpful to eliminate such division and conflict.

(7) Consider, investigate, study, and make recommendations regarding any contemplated or proposed action by any federal, state, or municipal government, or any agency or instrumentality thereof that may have an effect on human rights in the community.

(8) Investigate complaints of discrimination in the areas of public accommodations, employment, and housing outside of the jurisdiction of the Kentucky Commission on Human Rights.

(9) Investigate complaints of discrimination by employees toward other employees and the public.

(10) Foster mutual respect and understanding and create an atmosphere conducive to the promotion of peaceable relations among all members of the city.

(11) Study and document the effects of discrimination on the quality of life in Kenton County and the city.

(12) Compile regular reports on Commission functions and activities which must be submitted to the City Manager.

(13) Conduct regularly scheduled meetings to discuss Commission business.

(14) Initiate actions in Circuit Court or a court of competent jurisdiction to enforce the terms of its remedial orders.

(C) In addition to other tasks that the Human Rights Commission may pursue, the Commission may:

(1) Conduct training, workshops, and seminars on discrimination, sexual harassment, fair housing issues, the Americans with Disabilities Act, and education.

(2) Participate in community activities, such as Covington Housing Fair, Oktoberfest and the like, to educate the public about the role of the Human Rights Commission.

(3) Accept gifts or bequests, grants or other payments, public or private, to help finance its activities.

(Ord. O-20-03, passed 4-29-03)

§ 37.05 UNLAWFUL PRACTICES: SALE OR RENTAL OF PROPERTY.

In connection with any of the transactions set forth in this section, which affect any housing accommodation on the open market, or in connection with any public sale, purchase, exchange, rental or lease of any house accommodation, it shall be a prohibited, unlawful practice for a person, owner, financial institution, real estate broker, real estate salesperson, or any representative of the above to:

(A) Refuse to sell, purchase, exchange, rent or lease, or otherwise deny to or withhold any housing accommodation from a person because of his or her disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth;

(B) Discriminate against a person because of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth in the terms, conditions, or privileges of the sale, purchase, exchange, rental, or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith;

(C) Refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent, or lease any housing accommodation from or to a person because of his or her disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth;

(D) Refuse to negotiate for the sale, purchase, exchange, rental, or lease of any housing accommodation to a person because of his or her disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth;

(E) Represent to a person that any housing accommodation is not available for inspection, sale, purchase, exchange, rental, or lease when in fact it is so available, or to refuse to permit an individual to inspect any housing accommodation because of his or her disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth;

(F) Print, circulate, post, mail or cause to be printed, circulated, posted or mailed any notice, statement, or advertisement, or to announce a policy or to sign or to use a form of application for the sale, purchase, exchange, rental, lease, or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, exchange, rental, lease, or financing of any housing accommodation, which indicates, directly or indirectly, any discrimination or any intent to discriminate as it relates to a person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth;

(G) Offer, solicit, accept, or use a listing of real property for sale, purchase, exchange, rental, or lease with the understanding that an individual may be subjected to discrimination in connection with such sale, purchase, exchange, rental, or lease, or in the furnishing of facilities or services in connection therewith because of his or her disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth;

(H) To induce, directly or indirectly, or attempt to induce, directly or indirectly, the sale, purchase, exchange, rental, or lease or the listing for any housing accommodation by representing that the presence or anticipated presence of persons of any particular disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth in the area to be affected by such sale, purchase, exchange, rental, or lease will or may result in:

- (1) The lowering of property values in the area;
- (2) An increase in criminal or antisocial behavior in the area; or
- (3) A decline in the quality of the schools serving the area; or

(I) Make any misrepresentations concerning the listing for sale, purchase, exchange, rental, or lease or the anticipated listing for any of the above, or the sale, purchase, exchange, rental, or lease of any housing accommodation in any area in the city for the purpose of inducing or attempting to induce any such listing or any of the above transactions;

(J) Place a sign purporting to offer for sale, purchase, exchange, rental, or lease any housing accommodation that is not, in fact, so offered;

(K) Advertise for sale, purchase, exchange, rental, or lease any housing accommodation which is nonexistent

or which is not actually being offered;

(L) Engage in, hire to be done, or to conspire with others to commit threats or acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play on fear with the purpose of either discouraging or inducing or attempting to induce the sale, occupancy, purchase, exchange, rental, or lease, or the listing for any housing accommodation;

(M) To retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this chapter, or because he or she has filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or conference under this chapter;

(N) To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by this chapter, or to obstruct or prevent any person from complying with the provisions of this chapter;

(O) To obstruct or prevent a person from complying with the provisions of this chapter, or any order issued thereunder;

(P) To resist, prevent, impede, or interfere with the Human Rights Commission or any of its members or representatives or a hearing officer in the lawful performance of his, her, its, or their duty under this chapter;

(Q) To, by canvassing, do any of the unlawful practices prohibited by this chapter;

(R) To otherwise deny to or withhold any housing accommodation from a person because of his or her disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth; or

(S) To fail to reasonably accommodate a disabled person as required by the Federal Fair Housing Law and other state and federal law, as amended.

(Ord. O-20-03, passed 4-29-03)

§ 37.06 HOUSING EXEMPTIONS.

The provisions of this chapter, which prohibit discriminatory housing practices, other than the prohibition of discriminatory advertising, shall not apply to:

(A) The rental or lease of any housing accommodations in a building which contains not more than two families living independently of each other, if the owner or a member of his or her family resides in one of the housing accommodations;

(B) The rental or lease of any rooming units in a housing unit, if the owner or a member of his or her family resides in the housing unit;

(C) The rental or lease of any rooming units in a house in which the owner of the entire house or member of his or her family resides;

(D) 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, which limits the sale, lease, rental, occupancy, assignment, or sublease of housing accommodation that it owns or operates for other than commercial purposes to persons of the same religion, or from giving preference to those persons, unless membership in the religion is restricted on account of race, color, or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public that, as an incident to its primary purpose or purposes, provides lodging that it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of the lodging to its members or from giving preference to its members;

(E) A private individual homeowner disposing of his or her property through private sale without the aid of any real estate operator, broker, or salesperson and without advertising or public display, except that attorneys, escrow agents, abstractors, title companies, and other professional assistance may be utilized as necessary to perfect or transfer the title; or

(F) (1) Nothing in this chapter limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this title regarding familial status apply with respect to housing for older persons.

(2) As used in this section, **HOUSING FOR OLDER PERSONS** means housing:

(a) Provided under any program of a state or federal housing agency that is specifically designed and operated to assist elderly persons (as defined in the state or federal program);

(b) Intended for, and solely occupied by, persons 62 years of age or older; or

(c) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In

determining whether housing qualifies as housing for older persons under this division, state or federal housing agency regulations must require at least the following factors:

1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;
2. That at least 80% of the dwellings are occupied by at least one person 55 years of age or older per unit; and
3. 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.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(a) Persons residing in such housing as of the date of enactment of this chapter do not meet the requirements of applicable state, federal, and local housing regulations, provided that new occupants of such housing shall meet the age requirements of those regulations;

(b) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of applicable state, federal, and local housing regulations.

(G) 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.

(Ord. O-20-03, passed 4-29-03)

§ 37.07 UNLAWFUL PRACTICES: PUBLIC ACCOMMODATIONS.

(A) Except as otherwise provided herein, it is an unlawful practice for a person to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort, or amusement, as defined in § 37.02, as a result of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth, as defined herein.

(B) It is an unlawful practice for a person, directly or indirectly, to publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral, or visual communication, notice, or advertisement that indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort, or amusement will be refused, withheld, or denied an individual on account of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth, as defined herein, or that patronage of, or presence at, a place of public accommodation, resort, or amusement, of an individual, on account of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth, as defined herein, is objectionable, unwelcome, unacceptable, or undesirable.

(C) (1) It shall be an unlawful practice to deny an individual, because of disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth, as defined herein, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a restaurant, hotel, motel, or any facility supported directly or indirectly by government funds.

(2) The provisions of this division shall not apply to:

(a) Restrooms, shower rooms, bathhouses, and similar facilities, which are, by their nature, distinctly private;

(b) YMCA, YWCA, and similar dormitory-type lodging facilities;

(c) The exemptions contained in the definitions of **PLACE OF PUBLIC ACCOMMODATIONS**, **RESORT** or **AMUSEMENT** set forth in § 37.02;

(d) Hospitals, nursing homes, jails, penal or similar facilities, to require that men and women be in the same room.

(Ord. O-20-03, passed 4-29-03)

§ 37.08 UNLAWFUL PRACTICES: EMPLOYMENT.

(A) It is a prohibited, unlawful practice 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 his or her compensation, terms, conditions, or privileges of employment because of such individual's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity, as defined herein;

(2) To limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of the individual's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity; or

(B) It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity or to classify or refer for employment any individual on the basis of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity.

(C) It is an unlawful practice for a labor organization:

(1) To exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership because of that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity;

(2) To limit, segregate, or classify its 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 one's status as an employee or as an applicant for employment because of such individual's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity; or

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

(D) It is an unlawful practice 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 that person's disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity in admission to or employment in any program established to provide such apprenticeship, training, or retraining.

(E) It is an unlawful practice for any employer, labor organization, or employment agency to print, publish, or cause to be printed or published any notice, advertisement, classification, or referral for employment imposing any limitation, preference, or specification based on disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity, except that such notice, advertisement, classification, referral for employment may indicate such a limitation, preference, or specification based on disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation or gender identity when it is a bona fide occupational qualification for employment.

(F) Nothing herein shall be construed to prevent an employer from:

(1) Enforcing a written employee dress policy, or requiring an employee to dress in attire customarily worn by members of the employee's biological gender; or

(2) Designating appropriate restroom and shower facilities based on an employee's biological gender.
(Ord. O-20-03, passed 4-29-03)

§ 37.09 EMPLOYMENT EXEMPTION.

(A) Notwithstanding any other provisions of this chapter, it shall not be an unlawful practice for:

(1) An employer to hire and employ employees; or an employment agency to classify or refer for employment an individual; or a labor organization to classify its membership or to classify or refer for employment an individual; or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in any such program on the basis of his or her religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the particular

business or enterprise;

(2) A religious corporation, association, or society to employ an individual on the basis of his or her religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

(3) A school, college, university, or other educational institution to hire and employ individuals of a particular religion, if the school, college, university or other educational institution is, in whole or 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 the school, college, university, or other educational institution is directed toward the propagation of a particular religion, and the choice of employees is calculated by such organization to promote the religious principles for which it is established or maintained;

(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, if the differences are not the result of an intention to discriminate because of disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth, nor is it an unlawful practice for 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 disability, age, sex, race, color, religion, ancestry, national origin, sexual orientation, gender identity, familial status, marital and/or parental status and place of birth.

(B) The provisions of § 37.08 in regard to sexual orientation or gender identity shall not apply to a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised, or controlled by a religious corporation, association, or society.

(C) Any person who has eight or more employees in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such person shall be subject to the provisions of this chapter; businesses with seven or less employees shall be exempt.

(Ord. O-20-03, passed 4-29-03)

§ 37.10 ENFORCEMENT.

(A) Enforcement.

(1) The City Manager may appoint a person to assist the Human Rights Commission to carry out any or all of the duties, obligations, rights or powers under the provisions of this chapter. The job title shall be designated by the City Manager.

(2) The City Manager shall provide the Human Rights Commission with a monthly report of complaints received and the status of each complaint.

(3) Administration and enforcement of this chapter shall be as follows:

(a) Any person claiming to be aggrieved by a violation of this chapter may, within 90 days of the alleged violation or within 30 days of the dismissal of a charge or complaint concerning the same matter by another governmental agency or state or federal court without a final judgment on the merits, whichever last occurs, file a written complaint under oath with the City Manager. The City Manager may designate an agent to fulfill the duties and procedures outlined herein.

(b) A person who has filed a complaint with the Human Rights Commission, and whose complaint is pending shall provide written notice to the Human Rights Commission within five business days of the filing of any complaint or charge on his or her behalf with another agency or state or federal court that seeks relief or damages for the same alleged violation(s) arising from the same transaction(s) or occurrence(s) upon which the person seeks relief hereunder. Upon receiving notice of the other charge or complaint, the Human Rights Commission shall have discretion to dismiss the complaint filed hereunder. The failure to provide such notice in a timely manner may result in the immediate dismissal of the complaint filed herein. The complaint shall state:

1. The name and address (if known) of the alleged violator, or facts sufficient to identify such person.
2. An outline of the material facts upon which the complaint is based.
3. The alleged violation.
4. That any conduct of the complainant was for the purpose of obtaining the housing, employment, or public accommodation in question and not for the purpose of harassment or entrapment of the person against

whom the complaint is made.

5. That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without a final judgment on the merits.

(c) The City Manager shall furnish a copy of the complaint to the person against whom the complaint is made.

(d) Before conducting a full investigation of the complaint, the City Manager may attempt to negotiate a settlement of the dispute between the parties, if the City Manager deems that such an attempt is practicable.

(e) If the City Manager does not deem it practicable to attempt a pre-investigation settlement or if such settlement attempt is unsuccessful, the City Manager shall conduct an investigation to determine whether there is probable cause to believe the allegations of the complaint.

(f) If the City Manager determines that there is no probable cause, the City Manager shall dismiss the complaint. Written notice of the dismissal shall be served upon the complainant by U.S. Mail postage prepaid. The notice shall state that complainant or his or her designee may request a hearing before a hearing officer of the Human Rights Commission, in writing, within 14 days and shall include a hearing request form with instructions as to how to file that request.

(g) If the City Manager determines that there is sufficient basis in fact to support the complaint, the City Manager shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the City Manager, wherein the alleged violation is eliminated and the complainant is made whole to the greatest extent practicable.

(h) The City Manager shall furnish a copy of such signed conciliation agreement to the complainant and the person charged. The terms of the conciliation agreement may be made public, but no other information relating to any complaint, its investigation, or its disposition may be disclosed without the consent of the complainant and the person charged.

(i) A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred.

(j) A conciliation agreement may provide for dismissal of the complaint without prejudice.

(k) The Human Rights Commission shall have discretion to approve, modify, or reject the conciliation agreement. If the conciliation agreement is modified or rejected, any interested party shall be entitled to a request to pursue further reconciliation or other remedial action as provided herein.

(4) The City Manager shall have 30 days from the filing of the complaint to attempt to eliminate the alleged violation by conciliation agreement. In the event that either the complainant or the person or entity charged indicates an unwillingness to participate in the conciliation process or in the event that no conciliation process or no conciliation agreement has been reached within the time provided, the City Manager shall refer the complaint for hearing. The City Manager may continue attempts to reach a conciliation agreement after referral of the complaint for hearing.

(5) The City Manager shall set a date for a hearing and notify the complainant and the person or entity charged in writing at least ten days in advance of that hearing date.

(B) Hearings.

(1) A hearing officer shall be appointed by the City Manager to preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner that will promote the orderly and prompt conduct of the hearing. The hearing officers shall be attorneys licensed to practice law in the Commonwealth of Kentucky.

(2) To the extent necessary for the full disclosure of all relevant facts and issues, a hearing officer shall afford all parties the opportunity to respond, present documentary or tangible evidence, conduct cross-examination, and submit rebuttal evidence. The hearing officer shall supervise and determine what discovery will be appropriate, including but not limited to interrogatories, requests for production of documents, and depositions.

(3) Any party to an administrative hearing may participate in person and/or be represented by counsel.

(4) If a party fails to attend or participate in a hearing, the hearing officer may adjourn the proceedings and issue a default order.

(5) Hearings shall be conducted in accordance with KRS 13B.080 and KRS 13B.090 unless otherwise

provided herein.

(a) Notwithstanding the above, the hearing officer may receive additional evidence as he or she deems proper.

(b) Discovery of materials shall be completed at least 14 days prior to the hearing.

(c) The hearing officer shall receive only relevant and material evidence.

(d) All evidence shall be presented in the presence of the hearing officer.

(6) In an administrative hearing, findings of fact shall be based exclusively on the evidence in the record. The strict rules of evidence governing civil proceedings shall not apply; however, the hearing officer will abide by the general principles of evidence in an effort to conduct a rational and reasonable investigation to seek the truth of the matter. All findings of fact shall be based upon a preponderance of the evidence. The order of proof shall be that set forth in the Kentucky Rules of Civil Procedure. The hearing officer shall have the discretion to grant a continuance or continue a hearing in progress on a showing of good cause.

(7) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party, or if such practice is authorized by statute. Any party shall have the right to inspect the documentary or tangible evidence relating to an administrative hearing either in person or by counsel. Copies of documentary evidence may be obtained upon the payment of a fee, except documents protected from disclosure by state or federal law.

(8) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(9) A hearing officer may take official notice of any matter of which a court of the Commonwealth of Kentucky may take such notice.

(10) The hearing officer may order the removal of a person who exhibits disruptive behavior that interferes with the proceedings.

(11) A hearing officer shall cause all testimony in a hearing to be accurate and completely recorded. Any person, upon request, may receive a copy of the recording. A hearing officer may prepare a transcript of a hearing upon request, but the party making the request shall be responsible for the cost thereof.

(12) Within a reasonable time after the conclusion of the hearing, the hearing officer shall issue a written order that shall include findings of fact, conclusions of law, and final disposition of the hearing. A copy of the order shall be sent to each party, the City Manager, and the Human Rights Commission.

(C) Enforcement of orders.

(1) Upon receipt of a written order from the hearing officer finding no violation of this chapter, the Human Rights Commission shall enter an order dismissing the complaint. Upon receipt of a written order from the hearing officer finding a violation of this chapter, the Human Rights Commission may issue one or more of the following orders:

(a) An order directing the person or entity found to have violated this chapter to cease and desist from the discriminating practice.

(b) For three or more willful violations, an order suspending or terminating the occupational license of a person or entity found to have violated this chapter. In determining whether to suspend or terminate a license under this section, the Human Rights Commission will consider equitable factors, including but limited to the following potential mitigating factors: whether the owner of the business had knowledge of the violations; the time between the violations; whether corrective measures were undertaken; whether three or more violations occurred in connection with a single transaction or occurrence affecting multiple complaints from various parties; or whether the violations are discrete incidents that fail to indicate a systemic intent to discriminate.

(c) For three or more willful violations, an order suspending or terminating the license to operate residential rental property of a person or entity found to have violated this chapter.

(d) An order subjecting any person or entity found to have violated this chapter to civil penalties of not less than \$100 or more than \$250.

(2) Upon entering its order, the Human Rights Commission shall send a copy of its order to all parties to the complaint by U.S. Mail postage prepaid.

(D) Appeals.

(1) The orders of the Human Rights Commission, and the findings and conclusions upon which it was based, may be appealed to Kenton County Circuit Court within 30 days of the Commission's order.

(2) Any respondent or complainant aggrieved by an order of the Commission, or any complainant

aggrieved by an order of dismissal of his or her complaint by the Commission, may obtain a review of such order in the Circuit Court by filing with the Clerk of Court, within 30 days after service on he or she of the order, a written petition praying that such order be modified or set aside, and by serving a duplicate copy of the petition on the Commission, the City Manager, and the other parties to the complaint.

(E) *Enforcement by civil action.* The city may enforce the orders of the Human Rights Commission or the terms of any conciliation agreement by a civil action in a court of competent jurisdiction. Violations may be subject to abatement by restraining order or injunction. Such civil enforcement shall be in addition to any other penalty imposed by this code. The city shall be entitled to recover all court costs and reasonable attorney fees incurred by it in enforcing any provision of this chapter by civil action.

(Ord. O-20-03, passed 4-29-03)

§ 37.11 CONSEQUENCES OF DEFAULT.

(A) **DEFAULT**, as used herein, is defined as:

(1) The failure of a respondent to appear at a hearing.

(2) Any act, counsel, deliberate omission, communication, signal, or the like, direct or indirect, made or done by a respondent or any of his or her agents or attorneys on his or her behalf, which:

(a) Induces or helps to induce a person other than the respondent to refrain from testifying before, discussing a matter with, or misrepresenting any fact to the hearing officer, or to frustrate adjustments; or

(b) Frustrates or attempts to frustrate adjustments, or causes the misrepresentation of a fact to the hearing officer.

(B) Whenever the hearing officer decides by clear and convincing evidence that a default has occurred, it shall serve upon the respondent so charged an order of default against him or her. The making of such an order entitles the hearing officer to make findings of fact sustaining the averments of the complaint without resort to testimony.

(Ord. O-20-03, passed 4-29-03)

§ 37.12 FINDINGS OF FACT; CONCLUSIONS OF LAW.

(A) Findings of fact and conclusions of law shall be made after all hearings have ended in a matter before the hearing officer and they shall be in the style prescribed in Rule 52.01 Kentucky Rules of Civil Procedure. Findings of fact made as a consequence to a default need merely recite the averments of the complaint are true because of the default. Conclusions of law must accompany findings of fact made upon a default.

(B) Based upon the findings of fact and conclusions of law, the hearing officer shall, as to each respondent, either recommend dismissal of the complaint on the merits or refer the matter to the Commission to issue an order to the respondent to cease and desist from the prohibited discriminatory practice or practices and take such affirmative action as detailed in KRS 344, Title VIII of the Federal Civil Rights Act as amended, or this chapter, as the Commission deems necessary to remedy the violation and to prevent its continuation or recurrence. All Commission orders made under these rules shall be served upon each claimant and respondent affected by the order.

(Ord. O-20-03, passed 4-29-03)

§ 37.13 FURTHER REMEDY.

(A) In addition to any remedial order or civil penalty, if the Commission finds that any person has committed an unlawful practice with regard to housing, as defined in this chapter, it may subject such person to a fine not greater than civil penalties established by the Federal Fair Housing Act in section 812. The Commission may, if such person refuses to pay the fine, file an action in the Kenton Circuit Court for the collection thereof.

(B) If a real estate broker, a real estate salesman, or an employee thereof has failed to comply with any order issued by the Commission, or has been found to have committed an unlawful housing discrimination practice in violation of this chapter, the Commission shall so notify in writing the Real Estate Commission of the Commonwealth of Kentucky.

(Ord. O-20-03, passed 4-29-03)

§ 37.14 OBSTRUCTION AND RETALIATION.

(A) It shall be a prohibited, unlawful practice for any person:

(1) To retaliate in any manner against a person because he or she has opposed a practice declared unlawful by this chapter or because he or she has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, hearing, or conference before the City Manager, hearing officer, or Commission under this chapter;

(2) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this chapter or to obstruct or prevent any person from complying with the provisions of this chapter;

(3) To obstruct or prevent a person from complying with the provisions of this chapter, or any order of the Commission issued thereunder; or

(4) To resist, prevent, impede, or interfere with the City Manager, the hearing officer, or the Commission or any of its members or representatives in the lawful performance of his, her, its, or their duty under this chapter.

(B) Complaints filed with the Commission under this section shall be processed in conformity with §§ 37.04*et seq.*

(C) This section shall not be construed to impose individual or personal liability on owners, supervisors, or employees in the event of alleged employment discrimination or retaliation.

(Ord. O-20-03, passed 4-29-03)

§ 37.15 FRIVOLOUS CONDUCT.

(A) (1) It shall be a violation of this chapter for a party to engage in frivolous conduct.

(2) **FRIVOLOUS CONDUCT** shall mean conduct that serves to harass or maliciously injure another party, such as, but not limited to, filing a false or misleading claim or defense; or filing a complaint or asserting a defense that is not warranted under existing law and that cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(B) Upon a finding by a hearing officer or a court that frivolous conduct has occurred, the hearing officer or court may award reasonable attorney's fees and costs to the Human Rights Commission and/or the non-violating party against the party who has engaged in such frivolous conduct.

(Ord. O-20-03, passed 4-29-03)