

## **ORDINANCE NO. 6820**

### **HUMAN RIGHTS COMMISSION**

#### **§ 33.10 DEFINITIONS.**

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

“AFFIRMATIVE ACTION” shall mean those acts that the Commission and the City determines necessary to assure compliance with the Kokomo Human Rights Ordinance.

“COMMISSION” shall mean the Kokomo Human Rights Commission.

“COMMISSION ATTORNEY” shall mean the City of Kokomo’s Corporation Counsel, or such other attorneys as may be engaged by the Commission.

“COMPLAINANT” shall mean:

- (1) Any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice; or
- (2) The person who files a complaint charging that a discriminatory practice was committed against a person other than himself or a class of people in order to vindicate the public policy of the City as defined in this subchapter.

“COMPLAINT” shall mean any written grievance filed by a complainant with the Commission. The original shall be signed and verified before a notary public or other person authorized by law to administer oaths and take acknowledgments. Notary service shall be furnished by the Commission without charge. To be acceptable by the Commission, a complaint shall be sufficiently complete so as to reflect properly:

- (1) The full name and address of the complainant;
- (2) The name and address of the respondent against whom the complaint is made;
- (3) The alleged discriminatory practice and a statement of particulars thereof;
- (4) The date or dates and places of the alleged discriminatory practice and if the alleged discriminatory practice is of a continuing nature the dates between which continuing acts of discrimination are alleged to have occurred; and
- (5) A statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance alleged in the complaint, together with a statement as to the status or disposition of the other action.

No complaint shall be valid unless filed within one (1) calendar year from the date of the occurrence of the alleged discriminatory practice or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or labor union.

“CONSENT AGREEMENT” shall mean a formal agreement entered into by the parties in lieu of adjudication.

“DIRECTOR” shall mean the director of the Kokomo Human Rights Commission.

“DISABLED” or “DISABILITY” shall mean with respect to an individual:

- (1) a physical or mental impairment that substantially limits at least one (1) of the major life activities of the individual;
- (2) a record of an impairment described in subdivision (1); or
- (3) being regarded as having an impairment described in subdivision (1).

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” shall mean any difference in treatment based on race, color, religion, sex, national origin, ancestry, disability, sexual orientation, gender identity, Veteran status, marital status, familial status, or age and shall include segregation, except that it shall not be discrimination for any religious or denominational institution to prefer members of its own religion or denomination.

“DISCRIMINATORY PRACTICE” shall mean:

- (1) The exclusion of a person from equal opportunities or a system which excludes persons from equal opportunity in employment, education, public conveniences, and accommodations because of race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age;
- (2) The refusal to sell or rent after the making of a bona fide offer; the refusal to negotiate for the sale or rental or otherwise making unavailable or denying, or otherwise discriminating against any person in the terms, conditions, privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental of a dwelling because of a person’s race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age;
- (3) Advertising for the sale or rental of a dwelling in a manner that indicates any preference, limitation, or discrimination because of race, religion, color, sex, familial

status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age;

- (4) Falsely representing that a dwelling is not available for inspection, sale or rental based on race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age;
- (5) Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise of enjoyment of any right granted or protected by the provisions of this chapter;
- (6) Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age;
- (7) Discrimination because of race, religion, color, sex, familial status, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, or age by persons or entities whose business includes engaging in residential real estate transactions in the making of a loan or the granting of financial assistance for residential real estate, in the selling, brokering or appraisal of residential real estate, or by the denial of access to or participation in a multiple-listing service or other real estate broker organization or services;
- (8) The promotion of racial segregation or separation in any manner, including but not limited to, the inducing or attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, handicap/disability, familial status, national origin or ancestry; or
- (9) A violation of state statutes relating to civil rights, age discrimination, fair housing, or employment discrimination against disabled persons unless specifically exempted by this subchapter or state statutes.

“DWELLING” shall mean:

- (1) Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one (1) or more families; or
- (2) Any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described by subdivision (1).

“EDUCATIONAL INSTITUTION” shall mean all public and private schools and training centers except those affiliated with religious institutions, only insofar as they may give preference to members of their religious group in selecting their students.

“EMPLOYEE” shall mean any person employed by another for wages or salary. However, the term does not include any individual employed

- (1) By his or her parents, spouse or child; or
- (2) In the domestic service of any person.

“EMPLOYER” shall mean the City of Kokomo, or any department thereof, and any person employing six (6) or more employees within the City; the term shall not include:

- (1) Any bona fide private membership club (other than a labor organization) which is except from taxation under Section 501(c) of the Internal Revenue Code of 1954;
- (2) Any school, educational or charitable institution owned or conducted by or affiliated with a church or religious institution; or,
- (3) Any office, board, commission, department division, bureau, committee, fund, agency, and, without limitation by reason of any enumeration herein, any other instrumentality of the State of Indiana, any hospital, any penal institution and any other institutional enterprise and activity of the State of Indiana, wherever located; the universities supported in whole or in part by State funds; and the Judicial Department of the State of Indiana.

“EMPLOYMENT AGENCY” shall mean any person, corporation, partnership, or association undertaking with or without compensation to procure, recruit, refer, or place employees.

“FAMILIAL STATUS” shall mean that the person who is the subject of discrimination is:

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

“GENDER IDENTITY” shall mean an individual having or being perceived as having a gender-related self-identity, self-image, appearance, expression or behavior different from those characteristics traditionally associated with the individual’s assigned sex at birth.

“LABOR ORGANIZATION” shall mean any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or for other mutual aid or protection in relation to employment.

“MARITAL STATUS” shall mean a person’s state of being single, married, separated, divorced, or widowed.

“PROTECTED CLASS” shall mean those characteristics of a person that cannot be targeted for discrimination and include race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, familial status, and age.

“PERSON” shall mean one (1) or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, mutual companies, joint-stock companies, unincorporated organizations, receivers, fiduciaries, and other organized groups of persons.

“PUBLIC ACCOMMODATION” shall mean any establishment, organization, or authority that caters or offers its services or facilities or goods to the general public, including, but not limited to, motels, hotels, theatres, stores, public restaurants, public library services, and public recreational services and facilities.

“RELIGIOUS OR DENOMINATIONAL INSTITUTION” shall mean an institution which is operated, supervised, or controlled by a religious or denominational organization.

“RESPONDENT” shall mean any person against whom a charge is filed.

“SEX” shall mean as it applies to segregation or separation in this section applies to all types of employment, education, public accommodations and housing. However:

- (1) It shall not be a discriminatory practice to maintain separate rest rooms;
- (2) It shall not be an unlawful employment practice for an employer to hire and employ employees; for an employment agency to classify or refer for employment any individual; for a labor organization to classify its membership or to classify or refer for employment any individual; or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

It shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one sex only.

“SEXUAL ORIENTATION” shall mean an individual’s actual or perceived identity or practice as a lesbian woman, gay man, bisexual person or heterosexual person.

“TO RENT” shall include to lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

“VETERAN STATUS” shall mean:

- (1) A veteran of the armed forces of the United States;
- (2) A member of the Indiana National Guard; or
- (3) A member of a reserve component.

### **§ 33.11 ESTABLISHMENT.**

For provisions concerning the Human Rights Commission, see § 30.53.

### **§ 33.12 MEMBERS.**

(A) Appointment. The Human Rights Commission shall consist of seven (7) members, four of whom shall be appointed by the Mayor and three of whom shall be appointed by the Common Council. The Commissioners shall be broadly representative of the religious, racial, ethnic, economic, educational, and other groups existing within the community.

(B) Term. The term of the initial commissioners will be staggered with four of the commissioners being appointed for three year terms; four for two year terms; and three with a one year term. All subsequent appointments will be for a fixed term of office of three years. No commissioner may be reappointed to the Human Rights Commission until the expiration of one calendar year from the termination date of their previous appointment.

(C) Removal. Members of the Human Rights Commission may be removed by the Mayor with the consent of the Common Council.

(D) Compensation. The members of the Human Rights Commission shall serve without compensation, although they may be reimbursed for out of pocket expenses incurred in the performance of their duties.

### **§ 33.13 FILLING VACANCIES.**

In the event of the death, resignation, or removal of any member of the Human Rights Commission, a successor shall be appointed by the Mayor with the advice and consent of the Common Council to serve for the unexpired period of the term for which such member had been appointed. Members of the Commission may be removed by the appointing authority for just cause.

**§ 33.14 MEETINGS.**

The Human Rights Commission shall hold one (1) regular meeting each month and such special meetings as the chairperson may deem necessary.

**§ 33.15 MAJORITY VOTE REQUIRED.**

A majority vote of all the members of the Human Rights Commission shall be required for there to be any official action by it.

**§ 33.16 OFFICERS.**

The Human Rights Commission shall elect from its membership once each year a chairman, vice-chairman, and secretary.

**§ 33.17 PRINCIPAL OFFICE; EXPENSES OF COMMISSION.**

(A) The Human Rights Commission shall establish a principal office in the City, but it may meet and exercise any or all of its powers at any other place in any part of the City.

(B) The expenses for carrying on the Human Rights Commission's activities shall be budgeted for and paid out of the funds in the city treasury and appropriated by the Common Council for such purposes pursuant to the laws of the state.

**§ 33.18 UNLAWFUL DISCRIMINATORY PRACTICES.**

(A) Purpose

It is the public policy of the City of Kokomo to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property including, but not limited to, housing, and to eliminate segregation or separation based on race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, marital status, familial status, and age, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property including, but not limited to, housing are hereby declared to be civil rights. The exclusion of a person from or failure or refusal to extend to a person equal opportunities because of a protected class status or the promotion of racial segregation in any manner, is hereby declared to be unlawful discriminatory practices and is hereby declared to be illegal.

(B) Prohibited Conduct

(1) No person shall discriminate against any other person in education, employment, access to public conveniences and accommodations based on a protected class status. Such discrimination or denial of equal opportunity shall be an unlawful practice.

(2) Unlawful discriminatory practices shall include, but are not limited to, the following:

(a) Housing.

i. It is an unlawful discriminatory practice for a person to violate fair housing provisions as set forth in the City Fair Housing Code, Chapter 151 of this code of ordinances, adopted by the Common Council on July 25, 1994, or state or federal statutes regulating fair housing practices.

(b) Financial. It is an unlawful discriminatory practice for a financial institution or an individual employed by or acting on behalf of a financial institution as set forth in the city's Fair Housing Code:

i. To use a form of application for financial assistance or to make or keep a record of inquiry in connection with applications for financial assistance which indicates directly a limitation, specification or discrimination as to a protected class status or, an intent to make such a limitation, specification or discrimination;

ii. To discriminate because of a protected class status against any applicant in the fixing of amount, interest rate, duration or other terms or conditions of a loan or other financial assistance, or to make a lower appraisal evaluation because of a protected class status of any applicant.

(c) Employment. It is discrimination for an employer:

i. To fail or refuse to hire, promote or upgrade, or to discharge any individual, or otherwise to discriminate against any individuals with respect to their compensation, tenure, terms, conditions or privileges of employment, because of such individual's protected class status;

ii. To limit, segregate or classify their employees in any way which would deprive or tend to deprive any individuals of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's protected class status;



- iii. To publish or cause to be published any notice or advertisement with respect to employment which indicates any specification, limitation, preference or discrimination based on a protected class status; or
- iv. To fail to provide reasonable accommodation for an otherwise qualified disabled employee or prospective employee, unless an employer can demonstrate that the accommodation would impose an undue hardship on the conduct of an employer's business.

(d) Labor organizations. It is discrimination for a labor organization:

- i. To exclude or to expel from its membership, or otherwise to discriminate against, any members or applicants for membership because of their protected class status;
- ii. To limit, segregate or classify its membership, or to classify or fail or refuse to refer for employment any individuals, in any way which would deprive or tend to deprive these individuals of employment opportunities or otherwise adversely affect their status as employees or as applicants for employment, because of such individual's protected class status;
- iii. To cause or attempt to cause an employer to discriminate against an individual in violation of this action; or,
- iv. To discriminate against any individuals or to limit, segregate or qualify its membership in any way which would tend to deprive such individuals of employment opportunities, or would limit their employment opportunities or otherwise adversely affect their status as employees or as applicants for employment or would affect adversely their wages, hours of employment conditions because of such individual's protected class status.

(e) Apprenticeship or training. It is an unlawful discriminatory practice for an employer, labor organization or joint labor management committee controlling apprenticeship or apprentice training or retraining, including on-the-job training programs, to discriminate against any individuals because of a protected class status in admission to, or employment in, any program established to provide apprenticeship or other training.

(f) Employment agencies. It is an unlawful discriminatory practice for an employment agency to fail or refuse to classify properly, refer for employment, or otherwise, to discriminate against any individual because of his protected class status, or to conduct business under a name which directly or indirectly expresses any limitation, specification, or discrimination, as to a protected class status.

(g) Public accommodations. It is an unlawful discriminatory practice for any person who is the owner, lessor, proprietor, manager, superintendent or employee of any place of public accommodation, or amusement:

- i. To discriminate against any person because of such individual's protected class status, by refusing, withholding or denying to such person any of the services, accommodations or amusement, in any manner that conflicts with state or federal statutes.
- ii. To publish, circulate, issue, display, post or mail, directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the services, accommodations, advantages, facilities or privileges of any place of public accommodations, or amusement, will be refused, withheld or denied to any person on account of his/her protected class status, or that the patronage of any person of any protected class is unwelcome, objectionable or not acceptable.

(h) Educational institutions. It is an unlawful discriminatory practice for any educational institution to deny admittance to any prospective student or enrollee, or to deny any service offered by such institution to any person, otherwise qualified for such service, on the ground of his/her protected class status.

(i) Other unlawful practices.

- i. It is an unlawful discriminatory practice for any person, including but not limited to, any employer, employment agency, labor organization, educational institution, financial institution or any owner or any real estate operator to discharge, expel or penalize any individuals in any manner because they have filed a complaint, assisted or participated in any manner in an investigation, proceeding, or hearing under this subchapter.
- iii. It is an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any act declared unlawful by this subchapter;
- iv. It is an unlawful discriminatory practice for any person to knowingly obstruct the fair, equal and lawful enforcement of this subchapter by coercing or intimidating any complainant or prospective complainant, or any witness to any act made unlawful herein, or by destroying or altering any records, documents or other evidence relevant to any alleged unlawful discriminatory practice as defined herein, after such person had received actual notice of a discrimination complaint or has been served with notice of a complaint filed.

(C) Exceptions

- (1) Protections herein against discriminatory practices with regard to sexual orientation or gender identity shall not apply to decisions of an employer which is a religious society or order, association, organization, institution or related entity or business when such protections affect the definition, advancement of the mission(s), practice(s) or belief(s) of such religious society or order, association, organization, institution or related entity or business charged with the implementation of such decision or decisions, and no requirement of this Article shall compel any person to act in a manner contrary to that which has been granted specific protection by the United States Supreme Court in *Boy Scouts of America and Monmouth Council, et al. v. Dale*, 530 U.S. 640 (2000).
- (2) The protections in this Article against discriminatory practices regarding sexual orientation or gender identity in employment shall not be construed to require that health care plans, insurance, pension, or similar additional benefits provided by employers and benefiting the spouses of employees be extended to non-married domestic partners of any employee.
- (3) The denial of housing rights and opportunities based on familiar status as prohibited by this article shall not apply to housing intended for and solely occupied by persons over sixty-two (62) years of age or older or which is designed and operated to assist elderly persons under a federal or state program.

If there are persons living in such housing under age sixty-two (62), this exception applies provided that:

- i. All occupants after September 13, 1988 are at least sixty-two (62) years old;
- ii. Any unoccupied units are reserved for occupancy by persons at least sixty-two (62) years old; and
- iii. Any persons under age sixty-two (62) occupying said housing after September 13, 1988 are employees of the housing and their family members residing in the same unit, and such employees perform substantial duties directly related to the management or maintenance of the housing.

The determination of whether any housing unit falls within the exception created by this section shall be made by the Commission and shall be consistent with any determinations already made by the Secretary of Housing and Urban Development.

### **§ 33.19 POWERS AND DUTIES.**

The Human Rights Commission shall have the power to:

- (A) Formulate and promulgate a mission statement embodying the purposes of the commission, to-wit; promoting diversity and improving quality of life within the City;
- (B) Recommend to the Mayor for appointment an executive director, or such personnel as it may deem necessary, and to prescribe their duties.
- (C) Adopt, promulgate, amend and rescind such rules and regulations, procedural and substantive, as may be consistent with the provisions of this chapter and state laws. Such rules and regulations shall be adopted in accordance with the provisions of this chapter as it may hereafter be amended.
- (D) Formulate policies to effectuate the purposes of this chapter and make recommendations to the City to effectuate such policies. The several departments, commissions, boards, authorities, divisions, and officers of the City may furnish the Commission, upon its request, all records, papers, and information in their possession relating to any matter before the Commission.
- (E) Receive and investigate complaints of discriminatory practices. The Commission shall not hold hearings in the absence of a complaint as herein defined. All investigations of complaints shall be conducted by staff members of the Commission.
- (F) Issue such publications and such results of investigations and research which in its judgment will tend to minimize or eliminate discrimination because of race, color, religion, sex, disability, national origin, ancestry, sexual orientation, gender identity, Veteran status, familial status, marital status, or age.
- (G) Prepare and issue a report annually to the Common Council and Mayor, describing in detail the investigation and conciliation proceedings it has conducted and their outcomes, the progress made and any other work performed and achievements towards the elimination of discrimination.
- (H) Prevent any person from discharging, expelling or otherwise discriminating against any other person because he filed a complaint or has testified in any hearing before this Commission, or has in any way assisted the Commission in any matter under investigation.
- (I) Appoint hearing officers, hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any such person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the Commission. The Commission shall have the exclusive power to subpoena, but it shall consult with the Department of Law

concerning the issuance of a subpoena. The Department of Law may veto the issuance of a subpoena if and only if such an issuance would be an abuse of the Commission's subpoena power. Abuse of the Commission's subpoena power shall include, but not be limited to, use of such subpoena power for harassment purposes, issuance of a subpoena for information clearly irrelevant to the investigation being conducted, and issuance of a subpoena for information over an excessively broad span of time. Contumacy or refusal to obey a subpoena issued pursuant to this section shall constitute a contempt. All hearings shall be held within the City of Kokomo at a location determined by the Commission. A citation of contempt may be issued upon application by the Commission to the Circuit or Superior Court, or judge thereof, in the County in which the hearing is held or in which the witness resides or transacts business.

- (J) Reduce the terms of conciliation agreed to by the parties in a consent agreement, which the parties and a majority of the Commissioners shall sign and when so signed, the consent agreement shall have the same effect as a final decision of the Commission. If the Commission determines that a party to a consent agreement is not complying with the agreement, the Commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is subject to the Commission's jurisdiction.
- (K) Institute actions in the Howard County Superior or Circuit Court for appropriate or equitable relief.
- (L) Conduct programs and activities to carry out the public policy of the State, as provided in state statutes, within the City's territorial boundaries;
- (M) Develop and perform such activities as will assist the city's compliance as a Community Development Block Grant grantee and with federal regulations and guidelines to affirmatively further fair housing in the city and keep adequate documentation of such activities;
- (N) Subject to the provisions of the Indiana Open Records law, declare materials acquired in the course of an investigation to be confidential and to maintain the confidentiality thereof;
- (O) Retain all materials, papers, documents, reports and other records produced in the course of an investigation for at least two years after a complaint has been administratively closed by the Commission, whereupon, subject to the provisions of state law concerning public records, such materials, papers, documents, reports, and other records may be disposed;
- (P) Accept contributions, grants, and gifts from sources other than the city to carry on its work generally or for a particular function; and
- (Q) Recommend to the Mayor and the Common Council legislation to aid in carrying out the purposes of this subchapter.

### **§ 33.20 PROCEDURE; ENFORCEMENT.**

- (A) No complaint may be accepted by the Commission unless it substantially complies with the following requirements:
- (1) The complaint must sufficiently show the full name and address of the complainant; the full name and address of the person, employer, employment agency, labor organization, real estate broker, financial institution or educational institution against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates of the alleged discriminatory practice, or, if the alleged discriminatory practice is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal instituted in any other forum based upon the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action.
  - (2) The original complaint must be signed and verified before a notary public or any other person duly authorized by law to administer oaths and take acknowledgments. Notice of the complaint, including the date, place and circumstances of the alleged unlawful discrimination, shall be served upon the respondent within ten days of the filing of the complaint with the Commission.
  - (3) No complaint shall be valid unless filed within 90 days from the date of the occurrences of the alleged discriminatory practice.
- (B) The Commission shall make a prompt and full investigation of each complaint that is properly filed. The Commission may, by its rules and regulations, authorize such an investigation by an individual commissioner, by any committee or subcommittee of the Commission, by the director of the Commission, or by such staff members of the Commission as may be designated by the Commission.
- (C) If a subcommittee composed of three commissioners determines that probable cause exists for the allegations made in the complaint, it shall first attempt to resolve the alleged discriminatory practice by means of conciliation. The subcommittee shall not make public the details of any conciliation and/or consent agreement except when so authorized by the person against whom the complaint was made, or when a party to the conciliation and/or consent agreement has not complied with the agreement. The members of this subcommittee will not later sit as members at any subsequent public hearing in the same case.

- (D) If the subcommittee determines, either on the face of the complaint or after investigation, that said complaint should be dismissed, the subcommittee shall dismiss the complaint and notify the parties by mail of its determination and of the complainant's rights to apply to the Commission for a reconsideration of such dismissal as provided in these rules.
- (E) In any case of failure to resolve the alleged discriminatory practice charged in the complaint by means of conciliation or persuasion, the Commission, with at least five (5) members being present, shall hold a public hearing to determine whether or not an unlawful discriminatory practice has been committed. The Commission shall serve upon the respondent a statement of charges made in the complaint and a notice of the time and place of the hearing. The hearing shall be held not less than sixty (60) days after the service of the statement of charges issued by the Commission. The respondent shall have the right to file an answer to the statement of charges within thirty (30) days of receiving it, to appear at the hearing in person or to be represented by an attorney or any other person and to examine and cross-examine witnesses.
- (F) Complaints may be amended at any time prior to the hearing provided that no hearing may be held on an amended complaint within 15 days after the filing of such amended complaint and no less than five days after notice of the amended complaint is served on the adverse party therein.
- (G) Service may be achieved by any of the means authorized in the Indiana Trial Rules.
- (H) If, upon all the evidence presented, the Commission finds that the respondent has not engaged in any unlawful discriminatory practice, it shall state in writing its findings of fact, dismiss the complaint and so notify respondent.
- (I) If after all the evidence presented the Commission finds that respondent has engaged in an unlawful discriminatory practice, it shall issue its findings of fact and may cause to be served on the respondent an order requiring such person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power to restore the complainant's losses incurred as a result of discriminatory treatment, including the awarding of damages as provided at I.C. 22-9-1-12.1, as the Commission may deem necessary to assure justice. The Commission may require the posting of notice setting forth the public policy of Indiana concerning civil rights and the respondent's compliance with said policy in places of public accommodations; and it may require proof of compliance to be filed by the respondent at periodic intervals.

- (J) If the Commission subsequently determines that the respondent upon whom the order has been served is not complying with such order, or is making no effort to comply with such order, the Commission may certify the noncompliance, or lack of effort, to the Commission Attorney, who may seek and obtain a decree of court for the enforcement of its order in the circuit or superior court, provided that, a failure to comply with a Consent Agreement shall be considered as a failure to comply with a cease and desist order.
- (K) Any evidence may be introduced at any hearing on a complaint provided that such evidence is relevant and material to the subject matter of said complaint. The Commission shall rule on all objections to the introduction of any evidence provided that the Commission may by motion or rule designate a member or members to so rule prior to the commencement of any hearing.
- (L) A decision of the local Commission may be appealed under the terms of I.C. 4-21.5 the same as if it was a decision of a state agency.

### **§ 33.21 EXCEPTIONS UNDER HANDICAPPED/DISABLED PROVISIONS.**

State and federal statutes are to be followed regarding exceptions under handicapped/disabled provisions relating to employment.

### **§ 33.22 PENALTIES.**

In addition to award of actual damages as provided at I.C. 22-9-1-12.1(c)(8), any person who engages in an unlawful discriminatory practice as defined in this subchapter shall, upon conviction of an ordinance violation in any court of competent jurisdiction, shall be subject to fines in an amount not exceeding \$2,000. Each day such violation is committed or permitted to continue may constitute a separate offense and may be punishable as such hereunder.

### **§ 33.23 JUDICIAL REVIEW.**

If no proceedings to obtain judicial review are instituted within thirty (30) days from receipt of notice by a respondent that such order has been made by the Commission as above provided, should the Commission determine that the respondent upon whom the cease and desist order has been served is not complying or is not making effort to comply, the Commission may file suit in any court of competent jurisdiction to obtain a decree for the enforcement of such order upon a showing that such respondent is subject to the Commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.



### **§ 33.24 CITY EMPLOYMENT AND CITY CONTRACTS; CONTRACTORS.**

The City shall not engage in any of the discriminatory practices set forth in this chapter in any of its departments, divisions, offices or through any of its officials or employees. Every contract to which the City or any of its political or civil subdivisions is a party, including franchises granted to public utilities, shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment or promotion, who is to be employed in the performance of such contract with respect to any of the categories of individuals protected by this subchapter. Any such contractor shall obligate himself and his subcontractors to comply with all provisions of this subchapter. Breach of this covenant or provision may be considered a material breach of the contract.

### **§ 33.25 PENDING ACTIONS.**

This subchapter does not affect any:

(A) Rights or liabilities accrued;

(B) Penalties incurred;

(C) Offenses committed; or

(D) Proceedings begun before the effective date of this subchapter. Those rights, liabilities, penalties, and proceedings continue and shall be imposed and enforced under repealed or amended ordinances as if this subchapter had not been enacted.

### **§ 33.26 REFERRAL.**

Any person who files a complaint with the Human Rights Commission may not file a complaint with the Indiana Civil Rights Commission concerning any of the matters alleged in the local complaint. Any person who files a complaint with the Indiana Civil Rights Commission may not file a complaint with the Human Rights Commission concerning any of the matters alleged in the state complaint. Any complaint filed with the Human Rights Commission may be transferred by the Commission to the Indiana Civil Rights Commission should that commission have concurrent jurisdiction. The Human Rights Commission may accept referral of cases from the Indiana Civil Rights Commission. Upon referral of a case from the Indiana Civil Rights Commission, the Human Rights Commission shall proceed to process the matter as if it had originally been filed with the Human Rights Commission. Nothing in this section shall affect any person's right to pursue any and all other rights and remedies available in any other state or federal forum.

### **§ 33.27 RELATIONS WITH CITY DEPARTMENTS.**

The services of all other City departments and agencies shall be made available by their respective heads to the Human Rights Commission at its request and information in the possession of any department or agency, subject to any applicable state or federal confidentiality requirements, shall be furnished to the Commission upon its request. The Commission may make recommendations to such departments and agencies for the effectuation of the purposes of this subchapter.

**IN WITNESS WHEREOF**, the above-stated Ordinance has been duly adopted this \_\_\_\_ day of \_\_\_\_\_, 2016.

PASSED by the Common Council of Kokomo, Indiana by a \_\_\_\_\_ vote of all members present and voting this \_\_\_\_ day of \_\_\_\_\_ 2016.

\_\_\_\_\_  
Robert Hayes, President

ATTEST:

\_\_\_\_\_  
Brenda Ott, City Clerk

Presented by me to the Mayor of Kokomo, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2016 at the hour of \_\_\_\_\_ o'clock P.M.

\_\_\_\_\_  
Brenda Ott, City Clerk

This Ordinance approved and signed by me this \_\_\_\_ day of \_\_\_\_\_, 2016 at the hour of \_\_\_\_\_ o'clock A.M.

\_\_\_\_\_  
Greg Goodnight, Mayor