

ORDINANCE NO. **BG2019 - 12**

Defeated

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTERS 2 (ADMINISTRATION), 14 (HOUSING) AND 17 (PERSONNEL POLICIES) OF THE CITY OF BOWLING GREEN CODE OF ORDINANCES TO ADD LANGUAGE PROHIBITING DISCRIMINATION IN HOUSING ACCOMMODATIONS AND EMPLOYMENT ON THE BASIS OF SEXUAL ORIENTATION OR GENDER IDENTITY, PROHIBITING DISCRIMINATION IN PUBLIC ACCOMMODATIONS ON THE BASIS OF DISABILITY, RACE, RELIGION, NATIONAL ORIGIN, SEX, COLOR, SEXUAL ORIENTATION AND GENDER IDENTITY, AND PROVIDING FOR CERTAIN EXCEPTIONS AND EXCLUSIONS TO SUCH PROHIBITIONS, INCLUDING AN EXCEPTION FOR BURDENING FREEDOM OF RELIGION

WHEREAS, the City of Bowling Green has existing ordinances that prohibit discrimination on the basis of race, color, religion, national origin, sex, age, familial status, age and disability as it relates to employment and housing; and,

WHEREAS, the City desires to implement a policy to protect all individuals within the City from discrimination in housing, employment and public accommodations on account of race, color, religion, national origin, sex, age, familial status, age, disability, gender identity and sexual orientation in an effort to protect an individual's personal dignity, to preserve the general welfare of the citizenry and to promote economic development in the City; and,

WHEREAS, it is in the best interest of the City to amend Chapters 2, 14 and 17 of the City of Bowling Green Code of Ordinances to include discrimination regarding public accommodation to all protected classes and amend the existing language to include gender identity and sexual orientation as protected classes.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

BG2019-12

(Ordinance No. BG2019 – 12)

1. Chapter 2 (Administration) is hereby amended as follows:

2-17 HUMAN RIGHTS COMMISSION.

2-17.01 Established.

There is hereby established a City of Bowling Green Commission on Human Rights.

2-17.02 Definitions.

As used in this Subchapter:

“Commission” shall mean the City of Bowling Green Commission on Human Rights.

“Commissioner” shall mean a member of the Human Rights Commission.

“Conciliation” shall mean the attempted resolution of issues raised by a complaint or by the investigation of the complaint through informal negotiations involving the aggrieved person, the respondent and the Commission.

“Disability” shall mean: (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment, but such term does not include the current illegal use of or addiction to a controlled substance as defined in the United States Code and does not apply to an individual because of an individual’s sexual orientation or because that individual is a transvestite.

“Discriminate” and “Discrimination” shall mean any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person because of race, color, religion, national origin, sex, age over forty (40), disability, sexual orientation, gender identity or familial status in connection with housing accommodation.

“Employee” shall mean any individual employed by an employer.

“Employer” shall mean any person who has two (2) or more employees in each four (4) or more calendar weeks in the current or preceding calendar year, and any agent of such person.

(Ordinance No. BG2019 – 12)

“Familial Status” shall mean one or more individuals who have not attained the age of eighteen (18) being domiciled with a parent or another person having legal custody of such individual or individuals, or the designee of such parent or other person having such custody with the written permission of such parent or other person, and includes 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.

“Gender Identity” shall mean the actual or perceived appearance, expression or identity of a person with respect to masculinity and femininity.

“Housing Accommodation” shall mean and include improved and unimproved property and means a building, structure, lot or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied as the home or residence of one or more individuals. Such accommodation includes:

a. “Housing Unit” shall mean 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; and,

b. “Rooming Unit” shall mean 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.

“Organization” shall mean any person as defined in this Subchapter, and any agent of such a person, 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 in which employees or their representatives or agents participate.

“Person” shall mean and include an individual and any group of one (1) 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, trust, legal representatives, trustees in bankruptcy, receivers, any individuals acting in a financial or

(Ordinance No. BG2019 – 12)

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. The term “person” when applied to any of the foregoing includes members, representatives, shareholders, officers and directors.

“Place of public accommodation, resort, or amusement” includes 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. 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;

b. “Place of public accommodation, resort or amusement” does not include a rooming or boarding house containing not more than one (1) room for rent or hire and which is within a building occupied by the proprietor as his residence; and,

c. “Place of public accommodation, resort or amusement” does not include a religious organization and its activities and facilities if the application of 2-17.10(g) would not be consistent with the religious tenets of the organization, subject to the following:

1. Any organization that teaches or advocates hatred based on race, color, or national origin shall not be considered a religious organization for the purposes of this Subsection.

2. A religious organization that sponsors nonreligious activities that are operated and governed by the organization, and that are offered to the general public, shall not deny participation by an individual in those activities on the ground of disability, race, color, religion or national origin.

3. A religious organization shall not, under any circumstances, discriminate in its activities or use of its facilities on the ground of disability, race, color or national origin.

“Sexual Orientation” shall mean an individual’s actual or imputed heterosexuality.

(Ordinance No. BG2019 – 12)

homosexuality, bisexuality or asexuality.

2-17.03 Composition; Appointment; Qualifications; Terms; Compensation.

The Commission shall consist of thirteen (13) members who shall be broadly representative of the general public and the protected classes as defined in state and federal law. The Mayor shall appoint members, with the advice and consent of the Board of Commissioners. Each appointed member shall serve a three year term. In the event of incapacity, death or resignation of any member, his successor shall be appointed by the Mayor, with the approval of the Board of Commissioners, for the unexpired term of the withdrawn member. Members shall be eligible for reappointment for additional terms. No elected City official shall be a member of the Commission. The members shall serve without compensation.

2-17.04 Election of Officers.

The Commission shall elect a Chairman, Vice-Chairman, Secretary-Treasurer and such other officers as it deems necessary. The Chairman of the Commission shall appoint such committees as the Commission may deem necessary in order to carry out its functions.

2-17.05 Meetings.

The Commission shall meet as often as it deems necessary, but it shall meet not less than once each month.

2-17.06 Functions.

The functions of the Commission shall include the following:

a. The Commission shall encourage fair treatment and equal opportunity for all persons regardless of race, color, religion, national origin, sex, age over forty (40), disability, sexual orientation, gender identity or familial status in connection with housing accommodation; shall promote mutual understanding and respect among all economic, social, racial, religious and ethnic groups; and shall endeavor to eliminate discrimination against and antagonism between religious, racial and ethnic groups.

(Ordinance No. BG2019 – 12)

b. The Commission shall administer such enforceable ordinances forbidding discrimination as the Board of Commissioners may enact.

2-.07 Enforcement Powers and Duties.

In performing its functions, the Commission shall have the following powers and duties to:

a. Meet and exercise its power at any place within the City;

b. Employ attorneys, hearing examiners, clerks and other employees and agents, and to appoint and empower committees and divisions to assist in carrying out the purposes and provisions of this Subchapter;

c. Accept gifts or bequests, grants, or other payments, public or private, to help finance its activities;

d. Receive, initiate, investigate, seek to conciliate, and hold hearings on complaints alleging discrimination, with the power to request the circuit court to issue subpoenas to compel attendance of witnesses and with the power to compel the witnesses to testify under oath as administered by the Commission;

e. Recommend methods for elimination of discrimination and intergroup tensions, and to use its best efforts to secure compliance with its recommendations;

f. Issue remedial orders, after notice and hearing, requiring cessation of violations of this Subchapter;

g. Issue such affirmative orders as authorized by the Kentucky Revised Statutes as in the judgment of the Commission to carry out the purpose of this Subchapter. Affirmative action orders may include, but are not limited to:

1. Hiring, reinstatement or upgrading of employees, with or without backpay. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall operate to reduce the backpay otherwise allowable;

(Ordinance No. BG2019 – 12)

2. Admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program;

3. Ordering payment to the complainant of damages for injury caused by the unlawful practice, including compensation for humiliation and embarrassment, and for other costs incurred by the complainant as a direct result of an unlawful practice; and,

4. Applying to the Circuit Court for such temporary or permanent relief as it deems necessary.

h. Cooperate with other intergroup relations agencies, both public and private, on the local, state and national level in performing its functions under this Subchapter;

i. Cooperate with the various departments, agencies and boards of the City of the Commonwealth in effectuating the purposes of this Subchapter;

j. Adopt, promulgate, amend and rescind rules and regulations to effectuate the purposes and provisions of this Subchapter, including regulations requiring the posting of notices prepared or approved by the Commission and the Circuit Court;

k. Exercise all applicable powers as provided in the Kentucky Civil Rights Act;

l. Enlist the support of civic, labor, religious, professional, educational organizations and institutions in community activities and programs that will further the goals of this Subchapter;

m. Organize community committees and councils that will work toward the goals of this Subchapter; and,

n. Submit an annual report of its activities and of the progress and problems in intergroup relations in the community to the Board of Commissioners.

2-17.08 Relationship with Kentucky Commission on Human Rights.

The Commission shall when requested act in an advisory capacity to and otherwise cooperate

(Ordinance No. BG2019 – 12)

with the Kentucky Commission on Human Rights wherever possible to effectuate compliance with State laws.

2-17.09 Penalty.

Any person who violates an order of the Commission issued in accordance with this Subchapter shall be guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction be subject to a fine of not less than one hundred (\$100.00) dollars, but not more than five hundred (\$500.00) dollars, or imprisonment for thirty (30) days or both.

2-17.10 Unlawful Practices Enumerated.

a. It is an unlawful practice for an employer:

1. To fail or refuse to hire, or to discharge or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment; and,

2. To limit, segregate, classify or otherwise discriminate against his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of the individual's race, color, religion, national origin, sex, age over forty (40), sexual orientation, gender identity or because the person is a qualified individual with a disability.

b. It is an unlawful practice for any employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual, or to classify or refer for employment any individual for reasons as set forth in the definition of discrimination as defined in this Subchapter.

c. It is an unlawful practice for any person or organization:

1. To exclude or to expel from its membership, or otherwise discriminate as defined in this Subchapter, against any individual;

2. To limit, segregate or classify, or otherwise discriminate against its membership, or to classify or fail or refuse to refer for employment any individual in any way which

(Ordinance No. BG2019 – 12)

would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment; and,

3. To cause or attempt to cause any employer to discriminate against any individual in violation of this Subchapter.

d. It is an unlawful practice for any employer, labor organization or employment agency to print, publish or circulate, or cause to be printed, published or circulated, any notice or advertisement relating to employment by such an employer, or membership in, or any classification or referral for employment by such labor organization, or any classification or referral for employment by such labor organization, or any classification or referral for employment by such an employment agency indicating any preference, limitation, specification or other type discrimination, except that such a notice or advertisement may indicate that such a preference, limitation, specification or discrimination is a bona fide occupational qualification for employment.

e. It is an unlawful practice for any employer, labor organization, or other person controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual in admission to or employment in any program established to provide such apprenticeship, training or retraining.

f. It is an unlawful practice for any person:

1. To retaliate or discriminate in any manner against a person because he has opposed a practice declared unlawful by this Subchapter, or because he has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this Subchapter;

2. To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this Subchapter, or to obstruct or prevent any person from complying with the provisions of this Subchapter or any order issued thereunder; and,

(Ordinance No. BG2019 – 12)

3. To resist, prevent, impede or interfere with the Commission, or any of its members, representatives and agents in the lawful performance of their duties under this Subchapter.

g. It is an unlawful practice:

1. For a person to deny an individual 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 KRS 344.130, on the ground of disability, sex, race, color, religion, national origin, sexual orientation or gender identity.

2. 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, which indicates that the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation, resort or amusement will be refused, withheld from, or denied an individual on account of disability, sex, race, color, religion, national origin, sexual orientation or gender identity, or that the patronage of or presence at a place of public accommodation, resort or amusement, of an individual on account of disability, sex, race, color, religion, national origin, sexual orientation or gender identity is objectionable, unwelcome, unacceptable or undesirable.

3. The provisions of this Section prohibiting discrimination on the basis of sex in public accommodations shall not apply to:

(a) Restrooms, shower rooms, bath houses and similar facilities which are in nature distinctly private;

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

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

2-17.11 Specific Practices Not Considered Unlawful.

(Ordinance No. BG2019 – 12)

Notwithstanding any other provisions of this Subchapter, it shall not be an unlawful practice for:

a. An employer to hire and employ employees, or an employment agency to classify or refer for employment an individual, for 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 religion or national origin in those certain instances where religion, sex, national origin, age over forty (40) or disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

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

c. A school, college, university or other educational institution to hire and employ employees of a particular religion if the school, college, university or other educational institution is in whole or in substantial part owned, supported, controlled or managed by a particular religious corporation, association or society, or if the curriculum of the school, college, university or 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; and,

d. 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, provided that such differences are not the result of an intention to discriminate; nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed

(Ordinance No. BG2019 – 12)

ability test, provided that such test, its administration or action upon the results is not designed, intended or used to discriminate.

e. The provisions of this Chapter regarding sexual orientation or gender identity shall not apply to a religious institution, association, society or entity or to an organization operated for charitable or educational purposes, which is owned, operated or controlled by a religious institution, association, society or entity, except that when such an institution or organization receives a majority of its annual funding from any federal, state, local or other governmental body or agency, or any combination thereof, it shall not be entitled to this exemption.

f. The City is prohibited from substantially burdening a person's freedom of religion by the provisions of KRS 446.350. Accordingly, where a person, by action or inaction, violates the provisions of this Chapter due to a sincerely held religious belief, the individual or entity alleging the violation must prove by clear and convincing evidence that the City has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest to establish the existence of the violation. A burden shall include withholding benefits, assessing penalties, exclusion from programs or access to facilities.

2-17.12 Complaint Procedure.

a. An individual claiming to be aggrieved by an unlawful practice other than a discriminatory housing practice, or a member of the Commission may file with the Commission a written (sworn) complaint stating that an unlawful practice has been committed, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the Commission to identify the person charged, hereinafter called the respondent. The complaint must be filed within one hundred eighty (180) days after the alleged unlawful practice occurs.

b. The Commission shall make a prompt and full investigation of each complaint, shall notify the aggrieved party that the complaint has been received and shall serve on the respondent a copy

(Ordinance No. BG2019 – 12)

of the complaint within five (5) days.

c. A determination of whether or not there is probable cause to believe that the respondent has engaged in an unlawful action shall be made within thirty (30) days after the complaint has been filed.

d. If it is determined after investigation that there is probable cause to believe that the respondent has engaged in an unlawful practice, the Commission shall endeavor to eliminate the alleged unlawful practice by conference, conciliation and/or persuasion. The terms of a conciliation agreement reached with a respondent, and approved by the Commission, may require him to refrain from committing unlawful practices in the future, and make such further provisions as may be agreed upon between the Commission or its staff and the respondent. Except for the terms of the conciliation agreement, neither the Commission nor any officer or employee thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate an unlawful practice by conference, conciliation or persuasion, whether or not there has been a determination of probable cause or a conciliation agreement. The Commission shall monitor compliance with the approved conciliation agreement and may take appropriate action upon a finding that the terms of the agreement are not being complied with by the respondent.

e. In any case of failure to eliminate the alleged unlawful practice by means of conference, conciliation and/or persuasion, the Commission may hold a public hearing to determine whether or not an unlawful practice has been committed. The Commission shall serve upon the respondent a statement of the charge made in the complaint and a notice of the time and place of the hearing. The respondent shall have the right to file an answer, to appear at the hearing in person, or to be represented by an attorney, and to examine and cross-examine witnesses. All testimony shall be taken under oath and recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

(Ordinance No. BG2019 – 12)

f. If the Commission determines that the respondent has not engaged in an unlawful practice, the Commission shall state its findings of fact and conclusion of law and shall issue an order dismissing the complaint, and shall furnish a copy of the order to the complainant. The complainant, within ten (10) days after receiving a copy of the order dismissing the complaint, may file with the Commission an application for reconsideration of the order. The Commission shall make a new determination within ten (10) days of receipt of the application.

g. If the Commission determines that the respondent has engaged in an unlawful practice, the Commission shall state its findings of fact and conclusion of law and shall issue an order requiring the respondent to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Commission will carry out the purposes of this Subchapter.

h. In connection with an investigation of a complaint filed under this Subchapter, the Commission or its designated representative at any reasonable time may request access to premises, records and documents relevant to the complaint and the right to examine, photograph and copy evidence.

i. At any time after a complaint has been filed, the Commission may file an action in the Circuit Court seeking appropriate temporary relief against the respondent pending final determination of proceedings under this Subchapter as provided in KRS 344.200.

j. In the event the respondent fails to comply with any order issued by the Commission, the Commission may file a complaint for enforcement in the Circuit Court pursuant to the provisions of Chapter 344 of the Kentucky Revised Statutes (Kentucky Civil Rights Act KRS 344.340).

...

2. Chapter 14 (HOUSING) is amended as follows:

14-2 DISCRIMINATION IN HOUSING ACCOMMODATION.

14-2.01 Declaration of Policy.

(Ordinance No. BG2019 – 12)

It is the policy of the City to safeguard all individuals within the City from discrimination as defined hereinabove in connection with housing, thereby to protect their interest in personal dignity and freedom from humiliation, to make available to the City their 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. It is the policy of the City to safeguard the rights of an individual selling or leasing his own property without the aid of any person or corporation on a fee or commission.

14-2.02 Definitions.

As used in this Subchapter:

“A Member of His Family” shall mean the owner and his spouse and any son, daughter, parent, or grandparent of the owner or his spouse, or any person who is wholly dependent on any of the above.

“Commission” shall mean the Bowling Green Human Rights Commission.

“Commissioner” shall mean a member of the Bowling Green Human Rights Commission.

“Conciliation” shall mean the attempted resolution of issues raised by a complaint or by the investigation of the complaint through informal negotiations involving the aggrieved person, the respondent and the Commission.

“Disability” shall mean: (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment, but such term does not include the current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. Section 02[~~and does not apply to an individual because of an individual’s sexual orientation or because that individual is a transvestite~~].

“Discriminate” and “Discrimination” shall mean any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion,

(Ordinance No. BG2019 – 12)

national origin, sex, disability, sexual orientation, gender identity or familial status.

“Familial Status” shall mean one or more individuals who have not attained the age of eighteen (18) being domiciled with a parent or another person having legal custody of such individual or individuals, or the designee of such parent or other person having such custody with the written permission of such parent or other person, and includes 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” shall mean any person as defined herein engaged in the business of lending money for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance or improvement of real property and shall include any individual employed by or acting on behalf of such person.

“Gender Identity” shall mean the actual or perceived appearance, expression or identity of a person with respect to masculinity and femininity.

“Housing Accommodation” shall mean and include improved and unimproved property and means a building, structure, lot or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied as the home or residence of one or more individuals. Such accommodation includes:

a. “Housing Unit” shall mean 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; and,

b. “Rooming Unit” shall mean 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.

“Owner” shall mean and include 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.

(Ordinance No. BG2019 – 12)

“Person” shall mean and include 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 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. The term “persons” when applied to any of the foregoing includes members, representatives, shareholders, officers and directors.

“Real Estate Broker” or “Real Estate Salesman” shall mean an individual, whether licensed or not, who for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, exchanges, rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities, or who advertises or holds himself out as engaged in such activities, or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance upon transfer of any housing accommodation, or who is engaged in the business of charging an advance fee or contracting for the collection of a fee in connection with a contract whereby he 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 in behalf of any of these.

“Real Estate Operator” shall mean any person as defined in this Subchapter who is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate or the improvements thereon, including options, or that derives income, in whole or in part from the sale, purchase, exchange, rental or lease of real estate, or an individual employed by or acting on behalf of any of these.

“Real Property” shall mean and include buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums and hereditaments, corporeal and incorporeal, or any interest in the above.

(Ordinance No. BG2019 – 12)

“Sexual Orientation” shall mean an individual’s actual or imputed heterosexuality, homosexuality, bisexuality or asexuality.

14-2.03 Applicability.

a. Nothing in this Subchapter shall:

1. Apply to the rental or lease of any rooming units in a housing accommodation which contains not more than two (2) housing units if the owner or a member of his family resides in the housing accommodation;

2. Apply to the rental or lease of any rooming units in a housing unit containing (1) one rooming unit or less if the owner or a member of his family resides in the housing unit, or to the rental or lease of any rooming units in a house in which the owner of the entire house or member of his family resides; or,

3. Make it a discriminatory practice for a religious institution or organization or a charitable or educational organization operated, supervised or controlled by a religious institution or organization to give preference to members of the same religion in a real property transaction that is calculated by such religious corporation, association or society to promote the religious principles for which it is established or maintained.

b. Nothing in this Subchapter shall be construed to affect the legal rights of a private individual homeowner to dispose of his property through private sale without the aid of any real estate operator, broker or salesman and without advertising or public display.

c. Nothing in this Subchapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing unit.

d. Nothing in this Subchapter limits the applicability of any local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(Ordinance No. BG2019 – 12)

14-2.04 Enforcement.

In the enforcement of this Subchapter, the Bowling Green Human Rights Commission has the following powers and duties:

- a. To meet and exercise its powers at any place within the City;
- b. To employ attorneys, hearing examiners, clerks and other employees and agents, and to appoint and empower committees and divisions to assist in effecting the purposes and provisions of this Subchapter;
- c. To accept gifts and bequests, grants, or other payments, public or private, to help finance its activities;
- d. To receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints alleging violations of this Subchapter;
- e. To administer oaths;
- f. To compel the attendance of witnesses and the production of evidence before it by subpoena issued by the Circuit Court;
- g. To issue remedial orders, after notice and hearings requiring cessation of violations, and to seek enforcement of such orders as provided in KRS 344.340;
- h. To issue such affirmative orders as in the judgement of the Commission will carry out the purposes of this Subchapter. Affirmative action ordered may include, but is not limited to the remedies enumerated in KRS 344.230(3);
- i. To adopt, promulgate, amend and rescind rules and regulations to effectuate the purpose and provisions of this Subchapter, including regulations requiring the posting of notices prepared or approved by the Commission; and,
- j. All other such powers as provided in the Kentucky Civil Rights Act and [~~Ordinance No. 68-120~~] Chapter 2 of this Code of Ordinances creating the Bowling Green Human Rights

(Ordinance No. BG2019 – 12)

Commission.

14-2.05 Penalties.

a. Any person who violates an order of the Commission issued in accordance with this Subchapter shall upon conviction in a court of competent jurisdiction be guilty of a misdemeanor and shall be subject to a fine of not less than one hundred (\$100.00) dollars, nor more than five hundred (\$500.00) dollars or imprisonment for thirty (30) days or both.

b. Any person holding a City occupational license to sell or trade in real estate who violates an order of the Commission in accordance with this Subchapter shall in addition to the penalties set out above be subject to suspension of such license for a period of not less than thirty (30) days.

c. 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 practice in violation of this Subchapter, the Commission shall so notify in writing the Real Estate Commission of the Commonwealth of Kentucky.

14-2.06 No Defense that Violation of Subchapter was Procured by a Person Not Subject to Provisions of Subchapter.

It shall be no defense to a violation of this Subchapter by a real estate operator, real estate broker, real estate salesman, financial institution or other person subject to the provisions of this Subchapter that the violation was requested, sought or otherwise procured by a person not subject to the provisions of this Subchapter.

14-2.07 Complaint Procedures.

The complaint procedure shall be the same as set out in Chapter 2, in the Subchapter on the Human Rights Commission.

14-2.08 Unlawful Practices Enumerated.

a. It is an unlawful practice for any person, owner, real estate broker, real estate

(Ordinance No. BG2019 – 12)

salesman, real estate operator, real estate appraiser or any representatives or individuals employed by or acting on behalf of any of the above in connection with any of the transactions in this Subchapter which affect any housing accommodation on the open market or in connection with any public sale, purchase, exchange, rental or lease of any housing accommodation:

1. To refuse to sell, purchase, exchange, rent or lease or otherwise deny to or withhold real property after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a housing accommodation to an individual because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin;

2. To discriminate against an individual because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin in the terms, conditions or privileges of the sale, purchase, exchange, rental or lease of a housing accommodation or in the furnishing of facilities or services in connection therewith;

3. To refuse to receive or transmit a bona fide offer to purchase, rent or lease a housing accommodation to an individual because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin;

4. To refuse to negotiate for the sale, rental or lease of a housing accommodation to an individual because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin;

5. To represent to an individual that a housing accommodation is not available for inspection, sale, rental or lease when in fact it is so available, or to refuse to permit an individual to inspect a housing accommodation because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin;

6. To print, circulate, post or mail, or cause to be printed, circulated, posted or mailed an advertisement or sign, or to use a form of application for the purchase, rental or lease of a

(Ordinance No. BG2019 – 12)

housing accommodation, or to make a record of inquiry in connection with the prospective purchase, rental or lease of a housing accommodation, which indicates directly or indirectly a limitation, specification, preference or discrimination as to race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin or an intent to make such a limitation, specification, preference or discrimination;

7. To offer, solicit, accept, use or retain a listing of a housing accommodation for sale, rental or lease with the understanding that an individual may be discriminated against in the sale, rental or lease of that housing accommodation or in the furnishing of facilities or services in connection therewith because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin;

8. To induce or attempt to induce any person to sell or rent any housing accommodation for profit or with the hope or expectation of profit by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin;

9. To discriminate in the sale or rental or otherwise make unavailable or deny a housing accommodation to a buyer or renter or to discriminate against any person in the terms, conditions or privileges of sale or rental of a housing accommodation, or in the provision of services or facilities in connection with such housing accommodation because of a disability of that buyer or renter, a person residing in or intending to reside in that housing accommodation after it is sold, rented or made available or any person associated with that buyer or renter; or,

10. To otherwise deny or withhold or discriminate in any manner regarding a housing accommodation because of race, color, sex, religion, disability, familial status, sexual orientation, gender identity or national origin.

b. It is an unlawful practice for a real estate operator, real estate broker, real estate

(Ordinance No. BG2019 – 12)

salesman, financial institution, or an employee of any of these, or any other person for the purposes of inducing a housing accommodation transaction from which he may benefit financially:

1. To represent that a change has occurred, will occur or may occur in the composition with respect to race, color, sex, age religion, disability, familial status, sexual orientation, gender identity or national origin of the owners or occupants in the block, neighborhood or area in which the housing accommodation is located;

2. To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood or area in which the housing accommodation is located;

3. To discriminate by denying any person access to or membership or participation in any multiple listing service, real estate brokers organization or other service, organization or facility relating to the business of selling or renting housing accommodations, or to discriminate in the terms or conditions of such access, membership or participation on account of race, color, sex, age, religion, disability, familial status, sexual orientation, gender identity or national origin; or,

4. To discriminate in any other manner as defined in Kentucky Revised Statutes, Chapter 344 related to unlawful housing practices.

c. It is an unlawful practice for a financial institution or an individual employed by or acting on behalf of a financial institution:

1. To discriminate against an individual because of the race, color, religion, disability, familial status, national origin, sex, sexual orientation, gender identity or age of the individual, or the present or prospective owner, tenant or occupant of the housing accommodation, or of a member, stockholder, director, officer, employee, or representative of any of these in the granting, withholding, extending, modifying or renewing the rates, terms, conditions, privileges or other provisions of financial assistance or in the extension of services in connection therewith;

(Ordinance No. BG2019 – 12)

2. To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicate directly or indirectly a limitation, specification or discrimination as to race, color, sex, age, religion, disability, familial status, sexual orientation, gender identity or national origin or an intent to make such a limitation, specification or discrimination;

3. To discriminate by refusing to give full recognition, because of sex or age, or sexual orientation or gender identity, to the income of each spouse or the total income and expenses of both spouses where both spouses become or are prepared to become joint or several obligors in housing accommodation transactions; or,

4. To discriminate in any other manner as defined in Kentucky Revised Statutes, Chapter 344 related to unlawful housing practices.

d. For purposes of this Subchapter, discrimination includes:

1. A refusal to permit, at the expense of the person with the disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises of a dwelling, provided that in the case of a rental, a landlord may reasonably condition permission for modifications upon the renter's agreement to restore the interior of the premises to its premodification condition, reasonable wear and tear excepted and reasonably condition such permission on the renter providing a reasonable description of the proposed modifications and reasonable assurances that all work will be done in a workmanlike manner and that all required permits will be obtained;

2. A landlord increasing any customarily required security deposit for a person with a disability, except to ensure available funds for restorations as required hereinabove, if any, and a landlord may negotiate an agreement that the renter deposit into an interest bearing escrow account over a reasonable period a reasonable amount not to exceed the cost of restorations, where it is necessary in

(Ordinance No. BG2019 – 12)

order to ensure with reasonable certainty that funds will be available to pay for the restoration, with all interest accruing to the renter's benefit;

3. A refusal to make reasonable accommodations in rules, policies, practices or services when the accommodation may be necessary to afford a disabled person equal opportunity to use and enjoy a housing accommodation, including public and common use areas;

4. Making any inquiry to determine whether an applicant for a housing accommodation, a person intending to reside in that housing accommodation or any person associated with that person has a disability or to determine the nature or severity of any disability, except the following inquiries may be made if these inquiries are made of all applicants, regardless of disability:

(a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) Inquiry to determine whether an applicant is qualified for a housing accommodation available only to persons with disabilities or to persons with a particular type of disability;

(c) Inquiry to determine whether an applicant for a housing accommodation is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;

(d) Inquiry to determine whether an applicant is a current illegal user or addict of a controlled substance; and,

(e) Inquiry to determine whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

5. A refusal to design and construct multi-family housing accommodations to comply with accessibility and public and common use requirements as set out in Kentucky Revised Statutes, Chapter 344 related to unlawful housing practices and to the Kentucky Building Code.

(Ordinance No. BG2019 – 12)

14-2.09 Exceptions to Unlawful Practice of Discrimination Because of Sex.

Nothing in this Subchapter related to discrimination because of sex shall apply to:

- a. The YMCA, YWCA and similar type single sex dormitory rental properties, including but not limited to those dormitories operated by institutions of higher education;
- b. A landlord who refuses to rent to an unmarried couple of opposite sex;
- c. A landlord who chooses to rent only to men or only to women, provided that the landlord engages in the rental to no more than ten (10) persons or no more than ten (10) self-contained units in an owner-occupied housing accommodation; or,
- d. Rooms or rental units where tenants would be required to share common bath or kitchen facilities or to any housing accommodation where it can be demonstrated that gender-based exclusions are necessary for reasons of personal modesty or privacy.

...

3. 17-1 PERSONNEL MERIT SYSTEM.

...

17-1.14 Discrimination Prohibited.

No person in the classified or exempt service, or seeking admission thereto, shall be employed, promoted, demoted[,] or discharged or in any way be discriminated against because of race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability except where any of these is a bona fide occupational qualification. Neither shall any person be favored or discriminated against because of political opinions or affiliations

...

17-3 EQUAL EMPLOYMENT.

17-3.01 Declaration of Policy.

- a. It is the policy of the City to safeguard all individuals within the City from discrimination

(Ordinance No. BG2019 – 12)

because of race, color, religion, sex, national origin, age over forty (40) and the physically disabled (as defined in the Equal Opportunities Act of 1976, KRS Chapter 207) and because of sexual orientation or gender identity in connection with employment; thereby to protect their interest in personal dignity and freedom from humiliation, to make available to the City their 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.

b. It is not the policy of the City to prohibit bona fide seniority or merit systems, or systems which measure earnings by quantity or quality of production, or the use of professionally developed ability tests, so long as such systems and tests are not designed intended or used to discriminate in connection with employment because of an individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age over forty (40) and the physically disabled; nor is it the City's policy to require the granting of any preference to any individual in connection with employment.

...

4. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

5. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

6. Any and all other Ordinances and written policies, procedures and practices that are inconsistent with the provisions of this Ordinance are hereby amended to reflect the appropriate changes approved herein.

7. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on April 16, 2019, and given final reading on May 7, 2019, and said Ordinance shall be in full force and effect upon signature, recordation and publication in

(Ordinance No. BG2019 – 12)

summary pursuant to KRS Chapter 424.

ADOPTED: _____

APPROVED: _____
Mayor, Chairman of Board of Commissioners

ATTEST: _____
City Clerk

SPONSORED BY: Brian “Slim” Nash, Commissioner, 04/11/2019, 7:30 a.m.
Ordinance No. BG2019-12 was defeated by majority vote (3-2) at the May 7, 2019 Board of Commissioners meeting.

