

AN ORDINANCE AMENDING AND REENACTING CHAPTER 10,
ARTICLE IV, HUMAN RIGHTS, OF THE CITY
OF BECKLEY CODE TO ADD "SEXUAL
ORIENTATION" AND "GENDER IDENTITY" AS PROTECTED CLASSES

DIVISION 1. - GENERALLY

Sec. 10-400. - Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Age: Persons over forty (40) years of age.

Discriminate: To exclude from or fail to refuse to extend to a person equal opportunities because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, or blindness or other handicap; the term "discriminate" includes to separate or segregate.

Employer: Any person, as defined in Section 1-2, employing twelve (12) or more persons within the City; provided, that such term shall not be taken, understood or construed to include a church, church affiliated non-profit, or private club. The term "employer" shall not include the State, the county or the City, or any political or civil subdivisions thereof.

Employment Agency: Any person undertaking, with or without compensation, to procure, recruit, refer, or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

Familial Status: "Familial status" means one or more individuals (who have not attained the age of eighteen (18) years) being domiciled with:

- (a) A parent or another person having legal custody of such individual or individuals; or
- (b) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age

of eighteen (18) years. Nothing in this definition restricts advertisements of dwelling which are intended and operated for occupancy by older persons and which constitutes housing for older persons.

Gender Identity: Means actual or perceived appearance, or behavior of an individual, with or without regard to the individual's assigned sex at birth.

Handicap: Any physical or mental impairment which substantially limits one or more of the individual's major life activities. For the purposes of this Article, a person shall be considered to be blind only if such person's central visual acuity does not exceed twenty-two hundred (2200) in the better eye with correcting lenses, or if such person's visual acuity is greater than twenty-two hundred (2200) but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.

Housing Accommodations: Any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this Article shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four (4) rented rooms, or rooms to be rented.

Owner: The owner, lessee, sub-lessee, assignee, manager, agents, or other person having the right to sell, rent or lease any housing accommodation or real property within the state.

Place of Public Accommodations: Any establishment or person, as defined herein, including the City, or any political or civil subdivision thereof, which offers its services, goods, facilities, or accommodations to the general public, but shall not include any accommodations which are in their nature private.

Purchaser: Any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer, or prospective buyer.

Real Estate Broker: Any person who, for a fee, commission, or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or any interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for prospective purchasers or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting, or auctioning of any real estate, or negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person employed by or on behalf of the owners of lots or other parcels of real estate, at a stated

salary, or upon a commission, or upon a salary and commission or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

Real Estate Salesman: Any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy, or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts thereof, in lots or other parcels.

Rooming Houses: A house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as such proprietor chooses to receive. (Code 1971, § 10-1; Ord. of 1-24-84; Ord. of 9-12-89)

Sexual Orientation: Means actual or perceived heterosexuality, homosexuality or bisexuality.

Sec. 10-401 - Declaration of Public Policy.

(a) It is hereby declared to be the public policy of the city in the exercise of its police power for the protection of the public safety, public health and general welfare, for the maintenance of business and good government and for the promotion of the city's trade, commerce and manufacturing, to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations and equal opportunity in the sale, purchase, lease, rental, and financing of housing accommodations or real property. Equal opportunity in the areas of employment, public accommodations, housing accommodations, and real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap, or familial status. **PROVIDED, the refusal of a religious leader to perform a religious ceremony shall not violate the policy of this ordinance**

(b) The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap, or familial status is contrary to the principles of freedom and equal opportunity and is destructive to a free and democratic society. (Code 1971, § 10-2; Ord. of 9-12-89)

Sec. 10-402. Construction of article.

(a) The provisions of this article shall be liberally construed to accomplish its objectives and purposes.

(b) This article shall in no way be construed to deny any person such person's rights as they exist at common law or under the laws of the state for redress or damages, in the event of willful and malicious wrongs or harassment committed upon such person.

(Code 1971, § 10-3)

Sec. 10-403. Conflicts of interpretation of law.

In the event of a conflict between the interpretation of a provision of this chapter and the interpretation of a similar provision contained in the Code of West Virginia, Chapter 5, Article 11, or any other state law, or in any similar federal statute, the interpretation of the provision of the state law or federal statute shall apply to this article.

(Code 1971, § 10-4)

Sec. 10-404. Violation and penalties.

(a) It shall be unlawful for any person to willfully resist, prevent, impede or interfere with the city human rights commission, its members, agents or agencies in the performance of duties pursuant to this article, or to willfully violate a final order of the city human rights commission, but seeking judicial review of an order shall not be deemed to be such willful conduct.

(b) Any person who shall willfully resist, prevent, impede or interfere with the city human rights commission, its members, agents or agencies in the performance of duties pursuant to this article, or shall willfully violate a final order of the city human rights commission in violation of subsection (a) of this section shall, upon conviction, be punished as provided in section 1-8.

(Code 1971, § 10-5)

Secs. 10-405-10-424. Reserved.

DIVISION 2. - HUMAN RIGHTS COMMISSION

Sec. 10-425. Established; title; powers and objectives generally.

The Beckley Human Rights Commission is hereby established in the city government. The commission shall have the powers and authority and shall perform the functions and services as in this article prescribed and otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the city and shall strive to promote fair and equal employment practices, and to eliminate all discrimination in employment, places of public accommodations and in the sale, purchase, lease, rental or financing of housing and other

real property by virtue of race, religion, color, national origin, ancestry, sex, sexual orientation or gender identity.

(Code 1971, § 10-6)

Sec. 10-426. Composition; appointment, qualifications, term of office and compensation of members; vacancies;

(a) The commission shall be composed of nine (9) members, all residents and citizens of the city and broadly representative of the several racial, religious, political and ethnic groups residing within the city, at least one (1) of whom shall be a licensed practicing attorney, and all members shall be appointed by the mayor by and with the advice and consent of the council. Not more than five (5) members of the commission shall be members of the same political party.

(b) Each year, prior to the first day of July, three (3) members of the commission shall be appointed to terms of three (3) years commencing on the first day of July of the year of their appointments, so that the term of three (3) members of the commission will expire on the thirtieth day of June of each year. Appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment.

(c) No member of the commission shall receive any salary or compensation for such member's services.

(Code 1971, § 10-7)

Sec. 10-427. Offices; officers; meetings; budget

(a) Annually, as soon as practical after the first day of July, the commission shall elect a chairman and vice-chairman from its membership and such other officers as may be found necessary and proper for its effective organization.

(b) The commission shall equip and maintain its offices at the city hall or other accommodation as allowed by council and shall hold its annual organizational meeting there. The commission may hold other meetings at such times and places within the city as may be found necessary. Any five (5) members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be maintained.

(c) The commission shall prepare and submit a proposed annual budget to the council for approval.

(Code 1971, § 10-8)

Sec. 10-428. Executive director and other personnel.

The mayor may, by and with the advice and consent of the council, appoint an executive director who shall serve at the mayor's will and pleasure. The executive director shall serve as secretary of the commission. The director shall be selected with particular reference to such director's training, experience and qualifications for the

position and shall be paid an annual salary, payable in bi-monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission.

(Code 1971, § 10-9)

Sec. 10-429. - Objectives; Powers, Functions, Duties and Services.

The commission is hereby authorized and empowered:

- (1) To cooperate and work with federal, State and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this City.
- (2) To enlist the cooperation of racial, religious, political and ethnic units, community and civic organizations, industrial and labor organizations, employers, and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples.
- (3) To receive, investigate, and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap, or familial status, and complaints alleging discrimination in the sale, purchase, lease, rental, and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sexual orientation, gender identity, blindness or other handicap, or familial status, and to initiate its own consideration of any situations, circumstances, or problems, including therein any racial, religious, or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the State relating to employment, places of public accommodations, housing accommodations, and real property.
- (4) To hold and conduct public and private hearings on complaints, matters, and questions before the Commission and, in connection therewith, relating to discrimination in employment or places of public accommodations, housing accommodations, or real property, and during the investigation of any formal complaint before the Commission relating to employment, places of public accommodations, or real property, to:
 - (a) Issue subpoenas and subpoenas duces tecum upon the concurrence of at least three (3) members of the Commission, administer oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection

with such attendance.

- (b) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the Commission.
 - (c) Delegate to a hearing committee of three (3) to five (5) Commission members appointed by the chairman, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and actions growing out of or upon any such hearings shall be reserved for determination by the commission.
 - (d) To enter into conciliation agreements and consent orders.
 - (e) To apply to the Circuit Court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order.
 - (f) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules and regulations of the Commission.
 - (g) To apply to the Circuit Court for an order enforcing any lawful cease and desist order issued by the Commission.
- (5) To recommend to the Mayor and Council policies, procedures, practices, and legislation in matters and questions affecting human rights.
 - (6) To delegate to its Executive Director such powers, duties and functions as may be necessary and expedient in carrying out objectives and purposes of this Article.
 - (7) To prepare a written report on its work, function, and services for each year, ending on the thirtieth day of June, and to deliver copies thereof to the Mayor on or before the first day of September next thereafter.
 - (8) To do all other acts necessary and proper to carry out and accomplish effectively the objects, functions, and services contemplated by the provisions of this Article, including the promulgation of rules and regulations implementing the powers and authority hereby vested in the Commission.
 - (9) To create such advisory agencies and conciliation councils, local, regional or Statewide, as in its judgment will aid in effectuating the purposes of this Article; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, sexual orientation and gender identity, age, blindness or other

handicap, or familial status; to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of this State; and to make recommendations to the Commission for the development of policies and procedures, and for programs of formal and informal education, which the Commission may recommend to the appropriate State agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The Commission may itself make the studies and perform the acts authorized by this Subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the State.

- (10) To accept contributions from any person to assist in the effectuation of the purposes of this Section, and to seek and enlist the cooperation of private, charitable, religious, labor, civic, and benevolent organizations for the purposes of this Section.
- (11) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination; provided, that the identity of the parties shall not be disclosed. (Code 1971, § 10-10; Ord. of 9-12-89)

Sec. 10-430. City officers, departments and agencies to assist; legal services.

The commission may call upon other officers, departments and agencies of the city government to assist in its hearings, programs and projects. The city solicitor shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

(Code 1971, § 10-11)

Secs. 10-431-10-449. Reserved

DIVISION 3. UNLAWFUL DISCRIMINATORY PRACTICES

Sec. 10-450. - Enumeration.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States, the state or this city, or any agency or political subdivision thereof:

- (1) For any employer, or such employer's agent or employees, to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent to perform the services required, even if such individual is blind or otherwise handicapped; provided, that it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection.
- (2) For any employer, employment agency, or labor organization, or the agent or employees thereof, prior to the employment or admission to membership, to:
 - (a) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age or handicap, of any applicant for employment or membership;
 - (b) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitations, specification, or discrimination based upon race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap; or
 - (c) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap.
- (3) For any labor organization because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap, of any individual, to deny full and equal membership rights to any individual or otherwise discriminate against such individuals with respect to hire, tenure, terms, conditions, or privileges of employment or any other matter directly or indirectly related to employment.
- (4) For any employer, labor organization, employment agency, or any joint labor-management committee controlling apprentice training programs to:
 - (a) Select individuals for an apprentice training program registered with the City on any basis other than their qualifications as determined by objective criteria which permit review;
 - (b) Discriminate against any individual with respect to such individual's

right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

- (c) Discriminate against any individual in such individual's pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such program; or
 - (d) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based on a bona fide occupational qualification.
- (5) For any employment agency to fail or refuse to classify properly, refer for employment, or otherwise to discriminate against any individual because of such individual's race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, or other handicap.
- (6) For any reason being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodations, to:
- (a) Refuse, withhold from or deny to any individual because of such individual's race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness, or other handicap, or familial status, either directly or indirectly, any of the accommodations, advantages, facilities, privileges, or services of such place of public accommodation;
 - (b) Publish, circulate, issue, display, post, or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges, or services of any such place shall be refused, withheld from, or denied to any individual on account of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or other handicap, or familial status or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, or age, or who is blind or handicapped, is unwelcome, objectionable, not acceptable, undesired, or not solicited.
- (7) For the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership or possession of, or the right to sell, rent, lease, assign, or sublease any housing accommodations or real property

or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof to:

- (a) Refuse to sell, rent, lease, assign, or sublease, or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, blindness or other handicap, or familial status of such person or group of persons; ~~provided, that this provision shall not require any person named herein to rent, lease, assign, or sublease any housing accommodations, or real property, or any portion thereof to both sexes where the facilities of such housing accommodations or real property or any portion thereof, are suitable for only one sex; provided that such term shall not be taken ,understood or construed to include a church, church-affiliated non –profit, or private club.~~

- (b) Discriminate against any person or group of persons because of the race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, blindness or other handicap, or familial status of such person or group of persons in terms, conditions or privileges of the sale, rental or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or service in connection therewith; provided that such term shall not be taken, understood or construed to include a church, church-affiliated non-profit, or private club.

- (c) Print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted, or mailed any statement, advertisement, publication, or sign, or to use any form of application for the purchase, rental, lease, assignment, or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment, or sublease of any housing accommodations or real property, or part of portion thereof, which expresses, directly or indirectly, any discrimination as to race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, blindness or other handicap, or familial status, or any intent to make any such discrimination; and the production of any statement, advertisement, publicity, sign, form of application, record, or inquiry purporting to be made by any such person shall be prima facie evidence in any action that the same was authorized by such person; ~~provided, that with respect to sex discrimination, this provision shall not apply to any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only~~

~~one sex~~; provided, that such term shall not be taken, understood or construed to include a church, church-affiliated non-profit, or private club.

(d) Solely for purposes of familial status, nothing in subsection (7) (other than paragraph (7)(c)) of this Section shall apply to:

1. Any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three (3) such single-family houses at any one time; provided, however, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this Subsection shall apply only with respect to one such sale within any twenty-four-month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time; and provided further, that the sale or rental of any such single-family house shall be excepted from application of this Subchapter only if such house is sold or rented (i) without the use in any manner of the sales or rental facilities or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (ii) without the publication, posting, or mailing, after notice of any advertisement or written notice in violation of Paragraph (c), Subsection (7) of this Section; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or
2. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence;

(e) For the purposes of paragraph (7)(d) of this Section, a person shall be deemed to be in the business of selling or renting dwellings if:

1. He has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein, or
2. He has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence, in

providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein, or

3. He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families;
- (f) 1. Nothing in this Article limits the applicability of any reasonable local, State or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this Article regarding familial status apply with respect to housing for older persons.
2. As used in this Section "housing for older persons" means housing:
 - a. Provided under any State or federal program that is specifically designed and operated to assist elderly persons (as defined in the State or federal program); or
 - b. Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or
 - c. Intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit. In determining whether housing qualifies as housing for older persons under this Subsection, the Commission shall develop regulations which require at least the following factors:
 - (i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practical, that such housing is necessary to provide important housing opportunities for older persons; and
 - (ii) That at least eighty (80) percent of the units are occupied by at least one person fifty-five (55) years of age or older per unit; and
 - (iii) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.
 3. Housing shall not fail to meet the requirements for housing for older persons by reason of:
 - a. Persons residing in such housing as of July 1, 1989, who do

not meet the age requirements of Subparagraphs b or c, Paragraph 2, of this Subsection (7)f.; provided, that new occupants of such housing meet the age requirements of Subparagraph b or c, paragraph 2, of this Subsection (7)f; or

b. Unoccupied units: Provided, that such units are reserved for occupancy by persons who meet the age requirements of Subparagraphs b or c, paragraph 2, of this Subsection (7)f.

- (8) For any person or financial institution or lender to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair, or maintenance of any housing accommodations or real property or portion thereof or any agent or employee thereof to:
- (a) Discriminate against any person or group of persons because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, blindness, or other handicap, or familial status, of such person or group of persons or of the prospective occupants or tenants of such housing accommodations or real property, or part or portion thereof, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions, or provisions of any such financial assistance or in the extension of services in connection therewith;
 - (b) Use any form of application for such financial assistance or to make any record of inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any discrimination as to race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, blindness or other handicap, or familial status, or any intent to make any such discrimination.
- (9) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman, or financial institution, or the agents or employees of any of them, to:
- (a) Engage in any form of threats or reprisals, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or cause physical harm or economic loss, or to aid, incite, compel, or coerce any person to engage in any of the unlawful discriminatory practices defined in this Article;
 - (b) Willfully obstruct or prevent any person from complying with the provisions of this Article, or to resist, prevent, impede, or interfere with the Commission or any of its members or representatives in the performance of duty under this Article;

- (c) Engage in any form of reprisal or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this Article or because such person has filed a complaint, testified, or assisted in any proceeding under this Article; or
- (d) For profit, induce or attempt to induce any person to sell or rent or to not sell or rent any housing accommodations or real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons who are blind or otherwise handicapped or who are of a particular age, race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, or familial status; provided, that for the purposes of this Article, it shall not be an unlawful discriminatory practice for any person, employer or owner to refuse to make any unreasonable capital expenditure to accommodate the physical or mental impairment of any handicapped person. (Code 1971, § 10-12; Ord. of 11-22-83; Ord. of 9-12-89).

Secs. 10-451-10-474. Reserved.

DIVISION 4. REMEDIAL PROCEDURES AND ENFORCEMENT PROVISIONS

Sec. 10-475. Exclusiveness of remedy.

(a) The procedure provided in this division shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, such complainant may not subsequently resort to the procedure herein.

(b) If the complainant has submitted the same or similar allegations of discrimination to a disinterested third party arbitrator, through an employee grievance procedure, whether required by a collective bargaining agreement or otherwise, then the procedure provided in this chapter shall not be available to the complainant.
(Code 1971, § 10-13; Ord. of 9-10-85)

Sec. 10-476. Who may file complaint against whom; verification and contents of complaint; restrictions imposed during period of conciliation.

(a) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, owner or real estate broker or agency, real estate salesman, financial institution or lender, or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The

commission, upon its own initiative, or the mayor or the city solicitor, may in like manner make, sign and file such complaint.

(b) Any employer whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action, and no hearings, orders or other actions shall be taken, held or made by the commission against such employer.

(c) Any complaint filed pursuant to this article must be filed within ninety (90) days after the alleged act of discrimination.

(Code 1971, § 10-14)

Sec. 10-477. Investigation of complaint by commission.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the commission shall make a prompt investigation in connection therewith.

(Code 1971, § 10-15)

Sec. 10-478. Opportunity for complainant to show cause; endeavors by commission to eliminate discriminatory practices; confidential nature of endeavors of commission.

(a) If it shall be determined by the commission after investigation of a complaint that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within ten (10) days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the complainant or complainant's attorney may, within ten (10) days after such service, file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint.

(b) If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion.

(c) The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors; provided, that the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of the conciliation when the complaint has been adjusted without disclosing the identity of the parties involved.

(Code 1971, § 10-16)

Sec. 10-479. When copy of complaint to be served on respondent; notice of hearing on complaint.

In the case of failure so to eliminate such practice or in advance thereof, if, in the judgment of the commission circumstances so warrant, the commission shall cause to be issued and served written notice together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization, employment agency, owner, real estate broker or agency, real estate salesman, financial institution or lender named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the hearing committee in the city at a time and place to be specified in such notice; provided, that such written notice be served at least thirty (30) days prior to the time set for the hearing.

(Code 1971, § 10-17)

Sec. 10-480. Hearing on complaint; rights of parties; burden of proof; rules of procedure.

The case in support of the complaint shall be presented before the hearing committee by the complainant or complainant's attorney or the executive director of the commission, and in every instance the complainant shall be present in person and shall have the burden of proving such complainant's case. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. Except as otherwise provided in this article, all of the pertinent provisions of Article 5, Chapter 29A the Code of West Virginia shall apply to and govern the hearing and the administrative procedure in connection with and following such hearing with like effect as if the provisions of such Article 5, Chapter 29A were set forth in full in this section.

(Code 1971, § 10-18)

Sec. 10-481. Finding against respondent; issuance and provisions of cease and desist order; findings of fact.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the hearing committee shall find by a preponderance of the evidence that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the hearing committee shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization or the admission to full and equal enjoyment of the services, goods, facilities or accommodation offered by any respondent place of public accommodations and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property denied in violation of this article, as, in the judgment of the hearing committee, will effectuate the purposes of this article and including a requirement for report of the

manner of compliance. Such order shall be accompanied by findings of fact and conclusion of law as specified in section 29A-5-3 of the Code of West Virginia. (Code 1971, § 10-19)

Sec. 10-482. Commission action of finding in favor of respondent.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the hearing committee shall find that a respondent has not engaged in such unlawful discriminatory practice, the hearing committee shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the complaint as to such respondent.

(Code 1971, § 10-20)

Sec. 10-483. To whom copies of orders shall be provided; manner of enforcement of orders.

A copy of its order shall be delivered in all cases by the hearing committee to the complainant, to the respondent, to the city solicitor and to such other public officers as the hearing committee may deem proper. Any such order shall not be enforceable except as provided in section 10-485.

(Code 1971, § 10-21)

Sec. 10-484. Appeals from cease and desist orders.

Any person against whom a cease and desist order has been served by the hearing committee shall have a full appeal and complete right of review and a hearing de novo as a matter of right by the circuit court; provided, that, except as to the hearing de novo, any provision of Chapter 29A of the Code of West Virginia shall supersede this provision in the event of any conflict therewith.

(Code 1971, § 10-22)

Sec. 10-485. Enforcement of cease and desist orders.

(a) In the event any person shall fail to obey a lawful cease and desist order of the hearing committee, the commission may seek an order of the circuit court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the circuit court of the county wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the entire record of the hearing before the commission. Notice of the filing of such petition, together with a copy thereof shall be served upon respondent in the manner provided by law for the service of summons in civil actions. No hearing shall be held upon such petition within twenty (20) days of the date of service thereof on the respondent.

(b) The court may grant such temporary relief or restraining order as it deems just and proper and shall make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order enforcing, modifying and enforcing as so modified or setting aside in whole or in part the order of the commission. All such proceedings shall be heard and determined by the court. The jurisdiction of the circuit court shall be final and subject to review by the supreme court of appeals.
(Code 1971, § 10-23)

Secs. 10-486-10-499. Reserved