

## Albuquerque Code of Ordinances

### ARTICLE 3: HUMAN RIGHTS

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#### § 11-3-1 SHORT TITLE.

This article may be cited as the "Human Rights Ordinance."

('74 Code, § 12-3-1) (Ord. 106-1973)

#### § 11-3-2 DECLARATION OF POLICY.

Pursuant to Article VIII of The Albuquerque City Charter, in order to assure the public safety, public health and general welfare, to:

- (A) Preserve, protect, and promote human rights and human dignity;
- (B) Promote and encourage the recognition and exercise of human responsibility;
- (C) Protect and promote equality of access to public goods and services; and
- (D) Prohibit discrimination on the basis of race, color, religion, sex, national origin or ancestry, age or physical handicap, including, but not limited to the following area:

- (1) in places of public accommodations;
- (2) In housing accommodations; and
- (3) In commercial space.

('74 Code, § 12-3-2) (Ord. 106-1973)

#### § 11-3-3 DEFINITIONS.

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

**BOARD.** The Human Rights Board.

**COMMERCIAL SPACE.** Any space in a building, structure, or portion thereof, which is used or occupied or intended to be occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging, or distribution of personal property; and any space which is used or occupied as a separate business or professional unit or office in any building, structure, or

portion thereof.

**EMPLOYEE.** Any person in the employ of an employer.

**EMPLOYER.** Any person employing one or more persons acting for an employer.

**EMPLOYMENT AGENCY.** Any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, or refer employees.

**HOUSING ACCOMMODATION.** Any building or portion of a building which is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual.

**LABOR ORGANIZATION.** Any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment.

**PERSON.** One or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, cooperative, or the city and any governmental unit created and/or sponsored by the city. Where any reference to the masculine is present, he or she, her or him, his or her or person (as in chairperson vs. chairman) should be in its place.

**PHYSICALLY HANDICAPPED.** Any person who, because of accident, illness, congenital condition or other condition of health, experiences any impairment in sight, hearing, touch, taste, smell, motor skills or appearance.

**PUBLIC ACCOMMODATION.** Any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a *bona fide* private club or other place or establishment which is by its nature and use distinctly private.

**REAL PROPERTY.** Lands, leaseholds and tenements.

**UNLAWFUL DISCRIMINATORY PRACTICE.** Those unlawful practices and acts as specified in § 11-3-7.

('74 Code, § 12-3-3) (Ord. 106-1973)

#### **§ 11-3-4 HUMAN RIGHTS BOARD.**

(A) There is hereby created the Human Rights Board of the city, consisting of seven members, all of whom shall be residents of the city. All members shall be named by the Mayor with the consent of the City Council.

(B) The Human Rights Board shall elect a Chairperson, who shall carry out the usual duties of that office and such other duties as may be described herein.

(C) The term of office of each member of the Board shall be three years; of the Board Members first named, however, two shall have terms ending December 31, 1974, two shall have terms ending December 31, 1975, and three shall have terms ending December 31, 1976. The Board shall by lot determine which member shall have which term.

(D) Any vacancy occurring otherwise than by expiration of term shall be filled by appointment of the Mayor with the consent of the City Council and such appointment shall be for the unexpired term of the member whom he or she is to succeed.

(E) The Mayor shall endeavor in all appointments to create and maintain a Board broadly representative of the city population, and in particular, its racial, ethnic and cultural spectrum.

(F) A member once appointed may be removed only by the Mayor with the advice and consent of the City Council.

(G) Four members shall constitute a quorum for the purpose of conducting Human Rights Board business.

('74 Code, § 12-3-4) (Ord. 106-1973; Am. Ord. 43-1977)

#### § 11-3-5 POWERS AND DUTIES.

The Board shall:

(A) Set such rules and regulations as are necessary for the operation of the Board.

(B) Conduct public hearings upon the request of the City Council or Mayor upon such matters as the City Council or Mayor may from time to time direct.

(C) Receive complaints alleging an unlawful discriminatory practice as defined in this article. The staff director (as described in § 11-3-9(A)) of the Human Rights Board shall advise the complainant of the resources available to the complainant for resolution of his or her problem including but not limited to the State Human Rights Commission, the Federal Equal Employment Opportunity Commission, the Albuquerque Municipal Courts and such other agencies and entities as may be available. In addition, the staff director shall be responsible for:

(1) Following the progress of the individual complaints to insure that the agency to whom the complainant was referred acts on the referral;

(2) Observing complaints for trends that may indicate a need for changes in policies, ordinances or other practices; and

(3) Making recommendations to the Human Rights Board that it consider holding public hearings under this article.

(D) Not receive a complaint, where a similar complaint, based on the same facts, has been filed by the complainant with another agency.

(E) Use its best efforts to:

(1) Promote mutual trust, understanding and respect among the citizens of the Albuquerque community and between the citizens and their governmental agencies.

(2) Endeavor that all citizens may enjoy their rights and pursue their opportunities on an equal basis without discrimination as to race, color, religion, sex, national origin or ancestry, age, or physical handicap.

(3) Conduct programs of research and investigation into the existence, cause, prevention, and remedy of inter-group tensions and hostility, and prejudice and discrimination within the community and to inform and educate the citizens as to the results of such research and investigation.

(4) Conduct programs of information and education within the community so as to advise citizens of their existing rights and opportunities and the means by which they may lawfully be attained.

(5) Work in close cooperation with all public and private agencies within the community whose aims or activities are consistent with the purpose stated herein.

(F) Provide review of all existing and proposed ordinances and policies which relate to the objectives of this article.

(G) Work with governmental agencies, including the New Mexico Human Rights Commission, and with community organizations to carry out the purposes of this article.

(H) Make recommendations to the City Council based upon its findings concerning problems occasioned by prejudice and discrimination in all fields of human relations and recommend corrective

action to aid in carrying out the purposes of this article.

(I) Submit annually a written report of its activities and an evaluation of the effectiveness of this article to the City Council and Mayor with recommendations for changes.

(J) Review and make recommendations to the Mayor, City Council, or Chief Administrative Officer regarding the City Affirmative Action Plan and Programs; city department, division, agency, and program affirmative action plans; and affirmative action guidelines for City contracts. Conduct investigations, monitor, and make recommendations to the Mayor, City Council or Chief Administrative Officer about the city's implementation of such plans or guidelines. Recommend any remedial action necessary for compliance with approved plans or guidelines to the Chief Administrative Officer.

('74 Code, § 12-3-5) (Ord. 106-1973; Am. Ord. 5-1977)

#### § 11-3-6 POWERS OF THE BOARD.

The Board may:

(A) Hold hearings, request the appearance of witnesses and the production of relevant books, records, correspondence, documents, and other evidence relating to any matter under investigation or in question before the Board.

(B) Make such investigations and studies in the field of human relations as in the judgment of the Board will aid in effectuating its general purposes.

(C) Recommend to the City Council and Mayor legislation to aid in carrying out the purposes of this article.

(D) Whenever the Board has reason to believe that a violation of this article has occurred and a proceeding would be in the interest of the public, it shall issue and serve upon such person a complaint stating its charges in that respect and containing a notice of a hearing, upon a day and at a place therein fixed, at least 30 days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Board requiring such person to cease the violation of the law so charged in said complaint. Upon failure of the person to comply with the order within ten days, the Board shall file an appropriate proceeding in the Municipal Court. This proceeding shall be *de novo*. The Municipal Court shall have jurisdiction to entertain a complaint alleging a violation of this article without the necessity of filing a complaint with the Board.

('74 Code, § 12-3-6) (Ord. 106-1973)

#### § 11-3-7 UNLAWFUL DISCRIMINATORY PRACTICE.

It is unlawful discriminatory practice and a violation of this article for:

(A) An employer, unless based on a *bona fide* occupational qualification, to refuse to hire, to discharge, to promote or demote or to discriminate in compensation or terms and conditions of employment, against any person otherwise qualified, because of race, color, religion, sex, national origin or ancestry, age or physical handicap.

(B) A labor organization to exclude an individual or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, color, religion, sex, national origin or ancestry, age or physical handicap.

(C) Any employer, labor organization, or any other person to refuse to admit or employ any

individual in any program established to provide an apprenticeship or other training or retraining because of race, color, religion, sex, national origin or ancestry, age or physical handicap.

(D) Any employer, labor organization, or any other person to print or circulate or cause to be printed or circulated any statement, advertisement, or publication or to use any form of application for employment or membership, or to make any inquiry regarding prospective employment or membership which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, sex, national origin or ancestry, age or physical handicap, unless based on a *bona fide* occupational qualification.

(E) An employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which the individual is otherwise qualified because of race, religion, color, national origin, ancestry, age, sex, any physical or mental handicap unless based on a *bona fide* occupational qualification; or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex, or physical or mental handicap unless based on a *bona fide* occupational qualification.

(F) Any person who provides any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of race, color, religion, sex, national origin or ancestry or physical handicap.

(G) Any person to:

(1) Refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease or sublease, or assignment, any housing accommodation, commercial space or real property to any individual, or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation, commercial space or real property, or in the provision of facilities or services in connection therewith, because of race, color, religion, sex, national origin or ancestry, or physical handicap.

(2) Print, circulate, display or mail, or cause to be printed, circulated, displayed or mailed, any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation, commercial space or real property, or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any housing accommodation, commercial space or real property which expresses any preference, limitation or discrimination as to race, color, religion, sex, national origin or ancestry, or physical handicap.

(H) Any person to whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, commercial space or real property, to:

(1) Consider race, color, religion, sex, national origin or ancestry or physical handicap in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions or provisions of any financial assistance, or in the extension of services in connection with the request for financial assistance; and

(2) Use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, sex, national origin or ancestry or

physical handicap.

(I) Any person or employer to:

(1) Aid, abet, incite, compel or coerce the doing of any unlawful discriminatory practice or to attempt to do so.

(2) Engage in any form of threats, reprisals or discrimination against any person who has opposed unlawful discriminatory practices or has filed a complaint, testified or participated in any proceeding under this article.

(3) Willfully obstruct or prevent any person from complying with the provisions of this article or to resist, prevent, impede or interface with the Board or any of its members, staff or representatives in the performance of their duties under this article.

('74 Code, § 12-3-7) (Ord. 106-1973)

§ 11-3-8 GRIEVANCE PROCEDURE.

Any person claiming to be aggrieved by an unlawful discriminatory practice, as herein defined, and any Board member who has reason to believe that discrimination has occurred, may file with the Board a written complaint which shall state the name and address of the person alleged to have engaged in the discriminatory practice and any other information that may be required by the Board. All complaints must be filed with the commission within 90 days after the alleged act was committed.

('74 Code, § 12-3-8) (Ord. 106-1973)

§ 11-3-9 PROCEDURES FOR HOLDING PUBLIC HEARINGS.

(A) The Human Rights Board shall give notice of its proposed public hearings under § 11-3-6 30 days in advance of said hearings and shall within 30 days after the hearings issue the findings of the Human Rights Board as a result of the hearings and they shall make such recommendations to the City Council as the Human Rights Board deems appropriate.

(B) Upon notification by the City Council to the Human Rights Board that a public hearing under the provisions of § 11-3-5 is desired, a public hearing shall be heard thereon within three weeks of the request. The Human Rights Board shall give seven days written notice by certified mail, or two days written notice by personal service, to any prospective witnesses it wishes to testify at said public hearing. The Human Rights Board shall within 30 days after the public hearing under § 11-3-5, issue its findings and make such recommendations to the City Council as it deems appropriate.

(C) When a public hearing is requested under §§ 11-3-5 or 11-3-6, the Mayor shall issue a directive to all pertinent city personnel and departments to cooperate and assist the Human Rights Board in effectuating and accomplishing the charge by the City Council.

(D) Testimony given at the public hearing shall be taken under oath administered by a Notary Public. Minutes of the hearing shall be kept by a staff member; a full and verbatim transcription of the hearing, however, shall be made only at the request of the Human Rights Board.

('74 Code, § 12-3-9) (Ord. 106-1973)

§ 11-3-10 ADMINISTRATIVE RESPONSIBILITIES.

The Chief Administrative Officer shall:

(A) Employ, after consultation with the Human Rights Board, a staff director, and hire or cause to be hired such other employees for the Board he may deem necessary. The Staff Director may, at the discretion of the Board, in addition to the duties described in § 11-3-5(C):

(1) In the event of a citizen's complaint against the city or one of its agencies, refer the complaint to the appropriate city agency for action. If the problem is not satisfactorily solved, intercede on behalf of the complainant, taking such action as may be required to resolve the issues involved in the complaint.

(2) In the event of a citizen's complaining against another citizen, intercede on behalf of the complainant using conciliation and persuasion, as appropriate, to effect a solution.

(B) Make available, so far as practicable, the services of all city and city-related departments and agencies to the Board for the purpose of carrying out the function herein stated, including the provisions of information in the possession of such department or agency when the Human Rights Board, after consultation with the Chief Administrative Officer, so requests.

(C) Instruct the City Attorney to assign counsel to assist the Human Rights Board in the performance of its functions and make such other administrative arrangements as are normal and necessary for the functioning of the Board.

('74 Code, § 12-3-10) (Ord. 106-1973)

#### § 11-3-11 INTERFERING PROHIBITED.

No person shall:

(A) Use a threat, communicated either by physical, oral, or written means, of harm or injury to another person, his or her reputation, or his or her property because he or she has opposed a discriminatory practice, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding or hearing before any body charged by law with the duty to hear complaints relating to problems of discrimination.

(B) Use a threat, communicated either by physical, oral, or written means, or harm or injury to another person, his or her reputation, or his or her property to coerce such person to engage in a discriminatory practice or other violation of this article.

(C) Willfully obstruct, hinder or interfere with the performance of the proper exercise of a duty, obligation, right or power by the Mayor, the Municipal Court, or other official or body with duties, obligations, rights, and powers under this article.

('74 Code, § 12-3-11) (Ord. 106-1973)

#### § 11-3-12 EXEMPTIONS.

Nothing in this article shall:

(A) Bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination, or from making selections of buyers, leasees or tenants as are calculated by the organization or denomination to promote the religious or denominational principles for which it is established or maintained unless membership in the religious or denominational organization is restricted on account of race, color, sex, national origin, ancestry, age, or physical handicap.

(B) Apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his or her residence.

(C) Apply to public rest rooms, public showers, public dressing facilities or sleeping quarters in

public institutions where the preference or limitation is based on sex; and

(D) Apply to private living quarters where the preference or limitation is based on sex.

('74 Code, § 12-3-12) (Ord. 106-1973)

§ 11-3-99 PENALTY.

Any person who violates any provision of this article is subject to the general penalty provision of this code set forth in § 1-1-99.

('74 Code, § 12-3-13) (Ord. 106-1973)