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INTRODUCTION TO FAIR HOUSING ORDINANCE

Discrimination in the rental of housing facilities and in the sale of housing units is a significant problem in this country. It is estimated that one out of every six Americans is prohibited from living where he wishes because of racial or religious discrimination.¹ Moreover, it seems undisputed that discrimination in housing also exists on the basis of national origin, physical or mental disability, and sex. As a result of these various types of discrimination, millions of Americans are either confined to substandard housing or at least forbidden from living in the geographic area of their choice.²

To combat the problem in Iowa, the General Assembly has created a state Civil Rights Commission³ which has the authority to prohibit unfair or discriminatory practices in the sale and rental of housing.⁴ However, the General Assembly, by creating the commission, has not pre-empted municipalities from enacting ordinances concerning housing discrimination. In fact, one provision of the statute states expressly that the General Assembly did not intend to exclude local laws regarding discriminatory practices in housing.⁵

As a guideline for cities, this model ordinance establishes a municipal regime which is similar to the state's civil rights system. The ordinance creates a five member Fair Housing Board. Each member serves for a term of three years. Compensation may be determined by the city council. The Board is required to conduct regular monthly meetings and such special meetings as are necessary. It has the power, among other things, to appoint staff members, investigate

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charges of discrimination, and make recommendations to the mayor and council for additional legislation. It can issue cease and desist orders or fine a person up to \$100 or 30 days in jail for violation of the ordinance. A violation of the ordinance includes failure to conciliate in good faith.

Furthermore, the ordinance enumerates several unfair or discriminatory housing practices. These include: 1) the refusal to sell, rent, lease, assign, or sublease any real property or housing accommodation to any person because of race, color, creed, religion, national origin, age or sex of such a person; 2) the publication, directly or indirectly, that any person is unwelcome to buy or rent housing; and 3) the coercing by one person of another to do any act which is an unfair or discriminatory housing practice. In addition, the ordinance makes it a discriminatory housing practice for a lending institution to discriminate in providing money for the purchase, acquisition, construction, or repair of housing facilities.

If a person believes he has been discriminated against in the procurement of housing, he has the right to file a written charge with the Fair Housing Board. The Board shall appoint an investigating committee to determine whether probable cause exists for the charge. If the investigating committee does not find probable cause, then it shall close the case unless the complainant appeals to the full Board. If the committee finds probable cause, it shall report that finding to the Board. The Board can direct the parties to conciliate and if conciliation fails, then the Board can file a complaint to initiate a public hearing. At the public hearing, the Board determines whether discrimination actually occurred. If the



Board does not believe conciliation will be successful either because of past experience or the surrounding circumstances of the case in question, the Board can circumvent the conciliation proceedings and immediately initiate the public hearing procedure.

When a charge is initially filed with the Board, the Iowa Civil Rights Commission is notified. The commission is also notified if the Board rejects a conciliation agreement between the parties or where such an agreement cannot be reached. At any time during the Board's proceedings the complainant may file a complaint with the Iowa Civil Rights Commission.⁶

It should be noted that the ordinance permits several exceptions from its coverage. Any bona fide religious institution may discriminate on the basis of qualifications related to a bona fide religious purpose. If a family owns housing accommodations for not more than two families and the owner resides in one unit, this ordinance would not apply to the renting of the other unit. The same is true when a person is renting less than six rooms in his own house.

FOOTNOTES

¹Mc Ghee and Ginger, The House I Live In, 46 Cornell L.Q. 194 (1960).

²Bonfield, State Civil Rights Statutes: Some Proposals, 49 Iowa L. Rev. 1067 (1964).

³See 1973 Code of Iowa, ch. 601A (hereinafter cited as Code.) The constitutionality of the statute was upheld in Iron Workers No. 67 v. Hart, 191 N.W. 2d 758 (1971). See also Schimerowski v. Iowa Beef Packers, 196 N.W. 2d 551 (1972).

⁴Code, sec. 601A.13.

⁵Code, sec. 601A.12.

⁶Code, sec. 601A.9. Any person claiming to be aggrieved by a discriminatory practice may file a complaint. No restriction is placed on this right because a person has filed a charge with a municipal agency.

AN ORDINANCE TO ESTABLISH STANDARDS TO INSURE FAIR HOUSING PRACTICES IN _____, IOWA, TO ESTABLISH A FAIR HOUSING BOARD TO ENFORCE SAID STANDARDS AND TO PROVIDE FOR PENALTIES FOR VIOLATION OF SAID STANDARDS.

Be It Enacted by the Council of the City of _____, Iowa:

SECTION 1. Purpose. The purpose of this ordinance shall be to establish standards to insure that all residents in _____, Iowa, may purchase or rent adequate housing facilities of their choice without regard to their race, color, creed, religion, national origin, age or sex.

SEC. 2. Definitions.

1. The term "person" shall mean one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the State of Iowa and all political subdivisions and agencies thereof.¹

2. The term "unfair practice" or "discriminatory practice" shall mean those practices specified as unfair or discriminatory in Section ___ of this ordinance.²

3. The term "commission" shall mean the Iowa State Civil Rights Commission created by Chapter 601A of the Code of Iowa.³

4. The term "commissioner" shall mean a member of said commission.⁴

5. The term "housing" shall mean any building, structure, or facility, or portion thereof, that is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence or sleeping place of one or more individuals, groups or families, and

any vacant land offered for sale or lease for the purpose of constructing or locating such building, structure, facility and includes any interest in housing as so defined, for simple, leasehold or other.

6. The term "lending institution" shall mean any bank, insurance company, savings and loan association or any other person regularly engaged in the business of lending money or guaranteeing loans.

7. The term "disability" shall mean the physical or mental condition of a person which constitutes a substantial handicap.⁵

SEC. 3. Unfair or Discriminatory Housing Practices. It shall be an unfair or discriminatory practice for any owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salesmen, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign or sublease any real property or housing accommodation or part, portion or interest therein, to any person because of the race, color, creed, religion, national origin, disability, age or sex of such person.⁶

2. To discriminate against any person because of his race, color, creed, religion, national origin, disability, age, or sex in the terms, conditions or privileges of the sale, rental, lease assignment or sublease of any real property or housing accommodation or any part, portion or interest therein.⁷

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment or sublease of any real property or housing accommodation or any part,

portion or interest therein, by persons of any particular race, color, creed, religion, national origin, disability, age, or sex is unwelcome, objectionable, not acceptable or not solicited.⁸

4. To include in the terms or conditions of any sale, lease, sublease, rental, assignment or other transfer of housing any condition or provision that purports to forbid or discourages or attempts to discourage the ownership, leasing, possession, occupancy or use of such housing by persons because of race, color, religion, ancestry or national origin, disability, age, or sex.⁹

5. Directly or indirectly to cause or coerce, or attempt to cause or coerce, any person to do any act declared to be an unlawful housing practice, or to engage in economic reprisal or otherwise retaliate, or to cause or coerce or attempt to cause or coerce another person to engage in economic reprisal or otherwise retaliate, against any person because such person has opposed an unlawful housing practice or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this Ordinance.¹⁰

SEC. 4. Unfair or Discriminatory Housing Practices by Lending Institutions. It shall be an unlawful housing practice for any lending institution to discriminate in lending money, guaranteeing loans, accepting mortgages or otherwise making available money for the purchase, acquisition, construction, alteration, repair or maintenance of any housing or to discriminate in the fixing of the rates, terms or conditions of any such financing or in the extension of service in connection therewith because of race, color, religion, ancestry or national origin, age, disability or sex.¹¹

SEC. 5. Aiding or Abetting. It shall be unfair or discriminatory

practice for any person to intentionally aid, abet, compel or coerce another person to engage in any of the practices declared unfair or discriminatory by this ordinance.

SEC. 6. Exceptions. The provisions of this ordinance shall not apply to:

1. Any bona fide religious institution with respect to any qualifications it may impose based on religion, when such qualifications are related to a bona fide religious purpose.

2. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations.

3. The rental or leasing of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation, if he or members of his family reside therein.¹²

SEC. 7. Fair Housing Board. There is hereby created a Fair Housing Board of _____, Iowa, hereinafter referred to as the Board, which shall consist of five members. The members shall be nominated by the mayor and approved by the council. Of the members first appointed, two shall be appointed for terms of three years, two shall be appointed for terms of two years, and one shall be appointed for term of three years. Thereafter members shall be appointed for terms of three years unexpired term by nomination by the mayor and approved by the council.

SEC. 8. Conduct of Board. The Board shall:

1. Elect a chairman and vice-chairman at its regular January meeting and such other officers as the Board may decide. All officers shall be members of the Board.

2. Hold at least one regular meeting during each calendar month at a time and place to be determined by its rules. A quorum shall be 3 members of the Board.

3. Hold special meetings at the call of the chairman, vice-chairman, or any three members of the Board by giving at least 48 hours notice to every member of the Board. The call for a special meeting shall include an agenda and only matters included in that agenda may be discussed at the meeting. If all members of the Board agree in writing, prior notice of 48 hours to a special meeting may be waived.

4. Receive actual and necessary expenses incurred within the limits established in city budget. Members of the Board shall receive compensation as provided for by the council.

5. Adopt, amend or rescind such rules as may be necessary for the conduct of its business.

SEC. 9. Powers of Board. The Board shall have the following powers and duties:

1. To appoint and prescribe duties of a director and such investigators and other employees as the city budget shall provide for in the enforcement of the ordinance.¹³

2. To receive, investigate, and pass upon charges or complaints alleging unfair or discriminatory practices, as provided in Section 3 of this ordinance.

3. To investigate and study the existence, character, causes, and extent of discrimination in housing in this city and to attempt the elimination of such discrimination by education and conciliation.

4. To issue such publications and reports of investigations and research as in the judgment of the board shall tend to promote good will among the various racial, religious and ethnic groups of the city and which shall tend to minimize or eliminate discrimination in housing because of race, creed, color, national origin, religion, or ancestry.

5. To prepare and transmit to the mayor and council from time to time, but not less often than once each six-months, reports describing its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the Board.

6. To make recommendations to the mayor and council for such further legislation concerning discrimination because of race, creed, color, national origin, religion, or ancestry as it may deem necessary and desirable.

7. To cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are not inconsistent with those of this ordinance, and in the planning and conducting of programs designed to eliminate racial, religious, cultural and intergroup tensions in housing.¹⁴

SEC. 10. Charge.¹⁵

1. Any person claiming to be aggrieved by a discriminatory or unfair practice in housing within this city may, by himself or his attorney, make, sign, and file a verified written charge of discriminatory practice. The Board, a member of the Board, the city attorney, or the Iowa State Civil Rights Commission may in like manner make, sign and file such charge.

2. Charges may be filed with any member of the board, with the director or secretary of the board or with the city clerk.

3. Any charge filed under this ordinance shall be so filed within sixty (60) days after the most recent act constituting the alleged discriminatory or unfair practice in housing.

SEC. 11. Notice to Iowa State Civil Rights Commission.¹⁶

1. The secretary of the board shall immediately notify the Iowa State Civil Rights Commission in writing of the filing of a charge under this ordinance by forwarding a copy of the charge, and shall provide such other and further information thereon as from time to time the Board shall deem proper.

2. Whenever this ordinance requires the Board or its secretary to notify the Iowa State Civil Rights Commission of any matter, it shall be the duty of the secretary of the Board to transmit such notice or information in writing within five (5) days of the event giving rise to the duty to give notice or information.

SEC. 12. Investigation for Probable Cause.

1. Within five (5) days after the filing of a charge, the chairman of the Board, or in his absence or failure to act the vice-chairman or other member designated by the Board, shall designate two or more members of the Board or one or more members of the staff of the Board to investigate the charge. This person or persons are hereafter designated as the "investigating committee." If two or more persons are members of the investigating committee, the vote of a majority shall determine all questions. If the members of the investigating committee are equally divided on some issue, the chairman of the investigating committee shall have an additional vote.

2. The investigating committee shall first determine whether probable cause exists to believe that the person charged in the charge has committed an unfair or discriminatory practice. It shall take the sworn testimony of the complainant and such other evidence as it deems relevant. The proceedings of the investigating committee shall be in executive session.¹⁷

SEC. 13. Proceedings Upon Finding of Probable Cause.¹⁸

1. If the investigating committee shall find no probable cause to believe that the person charged has committed an unfair or discriminatory practice, it shall report the same to the Board and shall notify the complainant in writing by registered or certified mail.

2. If the complainant fails to object to such findings within ten (10) days of delivery of such written notice, the Board shall close the case. The secretary of the Board shall report such fact to the Iowa State Civil Rights Commission.

3. If the complainant objects in writing to such findings within ten (10) days of delivery of such written notice, the Board shall hear his evidence in an executive session. If the Board finds no probable cause to believe that the person charged has committed an unfair or discriminatory practice, it shall declare the case closed. If the Board finds probable cause to exist, it shall take further proceedings as are provided in Sections 14 and following of this ordinance.

SEC. 14. Proceedings Upon Report or Finding of Probable Cause.¹⁹

1. If the investigating committee shall find probable cause

to believe that the person charged has committed an unfair or discriminatory practice, it shall report the same to the Board.

2. If the Board shall find, on the report of the investigating committee or on its own investigation as provided in Section 13 of this ordinance, probable cause to believe that the person charged has committed an unfair or discriminatory practice as defined by this ordinance, it shall direct appropriate person or persons to attempt to conciliate the matter, and it shall issue a cause to be served upon such person charged a notice stating the charges against such person and requesting the cooperation of the person charged in conciliation. Service of the notice may be registered or certified mail or by any means provided for the service of original notices in civil actions.

3. If the Board shall find that probable cause does exist to believe that the person charged has committed an unfair or discriminatory practice as defined by this ordinance and the Board also has probable cause to believe based on past experience or on the surrounding circumstances of the charge in question that conciliation will not be successful, the Board may file a complaint for a public hearing as provided by Section 17 of this ordinance without conducting conciliation proceedings.

SEC. 15. Proceedings Toward Conciliation.²⁰

1. If the person or persons directed to conciliate succeed in conciliation, they shall report to the Board and shall submit a proposed written conciliation agreement. The conciliation agreement shall be effective only if approved by the person charged and by the Board. The complainant shall have an opportunity to be heard as to the

terms of the conciliation agreement shall be effective only if approved by the person charged and by the Board. The complainant shall have an opportunity to be heard as to the terms of the conciliation agreement, but the Board may act without his approval.

2. If the Board accepts the conciliation agreement, it shall close the case, subject to whatever continuing supervision of the charged party is provided in the agreement. If the Board accepts the conciliation agreement, it shall communicate the terms of the agreement to the Iowa State Civil Rights Commission.

3. If the Board rejects the conciliation agreement, it may either direct that further attempts at conciliation be made or it may file its complaint of the discriminatory practice charged and proceed as provided in Sections 17 and following of this ordinance. It shall notify the Iowa State Civil Rights Commission of the rejection of the proposed agreement and of the action taken.

SEC. 16. Proceedings Upon Failure to Conciliate. If after attempts to conciliate the person or persons directed to conciliate shall find that they are unable to conciliate the matter, they shall report the same in writing to the Board. If the Board determines the charge to be well founded, it may then file its complaint of the discriminatory practice charged. If the Board determines the charge not to be well founded, it shall declare the case closed and shall so notify the parties. In either event, the Board shall notify the Iowa State Civil Rights Commission of the failure of conciliation efforts and of the action taken.

SEC. 17. Public Hearing.

1. Upon filing the complaint, the Board shall issue and cause to be served on the person charged a notice, containing a copy of

of the complaint and a notice of the time and place at which the hearing will be held on the complaint. The hearing must be held not less than ten (10) days after the issuance of the notice and must be held in a building open to the public in this city. The Board may adjourn the hearing from time to time.²¹

2. The person charged shall have the right to file a written answer to the complaint, to appear in person or by attorney at the hearing, to testify, to call witnesses in his behalf, and to cross-examine any witnesses who appear.²²

3. The Board shall have the power to reasonably and fairly amend the complaint and the party charged shall have the power to reasonably and fairly amend his answer at any time before a final order is entered in the case.²³

4. The city attorney or an attorney designated by him shall conduct the case on behalf of the Board. If the city attorney is unable to conduct the case by reason of conflict of interest or otherwise, the City Council may appoint a special attorney to conduct the case on behalf of the Board. The complainant may introduce further evidence to support the claims alleged in his charge, either in person or by attorney. No member of the investigating committee shall participate in the deliberations of the Board on the case except as a witness.

5. If the person charged shall fail to file an answer to the complaint, or shall fail to appear in person or by attorney at the hearing, the Board shall proceed to consider the testimony offered and shall base its decision thereon.²⁴

6. The evidence shall be taken under oath. The Board shall not be bound by the strict rules of evidence prevailing in courts of law or equity, but the right of cross-examination shall be preserved.²⁵

SEC. 18. Remedy. After a public hearing on a complaint is concluded, the Board shall within 5 days issue a written finding of facts which states whether any person charged in the complaint has engaged in or is engaging in the unfair or discriminatory practice complained of. If the Board finds a violation of the ordinance, it shall order the person to cease and desist from the unfair or discriminatory practice and to take such affirmative action as necessary to remedy the practice. If the Board finds no violation, it shall issue a written finding of facts and dismiss the complaint.

SEC. 19. Suit to Enforce. The Board may within 2 years after entry of any order under Section 18 of this ordinance, direct city attorney to bring a suit in the district court of this county for an injunction to compel obedience to its order.

SEC. 20. Penalty. Any person who refuses to comply with a cease and desist order of the Board or violates any provision of this ordinance shall be liable for a one hundred dollar fine or thirty days in jail. A violation of this ordinance shall include failure of any party to conçiliate in good faith.

SEC. 21. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed. These are:²⁷

SEC. 22. Severability. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SEC. 23. When effective. This ordinance shall be in effect after its final passage, approval, and publication as provided by law.²⁸

Passed by the Council the ____ day of _____, 19__, and approved this ____ day of _____, 19__.

MAYOR

Attest: _____

CLERK

FOOTNOTES

¹1973 Code of Iowa, sec. 601A.2(2). (Hereinafter cited as Code.)

²Code sec. 601A.2(7).

³Code sec. 601A.2(8).

⁴Code sec. 601A.2(9).

⁵Code sec. 601A.2(11).

⁶Code sec. 601A.13.

⁷Ibid.

⁸Ibid.

⁹1961 Code of County of Fairfax, Virginia, sec. 150.3(2a).

¹⁰1961 Code of County of Fairfax, Virginia, sec. 150.3(2c).

¹¹1961 Code of County of Fairfax, Virginia, sec. 150.3(3).

¹²Code sec. 601A.14.

¹³Code sec. 601A.5.

¹⁴City of Waterloo, Iowa, Human Rights Ordinance No. 2513 (1969), sec. 107. (Hereinafter cited as Waterloo Ordinance).



¹⁵ See Waterloo Ordinance, sec. 301.

¹⁶ Waterloo Ordinance, sec. 302.

¹⁷ See Code sec. 601A.9(3).

¹⁸ Waterloo Ordinance, sec. 304.

¹⁹ See Waterloo Ordinance, sec. 305.

²⁰ Waterloo Ordinance, sec. 306.

²¹ Code sec. 601A.9(6).

²² Code sec. 601A.9(8).

²³ Code sec. 601A.9(10).

²⁴ Code sec. 601A.9(9).

²⁵ Code sec. 601A.9(11).

²⁶ The basis of the city attorney's petition for an injunction would be that the person who has been discriminated against will be irreparably harmed if the discriminating conduct is not enjoined. Iowa Rule of Civil Procedure 321.

²⁷ All ordinances or parts of ordinances that are repealed by this ordinance should be listed. See "Repealer Clause," in Iowa Model Ordinances, Introductory ch. 3.

²⁸ See "Adoption of an Ordinance," in Iowa Model Ordinances, Introductory ch. 4.

