

ORDINANCE NO. \_\_\_\_\_

**Ordinance amending Chapter 2.58 entitled “Civil Rights Commission” to replace it with a new “Human and Civil Rights Agency”**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

Section 1. That :

**Chapter 2.58 HUMAN & CIVIL RIGHTS AGENCY**

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### Division I—General

#### 2.58.010 Purposes.

The purposes of the city in enacting the ordinance codified in this chapter are:

A. To secure for all individuals within the city freedom from discrimination because of race, color, religion, creed, sex, national origin or ancestry, familial status, marital status, age, mental or physical disability, gender identity, or sexual orientation, in connection with employment, public accommodations, housing, education, and credit, and thereby to protect the personal dignity of these individuals, to insure their full productive capacity, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individual citizens within the city;

B. To provide for the execution within the city of the policies embodied in the Iowa Civil Rights Act of 1965 and in the Federal Civil Rights Act and to promote the cooperation between the city and the federal agencies enforcing those acts;

C. To provide, at the local level, a human and civil rights agency dedicated to the effective enforcement of this chapter;

D. To serve as a source of information to employers, landlords, businesses, laborers, tenants, and other citizens and groups relative to various civil rights legislation and regulations;

E. To provide accountability in matters of administrative oversight of personnel, budget, and day-to-day operations while maintaining independence from the administration of the city and independence in the adjudication of contested complaints; and

F. To create an organizational structure that may be easily regionalized through appointments to the governing board.

**2.58.020 Construction.**

This chapter shall be construed broadly to effectuate its purpose.

**2.58.030 Definitions.**

For the purposes of this chapter, the words set out in this section shall have the following meanings:

A. "Hearing Board" means the citizen volunteer board created by this chapter.

B. "Complainant" means that person filing a complaint with the agency.

C. "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent and the agency.

D. "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

E. "Court" means the district court in and for Scott County, Iowa.

F. Reserved.

G. "Disability" means, with respect to an individual,

1. A physical or mental impairment that substantially limits one or more of the major life activities of such individual and the condition of an individual with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired human immunodeficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of "disability" under provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases;

2. A record of such an impairment; or

3. Being regarded as having such impairment, but such term does not include current illegal use of or addiction to a controlled substance as defined in Chapter 124 of the Iowa Code.

H. "Employee" means any person employed by an employer, but does not include an individual employed by a parent, spouse, or child.

I. "Employer" means every person employing employees within the city, excepting due to an appearance of conflict, the city itself or any other political subdivision, board, commission, department, or school district within the city limits. Complaints against these excluded entities shall be referred to the relevant state and/or federal agency.

J. "Employment agency" means any person or entity undertaking to procure employees or opportunities to work for any other person or any person or entity representing himself or itself to be equipped to do so.

K. "Gender identity" means a gender-related identity of a person regardless of the person's assigned sex at birth.

L. "Labor organization" means 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.

M. "Marital status" means the state of being married, single, divorced, separated, or widowed.

N. "Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, labor organizations, trustees, trusts, mutual companies, joint stock companies, unincorporated organizations, trustees in cases under the federal bankruptcy code, receivers, and fiduciaries, excepting due to an appearance of conflict, the city itself or any other political subdivision, board, commission, department, or school district within the city limits.

O. "Public accommodation" means each and every place, establishment, or facility, of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives any governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which by its nature is distinctly private except when such distinctly private place, establishment, or facility caters or offers services, facilities, or

goods to the nonmembers for a fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

P. "Respondent" means the person or other entity against whom a complaint has been filed with the agency.

Q. "Sexual orientation" means the following:

1. Homosexuality, heterosexuality, and bi-sexuality;
2. Having a record of being homosexual, heterosexual, or bisexual; or
3. Being perceived as being homosexual, heterosexual, or bisexual.

R. "Unlawful practice" or "discriminatory practice" means those practices specified as unlawful or discriminatory in this chapter.

#### **2.58.040 Established.**

A. There is established a Davenport Human and Civil Rights Agency. The two aldermen at large and the mayor *pro tem* shall serve, without additional compensation, as its governing board on an *ex officio* basis with full powers and voting rights. If the mayor *pro tem* is also an alderman at large the mayor shall appoint another alderman to serve and complete the three member governing board (alternatively "board" or "governing board" or "governing body"). Further, if all three *ex officio* members are of the same gender, the mayor shall replace one of them with an alderman of the opposite gender. The three members shall select a chair and vice-chair.

B. The governing board may elect to contract with third-party providers to perform any or all of functions of this chapter assigned to the agency administrator or staff. Should the governing board determine that it wants to employ an agency administrator ("Human and Civil Rights Administrator" or "HCRA" or "agency administrator"), the HCRA shall be appointed by an affirmative vote of at least two of the governing board members. The HCRA shall serve an indefinite term at the pleasure of the governing board and direct the day to day affairs of the agency. The HCRA's initial compensation and benefits will be set by the board after receiving comparable data from the human resources director and may be adjusted from time to time in conjunction with the annual budget approval. The HCRA may be removed from office at any time upon an affirmative vote of at least two governing board members. The city attorney or their respective designee may investigate any allegations of misconduct, malfeasance, neglect of duties, poor performance or any other issue indicating unsuitability for continued employment on the part of the HCRA. In conjunction with any such investigation the city attorney may place the HCRA on administrative leave and/or compel the HCRA's presence at the workplace. The city attorney also may direct and compel the HCRA to respond to requests for information either orally or in a written format. After any such investigation, the findings and any recommendation for corrective action shall be presented to the governing body to take such action as the members deem appropriate.

C. In order to carry out the purposes of this chapter and to serve as the adjudicatory body for contested complaints and cases under this chapter there is established in the city a civil rights hearing board to be known as the Davenport Civil Rights Citizen Hearing Board (“hearing board”). Such hearing board shall consist of seven individuals with the goal that the individuals be broadly representative of the community and the various racial, religious, cultural and social groups within it. The mayor shall appoint the members of the hearing board, who must reside in Davenport. All members shall serve without compensation. After the initial appointments, the term of service is four years (anyone appointed to a vacant position serves the balance of the term). The terms for the initial appointments to create the hearing board shall be four members for three years and three members for four years. The hearing board shall elect a chair and vice-chair from the members of said hearing board.

#### **2.58.045 Meetings.**

A. The governing board shall have a regularly scheduled, bi-monthly meeting. The chair or any two members of the governing board may call a special meeting by giving at least twenty-four hours’ notice to every other member of the board. The call for a special meeting shall include an agenda and only matters included in the agenda may be acted on at the meeting. If or when the agency does not have a staff, the city administrator shall designate a staff member to provide administrative support to the agency on a temporary basis.

B. The hearing board shall meet as necessary to adjudicate contested cases, approve settlements or conciliations of complaints, or make probable cause determinations in regards to fair housing complaints. All legally required notices shall be given including the posting of an agenda. Members of the hearing board shall attend at least two-thirds of all regularly scheduled meetings within any twelve month period. If any member does not attend such prescribed number of meetings, it shall constitute grounds for the hearing board to recommend to the mayor that said member be replaced. Attendance of members shall be entered in the minutes.

#### **2.58.050 Powers and duties.**

The governing board shall have the following powers and duties:

A. To appoint and supervise a HCRA and approve appointment of staff of the agency unless the board elects to contract with third parties. Staff members of the human and civil rights agency are employees of the agency. The human resources director and finance director may be requested to provide administrative services, support and information to the board in regards to its employees. Any reference to “staff” or “agency staff” also shall be a reference to any third party contractors as appropriate given the context of the reference.

B. To receive and cause the investigation of complaints alleging unfair or discriminatory practice;

C. To study the existence, character, causes and extent of practices of discrimination and unfair practices in this city against any group because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation and to attempt the elimination of such discrimination by education and conciliation.

D. To set standards for and certify thereafter, to the HCRA, a list of eligible hearing officers who may conduct public hearings under this chapter, and such officers shall be attorneys.

E. To issue, amend or rescind suitable regulations not inconsistent with this chapter or law to carry out the provisions of this chapter. Regulations issued under this subsection or any amendments or rescission thereof shall be subject to public hearing before adoption with no less than fifteen days' notice of hearing to be published. Copies of proposed regulations, amendments or rescissions shall be placed on file with the city clerk's office for inspections by the general public prior to public hearing. Following the public hearing and certification of the final regulations, amendments or rescissions adopted by the governing board, such regulations, amendments, or rescissions shall take effect within thirty days of approval by the governing board.

F. To issue such publications and reports of investigations and research as in the judgment of the governing board shall tend to promote good will among the various racial, religious, ethnic, and other groups within the city and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, housing, education, or credit because of race, creed, color, sex, familial status, marital status, national origin or ancestry, religion, disability, age, gender identity or sexual orientation.

G. To prepare and transmit to the mayor and to the city council from time to time, reports describing its proceedings and the work performed by the agency;

H. To make recommendations to the mayor and to the city council for such further legislation concerning discrimination because of race, creed, color, national origin or ancestry, religion, sex, familial status, marital status, age, disability, gender identity or sexual orientation as it may deem necessary or desirable.

I. To cooperate within the limits of appropriations made for its operations with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate discrimination based on race, color, religion, creed, national origin or ancestry, sex, disability, age, familial status, marital status, gender identity or sexual orientation.

J. To enter into contracts with federal, state, and other municipal civil rights agencies which would further the purposes of this chapter including the joint exploration of a regional and cooperative model of the agency that includes neighboring political subdivision.

K. To work with and cooperate with the U.S. Equal Employment Opportunity Commission under Sections 705, 706, 709, 710 and other appropriate sections of the Civil Rights Act of 1964 as amended.

L. To hold meetings at intervals of not more than bi-monthly at a time and place to be determined by the governing board.

M. To issue subpoenas and order discovery in aid of investigations and hearings of alleged unfair or discriminatory practices as provided by this chapter. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court in accordance with state law and the Iowa rules of civil procedure.

**2.58.060 Reserved.**

**2.58.070 HCRA—Powers and duties.**

A. Subject to the legislative and budgetary direction of the city council and the direction of the governing board, the agency administrator shall have the following powers and duties:

1. To appoint and prescribe the duties of such employees and agents as the governing body may from time to time authorize, and to administer the budget of the agency, including any sums received by gift or grant under the rules and regulations of the city council and the department of city administration and to account for the same.

2. To receive, investigate and pass upon complaints alleging unfair or discriminatory practices;

3. To furnish staff services to the agency, governing board, and hearing board;

4. To initiate, with the approval of the governing board, investigations into apparent patterns and practices of discrimination where no complaints have been filed with the agency, and, if the governing board finds, subsequent to such investigation, that there is sufficient evidence to so warrant, to file a complaint against the party responsible for the alleged pattern or practice of discrimination;

5. To request such cooperation, assistance and data from city departments as may be necessary to carry on the duties and functions prescribed for the agency and HCRA by this chapter;

6. To report to the governing body monthly in writing concerning the activities of the HCRA and of hearings conducted, decisions rendered and the outcome thereof. Such reports also include an accounting of all complaints and the status or disposition thereof, without the use of names or other identifying information;

7. To perform such other duties as are imposed upon the HCRA by the terms of this chapter and by the governing body.

B. The HCRA shall be directly responsible to and shall report to the governing body.

**2.58.080 Public meetings, records, and confidentiality.**

A. All meetings of the governing body and hearing board shall be public meetings except when Iowa law allows for a closed session.

B. All records of the agency shall be public, except:

1. Complaints of discrimination, reports of investigations, statements and other documents or records obtained in investigation of any charge shall be closed records, unless public hearing is scheduled or district court action is commenced as provided in this chapter.

2. The minutes of any session which is closed under the provisions of this chapter shall be closed records.

C. No member or employee of the agency or the boards or of the city shall disclose to any person, other than the respondent, the filing of a charge, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by conference, conciliation, or persuasion, unless such disclosure is made in connection with the investigation, scheduling of a public hearing upon a complaint, the holding of the public hearing, after a public hearing is held, or after district court action is commenced as provided in this chapter. This subsection does not prevent any complainant, respondent, witness, or other person from publicizing the filing of a complaint or the matter therein complained of. Nor does it prohibit disclosure of any conciliation agreement without use of the names of parties involved.

**2.58.090 Administrative release.**

A. A person claiming to be aggrieved by an unfair or discriminatory practice must initially seek administrative relief by filing a complaint with the agency in accordance with local ordinance, state or federal law.

B. After the proper filing of a complaint with the agency and after the complaint has been on file for at least sixty days, a complainant may commence an action for relief in the district court after obtaining an administrative release from the agency.

C. Upon a request by the complainant, after meeting the applicable conditions, the agency through its HCRA shall issue to the complainant a release stating that the complainant has a right to commence an action in the district court. A release under this subsection shall not be issued if any of the disqualifying conditions found in the corresponding state or federal law are present, including:

1. A finding of no probable cause has been made on the complaint by the HCRA;
2. A conciliation agreement has been executed;

3. The agency has served notice of hearing upon the respondent; or

4. The complaint is closed as an administrative closure and two years have elapsed since the issuance date of the closure.

D. An action authorized under this section is barred unless commenced within ninety days after issuance by the agency of a release under this section. If a complainant obtains a release, the agency is barred from further action on that complaint.

E. Venue for an action under this section shall be in the county in which the respondent resides or has its principal place of business, or in the county in which the alleged unfair or discriminatory practice occurred.

## **Division II—Unfair Practices**

### **2.58.100 Unfair practices—Employment— Exceptions.**

A. It shall be an unlawful employment practice for any person or employer:

1. To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation; or

2. To limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the employee's status as an employee because of such individual's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

B. It shall be unlawful employment practice for any employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of the individual's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation, or to classify or refer for employment any individual on the basis of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

C. It shall be an unlawful employment practice for a labor organization:

1. To exclude or to expel from its membership, or otherwise to discriminate against any individual because of the individual's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

2. To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment, because of such individual's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation; or;

3. To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

D. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of the individual's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation in admission to, or employment in, any program established to provide apprenticeship or other training.

E. It shall be an unfair employment practice for any employer, employment agency, labor organization or the employees, agent or members thereof to directly or indirectly advertise, or in any other manner indicate or publicize, that individuals of any particular age, race, creed, color, sex, familial status, marital status, national origin or ancestry, religion, disability, gender identity, or sexual orientation are unwelcome, objectionable, not acceptable or not solicited for employment or membership.

F. Regardless of any other provision of this section, it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or refer for employment of any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of the individual's sex, national origin, or age, in those certain instances where the individual's sex, national origin, or age, is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

G. It shall not be an unlawful employment practice for any bona fide religious institution, association, corporation, society or educational institution to hire and employ employees of a particular religion if such institution is in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society, or if the curriculum of such educational institution is directed toward the propagation of a particular religion.

H. This section shall not apply to:

1. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

2. The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.

3. The employment of individuals to render personal service to the person of the employer or members of the employer's family.

**2.58.110 Unfair practices—Accommodations or services—Exception.**

A. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

1. To refuse or deny to any person because of age, race, creed, color, sex, familial status, marital status, national origin or ancestry, religion, disability, gender identity or sexual orientation the accommodations, advantage, facilities, services, education or privileges thereof, or otherwise to discriminate against any person because of age, race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation in the furnishing of such accommodations, advantages, facilities, services, education or privileges;

2. To directly or indirectly advertise, or in any other manner indicate or publicize, that the patronage or persons of any particular race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation is unwelcome, objectionable, not acceptable, or not solicited.

B. This section shall not apply to any bona fide religious institution with respect to any qualifications the institution may impose based on religion when such qualifications are related to a bona fide religious purpose nor shall it apply to discounts for services or accommodations based upon age.

**2.58.120 Unfair practices—Credit.**

A. A creditor shall not refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

B. Refusal by a creditor to offer credit, life or health or accident insurance based upon the age or disability of the consumer shall not violate the provisions of this section unless such denial is a mere subterfuge adopted for the purpose of evading the provisions of this section.

C. A person authorized or licensed to do business in this state pursuant to Iowa Code Chapters 524, 533, 534, 536 or 536A, shall not refuse to loan or extend credit, or

impose terms or conditions more onerous than those regularly extended, to persons of similar economic backgrounds because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

D. No form of application for financial assistance shall be used which indicates, directly or indirectly an intent to make a limitation, specification or discrimination on the basis of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

#### **2.58.125 Education.**

A. It shall be unfair or discriminatory practice for any educational institution to discriminate on the basis of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation in any program or activity. Such discriminatory practices shall include, but not be limited to, the following practices:

1. Exclusion of a person or persons from participation in, denial of the benefits of, or subject to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs.

2. Denial of comparable opportunity in intramural and interscholastic athletic programs.

3. Discrimination among persons in employment and the conditions of employment.

4. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

B. For the purpose of this section, educational institution includes any preschool, elementary, secondary, or merged area school, area education agency, or postsecondary college or university and their governing boards.

C. This section does not prohibit an educational institution from maintaining separate toilet facilities, locker rooms or living facilities for the different sexes so long as comparable facilities are provided.

D. Nothing in this section shall be construed as prohibiting any bona fide religious institution from imposing qualifications based on religion when such qualifications are related to a bona fide religious purpose or any institution from admitting students of only one sex.

E. Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner

accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

**2.58.130 Unfair practices—Aiding or abetting.**

It shall be an unfair or discriminatory practice for:

1. Any person to intentionally aid, abet, compel or coerce another person to engage in any of the practices declared unfair or discriminatory by this chapter;

2. Any person to discriminate against another person in any of the rights protected against discrimination on the basis of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation of this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

**2.58.140 Unfair practices—Retaliation.**

A. It shall be an unfair or discriminatory practice for any person to discharge, harass, penalize, or otherwise retaliate against any individual because of that individual's attempts to secure compliance or aid in securing compliance with this chapter or the remedies provided thereunder.

B. It shall be an unfair or discriminatory practice for any person to discharge, harass, penalize or otherwise retaliate with respect to employment, housing, public accommodations, education, or credit against any individual because of that individual's association with persons of a particular race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

**2.58.150 Complaint procedures - other than fair housing.**

A. The HCRA shall promptly cause investigation to be made of the allegations of unfair or discriminatory practice set forth in a complaint and shall promptly furnish the respondent with a copy of said complaint. Complaints filed in the areas of employment, credit, education, and public accommodation must be filed within three hundred days after the alleged discriminatory practice occurred. Complaints filed in the area of housing must be filed within one year after the alleged discriminatory practice occurred. The HCRA is authorized to administratively close a case when the HCRA finds any of the following: 1) lack of jurisdiction; 2) minimal impact on civil rights in the community; or 3) facts do not warrant further processing.

B. If it is determined after investigation that no probable cause exists for such complaint, the HCRA shall forthwith notify the complainant and the respondent of such determination and the case shall be closed.

C. If it is determined after investigation that probable cause exists for crediting the allegations of the complaint, the HCRA shall promptly endeavor to eliminate any

discriminatory or unfair practice by conference, conciliation and persuasion (hereinafter called conciliation).

D. The HCRA may notify the Iowa Civil Rights Commission whenever a finding of probable cause or no probable cause has been made with respect to any case within their jurisdiction or whenever such case is otherwise closed.

E. The complainant shall have the power to reasonably and fairly amend any complaint. The complaint and the answer may be amended at any time prior to the scheduling of the complaint for a public hearing, and thereafter, only upon the consent of the administrative law judge.

F. In any case where the HCRA determines that a complainant may suffer irreparable injury as a result of a violation of this chapter, the HCRA may initiate an immediate action in the court for a temporary injunction against a respondent pending the outcome of the complaint.

#### **2.58.160 Conciliation.**

A. Prior to a finding of probable cause, the HCRA may enter into the conciliation process with the respondent at the respondent's request where the investigation has been sufficient for the HCRA to determine adequate remedies for the alleged discrimination.

B. After a finding of probable cause, the respondent shall be promptly notified in writing of the finding and shall be informed of his or her right to conciliation. The notification shall further contain a place, date, and time for the conciliation meeting. Although, the agency staff must endeavor to eliminate the discriminatory practice by conference, conciliation, and persuasion for a period of sixty days after a finding of probable cause, the HCRA may, however, order the conciliation conference and persuasion procedure provided in this section to be bypassed when the HCRA determines the procedure is unworkable. Upon the bypassing of conciliation, the HCRA shall state in writing the reasons for bypassing.

C. Where the conciliation results in an agreement between the respondent and the HCRA, the agreement shall be in writing and shall be signed by the respondent or his or her representatives and by the HCRA. If the complainant can be found, the HCRA shall consult with the complainant prior to signing the agreement, and should the complainant object to the agreement, the HCRA shall execute the agreement only with the consent of the hearing board. If the complainant cannot be found, the HCRA may execute such agreement. If the HCRA becomes aware that the conciliation agreement's terms are not being complied with by the respondent, the HCRA shall take appropriate action to assure compliance with the agreement.

D. When the HCRA is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and/or the sixty-day period provided for has expired without agreement, the HCRA shall promptly report the same to the governing board. If HCRA finds that the circumstances

so warrant, the matter shall be set for public hearing. In either event, the HCRA may notify the Iowa State Civil Rights Commission of the failure of conciliation efforts and of the action taken.

**2.58.170 Public hearing.**

A. After the governing board or HCRA has determined to take the matter to public hearing, the HCRA shall serve on the respondent by registered or certified mail a written notice, together with a copy of the complaint as it may have been amended, requiring the respondent to answer the allegations of the complaint at a hearing before a hearing officer at a time and place specified in the notice, said hearing to be not less than ten days after the date of the service of notice on the respondent. A copy of the notice shall be furnished to the complainant and such other public officers and such other persons as the HCRA deems proper.

B. The notice shall include:

1. A statement of the time, place, and nature of the hearing and the name of the hearing officer before whom the hearing is to take place;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the ordinance and rules involved;
4. A short and plain statement of the matters asserted. If the HCRA is unable to state the matters in detail at the time that the notice is served, the initial notice may be limited to a statement of the issues involved.

C. The hearing will be conducted by the hearing officer who shall have the power, at the request of the complainant, the HCRA or the respondent, to issue subpoenas to compel the attendance of witnesses at such hearing and to compel any person to produce any books or papers involved in the complaint. If a witness fails or refuses to obey a subpoena issued by the hearing officer, the hearing officer may petition the district court having jurisdiction for issuance of a subpoena and the court shall issue the subpoena as by law provided. Refusal to obey such subpoena shall be subject to punishment for contempt.

D. No hearing officer shall conduct the hearing who has any personal interests in its outcome or who has taken part in the investigation of the complaint or taken a position as to whether discrimination occurred with respect to the matter in question.

E. If a party fails to appear in a contested case proceeding after proper service of notice, the person conducting the hearing may proceed and make a decision in the absence of the party.

F. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

The case for the agency may be presented by any member of the agency staff. The hearing need not be bound by the strict rules of evidence, but the admission of evidence should be based on sound discretion.

G. The record in a case shall include;

1. All pleadings, motions, and intermediate rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All findings, orders and exceptions.

H. The hearing shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording of stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision. Notice of public hearing shall be disseminated among local news media at least five days prior to the date of the hearing.

I. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

J. The hearing officer shall make written findings of fact and conclusions of law and shall state in writing a determination as to whether or not the respondent did commit any unfair or discriminatory practices as provided by this chapter. If upon taking into consideration all the evidence at a hearing, the hearing officer determines that the respondent has engaged in a discriminatory or unfair practice, the hearing officer shall, in addition to the foregoing requirements, issue an order in writing requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the hearing officer will effectuate the purposes of this chapter.

K. Upon receipt of the hearing officer's recommended decision, the HCRA shall forward a copy of the hearing officer's recommended decision to each of the parties. The HCRA shall include with the hearing officer's recommended decision notice of the date, time and place of the meeting at which the hearing board shall review the recommended decision. The notice shall also advise the parties that if they desire to take exceptions to the recommended decision that they must file the exceptions with the hearing board, and that they may file a brief in support of the exceptions. The exceptions and brief in support of exceptions must be filed with the hearing board no later than fifteen calendar days prior to the hearing board meeting at which the decision will be reviewed. The parties shall be afforded no less than fifteen calendar days between the

date the hearing officer's recommended decision is mailed to the parties and the date the exceptions and brief in support of exceptions must be filed with the hearing board.

L. The hearing board shall within ninety days of the date it receives the recommended decision of the hearing officer review the decision at a meeting. The hearing board shall consider all timely filed exceptions and briefs at the time it reviews the recommended decision. The hearing board shall hear oral arguments by the parties or their representatives, pursuant to reasonable rules made by the hearing board in each case. The hearing board may adopt, modify or reject the hearing officer's recommended decision based upon sufficiency of the evidence, or it may remand the case to the hearing officer for the taking of such additional evidence and the making of such further recommended findings of fact, conclusions of law, decision, and order as the hearing board deems necessary. Upon completing its review of the hearing officer's recommended decision and if the hearing board determines the respondent has engaged in a discriminatory practice, the hearing board shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take necessary remedial action as in its judgment will carry out the purposes of this chapter.

M. If the hearing board goes into executive session to deliberate, they may be accompanied by an attorney from the legal department who may assist them procedurally with the deliberation. No one who has previously investigated or prosecuted the matter for the HCRA shall participate in the deliberation.

#### **2.58.175 Remedial action.**

A. The remedial action ordered may include the following actions to be taken by respondent, in addition to any other remedy allowed by law:

1. Hiring, reinstatement or upgrading of employees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.
2. Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such program.
3. Admission of individuals to a public accommodation.
4. Sale, exchange, lease, rental, assignment or sublease of real property to an individual.
5. Extension to all individuals of a full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory practice.
6. Reporting as to the manner of compliance.

7. Posting notices in conspicuous places in the respondent's place of business in form prescribed by the hearing board and inclusion of notices in advertising material.

8. Payment to the complainant of damages of an injury caused by the discriminatory practice which damages shall include but are not limited to back pay, front pay, all economic damages, emotional distress damages, and reasonable attorney fees.

9. Payment of costs of hearing. If respondent prevails the agency's costs for the hearing shall be taxed to the complainant. "Costs" include costs incurred for the court reporter including but not limited to the daily charge of the court reporter for attending and transcribing the hearing, all mileage charges of the court reporter for traveling to and from the hearing, all travel time charges of the court reporter for traveling to and from the hearing, the cost of the original transcripts of the hearing, postage, and all expenses and fees of the administrative law judge including but not limited to professional fees related to presiding, transportation, lodging and meals.

If the complainant prevails, the agency's costs for the hearing are taxed to respondent. Where the complainant or the agency is successful as to part of the remedies sought and unsuccessful as to part of the remedies, the hearing officer may recommend an equitable apportionment of agency's costs between the complainant and the respondent.

B. In addition to the remedies delineated in the preceding provisions of this section including any other remedial action as in the judgment of the hearing board will carry out the purposes of this chapter, the hearing board may issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as in the judgment of the hearing board will carry out the purposes of this chapter.

#### **2.58.180 Appeal procedure.**

A. Any complainant or respondent claiming to be aggrieved by a final order of the hearing board, including a refusal to issue an order, may obtain judicial review thereof, and the agency may obtain an order of court for the enforcement of the hearing board's orders in proceedings as provided in this section.

B. Such proceedings shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice, which is the subject of the final order, was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

C. Such proceedings shall be initiated by the filing of a petition in such court. The agency shall file with the court a transcript of the record of the hearing before it. The court shall have jurisdiction of the proceedings and the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to 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 the order of the hearing board, in whole or in part.

D. An objection that has not been urged before the hearing officer or hearing board shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

E. Before the date set for hearing a petition for judicial review of the final order, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it in the contested case before the hearing officer or hearing board, the court may order that the additional evidence be taken before the hearing board upon conditions determined by the court. The hearing board may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

F. In proceedings for judicial review of the final order, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by the provisions of this chapter to the hearing board.

G. The court may reverse or affirm the hearing board's final order or remand for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the hearing board's final order, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the hearing board's final order is:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the agency;
3. Made upon unlawful procedure;
4. Affected by error of law;
5. Unsupported by substantial evidence in the record made before the hearing board when that record is viewed as a whole; or
6. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

H. Reserved.

I. The agency may appear in court by its own attorney.

J. Unless otherwise directed by the court, commencement of review proceedings under this section shall operate as a stay of any order.

K. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

L. If no proceedings to obtain judicial review are instituted by a complainant or respondent within thirty days from the service of an order of the hearing board under Section 2.58.180, the agency may obtain an order of the court for the enforcement of such order upon showing that respondent is subject to the jurisdiction of the agency and resides or transacts business within the county in which the petition for enforcement is brought.

**2.58.190 Court enforcement of order.**

Within two years after the entry of any order under this chapter, the agency may bring a suit in the district court of this county (or in any other court which may have jurisdiction over the party charged) for an injunction to compel obedience to the order.

**2.58.200 through 2.58.290 Reserved.**

**Division III—Fair Housing**

**2.58.300 Fair Housing—Definitions.**

As used in the fair housing sections:

A. "Aggrieved person" includes any person who:

1. Claims to have been injured by a discriminatory housing practice; or
2. Believes that such person will be injured by a discriminatory housing practice that is about to occur.

B. "Discriminatory housing practice" means an act that is unlawful under Sections 2.58.305, 2.58.315, and 2.58.320 of this provision.

C. "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

D. "Familial status" means one or more individuals under the age of eighteen domiciled with one of the following:

1. A parent or another person having legal custody of the individual or individuals;
2. The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person;

3. Protections 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 or individuals who have not yet attained the age of eighteen years.

E. "Family" includes a single individual.

F. "Prevailing party" for the purposes of this provision has the same meaning as such term has in §722 of the Revised Statutes of the United States 42 U.S.C. (1988).

G. "Respondent" for the purposes of this Provision means:

1. The person or other entity accused in a complaint of an unfair housing practice; and

2. Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under Section 2.58 325A.

H. "Secretary" means the U.S. Secretary of Housing and Urban Development.

I. "State" means the State of Iowa and any of its political subdivisions.

J. "To rent" includes to lease, to sublease, to let and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

### **2.58.305 Fair Housing—Prohibitions.**

It shall be unlawful:

A. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of or otherwise make unavailable or deny, a dwelling to any person because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

B. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection therewith, because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

C. To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, sexual orientation or an intention to make any such preference, limitation or discrimination.

D. To represent to any person because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

E. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or disabled persons of a particular race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation

F. 1. To discriminate in the sale or rental or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

a. That buyer or renter;

b. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or

c. Any person associated with that buyer or renter.

2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection with such dwelling, because of a disability of:

a. That person; or

b. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or

c. Any person associated with that person.

3. For purposes of this subsection, discrimination includes:

a. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter, agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

b. A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

c. In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

(1) The public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;

(2) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(3) All premises within such dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(c) Reinforcements in bathroom walls to allow later installation of grab bars; and

(d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

4. Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (generally cited as ANSI A117.1) suffices to satisfy the requirements of subsection F 3,c(3).

5. a. If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3) (c), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

b. A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3) (c) are met.

c. The Secretary shall encourage, but may not require, states and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3) (c), and shall provide technical assistance to states and units of local government and other persons to implement the requirements of paragraph (3) (c).

d. Nothing in this section shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph (3) (c).

6. a. Nothing in paragraph 5 shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to 42 U.S.C. Section 3610 f(3) to receive and process complaints or otherwise engage in enforcement activities under this fair housing provision.

b. Determinations by a state or a unit of general local government under paragraphs 5a and 5b shall not be conclusive in enforcement proceedings under this fair housing provision.

7. Nothing in this fair housing provision shall be construed to invalidate or limit any law of a state or political subdivision of a state, or other jurisdiction in which this fair housing provision shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this provision.

8. As used in this subsection, the term "covered multi-family dwellings" means:

a. Buildings consisting of four or more units if such buildings have one or more elevators; and

b. Ground-floor units in other buildings consisting of four or more units.

9. Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

#### **2.58.310 Fair Housing—Exemptions.**

A. Nothing in subsection 2.58.305 of this chapter other than subsection 2.58.305C shall apply to:

1. Any single-family house sold or rented by an owner provided that:

a. The private individual owner does not own more than three such single-family houses at any one time; and

b. In the sale of any single-family house, the private individual owner does not reside in, nor is the most recent resident of such house prior to such sale; the exemption granted by this subsection shall apply to only one such sale within a twenty-four month period; and

c. The bona fide private individual owner does not own any interest in, nor is there owned or reserved on the owner's behalf, under 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 such single-family houses at one time; and

d. There is no utilization in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, 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, salesperson or person; and

e. There is no publication, posting or mailing, after notice of any advertisement or written notice in violation of Section 2.58.305C of this Fair Housing Provision. Nothing in this subsection prohibits the utilization of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title.

2. 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 such living quarters as his residence.

3. Notwithstanding any other provisions of this section, services or programs designed to benefit a specific age classification which serve a bona fide public purpose shall be permissible.

B. For the purposes of subsection A of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

1. The person has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; or

2. The person has, within the preceding twelve months, participated as agent, other than in the sale of the person's own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

3. The person is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

C. Nothing in this Fair Housing Provision shall prohibit a religious organization, association, or society or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this Fair Housing Provision prohibit a private club not in fact open to the public which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other occupancy of such lodging to its members or from giving preference to its members.

D. 1. Nothing in this Fair Housing Provision limits the applicability of the city's Housing Ordinance regarding the maximum number of occupants permitted to occupy a

dwelling. Nor does any section in this provision regarding familial status or age 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 the Secretary of Housing and Urban Development (HUD) determines 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 years of age or older; or

c. Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the agency shall develop regulations which require at least the following factors:

(1) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(2) 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 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 the date of enactment of this Fair Housing Provision who do not meet the age requirements of Section 2.58.310 D,2,b. or D,2,c; provided, that new occupants of such housing meet the age requirements of Section 2.58.310 D,2,b. or D,2.c. of this section.

b. Unoccupied units provided that such units are reserved for occupancy by persons who meet the age requirements of Section 2.58.310 D,2,b. or D,2,c.

4. Nothing in this provision prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in The Controlled Substances Act, 21 U.S.C. §102 or Chapter 124 of the Iowa Code.

#### **2.58.315 Fair housing—Discrimination in residential real estate-related transactions.**

A. In General: It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

B. Definition: As used in this section, the term "residential real estate-related transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance:
  - a. For purchasing, constructing, improving, repairing or maintaining a dwelling; or
  - b. Secured by residential real estate.
2. The selling, brokering or appraising of residential real property.

C. Appraisal Exemption: Nothing in this provision prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, creed, religion, sex, national origin or ancestry, ancestry, familial status, marital status, age, disability, gender identity, or sexual orientation.

**2.58.320 Fair housing—Discrimination in provision of brokerage services.**

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership or participation, on account of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation.

**2.58.325 Fair Housing—Administrative enforcement; preliminary matters.**

A. Complaints and Answers:

1. An aggrieved person may not later than one year after an alleged discriminatory housing practice has occurred or terminated file a complaint with the agency alleging such discriminatory housing practice. The agency may also initiate a complaint.

2. Such complaints shall be in writing and shall contain such information and be in such form, as the agency requires.

3. The agency may also investigate housing practices to determine whether a complaint should be brought under the Fair Housing Provisions.

4. Upon the filing of such a complaint:

a. The agency shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this provision.

b. The agency shall, not later than ten days after such filing or the identification of an additional respondent under subsection A,7 of this section, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such

respondent of the procedural rights and obligations of respondents under this provision, together with a copy of the original complaint;

c. Each respondent may file not later than ten days after receipt of notice an answer to such complaint; and

d. The agency shall begin the investigation of the alleged discriminatory housing practice within thirty (30) days after receiving the complaint and shall complete such investigation within one hundred (100) days after the filing of the complaint unless it is impracticable to do so.

5. If the agency is unable to complete the investigation within one hundred days after the filing of the complaint, the agency shall notify the complainant and respondent in writing of the reasons for not doing so.

6. Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.

7. A person who is not named as a respondent in a complaint but who is identified as a respondent in the course of investigation may be joined as an additional or substitute respondent upon written notice. Such notice, in addition to meeting the requirements of subsection A of this section shall explain the basis for the agency's belief that the person to whom the notice is addressed is properly joined as a respondent.

#### B. Investigative Report and Conciliation:

1. Beginning with the filing of a complaint, the HCRA shall, to the extent feasible, engage in conciliation with respect to such complaint.

2. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the hearing board.

3. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

4. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree, and the HCRA determines that disclosure is not required to further the purposes of this provision.

5. a. At the end of each investigation under this section, the HCRA shall prepare a final investigative report containing:

(1) The names and dates of contacts with witnesses;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

b. A final report under this subsection may be amended if additional evidence is later discovered.

C. **Failure to Comply with Conciliation Agreement:** Whenever the HCRA has probable cause to believe that a respondent has breached a conciliation agreement, the HCRA shall refer the matter to a designated attorney or the legal department with a recommendation that a civil action be filed for the enforcement of such agreement.

D. **Prohibitions and Requirements with Respect to Disclosure of Information:**

1. Nothing said or done in the course of conciliation under this provision may be made public or used as evidence in a subsequent proceeding under this provision without the written consent of the persons concerned.

2. Notwithstanding subsection D,1 of this section, the HCRA shall make available to the aggrieved person and the respondent at any time, upon request following completion of the investigation, information derived from an investigation and any final investigative report relating to that investigation.

E. **Prompt Judicial Action:** If the agency concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this provision, the agency may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, a designated attorney or the legal department may promptly commence and maintain such an action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Iowa Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this provision.

### **2.58.330 Fair housing—Probable cause determination and effect.**

A. If the hearing board determines that probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the hearing board shall immediately issue a determination unless the legality of a zoning or land use law or ordinance is involved as provided in subsection D.

B. A Cause Determination Must:

1. Consist of a short and plain statement of the facts on which the hearing board has found probable cause to believe that a discriminatory housing or real estate practice has occurred or is about to occur;

2. Be based on the final investigative report; and

3. Need not be limited to the facts or grounds alleged in the complaint.

C. Not later than twenty days after the hearing board issues a cause determination, the hearing board shall send a copy of the determination with information as to how to make an election under Section 2.58.340 to all of the following persons:

1. Each respondent; and

2. Each aggrieved person on whose behalf the complaint was filed.

D. If the matter involves the legality of a state or local zoning or other land use ordinance, the hearing board shall not issue a determination and shall immediately refer the matter to the legal department for appropriate action.

E. If the hearing board determines that no probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the hearing board shall promptly dismiss the complaint. The hearing board shall make public disclosures of each dismissal under this provision.

F. The hearing board shall not issue a determination under this subsection regarding an alleged discriminatory housing or real estate practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to the discriminatory housing or real estate practice.

#### **2.58.335 Fair housing—Subpoenas; giving of evidence.**

The hearing board may issue subpoenas and order discovery in aid of investigations and hearings under this provision. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the Iowa District Court.

#### **2.58.340 Fair housing—Enforcement by agency.**

A. Election of Judicial Determination. When a probable cause determination has been issued, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that complaint decided in a civil action under Section 2.58.355 in lieu of a hearing under subsection F. The electing person must make the election not later than twenty days after the receipt of service. The person making such election shall give notice of doing so to the agency and to all other complainants and respondents to whom the complaint relates.

B. Administrative Law Judge Hearing in Absence of Election. If an election is not made under subsection A with respect to a complaint, the agency shall provide an

opportunity for a hearing on the record with respect to the complaint issued under Section 2.58.325. The hearing board shall delegate the conduct of a hearing under this section to an administrative law judge appointed by the agency.

C. Rights of Parties. At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under Section 2.58.335. Any aggrieved person may intervene as a party in the proceeding. The Iowa Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in the Iowa District Court.

D. Expedited Discovery and Hearing.

1. Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible consistent with the need of all parties to obtain relevant evidence.

2. A hearing under this section shall be conducted as expeditiously and inexpensively as possible consistent with the need and rights of the parties to obtain a fair hearing and a complete record.

E. Resolution of Charge. Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

F. Hearings, Findings and Conclusions and Order.

1. The administrative law judge shall commence the hearing under this section no later than one hundred twenty days following the probable cause determination, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within one hundred twenty days after the determination, the administrative law judge shall notify in writing the agency, the aggrieved person on whose behalf the charge was filed and the respondent, of the reasons for not doing so.

2. The administrative law judge shall make findings of fact and conclusions of law within sixty days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding sixty-day period thereafter, the administrative law judge shall notify in writing the agency, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

3. If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent

in an amount not to exceed those established by the Federal Fair Housing Act in 42 U.S.C. §3612.

4. No such order shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge filed under this Fair Housing Provision.

5. In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the agency shall, not later than thirty days after the date of the issuance of such order (or, if such order is judicially reviewed, thirty days after such order is in substance affirmed upon such review):

a. Send copies of the findings of fact, conclusions of law, and the order to that governmental agency; and

b. Recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

6. If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, the administrative judge shall enter an order dismissing the charge. The agency shall make public disclosure of each such dismissal.

7. An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the filing of the trial of a civil action commenced by the aggrieved party under a federal or state law, seeking relief with respect to that discriminatory housing practice.

#### **2.58.345 Fair housing—Review by hearing board; service of final order.**

A. The hearing board may review any finding, conclusion or order issued under Section 2.58.340. Such review shall be completed not later than thirty days after the finding, conclusion or order is so issued; otherwise the finding, conclusion or order becomes final.

B. The agency shall cause the findings of fact and conclusions of law made with respect to any final order for the relief under this section, together with a copy of such order to be served on each aggrieved person and each respondent in the proceeding.

#### **2.58.350 Fair housing—Judicial review.**

A. Review of Order: Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain review of such order by filing a petition for review not later than thirty days after the order is issued in the Iowa District Court pursuant to Chapter 17A of the Iowa Code.

B. Court Enforcement of Administrative Order Upon Petition by Agency:

1. The agency may petition the Iowa District Court in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

2. The agency shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the agency to the parties to the proceeding before the administrative law judge.

C. Relief Which May be Granted:

1. Upon the filing of a petition under Section 2.58.325 of this Fair Housing Provision, the court may pursuant to §216.17 of the Iowa Code:

a. Grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper;

b. Affirm, modify or set aside, in whole or in part, the order, or remand the order for further proceedings; and

c. Enforce such order to the extent that such order is affirmed or modified.

2. Any party to the proceeding before the administrative law judge may intervene on appeal to the court.

3. No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

D. Enforcement Decree in Absence of Petition for Review: If no petition for review is filed under subsection A before the expiration of forty-five days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement:

1. Which is filed by the agency under subsection A after the end of such day; or

2. Under subsection E of this section.

E. Court Enforcement of Administrative Order Upon Petition of any Person Entitled to Relief: If before the expiration of sixty days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection A, and the agency has not sought enforcement of the order under subsection B, any person entitled to relief under the order may petition for a decree enforcing the order in the Iowa District Court in Scott County, Iowa.

F. Civil Action for Enforcement if an Election Has Been Made:

1. If a timely election is made under Section 2.58.330C of this provision, the agency shall authorize, not later than thirty days after the election is made, the filing of a civil action on behalf of the complainant in district court. The designated attorney or legal department shall commence and maintain a civil action on behalf of the aggrieved person in the Iowa District Court in and for Scott County seeking relief under this subsection pursuant to Iowa Code § 216.16A.

2. Any aggrieved person may intervene as a matter of right in the civil action.

3. In the event that the court finds that a discriminatory housing practice has occurred or is about to occur in a civil action under this subsection, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under Section 2.58.355. The court shall not award any monetary relief for the benefit of an aggrieved person who fails to intervene in the civil action in instances in which the person has not complied with discovery orders entered by the court.

G. Attorney Fees: The administrative law judge or the court may at its discretion allow the prevailing party, other than the agency, reasonable attorney fees and costs resulting from any administrative proceeding brought under this section, any court proceeding arising therefrom, or any civil action.

**2.58.355 Fair housing—Enforcement by private persons.**

A. Civil Action:

1. An aggrieved person may commence a civil action in an appropriate United States District Court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this provision, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

2. The computation of such two year period shall not include any time during which an administrative proceeding under this provision was pending with respect to a complaint or charge under this provision based upon such discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement.

B. Conciliation Agreement Precludes Action: An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under Section 2.58.325 regardless of the status of the complaint. No action, however, may be filed under this subsection by the aggrieved person regarding the alleged discriminatory housing practice which forms the basis for the complaint if either the agency or the Iowa Civil Rights Commission has obtained a conciliation agreement with the consent of the aggrieved person except for the purpose of enforcing the terms of the agreement.

C. Administrative Hearing Precludes Civil Action: An aggrieved person may not commence a civil action under this subsection with regard to an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record under this provision with respect to such charge.

D. Appointment of Attorney by Court: Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may:

1. Appoint an attorney for such person; or
2. Authorize the commencement or continuation of a civil action under subsection A without the payment of fees, costs or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

E. Relief Which May Be Granted:

1. In the event that the court finds in a civil action under subsection A that a discriminatory housing practice has occurred or is about to occur, it may award to the plaintiff actual and punitive damages, and subject to subsection F, may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).

2. The court, in its discretion, may allow the prevailing party in a civil action under subsection A, reasonable attorney's fees and costs.

F. Effect on Certain Sales, Encumbrances and Rentals: Relief granted under this section shall not affect any contract, sale, encumbrance or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer or tenant, without actual notice of the filing of a complaint or civil action under this provision.

G. Intervention by the Legal Department: The legal department may intervene in such civil action upon timely application if the department certifies that the case is of general public importance. If the legal department intervenes in a civil action, it may obtain such relief as would be available under Section 2.58.360.

2.58.360 Fair housing—Enforcement by the legal department.

A. Probable Cause: On the request of the hearing board, the legal department may file a civil action in the district court for appropriate relief if the hearing board has probable cause to believe that any of the following applies:

1. A person is engaged in a pattern or practice of resistance to the full enjoyment of any housing right granted by the provision.

2. A person has been denied any housing right granted by this provision and that denial raises an issue of general public importance.

B. Legal Action; Enforcement: The hearing board may request the legal department to take appropriate legal action of a discriminatory housing practice or to enforce a conciliation agreement.

1. The legal department may commence a civil action in any appropriate court for appropriate relief with respect to a discriminatory housing practice referred to the legal department.

2. A civil action under this subsection may be commenced no later than the expiration of the two years after the date of the occurrence of the termination of the alleged discriminatory housing practice as provided in Iowa Code §216.16A.

3. The legal department may commence a civil action in any appropriate court for appropriate relief with respect to breach of a conciliation agreement referred to the legal department by the hearing board.

4. A civil action may be commenced under this subsection no later than the expiration of ninety days after the referral of the alleged breach under Section 2.58.325C.

5. Enforcement of Subpoenas: The legal department on behalf of the hearing board, or other party at whose request a subpoena is issued, under this provision may enforce such subpoena in appropriate proceedings in the district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

6. The district court may award as relief in civil actions under subsection A and B that relief that is available under Iowa Code §216.17A.

a. In a civil action under subsection A or B, the court:

(1) May award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this provision as is necessary to assure the full enjoyment of the rights granted by this provision;

(2) May award such other relief as the court deems appropriate, including monetary damages to the person aggrieved; and

(3) May, to vindicate the public interest, assess a civil penalty against the respondent:

(a) In an amount not exceeding fifty thousand dollars for a first violation; and

(b) In an amount not exceeding one hundred thousand dollars for any subsequent violation.

C. Attorney's Fees and Costs: In a civil action under this section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

D. Intervention in Civil Actions: Upon timely application, any person may intervene in a civil action commenced by the legal department under subsection A or B which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under Section 2.58.355.

**2.58.365 Fair housing—Cooperation with state and federal agencies in administering Fair housing laws.**

The agency may cooperate with state and federal agencies charged with the administration of state and federal fair housing laws. The agency may utilize the services of state and federal agencies, with their consent, to enable it to enforce fair housing laws. The agency may also enter into written agreements with such state and federal agencies to further efforts to enforce fair housing laws.

**2.58.370 Fair housing—Interference, coercion or intimidation; enforcement by civil action.**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of; or on account of such person having aided or encouraged any other person in the exercise or enjoyment of; any right granted or protected by this provision.

**2.58.375 Fair housing—Violations; bodily injury.**

Whosoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

A. Any person because of such person's race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation and because such person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or

B. Any person because such person is or has been or in order to intimidate such person or any other person or any class of persons from:

1. Participating, without discrimination on account of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation in the activities, services, organizations, or facilities described in subsection A of this section; or

2. Affording another person or class of persons opportunity or protection so to participate; or

C. Any citizen because such person is or has been or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate without discrimination on account of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation in any of the activities, services, organizations or facilities described in subsection A of this section or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be referred to the county attorney's office for prosecution.

**2.58.380 Fair housing—Disclaimer of preemptive effect.**

Nothing in this Fair Housing Provision limits any right, procedure, or remedy available under the federal or state constitution.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed as are any motions or resolutions of council that purport to give authority to a council standing committee to make a determination as all such determinations shall henceforth be made by the city council.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and upon publication as by law provided.

First Consideration \_\_\_\_\_

Second Consideration \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_  
Frank Klipsch  
Mayor

Attest: \_\_\_\_\_

Jackie Holecek, CMC  
Deputy City Clerk

Published in the Quad City Times on \_\_\_\_\_