

ORDINANCE NO. 1973

AN ORDINANCE to amend Chapter 2 of The Code of the City of Alexandria, Virginia, 1963, as amended, by adding thereto a new Article XVIII; which Chapter 2 relates to ADMINISTRATION, and which Article XVIII relates to CONSUMER AFFAIRS, PROVIDES FOR THE ESTABLISHMENT OF AN OFFICE OF CONSUMER AFFAIRS AND A CONSUMER AFFAIRS COMMISSION, AND SETS FORTH THE POWERS, DUTIES AND PROCEDURES OF SAID OFFICE AND COMMISSION.

WHEREAS, the right of consumers to be protected against unfair practices is an issue of mounting concern in our society and our city; and

WHEREAS, existing federal, state, and local laws are often inadequate to eliminate or remedy fraudulent and deceptive practices in the sale and service of merchandise and extension of credit; and

WHEREAS, the need for consumer protection agencies at the local level has been demonstrated by the establishment of and the response to such agencies in Arlington and Fairfax counties; and

WHEREAS, the Ad Hoc Consumer Protection Committee, after a year of study, documented a significant need for increased consumer protection activity by the city and recommended the establishment of a permanent consumer affairs committee; and

WHEREAS, city council in Resolution No. 282 created a consumer affairs committee and directed said committee to develop procedures for dealing with consumer problems; and

WHEREAS, said consumer affairs committee has proposed an ordinance establishing a consumer affairs commission and setting forth its powers, duties and procedures; and

WHEREAS, city council is of the opinion that Resolution No. 282 creating the consumer affairs committee should be repealed and that an ordinance should be enacted to establish mechanisms to deal with consumer problems in the city as proposed by the consumer affairs committee; and

WHEREAS, the Virginia General Assembly in 1974 enacted a law giving the city council authority to establish a local office of consumer affairs; and

WHEREAS, city council is of the opinion that a local office of consumer affairs should be created pursuant to authority in Sections 15.1-23.2 through 23.3, Code of Virginia, 1950, as amended, and in addition that a consumer affairs commission should be established; therefore

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Resolution No. 282 adopted on January 22, 1974, which created a consumer affairs committee and set forth its functions, be and the same hereby is repealed.

Section 2. That Chapter 2 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new Article XVIII to read as follows:

ARTICLE XVIII. CONSUMER AFFAIRS

Division 1. Office of Consumer Affairs

Sec. 2-157. Established; coordinator

There is hereby established under the city manager an office of the government of the city to be known as the office of consumer affairs. The head of the office of consumer affairs shall be the consumer affairs coordinator, (herein sometimes referred to as the coordinator), who shall be appointed and removed by the city manager.

Sec. 2-158. Powers and duties.

The office of consumer affairs shall have the power to perform the following duties:

(a) To serve as a central coordinating agency and clearing house for receiving and investigating complaints from consumers concerning illegal, fraudulent, deceptive or dangerous practices relating to consumer products, goods or services, and referring such complaints to the departments, agencies or appropriate law enforcement officers charged with enforcement of consumer laws, subject to the procedure set forth in Sec. 2-164 of this Article. The processing of complaints involving statutes or regulations administered by State agencies shall be coordinated, where applicable, with the State office of consumer affairs; and

(b) To attempt to resolve complaints received pursuant to subsection (a) hereof by means of voluntary mediation or arbitration, or by proceedings before the city's consumer affairs commission hereinafter established, subject to the procedure set forth in Sec. 2-164 of this Article.

(c) To develop programs of community consumer education and information in consultation with the city's consumer affairs commission; and

(d) To maintain records of consumer complaints and their eventual disposition, provided that records disclosing business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosures of such matters may be necessary for the enforcement of laws. A copy of all periodic reports shall be filed with the State office of consumer affairs; and

(e) To provide staff assistance and information to the city's consumer affairs commission.

Sec. 2-159. Expenditures.

The office of consumer affairs may make expenditures to carry out the duties assigned in Section 2-158 of this Article, subject to the availability of funds.

Division 2. Consumer Affairs Commission.

Sec. 2-160. Established.

There is hereby established a commission to be known as the "City of Alexandria, Virginia Consumer Affairs Commission," herein sometimes referred to as the commission.

Sec. 2-161. Composition; appointment; term; officers; compensation of members.

The commission shall consist of eleven members appointed by the city council; two of whom shall be members of the business community, two of whom shall be members of local consumer action organizations, and seven of whom shall be citizens at large; provided that initial members of the commission shall be appointed as provided hereinbelow. All members shall be residents of the city; except that one member of the business community and one member of a consumer action organization may be a nonresident of the city but a resident of the state. Members of the consumer affairs committee appointed by city council pursuant to Resolution No. 282, who are members of said committee on the date of final passage of this ordinance, are hereby appointed as members of the consumer affairs commission established herein for a term of one year from the date of final passage of this ordinance. Should said committee consist of less than eleven members on the date of final passage, council shall appoint sufficient members, for terms of one year from the date of final passage of this ordinance, necessary to bring total membership of the commission to eleven members. All members thereafter shall be appointed by city council for three-year terms except that as decided by lot the initial term of four members shall be two years and the the initial term of three members shall be one year. Members may be reappointed. Any vacancy shall be filled by the council for the unexpired portion of a term. The commission shall select a chairperson, vice chairperson and secretary by a majority vote of all members of the commission. The chairperson shall serve a two-year term and may not succeed himself. In the event that the chair is vacated for any reason, the vice chairperson shall succeed and serve as chairperson for the remainder of the term. A vice chairperson shall be selected by majority vote of all members of the commission to serve as vice chairperson for the unexpired term. Members shall serve without compensation but may receive reimbursement for expenses, subject to the availability of funds.

Sec. 2-162. Commission; powers and duties.

The commission is hereby authorized to:

(a) Provide guidance to the city's office of consumer affairs in the establishment and implementation of consumer affairs policies; and

(b) Hold hearings and render advisory opinions in mediation proceedings in accordance with the procedures established in Section 2-164 of this article; and

(c) Following a hearing on a complaint and after consultation with the consumer affairs coordinator and the city attorney, refer the matter to appropriate law enforcement officers; and

(d) Conduct investigations, research, studies and analyses of consumer problems and hold public hearings on such problems; and

(e) Review and analyze consumer protection policies and regulations and make recommendations to appropriate agencies for improved consumer relations; and

(f) Recommend specific legislative proposals to the city council and administrative practices to the city manager designed to facilitate the resolution of consumer problems which have come to the attention of the commission; and

(g) Conduct consumer education programs in the city; and develop, publish and distribute consumer information through pamphlets and other means for the general public and business community; and

(h) Serve as a conduit for communications when grievances exist between the business community and consumers; and

(i) Cooperate with other agencies, public and private, in the development of legislative proposals in the field of consumer affairs and minimum standards for consumer goods and services; and

(j) Serve as an arbitrating body if called upon by all parties to a consumer dispute in accordance with state law.

(k) Upon specific authorization of city council, make statements before state or federal legislative bodies and regulatory agencies.

In carrying out its duties, the commission may authorize expenditures subject to the availability of funds.

Sec. 2-163. Meetings; quorum; duty of secretary; rules of procedure; reports

The commission shall meet at least once each month from September through June, and may meet in July and August. Additional meetings may be held when deemed necessary and called by the chairperson with forty-eight (48) hours notice to the members of the commission. Additional meetings may also be held when deemed necessary and called by at least five (5) members of the commission with forty-eight (48) hours notice to the other members of the commission. All meetings shall be open to the public in accordance with state law. All members of the commission shall be entitled to vote and the decisions of the commission shall be determined by a majority vote of the members present unless specified otherwise in this article. A quorum of six (6) members present is required before the commission may take official action. A member present but not voting shall be considered in counting a quorum. The secretary of the commission shall cause minutes of its proceedings to be kept, and all findings and decisions shall be reduced to writing and entered as a matter of public record in the city's office of consumer affairs. In matters concerning the procedure for meetings not covered by this Article, the commission may establish its own rules, provided these are not contrary to the mandate or spirit of this Article. The commission shall render each six months to the city council a written report of its activities along with such comments and recommendations as it may choose to make.

Sec. 2-164. Complaint procedure.

(a) Any person who has a consumer complaint and wishes to resolve such complaint under the provisions of this Article must first file his or her complaint with the consumer affairs coordinator in the office of consumer affairs. Upon the filing of such complaint the consumer affairs coordinator may notify the person complained against (known as respondent) and make an investigation to determine whether or not there is probable cause to believe that an illegal, fraudulent, deceptive, inequitable, dangerous, or unfair practice relating to consumer products, goods or services exists. If the coordinator determines after such investigation that there is no probable cause for the complaint, the coordinator shall so notify the complainant by ordinary mail. The notice shall state that the complaint will be dismissed unless, within ten (10) days after receipt of such notice, the complainant files with the coordinator a written request for a review of the coordinator's decision by the commission. Upon request for such a review the coordinator shall notify the commission by ordinary mail and the respondent by certified mail of such request and the commission shall afford the complainant and respondent an opportunity to appear before the commission for review. If, after such review, the commission determines that no probable cause exists for the complaint, the complaint will be dismissed. If, however, the commission determines that probable cause exists for the complaint, the commission shall refer the complaint to the coordinator for further consideration under subsections (b) through (f) of this section.

(b) If the coordinator or the commission finds probable cause for the complaint, the coordinator may then refer the complaint to the appropriate department, agency, or law enforcement officer charged with enforcement of consumer laws in accordance with Sec. 2-158 of this Article, or he or she may promptly endeavor to resolve the complaint by mediation.

(c) In the case of mediation if the coordinator is unable to obtain agreement between the complainant and respondent within a reasonable time, he or she may at this time refer the complaint to the appropriate department, agency, or law enforcement officer charged with enforcement of consumer laws. Or, upon the request of the complainant or the respondent, the coordinator shall request the commission to convene a mediation proceeding.

When requested to convene a mediation proceeding, the commission shall, following receipt of such notice, promptly schedule a public hearing at which it shall receive evidence on the complaint. The coordinator, on behalf of the commission, shall notify by certified mail the complainant and the respondent that there will be a meeting of the commission at a specified time, date and place, to hold a hearing on the complaint. Insofar as reasonably possible, all hearings shall be informal and free from technical rules of evidence. However, in any such hearing, the right to notice, to assistance of counsel, to present testimony and other evidence, and to cross-examine witnesses shall be observed. The coordinator shall cause a qualified reporter or stenographer to be present throughout the hearing, or shall provide a voice recording device, and shall record the proceedings. Upon direction of the commission, the proceedings shall be transcribed. Not later than 14 days after the conclusion of the hearing, the commission shall render and announce and make public a decision which shall include a written statement of its findings. Hearings may be ex parte if after reasonable notice the respondent does not appear. No hearings shall be commenced pursuant to this section when any criminal or civil action involving the same complaint has been filed with or is pending before a court or when a voluntary arbitration proceeding is pending or has commenced. In the event any criminal or civil action concerning a complaint is commenced in any court, or any voluntary arbitration proceeding is commenced, during the pendency of any proceeding pursuant to this section for the same complaint, such proceeding shall be automatically suspended so long as the court or voluntary arbitration proceeding shall continue.

(d) Nothing in this section shall prohibit the coordinator from continuing efforts to resolve the complaint to the satisfaction of all persons involved at any time. A resolution of the complaint, evidenced by a written agreement signed by the complainant, respondent and the coordinator, shall, as soon as reached, put an end to a mediation proceeding before the commission.

(e) Findings and decisions of the commission in a mediation proceeding shall be advisory only and of no legal force or effect. However, the commission may publish its findings and decisions.

(f) Any consumer complaint may be submitted to voluntary arbitration at any time in accordance with Sec. 2-165 of this Article.

Sec. 2-165. Voluntary arbitration.

Any consumer complaint may be submitted to voluntary arbitration pursuant to Sec. 8-503, Code of Virginia, 1950, as amended, if the complainant and party complained against agree to such proceeding. The City's consumer affairs commission or the City's local office of consumer affairs established by this article may, if called upon by both parties, serve as arbitrator.

Sec. 2-166. Effect on other commissions, agencies, etc.

Nothing in this article shall deprive any other commission, board or agency of the city or of any jurisdiction of authority granted to such board, commission, or agency by any other provision of law.

Section 3. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.