

ORDINANCE NO. 3128

AN ORDINANCE to amend and reordain subsection (b), Section 12-4-5; the first paragraph of subsection (a) and subsubsection (1), subsection (a), Section 12-4-6; subsubsections (1) and (2) of subsection (b), Section 12-4-7; subsection (b), Section 12-4-14; subsection (a), Section 12-4-16; Section 12-4-17; subsection (b), Section 12-4-18; subsections (b), (c) and (d), Section 12-4-21; subsection (a), Section 12-4-23; and to repeal Section 12-4-24 and redesignate Sections 12-4-25 through 12-4-30 as Sections 12-4-24 through 12-4-29, all of Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended; which Title 12 relates to EDUCATION, SOCIAL SERVICES AND WELFARE, which Chapter 4 relates to HUMAN RIGHTS, which Section 12-4-5 relates to UNLAWFUL EMPLOYMENT PRACTICES, which subsubsection (b) relates to EXCEPTIONS, which Section 12-4-6 relates to CITY CONTRACTS, which first paragraph of subsection (a) relates to ANY CONTRACT, which subsubsection (1) relates to TERMS OF THE EQUAL EMPLOYMENT OPPORTUNITY AGREEMENT, which Section 12-4-7 relates to HEALTH AND SOCIAL SERVICES PRACTICES, which subsection (b) relates to EXCEPTIONS, which Section 12-4-14 relates to HUMAN RIGHTS ADMINISTRATOR, which subsection (b) relates to RESPONSIBILITIES OF THE HUMAN RIGHTS ADMINISTRATOR, which Section 12-4-16 relates to COMPLAINTS GENERALLY, which subsection (a) relates to COMPLAINTS UNDER THIS CHAPTER, which Section 12-4-17 relates to INVESTIGATION AND PROBABLE CAUSE OF COMPLAINT, which Section 12-4-18 relates to CONCILIATION--BREACH OF CONCILIATION AGREEMENT; PROCEDURE; HEARING; DECISION, which subsection (b) relates to CONCILIATION AGREEMENT, which Section 12-4-21 relates to HEARING; DECISIONS, which subsection (b) relates to PUBLIC HEARING, which subsection (c) relates to CONCLUSION OF THE HEARING, which subsection (d) relates to IF THE COMMISSION SHALL DETERMINE THAT A RESPONDENT HAS NOT VIOLATED THIS CHAPTER, which Section 12-4-23 relates to JUDICIAL REVIEW, which subsection (a) relates to ANY PERSON AGGRIEVED BY AN ORDER OR DECISION OF THE COMMISSION and which Section 12-4-24 formerly related to ENFORCEMENT BY CRIMINAL PROCEEDINGS; PENALTIES and now relates to ENFORCEMENT BY INJUNCTION.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That subsection (b), Section 12-4-5, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(b) **Exceptions.** Nothing in subsection (a) of this section shall apply to:

(1) any type of employment, occupation, or position where the job involves a bona fide occupational qualification requiring the employment of a person or persons of a particular

religion, sex, national origin, ancestry, marital status, age or physical or mental capabilities, where the qualification is reasonably necessary to the normal operation of that business or enterprise;

(2) any employment practice based upon applicable laws or regulations established by the United States or any agency thereof, the Commonwealth of Virginia, or any political subdivision of the Commonwealth having jurisdiction in the City of Alexandria;

(3) the observance of the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual who is at least 40 years of age but less than 70 years of age because of the age of such individual;

(4) any person who is 70 years of age or older; provided, however, that no form of discrimination based on race, color, sex, religion, ancestry, national origin, marital status or handicap that is prohibited by this section may be practiced against any person who is 70 years of age or older;

(5) agreements or contracts concerning contribution rates for employer or employee for group insurance, when the contribution rate may be affected by marital status or number of dependents;

(6) any employment agency providing services only to elderly persons or to minors; provided, however, that no employment agency may discriminate on the basis of race, color, sex, religion, ancestry, national origin, marital status or handicap; and

(7) Notwithstanding any other provisions of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, sex, religion, ancestry, national origin, marital status, age or handicap, or shall it be an unlawful employment practice for any employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, sex, religion, ancestry, national origin, marital status, age or handicap.

Section 2. That the first paragraph of subsection (a) and subsection (1), subsection (a), Section 12-4-6, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby are amended and reordained to read as follows:

(a) Any contract of over \$10,000, except any contract for the sale, purchase or rental of land, to which the city is a party shall include substantially the following provisions:

"Equal Employment Opportunity. The contractor hereby agrees:

"(1) Not to discriminate against any employee or applicant for employment on account of race, color, religion, sex, ancestry, national origin, marital status, age or handicap, when such person is a qualified handicapped person, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Section 3. That subsection (b), Section 12-4-7, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, be and the same hereby is amended and reordained to read as follows:

(b) **Exceptions.** Nothing in subsection (a) of this section shall apply to any health or social service or practice:

(1) that reasonably relates only to a particular sex, religion, national origin, age or handicap; or

(2) with respect to which sex, religion, national origin, marital status, age or handicap is usually and normally considered an essential qualification or requirement for such service.

Section 4. That subsection (b), Section 12-4-14, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(b) The human rights administrator shall be responsible for carrying out the policies of the commission and performing the duties assigned to him or her by this chapter, negotiating contracts or worksharing agreements with the equal employment opportunity commission, the department of housing and urban development or other appropriate federal or state agencies and performing the duties assigned by these contracts and worksharing agreements. The administrator shall have the power and duty to make investigations of unlawful discriminatory practices under this chapter, and to file complaints with the commission when he or she has probable cause to believe that a violation of this

chapter has occurred. The administrator shall further have the power and duty to attempt to conciliate any complaint of alleged unlawful discrimination under this chapter where there is probable cause for the complaint.

Section 5. That subsection (a), Section 12-4-16, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(a) Complaints under this chapter may be filed only by (i) any person claiming to have been injured by an unlawful discriminatory practice under this chapter (known as "person aggrieved"), or (ii) the human rights administrator on behalf of any person or persons whom he or she has probable cause to believe has been the subject of an unlawful discriminatory practice under this chapter. All complaints shall be made in writing, be under oath or affirmation and accompanied by an affidavit. An additional copy shall be made for each respondent, if more than one. Any complaint shall be on a form furnished by the human rights administrator, shall state the name and address of each respondent, the address of the complainant (person aggrieved), the date of the alleged offense and the alleged facts surrounding the acts complained of. The human rights administrator shall forthwith transmit a copy of the complaint to each respondent by certified mail, return receipt requested, with another copy by ordinary mail. Each complaint shall be held in confidence by the human rights administrator unless or until the complainant (person aggrieved) and the respondent consent to its being made public, or until the time a hearing procedure such as described in section 12-4-21 has begun. A complaint must be filed within 180 days after the date of the alleged unlawful discriminatory practice and not later.

Section 6. That Section 12-4-17, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

Sec. 12-4-17. Investigation and probable cause of complaint.

Upon the filing of a complaint, the administrator shall make an investigation, which shall be completed within 180 days, unless additional time is allowed by the commission, from the date of the filing of a complaint, to determine whether there is probable cause for the complaint. If he or she determines that there is probable cause for the complaint, the human rights administrator shall immediately endeavor to eliminate the unlawful discriminatory practice complained of in accordance with section 12-4-18. If he or she determines after such investigation that there is no probable cause for the complaint, the human rights administrator shall within the 60-day period, or other period allowed by the commission, so notify by certified mail, with a copy by ordinary mail, each party to the action. A

finding of no probable cause by the administrator shall constitute a final order of the commission for the purpose of judicial review pursuant to section 12-4-23.

Section 7. That subsection (b), Section 12-4-18, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(b) If conciliation succeeds, the terms of the conciliation shall be reduced to writing and signed by or on behalf of the parties and the human rights administrator. The human rights administrator shall then notify the commission through its chairperson that a conciliation agreement has been entered into by the parties. Conciliation agreements may be made public but any public disclosure shall not reveal the identities of the parties involved, except at the request of all parties.

Section 8. That subsection (b), subsection (c) and subsection (d), Section 12-4-21, Chapter 4, Title 12 of the Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby are amended and reordained to read as follows:

(b) In the event that the human rights administrator is unable to obtain a signed conciliation agreement within 30 days from the determination of probable cause or such additional time as the commission may allow, he or she shall promptly so notify the commission and the commission shall thereupon schedule a public hearing as soon as possible to determine if a violation of this chapter has been committed. The commission shall prior to any hearing verify that each party to the proceeding has received a copy of the pleadings and any amendments thereto. Notice of the time and place of hearing shall be mailed by certified mail, with a copy by ordinary mail, to each respondent and complainant no later than two (2) weeks prior to the date of the hearing. In cases in which there is more than one (1) respondent, the commission shall schedule a hearing for all respondents named in the complaint, but may upon request or on its own motion schedule separate hearings for each respondent. Complainants shall appear at the hearing in person and may be accompanied by an attorney. Each party respondent may appear at the hearing in person or by a duly authorized representative including an attorney. Each party may present testimony and evidence. Each party shall have the right to cross-examine. The human rights administrator 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, part or all of the proceedings shall be transcribed. Any transcription shall be public and open to inspection by any person. All testimony shall be taken under oath administered by the chairperson or his or her representative.

(c) If, at the conclusion of the hearing, the commission shall determine, upon the preponderance of the evidence, that the respondent has violated any provision of this chapter, the commission shall:

(1) Not later than 30 days thereafter render and issue a written statement of its findings and order, and cause to be served the statement and order on each respondent and complainant, by certified mail, with a copy by ordinary mail. The order shall require each respondent, within 15 days of receipt thereof, to take such action consistent with law as the commission deems necessary to bring himself or herself into compliance with this chapter.

(2) Not later than five (5) days after mailing the written statement of its findings and order to each respondent and complainant, announce and make public such statement and order.

(3) Designate appropriate parts of the hearing to be transcribed for the public record at the cost of the city.

(4) Permit the complainant or each respondent to obtain copies of any part or all of the transcript of the proceedings at his or her cost. For good cause, the commission may waive the requirement that the complainant or respondent must pay for the transcripts.

(d) If upon all the evidence at the hearing the commission shall determine that a respondent has not violated any provision of this chapter, the commission shall not later than 30 days following the conclusion of the hearing render and issue a written statement of its findings and decision, cause to be served such statement and decision on each respondent and complainant by certified mail, with a copy by ordinary mail, announce and make public the statement and decision, and record the statement and decision in the minutes. The case shall then be closed and no further action shall be taken by the commission in the matter.

Section 9. That subsection (a), Section 12-4-23, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

(a) Any person aggrieved by an order or decision of the commission entered pursuant to section 12-4-18 or 12-4-21 of this chapter or by a finding of no probable cause by the administrator pursuant to section 12-4-17 may have the order or decision reviewed by a court of competent jurisdiction. A review proceeding shall be instituted by filing with the court a petition for review naming the commission as respondent. A copy of the petition shall be served upon the city attorney, who shall represent the commission in every review proceeding. No petition for

review may be filed more than 30 days after the date of service of the order or decision of which review is sought.

Section 10. That Section 12-4-24, Chapter 4, Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is repealed, and redesignate Sections 12-4-25 through 12-4-30 as Sections 12-4-24 through 12-4-29.

Section 11. 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.

JAMES P. MORAN, JR.
Mayor

Final Passage: May 17, 1986