

ORDINANCE NO. 3729

AN ORDINANCE to amend and reordain Section 12-4-3 (DEFINITIONS), Section 12-4-5 (UNLAWFUL EMPLOYMENT PRACTICES), Section 12-4-15 (POWERS AND DUTIES OF THE HUMAN RIGHTS COMMISSION), Section 12-4-16 (COMPLAINTS GENERALLY), and Section 12-4-17 (INVESTIGATION AND PROBABLE CAUSE OF COMPLAINT), of Chapter 4 (HUMAN RIGHTS), Title 12 (EDUCATION, SOCIAL SERVICES AND WELFARE) of The Code of The City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Section 12-4-3 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. 12-4-3 Definitions.

(a) Affirmative action employment program. A positive program designed to ensure that a good faith effort will be made to employ applicants without regard to race, color, sex or disability. Such program, to be developed by the commission and approved by city council, shall include, where applicable, but shall not be limited to, the following: recruitment and recruitment advertising, selection and selection criteria, upgrading, promotion, demotion or transfer, lay-off or termination, rates of pay or other forms of compensation, other terms or conditions of employment and selection for training, including apprenticeship, and shall include realistic and attainable goals, methodology and timetable for implementation of the program.

(b) Age. Unless the context clearly indicates otherwise, the word "age" as used in this chapter shall refer exclusively to persons who are 18 years of age or older.

(c) Commission. The human rights commission created by section 12-4-15 of this chapter.

(d) Complainant. Any person filing a complaint or on whose behalf a complaint is filed by the human rights administrator pursuant to this chapter.

(e) Credit. The right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) Disability. A physical or mental impairment which substantially limits one or more major life activities. "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic or lymphatic; skin and endocrine; or any mental or

psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(g) Discriminate, discrimination, discriminatory practice. Any arbitrary difference in treatment not permitted by this chapter, including harassment.

(h) Educational institution. Any nursery, day care center, kindergarten, elementary or secondary school, academy, college, university, extension course or nursing, secretarial, business, vocational, technical, trade or professional school or joint apprenticeship program.

(i) Employer. Any person who employs four or more employees for wages, salaries or commission within the city, exclusive of parents, spouse or children, and excluding any bona fide religious, fraternal or sectarian organization not supported in whole or in part by governmental appropriations.

(j) Employment agency. Any person regularly undertaking with or without compensation to advertise for or otherwise procure opportunities to work or to procure, recruit, refer or place employees.

(k) Familial status. One or more individuals who have not attained the age of 18 years and who are domiciled with:

(1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The term "familial status" shall also apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. The provisions regarding familial status do not apply with respect to housing for older persons.

(l) Family. One or more individuals living together on the premises as a single housekeeping unit.

(m) Harassment. Any verbal or physical conduct that denigrates or shows hostility toward an individual because of his or her race, color, religion, gender, national origin, age, disability, marital status or sexual orientation.

(n) Health or social service agency. Any person rendering health or social services. The term includes but is not limited to any hospital, clinic, dispensary, nursing home, convalescent home, rehabilitation center, social work agency, community service center, group work-recreation center, counseling and guidance services agency, day camp or resident camp, protective service organization or facility; but except for a hospital, clinic or dispensary, this term shall not include any health or social service agency operated, supervised or controlled by or in conjunction with a religious organization, association or society exclusively or primarily for members of its own faith.

(o) Housing. 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.

(p) Human rights administrator. That person appointed pursuant to section 12-4-14 of this chapter.

(q) Labor organization. Any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers on behalf of employees concerning grievances, terms or conditions of employment, or of other mutual aid or protection in relation to employment.

(r) Lending institution. Any person, including but not limited to a bank, insurance company or savings and loan association, regularly engaged in the business of lending money, guaranteeing loans or furnishing consumer credit or other credit-related services.

(s) Owner. Any person, including but not limited to a lessee, sublessee, assignee, manager or agent, and also including the city and its departments, boards, commissions, authorities, committees and agencies, having the right of ownership or possession or the authority to sell or rent any dwelling.

(t) Pattern or practice of discrimination. Any event, course of conduct or way of doing business with respect to housing, employment, public accommodations, credit, health and social services or city contracts which happens on several occasions and which actually or predictably results in different treatment which is discriminatory on the basis of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(u) Person with a disability. Any person who has a disability, as defined above, or had a record of such impairment, or is regarded as having such an impairment. "Has a record of such impairment" means has a history of, or has been

misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. "Is regarded as having an impairment" means (i) has a physical or mental impairment that does not substantially limit major life activities but is treated by a respondent as constituting such a limitation; (ii) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment or (iii) has none of the impairments defined under "disability" above but is treated as having such an impairment by any person within the jurisdiction of this chapter; provided, however, that the term "person with a disability" shall not include any person who engages in the current, illegal use of a controlled substance as defined in Virginia or federal law.

(v) Public accommodation. Includes every business, professional or commercial enterprise, refreshment, entertainment, sports, recreation or transportation facility in the city, whether licensed or not, public or private, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available in any manner to the general public. Public accommodation does not include a bona fide private club or other establishment not in fact open to the general public.

(w) Public funds. Any funds derived from any governmental body or agency.

(x) Qualified person with a disability. (i) With respect to employment, a person with a disability, who with reasonable accommodation, can perform the essential functions of the job in question, and (ii) with respect to other services, a person with a disability who meets the essential eligibility requirements for the receipt of such services.

(y) Real estate broker. Any person, who for a fee or other valuable consideration, manages, sells, purchases, exchanges, rents or negotiates, or offers or attempts to negotiate the sale, purchase, exchange or rental of the real property of another, or holds himself or herself out as engaged in the business of managing, selling, purchasing, exchanging or renting the real property of another, including real estate salespersons, agents or any other persons employed by a real estate broker to perform or to assist in the performance of his or her business.

(z) Respondent. Any person against whom a complaint is filed pursuant to this chapter.

(aa) Restrictive covenant. For purposes of this chapter, this is a provision written into a deed, lease, mortgage, deed of trust or contract that bars any person from owning or occupying housing on the basis of race, color, sex, religion, ancestry,

national origin, familial status, age, sexual orientation or disability.

(bb) Sexual orientation. Having a preference for heterosexuality, homosexuality or bisexuality, having a history of such a preference or being identified with such a preference.

(cc) To rent. Includes to lease, to sublease, to let or otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Section 2. That Section 12-4-5 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. 12-4-5 Unlawful employment practices.

(a) Except as provided in subsection (b) of this section, it shall be unlawful:

(1) for any employer to fail or refuse to hire or to discharge any person or otherwise to discriminate against any person with respect to hiring, tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability, when such person is a qualified person with a disability;

(2) for any employer, employment agency or labor organization to establish, announce or follow a policy of denying or limiting the employment, membership or apprenticeship opportunities of any person on the basis of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability, when such person is a qualified person with a disability;

(3) for any employer, labor organization, employment agency or any joint labor management committee controlling apprentice training programs to deny to or withhold from any person the right to be admitted to or to participate in a guidance program, an apprenticeship training program, an on-the-job training program or any other occupational training program because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability, when such person is a qualified person with a disability;

(4) for any employer, employment agency or labor organization to publish or circulate, or to cause to be published or circulated with intent to circumvent the spirit and purpose of this section, any notice or advertisement relating to employment or membership which indicates any preference, limitation or

discrimination based on race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability, when such person is a qualified person with a disability, or an intention to make any such preference, limitation or discrimination;

(5) for any employment agency to fail or refuse to accept, register, classify properly or refer for employment or otherwise to discriminate against any person because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability, when such person is a qualified person with a disability;

(6) for any labor organization to discriminate against any person in any way which would deprive or limit his or her employment opportunities or otherwise adversely affect his or her status as an applicant for employment or as an employee with respect to hiring, seniority, tenure, referral, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability, when such person is a qualified person with a disability;

(7) for any employer, employment agency or labor organization to discriminate against any person because he or she has opposed any practice forbidden by this section or because he or she has made a complaint or testified or assisted in any manner in any investigation or proceeding under this chapter relating to the provisions of this section; or

(8) for any employer to deny any employment opportunity to a qualified person with a disability who is an employee or applicant if the basis for the denial is the need to make reasonable accommodations to the physical or mental limitations of the employee or applicant.

(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, ancestry, national origin, marital status, age, sexual orientation 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, sexual orientation or disability 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, sexual orientation or disability; 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, sexual orientation or disability, nor 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, sexual orientation or disability.

(c) Affirmative action employment program. The city manager shall establish an affirmative action employment program for the

city and shall report to the city council regarding the status of same annually.

Section 3. That Section 12-4-15 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. 12-4-15 Powers and duties of the human rights commission.

(a) Powers and duties. The commission shall administer the provisions of this chapter as stated above and shall have the following powers and duties:

(1) Receive complaints about alleged unlawful acts under this chapter or any other alleged act of discrimination in cases where a complainant seeks the commission's good offices to conciliate through actions not involving a penalty under this chapter.

(2) Utilize methods of persuasion, conciliation and mediation or informal adjustment of grievances; hold public hearings, and, in the case of complaints of alleged unlawful discriminatory acts, make findings of fact, issue orders and make public the findings and orders.

(3) Conduct studies and hold public hearings on discrimination against persons with a physical or mental disability, in concert with the commission on disabled persons and the Alexandria mental health and mental retardation services board, to explore local legislative proposals in the areas of employment, credit, education, health and social services, public accommodations and housing.

(4) Conduct studies and hold hearings on social conditions that may cause discrimination on the basis of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability that is prohibited by this chapter. Gather and disseminate reliable information by issuing publications and reports of studies and research relating to such discrimination.

(5) Institute and conduct educational and informational programs with wide sectors of businesses, unions, professions, agencies and organizations to promote equal rights and opportunities for all persons and to promote understanding among persons and groups of different races, colors, sexes, religions, ancestries, national origins, marital statuses, familial statuses, ages, sexual orientations or disabilities.

(6) Assist in developing, negotiating and reviewing voluntary fair housing affirmative action agreements as mandated by the city council in resolution no. 355, adopted on November

26, 1974, and develop and review other voluntary affirmative action programs.

(7) Review the city's affirmative action employment program and the performance of the city government, its contractors and subcontractors in employment policies and practices as they may relate to discrimination because of race, color, sex, religion, ancestry, national origin, marital status, age or disability. The commission shall report its findings to the city manager and city council.

(8) Establish, administer or review programs at the request of the city council or the city manager and make reports on these programs to the city council and city manager.

(9) Conduct studies and hold public hearings on policies and practices of public educational institutions with respect to discrimination on the basis of race, color, sex, religion, ancestry, national origin, sexual orientation or disability that is prohibited by this chapter, and of public health and social service agencies with respect to discrimination on the basis of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability that is prohibited by this chapter, and bring to the attention of the appropriate policy-making body and chief administrator problems that require notice or action to resolve.

(10) Bring to the attention of the city manager items that require city manager or city council notice or action to resolve.

(11) Conduct studies and hold public hearings on policies or practices that cause or may be caused by a pattern or practice of discrimination.

(12) Render to city council and the city manager annual written reports of its activities under the provisions of this chapter along with such comments and recommendations as it may choose to make.

(13) Cooperate with and render technical assistance to federal, state, local and other public or private agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this chapter.

(14) With the approval of the city council, accept grants from federal, state, local and other public or private agencies, organizations and institutions, including but not limited to foundations, colleges and universities.

(15) Make use of uncompensated services of public agencies and private organizations as may from time to time be offered and needed to perform advisory and research duties.

(16) As far as it is practicable, the services, including advisory and consultative services of all city departments, agencies, boards and commissions shall be made available to the commission for the purpose of carrying out the functions, powers and duties herein set forth, and with the approval of the city manager, the heads of such departments or agencies shall furnish to the commission any information in the possession of the departments or agencies as is relevant to the duties of the commission and which the commission, by written communication, may require. This includes the use of counsel from the office of the city attorney to aid in the conduct of its investigations and hearings.

(17) Establish panels of up to three members to conduct confidential hearings on pending complaints that have been identified by the administrator. As to such complaints, a panel may advise the administrator on whether (i) probable cause exists to believe unlawful discrimination has occurred, (ii) the time for the investigation should be extended, (iii) a public hearing should be scheduled, (iv) subpoenas should be obtained, and (v) a plan of settlement should be proposed to the parties.

(b) Subpoenas. In the course of any investigation of a complaint under this chapter or in any hearing held by the commission in accordance with section 12-4-18 or section 12-4-21 of this chapter, the commission, by majority vote of those members present, may apply to the appropriate circuit court for a subpoena or subpoena duces tecum to compel the attendance and testimony of witnesses and the production of evidence; provided, that, at the time it votes to apply to the court, the commission shall have grounds to believe that unlawful discrimination has occurred, shall have made a good faith effort to obtain the data and other information necessary to determine whether such discrimination has occurred, and shall have been unable to obtain such data and information on a voluntary basis. At least five days prior to applying for a subpoena, the commission shall notify the city manager of its intention to apply for the subpoena and its reasons for doing so. The judge of the circuit court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena.

(c) Funds. In the exercise of its powers and the performance of its duties the commission shall not expend funds in excess of those appropriated to it by the city council and those received by it from approved grants.

Section 4. That Section 12-4-16 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. 12-4-16 Complaints generally.

(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 300 days after the date of the alleged unlawful discriminatory practice, except that a complaint alleging housing discrimination may be filed within 365 days of the alleged unlawful practice.

(b) Where a complainant or respondent in a case filed with the human rights administrator is a person with a disability, the administrator shall provide reader services if blind, interpreter services if deaf, or other special services to persons with a disability as are appropriate.

(c) Nothing in this chapter shall prevent any member of the human rights commission from filing a complaint if he or she claims himself or herself to be the subject of a discriminatory practice or to be a person aggrieved under this section. Such person shall disqualify himself or herself as a member of the commission when his or her complaint is before the commission for a public hearing and for disposition.

(d) Nothing in this section shall be construed to prevent any person from seeking the commission's good offices to conciliate through actions not involving a penalty under this chapter pursuant to section 12-4-15(a)(1).

Section 5. That Section 12-4-17 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. At any time following the filing of a complaint, the administrator may convene a conference, over which the administrator or her designee shall preside, in order to mediate the issues in dispute between the parties. The administrator may also convene a confidential hearing, over which a panel of commission members shall preside, in order to obtain advice from the panel in one or more of the areas set forth in section 12-4-15(a)(17). If the administrator determines that there is probable cause for the complaint, the administrator shall immediately endeavor to eliminate the unlawful discriminatory practice complained of in accordance with section 12-4-18. If the administrator determines after such investigation that there is no probable cause for the complaint, the administrator shall within the 180-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 6. This ordinance shall become effective upon the date and at the time of its final passage.

PATRICIA S. TICER  
Mayor

Final Passage: June 18, 1994