

ORDINANCE NO. 3850

AN ORDINANCE to amend and reordain Section 12-4-2 (FINDINGS OF FACT AND DECLARATION OF POLICY), Section 12-4-3 (DEFINITIONS), Section 12-4-4 (UNLAWFUL HOUSING PRACTICES), Section 12-4-5 (UNLAWFUL EMPLOYMENT PRACTICES), Section 12-4-12 (HUMAN RIGHTS COMMISSION--CREATION; COMPOSITION), Section 12-4-14 (HUMAN RIGHTS ADMINISTRATOR), Section 12-4-15 (POWERS AND DUTIES OF THE HUMAN RIGHTS COMMISSION), Section 12-4-16 (COMPLAINTS GENERALLY), 12-4-17 (INVESTIGATION AND PROBABLE CAUSE OF COMPLAINT), Section 12-4-18 (CONCILIATION--BREACH OF CONCILIATION AGREEMENT; PROCEDURE; HEARING; DECISION), Section 12-4-21 (HEARINGS; DECISIONS), Section 12-4-23 (JUDICIAL REVIEW), Section 12-4-24 (ENFORCEMENT BY INJUNCTION) and Section 12-4-29 (CONDITIONS UNDER WHICH CITY ATTORNEY NOT TO REPRESENT COMMISSION, ADMINISTRATOR), and to add a new Section 12-4-4.1 (UNLAWFUL COMMERCIAL REAL ESTATE PRACTICES), a new Section 12-4-24.1 (CIVIL PENALTY) and a new section 12-4-30 (SEVERABILITY), all 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 12-4-2 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. 12-4-2 Findings of fact and declaration of policy.

(a) Findings. The City Council of the City of Alexandria, Virginia, having conducted public hearings finds:

(1) The population of the City of Alexandria consists of people of different races, colors, sexes, religions, ancestries, national origins, marital statuses, familial statuses, ages, sexual orientations and disabilities, many of whom, because of their race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability, in some instances have been unjustly discriminated against with respect to housing, employment, public accommodations, health and social services, education, credit or city contracts.

(2) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability with respect to housing causes, at least in part, circumscribed and segregated areas within the city and deprives many persons of the opportunity to live in the city or the opportunity to live in decent housing.

(3) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability with respect to employment denies job

opportunities to many citizens of Alexandria and causes depressed living conditions.

(4) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability in places of public accommodation causes embarrassment and inconvenience to citizens and visitors of the city and is detrimental to the welfare of the city.

(5) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability with respect to credit, credit-related services or credit ratings arbitrarily denies financial opportunities and purchasing power to many citizens.

(6) Discrimination because of race, color, sex, religion, ancestry, national origin, sexual orientation or disability with respect to education denies appropriate role models and career and athletic opportunities to the students, teachers and administrative staff.

(7) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, age, sexual orientation or disability with respect to health and social services is detrimental to the health of many citizens and deprives many needy and unfortunate citizens of the bare essentials of life.

(8) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, age or disability with respect to city contract employment denies job opportunities to many citizens and causes depressed living conditions.

(9) Discrimination because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age or disability is contrary to the law of the United States of America and the spirit of the Constitution of Virginia.

(10) It is in the public interest and in furtherance of the welfare and well being of all citizens of Alexandria, Virginia, to assure that each citizen is treated fairly, provided equal protection of the law and afforded full and equal opportunity to enjoy life, liberty, property and the pursuit of happiness.

(11) The conditions set forth in subsections (1) through (9) above have caused or are capable of causing or encouraging crime, riots, disturbances, disorders, delinquency, breach of peace, fires, poverty, slums, blighted areas, overcrowding, unhealthy and unsanitary conditions, disease, increased mortality, unstable family life, increased cost of government, excessive public assistance problems, unemployment, loss of

manpower, loss of womanpower, loss of tax revenue, and loss of trade, commerce, business and productivity.

(b) Policy. The City Council of the City of Alexandria, Virginia, hereby declares:

(1) That it is contrary to the policy of the city to permit the conditions mentioned in this section to exist or to arise.

(2) That it is the duty and policy of the city to exercise all available means and every power it possesses to protect the city and its citizens from such conditions and from the undesirable results that have been or may be caused or encouraged by the existence of such conditions.

(3) That, except as hereinafter provided, it is and shall be the policy of the city, in the exercise of its police power and all other powers it may possess, to protect the safety, health, peace, good order, comfort, convenience, morals and welfare of its inhabitants, to assure all persons the opportunity to obtain housing, public accommodations, employment, health and social services, credit, education and city contracts without regard to race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(4) That to carry out these goals and policies it is and shall be the policy of the city generally, except as hereinafter provided, to prohibit discrimination because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability with respect to housing, public accommodations, employment, health and social services, credit, education and city contracts.

Section 2. 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 stated or 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) Commercial real estate. Land or any improvement thereon, or both, or an interest in land or any improvement thereon, that is offered for sale or lease and that is being utilized, or may be utilized, by a commercial or industrial use under the City of Alexandria Zoning Ordinance, whether such use is a permitted or special use. The fact that some alterations to land or improvements, or both, must be made after the sale or lease is completed, or that permits, licenses or other approvals are necessary after the sale or lease to put the land or improvements into an actual commercial or industrial use shall not preclude the land or improvements from constituting commercial real estate.

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

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

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

(g) 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.

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

(i) 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.

(j) 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.

(k) 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.

(l) 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.

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

(n) 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.

(o) 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.

(p) 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.

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

(r) 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.

(s) 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.

(t) 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.

(u) 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.

(v) 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. Notwithstanding any contrary provision in this chapter, 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.

(w) 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.

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

(y) 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.

(z) 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.

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

(bb) 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.

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

(dd) 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 3. That Section 12-4-4 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. 12-4-4 Unlawful housing practices.

(a) Unlawful housing practices--sale or rental. Except as provided in subsection (e) of this section, it shall be unlawful for any person:

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

(2) to discriminate against any person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection therewith, because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(3) 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 housing, that indicates any preference, limitation or discrimination based on race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability, or an intention to make any such preference, limitation or discrimination.

(4) to represent to any person because of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability, that any housing is not available for inspection, sale or rental, when the housing is in fact so available.

(5) for profit, to induce or attempt to induce any person to sell or not sell, or to rent or not rent any housing by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(6) except in connection with a written affirmative action plan, to make an oral inquiry or to use a written inquiry or form of application or photograph, as a condition of the transaction in connection with the sale or rental of housing that elicits or attempts to elicit information concerning race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(7) to discriminate in the sale or rental of, or to otherwise make unavailable or deny, housing to any buyer or renter because of a disability of the buyer or renter, of a person residing in or intending to reside in the housing after it is sold, rented or made available, or of any person associated with the buyer or renter.

(8) to discriminate against any person in the terms, conditions, or privileges of sale or rental of housing, or in the

provision of services or facilities in connection with such housing, because of a disability of the person, of a person residing in or intending to reside in the housing after it is sold, rented or made available, or of any person associated with the person.

(9) For purposes of subsections (7) and (8), discrimination shall include:

a. a refusal to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises;

b. a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations are necessary to afford a person with a disability equal opportunity to use and enjoy housing; or

c. in connection with the design and construction of covered multifamily housing, as defined in Virginia or federal law, for initial occupancy after April 1, 1991, a failure to design and construct the housing in such a manner that:

(i) the public use and common use portions of the housing are readily accessible to and usable by persons with disabilities;

(ii) all the doors designed to allow passage into and within all premises within the housing are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

(iii) all premises within the housing contain an accessible route into and through the housing, light switches, electrical outlets, thermostats and other environmental controls in accessible locations, reinforcements in bathroom walls to allow later installation of grab bars and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(10) Nothing in subsections (7), (8) and (9) requires that housing be made available to an individual whose tenancy would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.

(11) For purposes of this subsection, discrimination because of or on the basis of age shall mean discrimination against a person who is 55 years of age or older because of or on the basis of that person's age.

(b) Unlawful housing practices--financing.

(1) a. It shall be unlawful for any lending institution to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining housing, or to discriminate against him or her in the fixing of the amount, interest rate, duration or other terms or conditions of the loan or other financial assistance because of the race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability of such person.

b. It shall also be unlawful for any lending institution to deny a loan or other financial assistance because of the race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability of the present or prospective owners, lessees, tenants or occupants of the housing in relation to which the loan or other financial assistance is to be made or given.

c. It shall also be unlawful for any lending institution to deny such a loan or other financial assistance to any person because of the race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability of any person associated with such person in connection with the loan or other financial assistance or the purposes of the loan or other financial assistance.

(2) It shall also be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to discriminate against any person applying for a loan or other financial assistance, the proceeds of which are to be used for the purchase, construction, improvement, repair or maintenance of housing by:

a. denying a loan or other financial assistance because of the race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability of the residents of the neighborhood in which the housing is located; or

b. discriminating in fixing of the amount, interest rate, duration or other terms or conditions of a loan or other financial assistance, because of the race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability of the residents of the neighborhood in which the housing is located.

(c) Unlawful housing practices--brokerage services.

(1) It shall be unlawful for any person 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 housing, or to discriminate against any person in the terms or conditions of such access, membership or participation, on account of race, color, sex, religion, ancestry, national origin, marital status, familial status, age, sexual orientation or disability of such persons.

(2) It shall be unlawful for any real estate broker or salesperson or other person in the business of selling or renting housing to solicit the sale or rental of housing or discourage the purchase or rental of housing by representations regarding the existing or potential proximity to real property owned, used or occupied by a person or persons of a particular race, color, sex, ancestry, national origin, marital status, familial status, age, sexual orientation or disability.

(d) Unlawful housing practices--restrictive covenants, as defined.

(1) It shall be unlawful for any person who prepares or supervises the preparation of any deed, mortgage, deed of trust, lease or contract affecting title to or any interest in land or housing in the city willfully and knowingly to include therein any restrictive covenant that discriminates on the basis of race, color, sex, religion, ancestry, national origin, familial status, age, sexual orientation or disability, except that nothing in this subsection shall be construed to prohibit any person from conveying, or preparing any legal document for any conveyance of housing or land to a religious organization for use only by members of such religious organization.

(2) It shall be unlawful for any person who prepares or supervises the preparation of any deed, mortgage, deed of trust, lease or contract affecting title to or any interest in land or housing in the city, wherein any restrictive covenant prohibited by subsection (1) above is incorporated by reference to another document or instrument, to fail to include therein a statement that such restrictive covenant is invalid and unenforceable.

(3) The Clerk of the Circuit Court for the City of Alexandria, Virginia, is hereby authorized and directed:

a. to post in a conspicuous location in the clerk's office and in the land record room the following notice printed in 14-point type:

"It is a violation of the Human Rights Code of the City of Alexandria, Virginia, for any person to include any provision in a deed, mortgage, deed of trust, lease or contract affecting title or any interest in land which purports to restrict or

affect on the basis of race, color, sex, religion, ancestry, national origin, familial status, age, sexual orientation or disability the holding, occupancy or transfer of any interest in land, and any such provisions are invalid and unenforceable."

b. when a copy of any deed, mortgage, deed of trust, lease or contract affecting title or interest in land or housing recorded in the clerk's office is requested, to affix to such copy a statement that any provision contained in such legal instrument which purports to restrict or affect the holding, occupancy, ownership, rental, lease or transfer of any interest on the basis of race, color, sex, religion, ancestry, national origin, familial status, age, sexual orientation or disability is invalid or unenforceable.

(e) Exemptions and exceptions.

(1) Nothing in section 12-4-4 shall prohibit a religious organization, association or society, or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting or from advertising the sale, rental or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(2) Nothing in section 12-4-4 other than subsection (3) of subsection (a) shall apply to:

a. any single-family house sold or rented by an owner; provided, that the private individual owner does not own more than three such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24-month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any rights to all or a portion of the proceeds from the sale or rental of more than three single-family houses at any one time; provided further, that the owner sells or rents the following:

1. without the use in any manner of the sales or rental facilities or the sales or rental services of any real

estate broker, agent or sales person, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent, salesperson or person, and

2. without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (3) of subsection (a) of this section; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title, or

b. rooms or units in housing 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 the living quarters as his or her residence, provided that the owner sells or rents the rooms or units:

1. without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent, salesperson or person, and

2. without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (3) of subsection (a) of this section, but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other professional assistance as necessary to perfect or transfer the title.

For the purposes of this subsection (e) (2), a person shall be deemed to be in the business of selling or renting housing if:

a. he or she has, within the preceding 12 months, participated as principal, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in three or more transactions involving the sale or rental of any housing or any interest therein;

b. he or she has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence, in providing the sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any housing or any interest therein; or

c. he or she is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(3) Nothing in section 12-4-4 shall be construed to:

a. bar any person from restricting sales, rentals, leases or occupancy, or from giving preference, to persons of a given age for bona fide housing intended solely for the elderly or bona fide housing intended solely for minors;

b. make it an unlawful act to require that a person have legal capacity to enter into a contract or lease;

c. prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, or religious or correctional institution from requiring that persons of both sexes not occupy any single-family residence or any room or unit in dwellings or other buildings which it owns or operates or that persons of both sexes not utilize any rest room in said room or unit in dwellings or other buildings which it owns or operates;

d. bar any person from refusing to sell or rent any housing to unmarried individuals cohabiting contrary to law;

e. bar any person from refusing a loan or other financial assistance to any person whose life expectancy, according to generally accepted mortality tables, is less than the term for which the loan is requested; or

f. forbid distinctions based on the inability to fulfill the terms or conditions including financial obligations of any such lease, contract of sale, deed or mortgage.

(4) a. Nothing in section 12-4-4 regarding unlawful discrimination because of familial status shall apply to housing for older persons.

b. As used in this section, "housing for older persons" means housing:

(i) provided under any state or federal program that is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(ii) intended for, and solely occupied by, persons 62 years of age or older; or

(iii) intended and operated for occupancy by at least one person 55 years of age or older per unit.

c. The following factors will be considered in determining whether housing qualifies as "housing for older persons":

(i) the housing contains significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, the housing is necessary to provide important housing opportunities for older persons; and

(ii) 80 percent or more of the units are occupied by at least one person 55 years of age or older; and

(iii) the publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing primarily for persons 55 years of age or older.

d. Housing shall not fail to constitute "housing for older persons" by reason of:

(i) persons residing in the housing as of February 23, 1991, who do not meet the age requirements of subsections (4)a(ii) or (iii); provided, that new occupants of such housing meet these age requirements; or

(ii) unoccupied units; provided, that such units are reserved for occupancy by persons who meet these age requirements.

(5) Nothing in section 12-4-4 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.

Section 4. That Chapter 4 of Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended by adding a new Section 12-4-4.1, to read as follows:

Sec. 12-4-4.1 Unlawful commercial real estate practices.

It shall be unlawful for any person, on the basis of race, color, sex, sexual orientation, age, marital status, religion, disability or national origin, to:

(a) refuse to sell or rent commercial real estate after the making of a bona fide offer, to refuse to negotiate for the sale or rental of such real estate, or to otherwise make unavailable or deny such real estate to any person;

(b) discriminate against a person in the terms or conditions of a sale or rental of commercial real estate, or in the provision of services or facilities in connection with or following a sale or rental of such real estate;

(c) make, print or publish, or cause to be made, printed or published, any notice, advertisement or other statement with respect to the sale or rental of commercial real estate that indicates any preference, limitation or discrimination on the basis of any of the factors identified above in this section;

(d) represent to a person that commercial real estate is not available for inspection, sale or rental when such commercial real estate is, in fact, available;

(e) interfere with, interrupt or terminate a person's ownership, rental, possession or occupancy of commercial real estate;

(f) include in the terms or conditions of any sale or rental of commercial real estate a provision that prohibits or discourages, or purports or attempts to prohibit or discourage, the ownership, rental, possession, occupancy or use of such real estate by any person on the basis of any of the factors identified above in this section; and

(g) discriminate in lending money, guaranteeing loans, accepting mortgages or otherwise making available money for the purchase, construction, alteration, repair or maintenance of commercial real estate, or to discriminate in the fixing of the rates, terms or conditions of any such financing, or in the extension of service in connection therewith;

provided, that nothing in this section shall be construed as prohibiting a person from refusing to sell or rent commercial real estate to, or otherwise to deal in connection with commercial real estate with, another person where the latter person lacks the capacity to contract; and provided further, that for purposes of this section, discrimination because of or on the basis of age shall mean discrimination against a person who is 55 years of age or older because of or on the basis of that person's age.

Section 5. 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.

(9) For purposes of subsections (a)(1) through (a)(6), discrimination because of or on the basis of age shall mean discrimination against a person who is 40 years of age or older because of or on the basis of that person's age.

(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 or older because of the age of such individual;

(4) 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;

(5) 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

(6) 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 6. That Section 12-4-12 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. 12-4-12 Human rights commission--creation; composition.

For the purpose of making effective the provisions of this chapter, there is hereby created a commission of the City of Alexandria, Virginia to be known as the "human rights commission," herein referred to as the commission, which shall consist of 14 members, each of whom shall reside in the city at the time of appointment to the commission and while serving on it. They also shall be as broadly representative of residents of the city as is practicable. Of the 14 members, nine shall be citizens at large and one each shall be members of the economic opportunities commission, the commission for women, the landlord-tenant relations board, the commission for persons with disabilities and the commission on aging. All the members shall be appointed by city council. The members representing the aforementioned city boards and commissions shall be nominated by the board or commission each represents. Of the at-large members first appointed, as decided by lot, three shall be appointed for a term of one year, three for a term of two years and three for a term of three years. Thereafter, at-large members shall be appointed for terms of three years each. Any vacancy shall be filled by the council for the unexpired portion of a term. Each member representing a board or commission shall serve coextensive with his or her term on the parent body, or until such time as the parent body shall nominate and the city council shall appoint a replacement from among the members of the parent body, but under no circumstances shall any member serve on the commission

beyond his or her term on the parent body. Members shall serve without compensation but may receive reimbursement for expenses, subject to availability of funds. On the request of any board, commission or committee of the city, the commission may invite a designated representative from such board, commission or committee to act as a participating observer at any meeting of the commission other than a hearing under sections 12-4-18 or 12-4-21 of this chapter. Also on request, the commission may provide agendas and minutes of any meeting and any other official document, except for conciliation agreements, to any other public agency, board, commission, committee or the general public.

Section 7. That Section 12-4-14 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. 12-4-14 Human rights administrator.

(a) There is hereby established the position of human rights administrator. The city manager shall appoint a person to the position of human rights administrator, who shall be a member of the manager's staff, upon consideration of the recommendations of the commission with respect to the appointment. The human rights administrator shall report to the city manager and may be removed for cause by the city manager.

(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 work-sharing 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 an unlawful discriminatory practice 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 8. 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 alleging actions or conduct that are unlawful under this chapter, as well as grievances alleging other actions or conduct that constitute discrimination where the complainant is only seeking the commission's good offices to conciliate.

(2) Utilize methods of persuasion, conciliation and mediation or informal adjustment of grievances; hold public hearings; and, in the case of complaints alleging actions or conduct that are unlawful under this chapter, make findings of fact, issue orders and make recommendations pursuant to section 12-4-21, and make public its findings, orders and recommendations.

(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 9. 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) a person claiming to have been injured by actions or conduct that are unlawful under this chapter (a "complainant"), or (ii) the human rights administrator where the administrator has probable cause to believe that one or more persons have been the subject of an unlawful discriminatory practice under this chapter. All complaints shall be made in writing, be under oath or affirmation and be accompanied by an affidavit. An additional copy shall be

made for each respondent, if more than one. All complaints shall be on a form furnished by the human rights administrator, and shall state the name and address of each respondent, the address of the person filing the complaint (the complainant or the administrator), 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 or the administrator, as the case may be, 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 actions or conduct alleged to be in violation of this chapter, except that a complaint alleging housing discrimination may be filed within 365 days of the alleged violation.

(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 a person from filing a grievance with the commission which alleges actions or conduct that is discriminatory and which seeks the commission's good offices to conciliate, or to prevent the commission from seeking to conciliate such grievances, pursuant to section 12-4-15(a)(1).

Section 10. 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 filed by a complainant.

(a) Upon the filing of a complaint by a complainant, the administrator shall undertake 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). Upon completion of the investigation, the administrator shall issue a written decision containing the administrator's determination as to whether there is probable cause for the complaint. The administrator shall send a copy of this written decision to the complainant person and the respondent by certified and ordinary mail.

(b) If the administrator determines that there is probable cause for a complaint filed by a complainant, the administrator shall immediately endeavor to eliminate the unlawful discriminatory practice complained of in accordance with section 12-4-18.

(c) If the administrator determines that there is no probable cause for a complaint filed by a complainant, that determination shall constitute the final decision of the commission which shall not be subject to judicial review.

Section 11. That Section 12-4-18 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. 12-4-18 Conciliation; breach of conciliation agreement; procedure; hearing; decision.

(a) Upon a determination by the administrator that there is probable cause for a complaint filed by a complainant, or upon the filing of a complaint by the administrator, the administrator shall immediately endeavor to eliminate the unlawful actions or conduct or the unlawful discriminatory practice complained of, upon terms that are agreeable to the parties. The administrator's effort initially shall consist of conciliation and persuasion. Conferences and other efforts at conciliation and persuasion shall be informal and may be conducted by the administrator or any member of his or her staff so designated. Nothing said or done during or as part of the conciliation efforts shall be made public or used as evidence in a subsequent proceeding instituted under this chapter unless each of the interested parties agrees thereto in writing.

(b) If conciliation succeeds, the terms of the conciliation shall be reduced to writing and signed by or on behalf of the parties and, where the complaint was filed by a complainant, also by the administrator. The administrator shall then notify the commission through its chair-person 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 with the consent of all parties.

(c) Any conciliation agreement established pursuant to this section shall provide that all complaints filed by the same complainant that are pending before the commission and that arise out of the same events or transactions giving rise to the complaint covered in the agreement shall terminate and shall not be revived by the complainant so long as the agreement is in force. The signing of an agreement shall not constitute an admission on the part of any signatory of a violation of any provision of this chapter or any other provision of law.

(d) Nothing in this chapter shall prohibit the administrator from continuing his or her efforts to reach conciliation at any time while a complaint is pending before the commission.

(e) In the event the administrator has reason to believe that a party to a conciliation agreement entered into pursuant to this section has breached any provision of the agreement, the administrator shall promptly so notify the commission. The commission shall thereupon promptly schedule a public hearing to determine if the agreement has been breached. 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 weeks prior to the date of the hearing. The commission shall schedule for hearing all respondents who signed the agreement, but may upon request or its own motion schedule separate hearings for each respondent. Any party alleging a breach of the agreement shall appear at the hearing in person and may be accompanied by an attorney. Any party who is alleged to have violated the agreement may appear at the hearing in person or by a duly authorized representative, including an attorney. Each party may present testimony and evidence. The right to cross-examine witnesses shall be preserved. The 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, the proceedings shall be transcribed. Any transcription shall be public and open to inspection by any person. All testimony shall be given under oath administered by the chairperson or his or her representative.

(f) If upon all the evidence at the hearing the commission determines that the conciliation agreement has not been breached, the commission shall not later than 14 days following the conclusion of the hearing render and issue a written decision containing its determination and the facts upon which the determination is based, cause the decision to be mailed by certified and ordinary mail to each respondent and complainant, announce and make public its determination, and cause the determination to be recorded in the minutes of its proceedings. The case shall then be closed, and no further action shall be

taken by the commission on the instant allegation of the breach of the conciliation agreement, and the agreement shall remain in effect.

(g) If upon all the evidence at the hearing the commission determines that the conciliation agreement has been breached, the commission may refer the matter back to the human rights administrator for further efforts toward conciliation or may, after consultation with the city attorney, refer the matter to the city attorney and recommend appropriate legal action to enforce the agreement.

(h) The city attorney, upon receipt of a recommendation from the commission, including a recommendation under subsection (g) of this section, may initiate appropriate legal action in a court of competent jurisdiction to enforce a conciliation agreement.

Section 12. That Section 12-4-21 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. 12-4-21 Hearings; decisions.

(a) Before the commission can hold a hearing or render a decision under this section relating to a violation of this chapter, it is necessary that:

(1) a complaint shall have been filed under section 12-4-16 alleging the violation;

(2) a determination shall have been made under this chapter that probable cause exists for the complaint; and

(3) the applicable conciliation provisions of this chapter relating to the complaint shall have been complied with.

(b) In the event that a signed conciliation agreement is not reached within 30 days from the determination of probable cause on a complaint filed by a complainant, or within 30 days of the filing of a complaint by the administrator, or within such additional time as the commission may allow, the administrator 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 complaint 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 weeks prior to the date of the hearing. In cases in which there is more than one 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) Within 30 days of the conclusion of the public hearing, the commission shall determine whether the respondent has violated any provision of this chapter, shall announce in public the determination it has reached, and shall cause the determination to be recorded in the minutes of its proceedings.

(d) If the commission determines, 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 after announcing its determination, issue a written decision containing:

(i) its determination;

(ii) the facts upon which the determination is based;

(iii) an order requiring the respondent to undertake specified actions designed to bring respondent into compliance with this chapter and stating the date or dates by which the respondent shall demonstrate to the commission that it has undertaken these actions;

(iv) recommendations, if any, regarding the relief, including but not limited to compensatory damages, that the respondent should provide any complainant and/or other persons injured by respondent's violation of this chapter, and the date or dates by which the respondent shall demonstrate to the commission that it has implemented these recommendations; and

(v) recommendations, if any, to the city manager regarding the levying of civil penalties against the respondent under section 12-4-24.1.

(2) Cause a copy of its decision to be served on each respondent and complainant, by certified mail, with a copy by ordinary mail.

(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.

(e) If the commission determines, upon the preponderance of the evidence, that the respondent has not violated any provision of this chapter, the commission shall, not later than 30 days after announcing its determination, issue a written decision containing its determination and the facts upon which the determination is based, and shall cause its decision to be served on each respondent and complainant by certified mail, with a copy by ordinary mail. The case shall then be closed and no further action shall be taken by the commission in the matter.

Section 13. That Section 12-4-23 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. 12-4-23 Judicial review.

(a) Any person aggrieved by a decision of the commission entered pursuant to section 12-4-18(f) or 12-4-21 may have the decision reviewed by a court of competent jurisdiction. A review proceedings 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 the review proceeding. No petition for review may be filed more than 30 days after the date of service of the decision of which review is sought.

(b) The court, on motion of the petitioner, may issue a writ of certiorari requiring the agency to transmit the record of the proceeding before the commission on or before a certain date.

(c) The court, sitting without a jury, shall hear the appeal on the record transmitted by the commission and any additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require.

(d) The court may affirm the decision of the commission or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the determination, findings of fact or conclusions of law set out in the commission's decision are:

(1) in violation of constitutional provisions;

- (2) in excess of legal authority or jurisdiction of the commission;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by the evidence on the record considered as a whole; or
- (6) arbitrary, capricious, or an abuse of discretion.

(e) The filing of a petition shall not operate to stay an application to the court under section 12-4-24 for the enforcement of the order. If an application has been made to the court for enforcement of the order, the petitioner, at any time after the filing of his or her petition, may move the court for a stay of enforcement. The motion shall be made after notice to the commission, and a stay pending the review shall be granted unless it appears to the court that immediate enforcement of the order is essential to the public health or safety. In the order granting a stay, the court may make any provision required to serve the ends of justice.

Section 14. That Section 12-4-24 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. 12-4-24 Judicial action to enforce commission decision.

(a) If a person who is a respondent in a proceeding before the commission fails to comply with an order issued by the commission pursuant to section 12-4-21(d)(iii), the commission may, after consulting with and receiving the approval of the city attorney, bring an appropriate action, through the city attorney, in any court of competent jurisdiction to secure a judicial order requiring the person to comply with the commission's order or otherwise to come into compliance with the provisions of this chapter.

(b) If a person who is a respondent in a proceeding before the commission fails to comply with recommendations issued by the commission pursuant to section 12-4-21(d)(iv), the commission, after consulting with and receiving a recommendation from the city attorney and thereafter receiving authorization from the city council, may bring an appropriate action, through the city attorney, in any court of competent jurisdiction to secure a judicial order or judgment requiring the person to provide appropriate relief to any complainant in said proceeding, and/or any other individual, who has been injured as a result of the person's violation of this chapter.

Section 15. That Chapter 4 of Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new Section 12-4-24.1, to read as follows:

Sec. 12-4-24.1 Civil penalty.

The violation of any provision of this chapter shall be a class one civil violation, and any person who commits, permits, assists in or attempts, whether by act or omission, such a violation shall be liable for a civil penalty. The rules applicable to, and the procedures for the levying of, such a civil penalty shall be those set out in section 1-1-11 of this code; provided, that notice of a civil violation of this chapter may be issued only by the city manager and only following a recommendation made by the commission under section 12-4-21(d)(v).

Section 16. That Section 12-4-29 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. 12-4-29 Conditions under which city attorney not to represent commission, administrator.

Notwithstanding any contrary provisions of this chapter, the city attorney shall not represent either the commission or the administrator in any matter or proceeding in which the city or any department, office or agency of the city is a respondent. In this event, the commission and the administrator may consult with and retain a private attorney to provide the services that the city attorney would ordinarily provide the commission and administrator.

Section 17. That Chapter 4 of Title 12 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended by adding thereto a new Section 12-4-30, to read as follows:

Sec. 12-4-30 Severability.

The provisions of this chapter are severable and, if any section, provision or part of the chapter is held, for any reason, invalid or inapplicable to any person or circumstance, such invalidity or inapplicability shall not affect or impair any of the remaining sections, provisions or parts of this chapter, or their application to any other person or circumstance. It is hereby declared to be the intent of the city council that this chapter would have been adopted even if the section, provision or part of the chapter declared invalid had not been included herein, or if the person or circumstance to which the section, provision or part is declared inapplicable had been specifically exempted from the chapter.

Section 18. That this ordinance shall become effective upon the date and at the time of its final passage, and therefore shall, with the exception of Sections 2, 3 and 4, apply to the actions and conduct of persons undertaken, and to complaints filed with the human rights commission (including the office of human rights), both prior to and after said date. Sections 2, 3 and 4 shall only apply to the actions and conduct of persons undertaken after the effective date of this ordinance.

KERRY J. DONLEY
Mayor

Final Passage: March 23, 1996