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Requested by the Department of Law

October 26, 2018

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OFFERED BY: KEITH

ORDINANCE NO. 381 -2018 amending and supplementing Title 3, "Administration," Chapter 38, "Unlawful Discrimination," of the Akron Codified Ordinances; and declaring an emergency.

WHEREAS, on March 27, 2017, Akron City Council approved Ordinance 82-2017, adopting comprehensive non-discrimination provisions and establishing the Akron Civil Rights Commission; and

WHEREAS, the Commission has begun accepting complaints for claims of discrimination on the basis of a variety of protected classes, including age, race, color, creed, religion, national origin, ancestry, disability, marital status, familial status, sex, gender identity or expression, sexual orientation, and military status, and

WHEREAS, the City has identified several adjustments and amendments to the Ordinance that will clarify the meaning of several substantive provisions and avoid jurisdictional and conflict concerns in the Commission process.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section 1. That Title 3 "Administration," Chapter 38 "Unlawful Discrimination" of the Code of Ordinances of the City of Akron be and is hereby amended as follows:

CHAPTER 38 - UNLAWFUL DISCRIMINATION

38.01 - Definitions.

(A) As used in this chapter:

- (1) "Advertising" means to make, print, publish, advertise or otherwise disseminate any notice, statement or advertisement, with respect to any employment activity or any business activity.
- (2) "AFFIRMATIVE ACTION PLAN" MEANS ANY PLAN DEvised TO EFFECTUATE REMEDIAL OR CORRECTIVE ACTION TAKEN IN RESPONSE TO PAST DISCRIMINATION PRACTICES OR AS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW.
- (3) "Age" means age of or over 18 except as otherwise provided by law or otherwise indicated herein.
- (4) "Business establishment" means any entity, however organized, including a commercial enterprise owned or operated by a religious institution, ~~which~~ **THAT** furnishes goods, services or accommodations to the general public. An

otherwise qualifying establishment—which THAT has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist only of requirements under which a substantial portion of the residents of the City could qualify.

- (5) “CITY” MEANS THE CITY OF AKRON, IN THE COUNTY OF SUMMIT, OHIO.
- (6) “COMMISSION” MEANS THE AKRON CIVIL RIGHTS COMMISSION.
- (7) “COMPLAINANT” MEANS A PERSON CLAIMING TO BE AGGRIEVED BY A DISCRIMINATORY PRACTICE.
- (8) ~~“Disability” or “disabled” means, with respect to an individual, a physical or mental impairment, a record of such an impairment, or being perceived or regarded as having such impairment.~~
- (9) “DISABLED PERSON” MEANS AN INDIVIDUAL WHO HAS, IS PERCEIVED TO HAVE, OR HAS A RECORD OF HAVING A DISABILITY.
- (10)
 - (a) ~~“Discriminate, discrimination or discriminatory” means~~ TO ENGAGE IN, TAKE PART IN, CREATE, ENFORCE, OR ESTABLISH any act, policy or practice that subjects any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, familial status, sex, gender identity or expression, sexual orientation, or military status.
 - (b) “DISCRIMINATION” MEANS ANY ACT, POLICY, OR PRACTICE THAT SUBJECTS ANY PERSON TO DIFFERENTIAL TREATMENT AS A RESULT OF THAT PERSON’S AGE, RACE, COLOR CREED, RELIGION, NATIONAL ORIGIN, ANCESTRY, DISABILITY, MARITAL STATUS, FAMILIAL STATUS, SEX, GENDER, SEXUAL ORIENTATION, OR MILITARY STATUS.
 - (c) “DISCRIMINATORY” MEANS CHARACTERIZED BY DIFFERENTIAL TREATMENT AS A RESULT OF A PERSON’S AGE, RACE, COLOR, CREED, RELIGION, NATIONAL ORIGIN, ANCESTRY, DISABILITY, MARITAL STATUS, FAMILIAL STATUS, SEX, GENDER, SEXUAL ORIENTATION, OR MILITARY STATUS.
 - (d) “DISCRIMINATE,” “DISCRIMINATION,” AND “DISCRIMINATORY,” DO NOT INCLUDE THE ACT, PRACTICE, OR POLICY OF AWARDED PREFERENCE

POINTS TO OR OTHERWISE PREFERRING AN
INDIVIDUAL ON THE BASIS OF THE INDIVIDUAL'S
MILITARY SERVICE.

(11)

(a) “Educational institution” means any public or private educational institution including INCLUDES ANY OF THE FOLLOWING THAT ARE NOT GOVERNED BY AN ELECTED BODY:

- (i) AN academy;
- (ii) A college;
- (iii) AN elementary or secondary school;
- (iv) AN extension course;
- (v) A kindergarten
- (vi) A pre-school
- (vii) A nursery school;
- (viii) A university; **OR** and
- (ix) A business, nursing, professional, secretarial, technical or vocational school.

(b) For purposes of this chapter "educational institution" shall not include any religious institution or school operated by a religious institution.

(12) “Employee” means any individual employed or seeking employment from an employer.

(13) “Employer” means any person who, for compensation, regularly employs four (4) or more individuals, not including the PERSON'S employer's parents, spouse or children. For purposes of this chapter ~~an employer~~ — PERSON "regularly" employs four (4) individuals when the employer PERSON employs four (4) or more individuals for each working day in any twenty (20) or more calendar weeks in the current or previous calendar year. For purposes of this chapter, an "employer" is also any person acting **DIRECTLY OR INDIRECTLY** on behalf of an employer, ~~directly or indirectly~~, or any employment agency. "Employer" shall include any religious institution that otherwise meets the definition.

(14) “Familial status” means having any of the following family characteristics:

- (a) One or more individuals who are under 18 years of age and who are domiciled with a parent or guardian having legal custody of the individual; or
 - (b) One or more individuals who are under 18 years of age and who are domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian; **OR**
 - (c) Any person who is pregnant or in the process of securing legal custody of any individual who is under 18 years of age.
- (15) “Family” includes a single individual.
- (16) **“GENDER” INCLUDES ACTUAL OR PERCEIVED SEX, GENDER IDENTITY, AND GENDER EXPRESSION.**
- (17) “Gender identity—~~or—expression~~” means **A PERSON’S INTERNAL, DEEPLY HELD SENSE OF THE PERSON’S GENDER, WHICH MAY BE THE SAME OR DIFFERENT FROM THE PERSON’S SEX ASSIGNED AT BIRTH.** ~~having or being perceived as having a gender identity or expression whether or not that gender identity or expression is different from that traditionally associated with the gender/sex assigned to that individual at birth.~~
- (18) **“GENDER EXPRESSION” MEANS A PERSON’S REPRESENTATION OF THE PERSON’S GENDER THROUGH THE PERSON’S NAME, CHOICE OF PRONOUNS, CLOTHING, HAIRCUT, BEHAVIOR, VOICE, OR OTHER BODY CHARACTERISTICS.**
- (19) “Labor organization” means any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining, **PROTECTION OF EMPLOYEES,** ~~or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection on behalf of employees.~~
- (20) “Non-secular position” means any leadership position in a religious institution, or any position that has important functions in worship services or in the performance of religious ceremonies and rituals, or any position entrusted with teaching classes regarding the tenets of the faith or religion of that religious institution.
- (21) “Person” means a natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.
- (22) “Place of public accommodation” means inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments ~~which~~ **THAT** offer goods, services, accommodations and entertainment to the public within the City. A place of public accommodation does not include any

institution, club or other place of accommodation THAT, which by its nature, is distinctly private or the non-public religious facilities of a religious institution.

- (23) **“QUALIFIED INDIVIDUAL WITH A DISABILITY” MEANS AN INDIVIDUAL WITH A DISABILITY WHO, WITH OR WITHOUT REASONABLE ACCOMODATION, CAN PERFORM THE ESSENTIAL FUNCTIONS OF THE EMPLOYMENT POSITION THAT THE INDIVIDUAL HOLDS OR SEEKS.**
- (24) “Religious institution” means any church, institution, organization, or entity that has several of the following general characteristics: a distinct legal existence, a recognized creed and form of worship, a definite and distinct ecclesiastical government, a formal code of doctrine and discipline, a distinct religious history, membership not associated with any other church or denomination, an organization of ordained ministers/clerics, ordained ministers/clerics selected after completing prescribed courses of study, literature of its own, established places of worship, regular congregations, regular religious services, schools for the religious instruction of the young, and schools for the preparation of its members.
- (25) **“RESPONDENT” MEANS THE PERSON(S) NAMED IN A COMPLAINT FILED WITH THE COMMISSION AS HAVING ENGAGED IN DISCRIMINATION.**
- (26) “Sex” means biological sex and shall include pregnancy, childbirth, and related medical conditions.
- (27) “Sexual orientation” means actual or perceived heterosexuality, homosexuality or bisexuality.
- (28) “Real estate transaction” means the exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, of any interest in real property or improvements thereon.

38.02 - Unlawful discrimination related to employment.

- (A) With regard to employment, it shall be unlawful for any employer or labor organization to engage in any of the following acts, wholly or partially for a discriminatory reason:
- (1) To fail to hire, refuse to hire, or discharge an individual;
 - (2) To discriminate against any individual, with respect to compensation, terms, conditions, or privileges of employment, including promotion;
 - (3) To limit, segregate, or classify employees in any way which THAT would deprive or tend to deprive any employee of employment opportunities, or

which would otherwise tend to adversely affect his or her status as an employee;

- (4) To discriminate against an individual in admission to, or employment in, any program established to provide apprenticeship or other job training, including an on-the-job training program;
 - (5) To print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment.
 - (a) This subsection shall not be construed so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability;
 - (6) To discriminate in referring an individual for employment whether the referral is by an employment agency, labor organization, or any other person;
- (B) Notwithstanding the provisions of subsections ~~(a) through (f)~~**(A)(1) THROUGH (A)(6)**, nothing contained in this chapter shall be deemed to prohibit a religious institution from selecting or rejecting applicants and employees for non-secular positions on the basis of the applicant's or employee's conformance with the institution's religious principles. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious preference, that party shall have the burden of proving **THE FOLLOWING**:
- (1) That the discrimination is in fact a necessary result of such a bona fide religious preference; and
 - (2) That there exists no less discriminatory means of satisfying the bona fide religious preference.
- (C) Notwithstanding the provisions of subsections ~~(a) through (f)~~**(A)(1) THROUGH (A)(6)**, nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, that party shall have the burden of proving:
- (1) That the discrimination is in fact a necessary result of such a bona fide occupational qualification; and
 - (2) That there exists no less discriminatory means of satisfying the bona fide occupational qualification.
- (D) Notwithstanding the provisions of subsections ~~(a) through (f)~~**(A)(1) THROUGH (A)(6)**, it shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as a retirement, pension, or insurance plan ~~which~~ **THAT** is not a subterfuge or pretext to evade the purposes of this chapter.
- (E) Notwithstanding the provisions of subsections ~~(a) through (f)~~**(A)(1) THROUGH (A)(6)**, for purposes of this section, discrimination on the basis of disability means that no covered entity shall discriminate against a qualified individual with a disability because of that individual's disability. ~~The term "qualified individual with a~~

disability" shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment positions that the individual holds or seeks.

38.03 - Unlawful discrimination related to housing.

(A) With regard to housing and real estate transactions, it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason:

- (1) To discriminate by impeding, delaying, discouraging or otherwise limiting or restricting any real estate transaction;
- (2) To discriminate by imposing less preferential terms on a real estate transaction;
- (3) To represent falsely that an interest in real estate is not available for a real estate transaction;
- (4) To include in the terms or conditions of a real estate transaction any discriminatory clause, condition or restriction;
- (5) To discriminate in performing, or refusing to perform, any act necessary to determine an individual's financial ability to engage in a real estate transaction;
- (6) For a property manager to discriminate by refusing to provide equal treatment of, or services to, occupants of any real estate ~~which~~ **THAT** the property manager manages;
- (7) To make, print or publish, or cause to be made, printed or published any discriminatory notice, statement, or advertisement with respect to a real estate transaction or proposed real estate transaction, or financing relating thereto.

(a) This subsection ~~(A)(7)~~ shall not be construed to prohibit advertising directed to physically disabled persons or persons over the age of 55 for the purpose of calling to their attention the existence of housing accommodations or services for the physically disabled or elderly;

(B) THIS SUBSECTION (A)(7) SHALL NOT BE CONSTRUED SO AS TO EXPOSE THE PERSON WHO PRINTS OR PUBLISHES THE NOTICE OR ADVERTISEMENT, SUCH AS A NEWSPAPER, TO LIABILITY.

- (8) To discriminate in any financial transaction involving real estate, on account of the location of the real estate, be it residential or non-residential ("red-lining");
- (9) For a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these, or any other person, for the purposes of inducing a real estate transaction from which such person may benefit financially to represent that a change has occurred or will or may occur in the composition with respect to age, race, color, creed, religion,

national origin, ancestry, disability, familial status, marital status, sex, gender ~~identity or expression~~, sexual orientation, or military status of the owners or occupants in the block, neighborhood or area in which the real property is located or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood or area in which the real property is located ("block- busting");

- (B) Notwithstanding the provisions of subsections ~~(a) through (h)~~ **(A)(1) THROUGH (A)(9)**, it shall not be an unlawful discriminatory practice for an owner to limit occupancy on the basis of a person's low-income, age over 55 years or disability status in accordance with federal or state law;
- (C) Notwithstanding the provisions of subsections ~~(a) through (h)~~ **(A)(1) THROUGH (A)(9)**, it shall not be an unlawful discriminatory practice for an owner, lessor, or renter to refuse to rent, lease, or sublease a portion of a single family dwelling unit to a person as a tenant, roomer, or boarder where it is anticipated that the owner, lessor, or renter will be occupying any portion of the single-family dwelling.

38.04 - Unlawful discrimination related to business establishments, public accommodations and/or educational institutions.

- (A) It shall be unlawful for a business establishment, place of public accommodation, or educational institution to engage in any of the following acts wholly or partially for a discriminatory reason:
 - (1) To deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages, ~~and~~ **OR** accommodations of any business establishment, place of public accommodation, or educational institution (for purposes of this section it will not be considered discrimination to restrict access to facilities not open to the general public on the basis of non-discriminatory criteria);
 - (2) To print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a business establishment, place of public accommodation, or educational institution will be unlawfully refused, withheld from, or denied an individual, or which indicates that an individual's patronage of, or presence at, the business establishment, place of public accommodation, or educational institution is objectionable, unwelcome, unacceptable, or undesirable.
 - (a) **THIS SUBSECTION (A)(2) SHALL NOT BE CONSTRUED SO AS TO EXPOSE THE PERSON WHO PRINTS OR PUBLISHES THE NOTICE OR ADVERTISEMENT, SUCH AS A NEWSPAPER, TO LIABILITY.**

38.05 - General exceptions.

- (A) Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by members of any protected group, in furtherance of the purposes of this chapter.
- (B) **NOTHING CONTAINED IN THIS CHAPTER SHALL BE CONSTRUED TO PROHIBIT ANY PERSON FROM CARRYING OUT** ~~It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan.~~
- (C) **NOTHING CONTAINED IN THIS CHAPTER SHALL BE CONSTRUED TO PROHIBIT THE AWARDDING OF PREFERENCE POINTS OR ANY OTHER PREFERENCE TO AN INDIVIDUAL ON THE BASIS OF THE INDIVIDUAL'S MILITARY SERVICE.**

38.06 - Unlawful coercion or retaliation.

- (A) It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against or interfere with any person in the exercise of, or on account of having exercised, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected under this chapter.
- (B) It shall be an unlawful discriminatory practice for any person to cause, directly or indirectly, any other person not to comply with the provisions of this chapter, or for any person to coerce, directly or indirectly, any other person not to comply with the provisions of this chapter.

38.07 - Akron Civil Rights Commission.

- (A) The Akron Civil Rights Commission (hereinafter the "Commission") is hereby constituted in accordance with the provisions of this chapter for the purposes of enforcing the provisions of this chapter.
- (B) The Commission shall be comprised of five members appointed by the Mayor by and with the consent of Council. The composition of the Commission shall broadly reflect the diversity of the City of Akron and aim to include a diverse set of members from classes of individuals protected from discrimination by this chapter. The Mayor may, by and with the consent of Council, appoint up to two alternate members to serve in the event of a temporary vacancy, absence, or recusal of a member.
- (C) Of the members first appointed, one member shall hold office for a term of one year; two members for a term of two years; and two members for a term of three years; and their successors shall be appointed for a term of three years. Of the first alternate members appointed, if any, the first shall be appointed for a term of one year and another for a term of two years; and their successors shall be appointed for a term of three years. All members and alternate members shall serve until their successor has been appointed and qualified for office. (Hereinafter "member" shall include alternate members unless otherwise indicated.) Every member shall be a resident of the City of Akron and shall continue to be a resident so long as that person shall serve as a member of the Commission. In the event of a vacancy, a replacement will be appointed by the Mayor and confirmed by Council to serve out the remainder of the

vacant term. If a member of the Commission is party to a complaint, that member shall recuse themselves from the complaint.

- (D) Each member of the Commission shall be compensated One Hundred Dollars (\$100.00) per Commission meeting, hearing, or conciliation proceeding that member attends.
- (E) The Commission may create and modify rules regarding its meetings and procedures. The Commission may create and appoint committees of its membership that it deems appropriate to carry out its functions. The Commission shall elect from within its membership a Chairperson and a Vice Chairperson. The Chairperson will preside over meetings of the Commission and the Vice Chairperson shall preside over meetings of the Commission in the absence of the Chairperson. In the absence of both the Chairperson and the Vice Chairperson, a majority of a quorum of the Commission shall elect a temporary chairperson to preside.
- (F) The Department of Law or other City department, at the direction of the Mayor, shall provide support functions for the benefit of the Commission including, but not limited to, managing Commission records and accounts, providing training for Commission members, managing citizen complaints, and facilitating Commission scheduling and communication.
- (G) In the enforcement of this chapter, the Commission shall have the following powers and duties:
 - (1) To receive, initiate, investigate, seek to conciliate, hold hearings, and issue orders on complaints alleging violations of this chapter;
 - (2) To cooperate with relevant federal and state authorities;
 - (3) To require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation in person by deposition, and require the production of documents relevant to the complaint, in accordance with this chapter ~~and Ohio Revised Code Chapter 119~~;
 - (4) To cooperate with community, professional, civic, and religious organizations, as well as state and federal agencies, in the development of public education programs regarding compliance with the provisions of this chapter and equal opportunity and treatment of all individuals;
 - (5) To make available to the public information on this chapter, grievance procedures, public records of the Commission and any other information that would further the purposes and intentions of this chapter.
- (H) The Commission shall report to City Council and the Mayor semi-annually, on or before April 1 ~~of each calendar year~~ and again on or before ~~September 1~~ **OCTOBER 1** of each calendar year, as to the activities of the Commission for the preceding period (since the last preceding report). Such report shall contain data regarding complainant and respondent demographics, types of complaints (housing, employment or public accommodations), complaint disposition, and any fines and remedies issued by the Commission, as well as any other relevant information that Council or the Mayor may require.

38.08 - Complaints; consideration by the commission.

- (A) ~~A person claiming to be aggrieved by a discriminatory practice, hereinafter "Complainant,"~~ **A COMPLAINANT** may file with the Commission a written sworn complaint stating that a discriminatory practice has been committed, setting forth the facts sufficient to enable the Commission to identify the person(s) charged **AND THE DISCRIMINATION ALLEGED** ~~(hereinafter the Respondent)~~. A complaint may be amended by the Complainant at any time prior to a hearing on the complaint or an order dismissing the complaint.
- (B) Within a reasonable time after receipt of the complaint, the Commission shall:
 - (1) Furnish the Complainant with a notice acknowledging the filing of the complaint and informing the Complainant of the complaint process; and
 - (2) Furnish the Respondent with a copy of the complaint and a notice advising the Respondent of the provisions of this chapter.
- (C) The complaint must be filed within one year after the occurrence of the alleged discriminatory practice. If the alleged discriminatory practice is a continuing practice, a complaint must be filed within one year after the cessation of the alleged discriminatory practice.
- (D) The Commission shall promptly commence an investigation of the complaint after the filing of the complaint. The Commission, or designee, shall promptly investigate the matter to determine whether there is reasonable cause to believe a discriminatory practice exists.
- (E) If it is determined that there is no reasonable cause to believe that the Respondent has engaged in a discriminatory practice, the Commission shall furnish a copy of an order dismissing the complaint to the Complainant, the Respondent, and any such public officers and persons as the Commission deems proper.
- (F) If it is determined that there is reasonable cause to believe that the Respondent has engaged in a discriminatory practice, the Commission shall issue a letter of determination stating the basis for its finding of reasonable cause. The letter of determination shall be furnished to the Respondent by mail or in person, and shall include information regarding optional conciliation proceedings, as provided for in this chapter.

38.09 - Preservation of records; right to representation.

- (A) Where a complaint of discrimination has been filed against a person under this chapter, such person shall cause all records relevant to the complaint to be preserved, until a final disposition of the complaint, including the final disposition of any appeal to court or the expiration of the period of time during which such an appeal could be made.
- (B) Any Complainant and/or Respondent may be represented by legal counsel at any time during any proceeding under this chapter.

38.10 - Conciliation.

- (A) If the Commission determines after investigation that there is reasonable cause to believe that the Respondent has engaged in a discriminatory practice, the Commission shall endeavor to eliminate the alleged discriminatory practices by conference, conciliation, and persuasion. Up to two members of the Commission may participate in conciliation proceedings with the assistance of the City's Department of Law, or the Commission may delegate participation in the conciliation proceedings to the City's Department of Law. With the consent of the Complainant and the Respondent, the Commission may undertake conciliation proceedings at any time after a Complaint has been filed.
- (B) The terms of a conciliation agreement reached with a Respondent shall require the Respondent to refrain from discriminatory practices in the future and shall make such further provisions as may be agreed upon between the Commission, the Director of Law, and the Respondent.
- (C) If a conciliation agreement is entered into, the Commission shall issue a copy to the Complainant and the Respondent and provide a copy to the Mayor or the Mayor's designee.
- (D) The Commission shall not make public information concerning efforts in a particular case to eliminate discriminatory practice by conference, conciliation, or persuasion, whether or not there is a conciliation agreement. A conciliation agreement shall not be made public unless the Commission determines that disclosure is required by state or federal law. Conciliation agreements entered into pursuant to this chapter are not intended to be public records subject to disclosure under the Ohio Public Records Act.
- (E) At any time after a conciliation agreement is entered into, in the reasonable discretion of the Commission, the Commission may investigate whether the Respondent is following the terms of the conciliation agreement.
- (F) If a finding is made that the Respondent is not complying with the terms of the conciliation agreement, the Commission shall **PROCEED AS THOUGH A NEW COMPLAINT HAD BEEN FILED.** ~~take such action as permitted by this chapter that it deems appropriate to ensure compliance.~~

38.11 - Hearings.

- (A) If a conciliation agreement has not been reached within ninety (90) days after an administrative determination of reasonable cause to believe that discrimination took place, or if the Respondent declines participation in the conciliation process, the Commission shall promptly serve on the Respondent by mail or in person a written notice, together with a copy of the complaint, as it may have been amended, and a copy of the letter of determination, requiring the Respondent to answer the allegation(s) of the complaint at a hearing before the Commission, at a time and place specified by the Commission. A copy of the notice shall be furnished to the Complainant and such public officers and persons as the Commission deems proper.

- (B) A member of the Commission who participated in conciliation proceedings shall not participate in the hearing or in the subsequent deliberation of the Commission.
- (C) The Respondent may file an answer with the Commission in accordance with the rules of the Commission before the hearing date. The Respondent may amend an answer at any time prior to a hearing or the issuance of an order dismissing the complaint.
- (D) If the Respondent fails to answer the complaint, the Commission shall find the Respondent in default, unless good cause is shown. In the event of default, the hearing shall proceed on the evidence offered by the Complainant.
- (E) A Respondent, who has filed an answer or whose default in answering has been set aside for good cause shown, may appear at the hearing, may examine and cross-examine witnesses and the Complainant and may offer relevant evidence.
- (F) The Complainant, and, in the discretion of the Commission, any person may intervene, examine and cross-examine witnesses and present relevant evidence.
- (G) Efforts at conference, conciliation and persuasion shall not be permitted to be placed in evidence or discussed on the record.
- (H) Testimony taken at the hearing shall be under oath and recorded.
- (I) All hearings conducted under this section shall be conducted in accordance with the Charter of the City of Akron and ~~Chapter 119 of the Ohio Revised Code.~~

38.12 - Findings and orders.

- (A) If, following a hearing held under this chapter, the Commission determines that the Respondent has not engaged in a discriminatory practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be furnished to the Complainant, the Respondent, the Mayor, and such other public officers as the Commission deems proper.
- (B) If, following a hearing held under this chapter, the Commission determines that the Respondent has engaged in a discriminatory practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order requiring the Respondent to cease and desist from the discriminatory practice and to provide such remedies as in the judgment of the Commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the Respondent, the Complainant, the Mayor, and such other public officers as the Commission deems proper.

38.13 - Remedies.

- (A) Remedies ordered under this section may include any and all of the following as the Commission finds appropriate:
 - (1) Hiring, reinstatement, upgrading, or promotion of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;

- (2) Admission or restoration of individuals to union membership, admission to or participation in a guidance program, apprenticeship, training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;
- (3) Extension of access to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of Respondent's business establishment, place of public accommodation, or educational institution;
- (4) Reporting as to the manner of compliance;
- (5) Posting notices in conspicuous places in the Respondent's place of business in the form prescribed by the Commission;
- (6) Payment to the Complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and costs, including reasonable attorney fees;
- (7) Payment to the Commission of a civil penalty not to exceed One Thousand Dollars (\$1,000.00) for each violation. Each day on which a continuing violation occurs shall constitute a new and separate violation of this chapter. Penalties collected pursuant to this section will be used to support the operations of the Commission and to promote equality in the City of Akron; and/or
- (8) Such other remedies as shall be necessary and proper to eliminate and correct all discrimination identified by the evidence submitted at the hearing or in the record, whether or not included in a complaint.

38.14 - Judicial review.

Any Complainant or Respondent aggrieved by an order of the Commission, including an order dismissing a complaint, may obtain judicial review through the Summit County Court of Common Pleas pursuant to Chapter 2506 of the Ohio Revised Code or through the Akron Municipal Court.

38.15 - Resistance to or obstruction of commission.

Any person who willfully resists, prevents, impedes or interferes with the Commission, its members, agents or agencies in the performance of duties pursuant to this chapter, or violates any order of the Commission shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000) in addition to such order or decree that may be issued.

38.16 - State/Federal remedies.

- (A) The remedies provided for in this chapter are in addition to, not in lieu of, those provided for by state and federal law. This chapter shall therefore not be construed so as to limit a person's right to file complaint with any state or federal agency, board, tribunal or court vested with jurisdiction to receive, review and act upon complaints of discrimination. This chapter shall not be construed as limiting the right of any

person to seek remedies in courts of competent jurisdiction pursuant to state or federal law which grant private rights of action to persons aggrieved by discriminatory acts of the type prohibited by this chapter. There is no requirement that an aggrieved person file a complaint with the City pursuant to this chapter before seeking any other federal, state or other remedy available to the person.

- (B) A person's election to seek remedies provided for in this chapter shall not operate to toll any statute of limitation set forth in state or federal law for pursuing remedies under state or federal law for acts of discrimination of the type prohibited by this chapter.

38.17 - Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter, or the application thereof to any person, firm, corporation or circumstance, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof.

38.18 – POLITICAL SUBDIVISIONS OF THE STATE OF OHIO

THIS CHAPTER DOES NOT APPLY TO ANY POLITICAL SUBDIVISIONS OF THE STATE OF OHIO.

Section 2 That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare for the reason that the changes are needed immediately, and provided this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed OCTOBER 29, 2018

[Signature]
Clerk of Council

[Signature]
President of Council

Approved 10/31, 2018

[Signature]
MAYOR

Code

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AKRON CITY COUNCIL

CITY OF AKRON, OHIO
UNIFORM CITY COUNCIL REPORT

PART I

Subject/Project: Akron Civil Rights Commission

Department of Origin: Law

Bureau of Origin: N/A

Division of Origin: N/A

Fact Sheet Prepared By: Brian D. Bremer **Date:** 10/26/2018

FINANCIAL DATA:

Current Request:	Budgeted Cost		Current Estimate Of Costs	
	Source	Amount	Source	Amount
	_____	_____	_____	_____
Total Project (If Applicable):	Source	Amount	Source	Amount
	_____	_____	_____	_____

PART II

Purpose of Legislation: To amend Chapter 38 of the Akron Code of Ordinances to clarify definitions, improve the organization of the Chapter, and correct potential jurisdictional concerns

Impact of Objective of the Legislation: Clarifies definitions and improves the organization of the Chapter and remedies potential jurisdictional concerns.

Alternative(s): The Code of Ordinances could continue to contain circular definitions, which could lead to unintended consequences.

Earlier Legislation on this Subject: Ordinance No. 82-2017

Summary of Ordinance No. 381-2018 enacted by the Council of the City of Akron on October 29, 2018 amending and supplementing Title 3, "Administration," Chapter 38, "Unlawful Discrimination," of the Akron Codified Ordinances; and declaring an emergency.

BY: Robert Keith
Clerk of Council

**advertised in Akron Beacon Journal 11/3/18. MYR0056-129102*