

Chapter 11.01

GENERAL PROVISIONS

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11.01.010 Definitions.

As used in this title, the following terms shall mean:

Age shall mean the age of any individual from forty years of age and above.

Aggrieved person shall mean any person who (1) claims to have been injured by a discriminatory housing practice, or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.

Attorney shall mean the City Attorney or a member of that department's staff.

Commission shall mean the Commission on Human Rights of the City of Lincoln, Nebraska or any members of the Commission who may be assigned by the Commission to hear complaints by public hearing proceedings.

Complainant shall mean the person, including the Commission, who files a complaint under this title.

Conciliation shall mean the attempted resolution of issues raised by a complaint or by the investigation of a complaint through informal negotiations involving the aggrieved person, the respondent, and the Commission.

Covered multi-family dwelling shall mean:

(1) A building consisting of four or more units if such building has one or more elevators;
and

(2) Ground-floor units in any other building consisting of four or more units.

Disability shall mean, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment.

Disability shall not include current, illegal use of or addiction to a controlled substance as defined by state law.

Discriminatory housing practice shall mean an act that is unlawful as provided by Chapter 11.06.

Dwelling shall mean any building, structure, or portion thereof or mobile home which is occupied as, or designed or intended for occupancy as, a residence for one or more families, and any vacant land which is offered for sale or lease for the construction or location of any such building, structure, or portion thereof, or mobile home.

Employee shall mean an individual employed by an employer, or an applicant for employment.

Employer shall mean a person engaged in an industry who has four or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such person, but such term does not include (1) the United States government, a corporation wholly owned by the government of the United States, or an Indian tribe; or (2) the State of Nebraska; or (3) the County of Lancaster; or (4) a bona fide private membership club, other than a labor organization, which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; or (5) a religious organization.

Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.

Equal Opportunity Officer shall mean the duly appointed Equal Opportunity Officer of the City of Lincoln or the designated representative of such person.

Familial status shall mean one or more minors being domiciled with:

- (1) A parent or other person having legal custody of such individual; or
- (2) The designee of a parent or other person having legal custody, with the written permission of the parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any minor.

Family shall include a single individual.

Housing for older persons shall mean:

(1) Housing provided under any federal, state, or local program that the Secretary of Housing and Urban Development or the Commission determines is specifically designed and operated to assist elderly persons as defined in the federal, state, or local program;

(2) Housing intended for, and solely occupied by, persons sixty-two years of age or older; or

(3) Housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the Commission shall develop regulations which require at least the following factors:

- A. The existence of 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, that such housing is necessary to provide important housing opportunities for older persons;
- B. That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

- C. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

Housing shall not fail to meet the requirements of housing for older persons by reason of:

- (i) Persons residing in the housing as of the effective date of this ordinance who do not meet the age requirements of (2) or (3) above if succeeding occupants of the housing meet the age requirements; or
- (ii) Unoccupied units if the units are reserved for occupancy by persons who meet the age requirements.

Labor organization shall mean any organization which exists wholly or in part for one or more of the following purposes: Collective bargaining; dealing with employers concerning grievances, terms, or conditions of employment; or of mutual aid or protection in relation to employment.

Person shall include one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Private membership club shall mean one that is organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but if any part of its earnings is used to the benefit of any private shareholder or member thereof, it shall be deemed not to be a private club. A club which engages in business, such as making its social and recreational facilities available to the general public, shall not be deemed to be a private club. Generally, it is the intent of this definition to apply to social and recreational clubs which are supported solely by membership fees, dues, and assessment.

Public accommodations shall mean all places or businesses offering or holding out to the general public goods, services, privileges, facilities, advantages, and accommodations for the peace, comfort, health, welfare, and safety of the general public and such public places providing food, shelter, recreation, and amusement including, but not limited to:

(1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as such proprietor's residence;

(2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment;

(3) Any gasoline station, including all facilities located on the premises of such station and made available to the patrons thereof;

(4) Any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

(5) Any public facility owned, operated, or managed by or on behalf of the City of Lincoln or any agency thereof, or any public corporation, and any such facility supported in whole or in part by public funds; and

(6) Any establishment which is physically located within the premises of any establishment otherwise covered by this section or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

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 position that

such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

Reasonable accommodation shall include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job-restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training manuals, or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. Reasonable accommodation shall not include accommodations which the employer can demonstrate require significant difficulty or expense thereby posing an undue hardship upon the employer. Factors to be considered in determining whether an accommodation would pose an undue hardship shall include:

- (1) The nature and the cost of the accommodation needed under this title;
- (2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (3) The overall financial resources of the employer, the overall size of the business of the employer with respect to the number of its employees, and the number, type, and location of its facilities; and
- (4) The type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.

Residential real estate-related transaction, as used in this title, shall mean:

- (1) The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or (ii) secured by residential real estate.
- (2) The selling, brokering, or appraising of residential real property.

Respondent shall mean:

- (1) The person or other entity accused in a complaint of an unfair housing practice; and
- (2) Any other person or entity identified in the course of an investigation and notified as required with respect to respondents so identified under this title.

Restrictive covenants shall mean any specification limiting the transfer, rental, or lease of any real property because of race, color, religion, sex, disability, national origin, familial status, ancestry, age, or marital status.

Because of sex or on the basis of sex shall include, but not be limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions.

Title shall mean Title 11 of the Lincoln Municipal Code.

To rent shall include to lease, to sublease, to let, and otherwise to grant for consideration the right to occupy the premises not owned by the occupant. (Ord. 17028 §1; July 15, 1996: prior Ord. 16048 §1; February 10, 1992: Ord. 15966 §1; September 9, 1991: Ord. 15106 §1; February 13, 1989: Ord. 13793 §1; March 26, 1984: Ord. 12849 §1; February 19, 1980: Ord. 12621 §2; July 2, 1979: Ord. 12151 §1; November 21, 1977).

11.01.020 Protection, Preservation, and Perpetuation of Constitutional Rights.

It is the policy of the City of Lincoln to foster equal opportunity to all persons in the City regardless of their race, color, religion, sex, disability, national origin, familial status, ancestry, age, or marital status. Denying equal access to places of public accommodation or equal opportunity for housing or employment because of race, color, religion, sex, disability, national origin, familial status, handicap, age, ancestry, or marital status is contrary to the principles of freedom and is a burden upon the objectives of the aforesaid public policy of the City of Lincoln. It is the intent, purpose, and public policy of the City of Lincoln to protect, preserve, and perpetuate all constitutional rights, including the constitutional right to freely speak, write, and publish on all lawful subjects, including the right to make a comprehensive distribution of such printed material, either commercial or noncommercial, by using the most effective lawful means or methods. (Ord. 17028 §2; July 15, 1996: prior Ord. 15966 §2; September 9, 1991: Ord. 13793 §2; March 26, 1984: Ord. 12849 §2; February 19, 1980: Ord. 10917 §2; October 1, 1973).

11.01.030 Commission; Powers and Duties; Referral to City Attorney; Civil Action by City.

(a) If the Commission, after a public hearing as provided in Section 11.02.070 of this title, finds that a respondent has engaged or is about to engage in a discriminatory practice, it shall promptly issue an order for such relief as may be appropriate which may include a referral to the City Attorney for the institution of a civil action in the district court for the recovery of actual damages suffered by the aggrieved person and for appropriate injunctive or other equitable relief; provided, however, such civil actions shall be promptly commenced only if it is determined by the City Attorney that a legally sufficient basis exists for the institution of such a civil action.

(b) All findings of the Commission under subsection (a) of this section shall be final and binding upon the City. (Ord. 17028 §3; July 15, 1996: prior Ord. 16048 §2; February 10, 1992; Ord. 12849 §3; February 19, 1980: Ord. 12621 §12; July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.01.035 Discriminatory Housing Practice; Civil Penalties.

(a) In any complaint involving discriminatory housing practices under Chapter 11.06 of this code, any order of the Commission as referred to in Section 11.01.030 may, to vindicate the public interest, authorize the City Attorney to seek, in addition to actual damages or injunctive or other equitable relief, a civil penalty against the respondent:

(1) In an amount not exceeding \$10,000.00 if the respondent has not been adjudged to have committed any prior discriminatory housing practice or if subsection (2) or (3) of this subsection does not apply;

(2) In an amount not exceeding \$25,000.00 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the issuance of the current complaint; or

(3) In an amount not exceeding \$50,000.00 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the issuance of the current complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties set forth in subsections (a)(1) and (2) of

this section may be requested without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(c) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the change.

(d) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the Commission shall, not later than thirty days after the date of the issuance of the order or, if the order is judicially reviewed, thirty days after the order is in substance affirmed upon such review:

(1) Send copies of the findings of fact, conclusions of law, and the order to that governmental agency; and

(2) Recommend to that governmental agency appropriate disciplinary action, including, when appropriate, the suspension or revocation of the license or permit of the respondent.

(e) In the case of an order against a respondent against whom another order was issued under this section within the preceding five years, the Commission shall send a copy of each such order to the City Attorney. (Ord. 17028 §4; July 15, 1996).

11.01.040 Temporary or Preliminary Relief; Actions Authorized

Whenever the Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this title, the Commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this title. Upon receipt of such authorization, the City Attorney shall promptly commence and maintain an action, provided, however, such civil actions shall be promptly commenced only if it is determined by the City Attorney that a legally sufficient basis exists for the institution of such a civil action. (Ord. 17028 §5; July 15, 1996; prior Ord. 12849 §4; February 19, 1980: Ord. 12621 §13; July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.01.050 Housing Discrimination Complaints; Civil Action in Lieu of Hearing; Relief Authorized.

(a) Any person entitled to file a complaint with the Commission pursuant to this title may file, on their own behalf, a civil action in the district court under the provisions of Neb. Rev. Stat. § 48-1008 (Reissue 1993) or any other applicable state or federal statute. Any such action shall be considered an alternative to the procedures and remedies provided by this title, and the disposition of such complaint shall be controlled by any judicial judgments or orders resulting from such filing. The Commission shall not process any complaint initiated pursuant to this title while an action involving the same alleged facts is pending under Neb. Rev. Stat. § 48-1008 (Reissue 1993), or any other federal or state statutes.

(b) If an election is made under Section 11.02.070(b) of this title to have the claims asserted in the complaint decided in a civil action, the Commission shall authorize, and not less than thirty days after the election is made the City Attorney shall, where the complaint is legally sufficient, commence and maintain a civil action on behalf of the aggrieved person in the district court seeking relief under this section.

(c) Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right.

(d) In a civil action under this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the City Attorney shall request that the court grant such relief as would be available with respect to such discriminatory housing practice in a civil action under Neb. Rev. Stat. § 20-342. Any relief so granted that would accrue to an aggrieved person in such a civil action shall also accrue to that aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the City Attorney shall not request such relief if that aggrieved person has not complied with discovery orders entered by the court. (Ord. 17028 §6; July 15, 1996: prior Ord. 16048 §3; February 10, 1992: Ord. 12849 §5; February 19, 1980: Ord. 10917 §2; October 1, 1973).

11.01.060 Violations; Penalty.

Any person who shall willfully do or aid and abet in the doing of any act declared to be unlawful by the provisions of this title shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500.00 or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. (Ord. 16048 §4; February 10, 1992: prior Ord. 12849 §6; February 19, 1980: Ord. 12151 §2; November 21, 1977: Ord. 10917 §2; October 1, 1973).

11.01.070 Severability.

If any section, subsection, sentence, clause, or phrase of this title is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this title. (Ord. 12849 §7; February 19, 1980: prior Ord. 12621 §4; July 2, 1979: Ord. 12151 §38; November 21, 1977: Ord. 10917 §2; October 1, 1973).