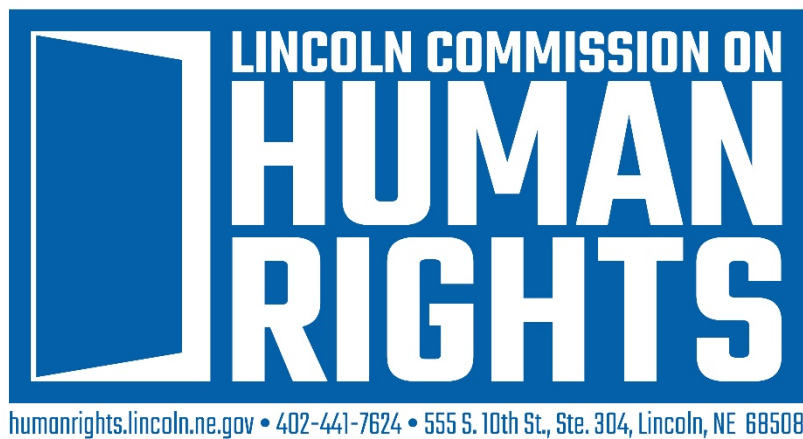


RULES & REGULATIONS

TITLE 11 LINCOLN MUNICIPAL CODE

EQUAL OPPORTUNITY ORDINANCE



**City of Lincoln
Commission on Human Rights
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Lincoln, Nebraska 68508
402-441-7624**

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AMENDMENTS

On July 15, 1996, The City Council unanimously amended Title 11 of the Lincoln Municipal Code. The amendment brought the Equal Opportunity Ordinance into substantial equivalency with the Fair Housing Act and it also corrected certain deficiencies and enhanced other provisions of the employment and public accommodation sections of Title 11.

Mayor Mike Johanns signed this amendment into law July 22, 1996, and it became effective July 30, 1996.

On December 20, 1996, the Lincoln Commission on Human Rights amended the existing Rules and Regulations in order to effectuate the amendments to Title 11 of July 22, 1996.

Amendments to the Rules and Regulations since December 20, 1996:

Date	Topic	Rule	Page
9-25-97	Charge	2-(6.1b)	5
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**LINCOLN COMMISSION
ON
HUMAN RIGHTS**

TITLE 11

Lincoln Municipal Code Equal Opportunity Ordinance

RULES AND REGULATIONS

Chapter 11.01

Rule 1. GENERAL PROVISIONS

Rule 1-(1)
Definitions

Rule 1-(1a).

The term "Respondent" shall also mean the person or other entity accused in a complaint of unfair employment or public accommodations practice or against whom a charge has been issued.

Rule 1-(1b).

Housing for older persons shall mean housing provided under any State or Federal program that the Secretary of Housing and Urban Development and the Commission determines is specifically designed and operated to assist elderly persons as defined in the Federal or State program.

Rule 1-(1c).

Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in the housing as of September 13, 1988 who do not meet the age requirements pursuant to sections (2) or (3) of the definition for housing for older persons if succeeding occupants of the housing meet the age requirements.

Rule 1-(1d).

Every other term used in Title 11 shall mean what is defined by Section 11.01.010 of said title unless otherwise prescribed.

Rule 1-(2).

Protection, Preservation, and Perpetuation of Constitutional Rights As used in Section 11.01.020, the term handicap shall mean the same as the term disability.

Rule 1-(3).

Reserved

Rule 1-(4).

Reserved

Rule 1-(5).

Reserved

Rule 1-(6).

Housing Discrimination Complaints; Civil Action In Lieu of Hearing, Relief Authorized

When a person files a Civil Action on their own behalf, pursuant to Section 11.01.050 (a), The Commission shall not file a complaint against the Respondent. **If** a complaint was filed prior to the civil action, The Commission should dismiss the complaint pursuant to Section 11.02.040 O), unless a hearing was commenced pursuant to Section 11.02.070 (a) (c).

Rule 1-(7).

Reserved

Rule 1-(8).

Reserved

Chapter 11.02

Rule 2. ADMINISTRATIVE ENFORCEMENT; PRELIMINARY MATTERS

Rule 2-(1).

Equal Opportunity Officer; Duties

The term Equal Opportunity Officer shall also mean the Director of the Commission.

Rule 2-(2).

Reserved

Rule 2-(3).

Commission on Human Rights; Powers and Duties- Investigative Report And Conciliation

Rule 2-(3a).

During the period beginning with the filing of a Housing complaint under Chapter 11.06 of Title 11, and ending with the filing of a charge or a dismissal by the Commission, the Commission shall, to the extent feasible, engage in conciliation with respect to such a complaint.

A Conciliation Agreement arising out of such conciliation shall be an agreement between the Respondent and the Complainant and shall be subject to approval by the Commission.

A Conciliation Agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results in a Conciliation Agreement may reward appropriate relief, including monetary relief.

Each Conciliation Agreement shall be made public unless the Complainant and Respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of this Title.

Whenever the Commission has reasonable cause to believe that a Respondent has breached a Conciliation Agreement, the Commission shall file a civil action for the enforcement of such Agreement.

Rule 2-(3b).

For purposes of Chapter 11.06:

- (i) Nothing said or done in the course of Conciliation under this Title may be made public or used as evidence in a subsequent proceeding under Chapter 11.06 without the written consent of the persons concerned.
- (ii) Notwithstanding paragraph (a) herein, the Commission shall make available to the aggrieved person and the Respondent, at anytime, upon request, following completion of the Commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

Rule 2-(3c).

At the end of each housing investigation under Chapter 11.06, the Commission shall prepare a final investigative report containing:

- (i) the names and dates of contacts with witnesses;
- (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the Respondent;
- (iii) a summary description of other pertinent records;
- (iv) a summary of witness statements; and
- (v) answers to interrogatories.

A final report under this paragraph may be amended if additional evidence is later discovered.

Rule 2-(4).

Reserved

Rule 2-(5).

Discriminatory Practices; Complaint; Notice; Investigation; Conference and Conciliation

Rule 2-(5a).

After receiving notice of an employment or public accommodation complaint filed pursuant to Section 11.02.060, each Respondent should file, no later than 20 days after receipt of notice, an answer to such complaint.

Rule 2-(5b).

The processing requirements set forth on Section 11.02.060 (a) shall not apply to any employment or public accommodation complaint duly filed.

Rule 2-(5c).

After receiving notice of a housing complaint filed pursuant to Section 11.02.060, each Respondent should file, no later than 10 days after receipt of notice, an answer to such a complaint.

Rule 2-(5d).

With respect to any housing complaint, Section 11.02.060 shall not require the Commission, after finding of reasonable cause, to "eliminate any such alleged unlawful practice by informal methods of conference, conciliation, or persuasion".

Rule 2-(6).

Discriminatory Practices; Failure of Informal Proceedings; Charge; Notice; Judicial Election for Housing Discrimination Charges; Public Hearing; Findings and Order of the Commission.

Rule 2-(6.1).

The Charge

Rule 2-(6.1a).

With respect to any housing complaint, Section 11.02.070 (a) shall cause the Commission to issue a charge immediately after a finding of reasonable cause.

Rule 2-(6.1b).

The Equal Opportunity Officer or its designee shall serve the charge upon Respondent. Such a charge shall consist of a short and plain statement of the facts upon which the Commission has found reasonable cause to believe that a practice made unlawful by Title 11 has occurred or is about to occur; shall be based on the final investigative report and; need not be limited to the facts or grounds alleged in the complaint filed under Section 11.02.060.

Rule 2-(6.1c).

If charges arise under the provisions of Chapter 11.06 (Housing), the Commission shall also advise the parties as to how to make an election under Section 11.02.070 (b).

Rule 2-(6.1d).

Public Hearing

If an election is not made under 11.02.070 (b), Respondent will be required to answer the allegations of the charge within twenty (20) days of receipt of notice of the public hearing and appear at a public hearing at time and place to be specified.

Rule 2-(6-1e).

Notice of Public Hearing

Notice will contain:

- (i) shall name the Hearing Officer or Presiding Commissioner who shall conduct such hearing; or in lieu thereof, a statement that the Public Hearing will be conducted by a Hearing Officer to be designated by the Commission;
- (ii) shall name the place of the hearing;
- (iii) shall name the date and time of the Public Hearing which shall be no more than 120 days after issuance and service of the charge;
- (iv) advise the Respondent and the Complainant of his/her right to appear at the hearing and to be represented in such hearing in person and/or by his/her attorney;
- (v) require the Respondent or his/her attorney to file an answer to the charge within twenty (20) days after the receipt of the charge;
- (vi) require the Respondent or his/her attorney to file the answer with the Commission in person or by certified or registered mail;
- (vii) request the correct name and post office address of the Respondent;
- (viii) request the correct name, post office address, and telephone number of the Respondent's attorney, if Respondent is represented by an attorney;
- (ix) request a general or specific denial of each and every allegation of the charge controverted by the Respondent or a denial of any knowledge or information sufficient to form a belief; or a statement of any matter constituting a defense against any allegation in the charge. Any allegation in the charge which is not denied or admitted in the answer unless the Respondent shall state in the answer that he/she is without knowledge or information sufficient to form a belief, shall be deemed admitted;
- (x) advise that the answer or any part thereof may be amended as a matter of right at any time up to ten (10) days before the hearing. Answers shall be filed with the Commission and will be conveyed to the Hearing Officer or Presiding Commissioner by the Commission;
- (xi) advise Respondent or his/her attorney that failure to respond to the charge may cause the Hearing Officer or Presiding Commissioner to make an inference finding against the Respondent.

Rule 2-(6.2).
Findings of Fact

Rule 2-(6.2a).

After completion of the Public Hearing, if the Hearing Officer or Commission members find that a Respondent has engaged in an unlawful discriminatory practice as defined by Title 11 of the Lincoln Municipal Code, the Hearing Officer or Commission members shall make findings of fact and shall reduce same in writing.

Rule 2-(6.2b).

After completion of the Public Hearing, if the Hearing Officer or Commission members find that a Respondent has not engaged in any. unlawful discriminatory practice as defined by Title 11 of the Lincoln Municipal Code, the Hearing Officer or Commission members shall make findings of fact and shall reduce same in writing.

Rule 2-(6.2c).

The Hearing Officer or Presiding Commissioner shall file with the Commission their Findings of Fact within seven calendar days of completion of the Public Hearing.

Rule 2-(6.2d).

The Findings of Fact shall include a summary of the respective contentions of the parties.

Rule 2-(6.2e).

The Findings of Fact shall be based upon, and limited to, the testimony and other evidence in the record of the Public Hearing and upon evidence of which judicial notice may be taken by courts of record in the State of Nebraska.

Rule 2-(6.2f).

If the findings of fact find that a Respondent has engaged in an unlawful discriminatory practice, the findings of fact may include, where appropriate, but is not limited to the following:

- (i) Direction to the Respondent to cease and desist from such unlawful practice;
- (ii) Hiring, reinstatement, promotion, transfer, increasing compensation, and upgrading of employees;
- (iii) Admission or restoration to union membership and admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining programs;
- (iv) Utilization of bona fide occupational qualifications, i.e., only job-relevant criteria in hiring, promotion, transfer, increasing compensation and upgrading of employees;
- (v) Utilization of bona fide health, safety, and only other such relevant criteria in the rental or sales of real estate or properties or in the extension of full, equal, and unsegregated accommodations, advantages, privileges, and services;
- (vi) Posting of equal opportunity notices in conspicuous positions in the Respondent's place of business in a form approved by the Commission, and inclusion of such notices in advertising;
- (vii) Compensation for earnings lost as a result of an unlawful practice with additional compensation for lost earnings on any interim period during which the aggrieved was unemployed, forced to seek employment of lesser status and/or pay, forced to seek a period of retraining during which pay was lost, or forced to accept any reduction in pay and/or status pursuant to loss or reduction of employment;
- (viii) Payment to an injured person of profits obtained by the Respondent through a violation of the Municipal Code subject to the principles of equity;
- (ix) Payment to an injured person as compensation for any expense incurred in obtaining employment or real property and for other expenses actually incurred as a result of an unlawful practice;
- (x) Sale, exchange, lease, rental, assignment, or sublease of real property;
- (xi) Award damages, based on actual pecuniary loss and other such damages be paid by a Respondent violating the provisions of Title 11 to an aggrieved Complainant; and,
- (xii) Reporting at intervals prescribed by the Commission as to compliance with any terms or conditions of said order.

Rule 2-(6.3).
Commission Orders

Rule 2-(6.3a).

The Commission shall review the finding and findings of fact of the Hearing Officer or Commission members at a closed meeting with a quorum present.

Rule 2-(6.3b).

The Commission shall adopt the finding and findings of fact of the Hearing Officer or Commission members and enter an appropriate order.

Rule 2-(6.3c).

The Commission shall issue the order in the name of the Commission executed by the Chair of the Commission.

Rule 2-(6.3d).

The Commission shall write the order based upon the evidence of record of the Public Hearing and upon evidence of which judicial notice may be taken by courts of record in the Staff of Nebraska. The order shall contain the Commission's findings of fact, conclusions of law, decisions and remedies, when applicable.

Rule 2-(6.3e).

The Commission's order shall be made a part of the record of the proceedings. The entire record shall be filed with the Commission and shall be available for public inspection during regular office hours.

Rule 2-(6.3f).

The transcript of the record of the proceedings shall consist of the following: complaint, charge as the same may have been amended or supplemented; answer to the complaint and charge as the same may have been amended; transcript or recording of testimony; exhibits; depositions; written applications; orders; stipulations; findings, findings of fact, order of the Commission and such other matters as may properly become a part of the record.

Rule 2-(6.3g).

Any party to the proceedings before the Commission claiming to be aggrieved by the Commission's order may seek judicial review thereof by filing an appeal in the District Court, pursuant to Section 15-1201 Nebraska Revised Statutes, et. seq. and proceeding in accordance therewith.

Rule 2-(6.3h).

An appeal shall not be filed more than thirty (30) days after the Commission issues the final order.

Rule 2-(7).
Hearings; Rules

Rule 2-(7.1).
Pre-Hearing Matters

Rule 2-(7.1a).

The Hearing Officer or Presiding Commissioner shall commence the hearing under Section 11.02.070 no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the Hearing Officer or Presiding Commissioner is unable to commence the hearing within 120 days after issuance of the charge, the Hearing Officer or Presiding Commissioner shall notify the Commission, the aggrieved person on whose behalf the charge was filed, and the Respondent, in writing of the reasons for not doing so.

Rule 2-(7.1b).

The Hearing Officer or Presiding Commissioner may proceed, notwithstanding any failure of the Respondent to file an answer within the time prescribed, to hold a hearing at the time and place specified in the charge.

Rule 2-(7.1c).

Proceedings involving common questions of law or fact may be joined for hearing of any or all matters at issue, and such proceedings may be consolidated. The Hearing Officer or Presiding Commissioner may make such order concerning the conduct of the proceedings so as to avoid unnecessary costs or delay.

Rule 2(7.1d).

In order to provide opportunity for submission and consideration of facts, arguments, offers of settlement, or any of the issues therein or consideration of means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, pre-hearing conferences between the parties may be held with the Hearing Officer or Presiding Commissioner for such purposes at any time prior to or during public hearing as time, the nature of the proceeding, and the public interest may permit.

Rule 2-(7.1e).

At any pre-hearing conference which may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement or proposals of adjustment, the possibility of the following:

- (i) the simplification of the issues;
- (ii) the exchange and acceptance of service of exhibits proposed to be offered into evidence;
- (iii) the obtaining of admission as to, or stipulation of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing;
- (iv) the limitation of the number of witnesses;
- (v) the discovery or production of evidence; and
- (vi) such other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

Rule 2-(7.1f).

The Hearing Officer or the Presiding Commissioner may, with or without motion, direct that a pre-hearing conference be held and notify the parties that their attendance at such hearing is required. All parties will be expected to come to the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive and fully authorized to make commitments with respect thereto. Such preparation should include, among other things, advance study of all relevant material and advance informal communication between the participants, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a participant to attend such conference, after being served with due notice of time and place thereof, shall constitute a waiver of all objections of the agreements reached, if any, and any order with respect thereto.

Rule 2-(7.1g).

The Presiding Commissioner or the Hearing Officer shall serve or cause to be served upon the parties a notice of the pre-hearing conference.

Rule 2-(7.1h).

The notice of the pre-hearing conference shall contain the following:

- i. The name of the Hearing Officer or Presiding Commissioner who shall conduct the conference;
- ii. the place of the conference; and
- iii. the date and the time of the conference which shall not be less than five (5) nor more than ten (10) days after issuance and service of the notice.

Rule 2-(7.1i).

The Hearing Officer or the Presiding Commissioner at any pre-hearing may dispose of by ruling, irrespective of the consent of the participants, any procedural matters which he/she is authorized to rule upon during the course of the proceeding, and which it appears may appropriately and usefully be disposed of at that stage. In addition, where it appears that the proceeding would be substantially expedited by distribution of proposed exhibits and written prepared testimony reasonably in advance of the hearing session, the Hearing Officer or Presiding Commissioner at his/her discretion and with due regard for the convenience and necessity of the parties and the Commission staff, may direct such advance distribution by a prescribed date. The rulings of the Hearing Officer or Presiding Commissioner made at such conference shall control the subsequent course of the hearing, unless modified for good cause shown.

Rule 2-(7.1j).

Nothing contained in these Rules shall be construed as precluding any party in a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the Commission or from requesting conferences for such purposes.

Rule 2-(7.1k).

If a party attending a pre-hearing conference pursuant to these Rules refuses to admit or stipulate the genuineness of any documents or the truth of any matters of fact and if the participant requesting the admissions or stipulations thereafter proves the genuineness of any such document or the truth of any such matter of fact, he may apply to the Hearing Officer or Presiding Commissioner for an order requiring the other party to pay him/her the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the Hearing Officer or Presiding Commissioner finds that there were good reasons for the refusal to admit or stipulate or that the admission or stipulations sought were not of substantial importance, the order shall be made. An appeal may be taken to the Commission from any such order made by a Hearing Officer or Presiding Commissioner. If a party refuses to comply with such order after it becomes final, the Hearing Officer or Presiding Commissioner may strike all or any part of such pleading of such party or limit or deny further participation by such party.

Rule 2-(7.2).**Public Hearings - Procedural Matters****Rule 2-(7.2a).**

All hearings conducted under these rules shall be considered public. The Hearing Officer or Presiding Commissioner shall cause to be entered upon the record all appearances with a notation in whose behalf each appearance is made.

Rule 2-(7.2b).

Two or more proceedings against the same Respondent arising out of the same set of circumstances, or two or more proceedings by the same Charging Party against two or more Respondents arising out of the same set of circumstances, may be consolidated at the discretion of the Commission for the purposes of Public Hearing.

Rule 2-(7.2c).

A Hearing Officer or Presiding Commissioner appointed by the Commission shall conduct the hearing in the county in which the Respondent conducts business and. in which acts are alleged to have occurred.

Rule 2-(7.2d).

The Hearing Officer or Presiding Commissioner shall have full authority to:

- i. make all decisions regarding the admissions and exclusions of evidence;
- ii. administer oaths and affirmations;
- iii. control the proceedings;
- iv. interrogate witnesses;
- v. rule upon all objections and motions;
- vi. exclude from the hearing room or from further participation in the proceedings any person, other than the Charging Party and the Respondent, who engages in improper conduct at the hearing;
- vii. exclude witnesses from the hearing room at the request of either party;
- viii. issue subpoenas;
- ix. hold conferences for simplification of issues, before ordering hearings;
- x. allow interrogatories;
- xi. authorize and set times for the filing of briefs;
- xii. consider and evaluate the facts and evidence on the record, as well as arguments and contentions made; and
- xiii. take any other action authorized by the Commission and consistent with the ordinance and these rules.

Rule 2-(7.2e).

The Charging Party and the Respondent are parties to the Public Hearing.

Rule 2-(7.2f).

At the discretion of the Hearing Officer or Presiding Commissioner, any other person may be allowed to intervene, in person or by attorney, for such purposes and to such extent as the Hearing Officer or Presiding Commissioner shall determine.

Rule 2-(7.2g).

If either the Respondent or the Charging Party fail to appear at the Public Hearing after being served with due notice of the time and place thereof, the Hearing Officer or Presiding Commissioner may conduct the hearing. The Hearing Officer or Presiding Commissioner may either consider the evidence presented at the hearing and may make recommendations thereon or make a "finding of default" for the party in attendance at the hearing.

Rule 2-(7.2h).

Since the burden of proof is on the Charging Party, the Charging Party shall open and close, unless the Hearing Officer or Presiding Commissioner directs otherwise.

Rule 2-(7.2i).

After all the Charging Party's evidence and testimony has been received, the Respondent shall be allowed to present his/her evidence and testimony, unless the Hearing Officer or Presiding Commissioner directs otherwise.

Rule 2-(7.2j).

Interveners shall follow the parties in whose behalf the intervention is made. Where the intervention is not in support of any party, the Hearing Officer or Presiding Commissioner shall designate the stage at which such intervener shall be heard.

Rule 2-(7.2k).

The parties shall be allowed to cross-examine any witness immediately after his/her testimony has been received.

Rule 2-(7.3).
Public Hearing- Testimony, Witnesses, Evidence

Rule 2-(7.3a).

Persons whose testimony is to be taken shall be sworn or shall affirm before their testimony is accepted as evidence in the proceeding and before any questions are put to them. The Hearing Officer or Presiding Commissioner shall administer all oaths and affirmations.

Rule 2-(7.3b).

The Hearing Officer or Presiding Commissioner may limit appropriately the number of witnesses who may be heard upon any issue.

Rule 2-(7.3c).

Witnesses subpoenaed by the Commission shall be paid the same fees and mileage as are paid for like services in the District Court. Witnesses subpoenaed at the instance of participants shall be paid the same fees by the participant at whose instance the witnesses are subpoenaed. The Commission before issuing any subpoena may require a deposit of an amount adequate to cover the fees and mileage involved.

Rule 2-(7.3d).

The parties to the proceedings shall have the right in person and/or by their attorney to call, examine and cross-examine witnesses, and subject to the provisions of the ordinance and of these Rules and Regulations, to introduce documentary and other evidence into the record of the proceedings.

Rule 2-(7.3e).

Any party desiring a subpoena or subpoena duces tecum in connection with a Public Hearing shall apply for such from the Commission. The application shall contain the following:

- (i) The name of the party on Whose behalf the subpoena is sought;
- (ii) The name and address of the witness(es) and/or the name of the books, records, writings, or other evidence sought and the name and address of the custodian of the books, records, writings, or other evidence sought;
- (iii) The reason(s) for which the subpoena is sought.

Rule 2-(7.3f)

The application for a subpoena shall be filed with the Commission by transmitting such either personally or by registered or certified mail.

Rule 2-(7.3g).

Upon receipt of the written application the Chairperson may request the issuance of a subpoena and/or subpoena duces tecum at the insistence of the Hearing Officer or Presiding Commissioner conducting the Public Hearing, or at the insistence of any party to the proceedings whenever production for examination of any books, payrolls, records, correspondence, documents, papers, or other evidence, in any hearing conducted by the Hearing Officer or Presiding Commissioner.

Rule 2-(7.3h).

Every subpoena and subpoena duces tecum issued by the Chairperson shall include the following:

- (i) The name of the Commission;
- (ii) The purpose for which the subpoena is issued;
- (iii) The date, time, and place at which the person must appear;
- (iv) The name, address, and the telephone number of the party or the Hearing Officer or Presiding Commissioner on whose behalf the subpoena was issued.

Rule 2-(7.3i).

Within five (5) working days after the service of a subpoena on any person requiring the attendance of said person as a witness at a hearing or requiring the production of any evidence in his/her possession, or under his/her control, such person may apply to the Commission in writing, personally by registered or certified mail, to quash the Subpoena. The Commission shall quash and nullify such subpoena if, in its opinion, the attendance of the person subpoenaed or the evidence, the production of which is required, would be burdensome or oppressive, does not relate to any matter in question, or if, in its opinion, such subpoena does not describe with sufficient particularity the reasons requiring the attendance of the person as a witness or the evidence, the production of which is required.

Rule 2-(7.3j).

Where a subpoena is applied for and issued at the instance of a party to the proceedings, the cost of service and witness and mileage fees shall be borne by the party at whose instance it has been requested and issued. Where a subpoena is applied for and issued at the instance of the Hearing Officer or Presiding Commissioner in the presentation of evidence relating to a pending public hearing, then the cost of such service and witness and mileage fees shall be borne by the Commission. Such witness and mileage fees shall be the same as are paid witnesses in the District Courts of the State of Nebraska.

Rule 2-(7.3k).

The testimony of any witness may be taken by deposition, upon application by a participant in a proceeding pending before the Commission any time before the hearing is closed, upon approval by the Commission and the Hearing Officer or Presiding Commissioner.

Rule 2-(7.3l).

Unless notice is waived, no deposition shall be taken except after at least ten (10) days notice when a deposition is to be taken elsewhere. Such notice shall be given in writing by the participant proposing to take such deposition to the other participants and to the Commission. In such notice and application to take evidence by deposition, the participant desiring to take the deposition shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and post office address of the notarial officer before whom it is desired that the deposition be taken, and the reasons why such

deposition should be taken. The other participants may, within the time frame stated in this section make any appropriate response to such notice and application.

Rule 2-(7.3m).

If an application for the taking of a deposition so warrants, the Commission will issue and serve, within a reasonable time in advance of the time fixed for taking testimony, upon the participants an authorization naming the witness whose deposition is to be taken and the time, place and notarial officer before whom the witness is to testify, but such time, place, and notarial officer so specified may or may not be the same as those named in the said notice and application.

Rule 2-(7.2n).

Depositions may be taken before the Hearing Officer or other authorized representative of the Commission, any notary public or any other person authorized to administer oaths not being counsel or attorney for any of the participants, or interested in the proceeding or investigation, according to such designation as may be made in the authorization.

Rule 2-(7.30).

Every person whose testimony is taken by deposition shall be sworn, or shall affirm concerning the matter about which he/she shall testify, before any questions are put to testimony given.

The testimony shall be reduced to writing by the notarial officer, or under his/her direction, after which the deposition shall be subscribed by the witness, unless waived, and certified in the usual form by the notarial officer.

Rule 2-(7.3p).

Unless otherwise directed in the authorization, the deponent may be examined regarding any matter which may be relevant to the issues involved in the pending proceeding, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identify and location of persons having knowledge of relevant facts. Participants shall have the right of cross-examination, objection, and exception. **In** making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall not have the power to decide upon the competency, materiality, or relevancy of evidence. Objections to questions or evidence not taken before the notarial officer shall be deemed waived.

Rule 2-(7.3q).

No part of a deposition shall constitute a part of the record in the proceeding, unless received in evidence by the Hearing Officer or Presiding Commissioner. Objection may be at the hearing in the proceeding to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witnesses were then present and testifying.

Rule 2-(7.3r).

Hearings need not be conducted according to the technical rules relating to evidence and witnesses. However, oral evidence shall be taken only on oath or affirmation.

Rule 2-(7.3s).

Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

Rule 2-(7.3t).

Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state. Irrelevant and unduly repetitious evidence shall be excluded.

Rule 2-(7.3u).

Written stipulations may be introduced as evidence if signed by the attorneys of the parties sought to be bound thereby, or by any party personally if she or he is not represented by the attorney. Oral stipulations may be made on the records of any public hearings.

Rule 2-(7.3v).

The Commission expects the parties to stipulate evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or fairly should not be in dispute.

Rule 2-(7.3w).

The Commission shall arrange for the proceedings to be recorded by a Court Reporter or a tape recording.

Rule 2-(7.3x).

The Commission upon the request of any party, upon the posting of reasonable security for the costs, thereby, may order that the record be transcribed by the Court Reporter **in** attendance at the hearing.

Rule 2-(7.3y).

Any record/recording of the proceedings filed with the Commission shall be available for examination by the public during regular working hours if written request is made at least forty-eight (48) hours (exclusive of Saturdays, Sundays, and official City holidays) in advance, unless the record/recording has been filed with the court as the result of the filing of a complaint in error.

Rule 2-(7.3z).

In any proceeding before the Hearing Officer or Presiding Commissioner relevant and material evidence shall be admissible, but there shall be excluded such evidence as is unduly repetitious or cumulative, or such evidence as is not of any probative value.

Rule 2-(7.3aa).

The Hearing Officer or Presiding Commissioner shall rule on the admissibility of all

evidence, and shall otherwise control the reception of evidence so as to confine it to the issues in the proceeding. The production of further evidence upon any issue may be ordered. I

Rule 2-(7.3bb).

No testimony or evidence shall be given or received in any Public Hearing concerning endeavors to settle and adjust an alleged unlawful practice by conference, conciliation, persuasion," or education.

Rule 2-(7.3cc).

Evidence and testimony otherwise discoverable shall not be excluded merely because it was presented in the course of conference, conciliation, persuasion, or education.

Rule 2-(7.3dd).

- (i) . Direct testimony of any witness may be offered as an exhibit, or as prepared written testimony to be copied into the transcript. Cross-examination of the witness presenting such written testimony or exhibit shall proceed at the hearing at which such testimony or exhibit is authenticated if, not less than twenty (20) days prior to such hearing, service thereof is made upon each participant of record, unless the Hearing Officer or Presiding Commissioner for good cause shall otherwise direct.
- (ii) Whenever in the circumstances of a particular case it is deemed necessary or desirable, the Hearing Officer or Presiding Commissioner may direct that testimony to be given upon direct examination shall be reduced to exhibit form or to the form of prepared written testimony and be served and offered in the manner provided in subsection (1) of this section. A reasonable period of time shall be allowed for the preparation of such written testimony.
- (iii) All participants offering prepared written testimony whether in the form of an exhibit, or to be copied into the transcript, shall insert line numbers on each page, in the left-hand margin, unless otherwise directed by the Hearing Officer or Presiding Commissioner.

Rule 2-(7.3ee).

All motions and objections made during' a public hearing shall be stated orally on the record and shall, with the rulings on such motions or objections by the Hearing Officer or Presiding Commissioner conducting the hearing, be included in the record/recording of the hearing.

Rule 2-(7.3ff)

Upon written application, the Hearing Officer or Presiding Commissioner may, for good cause, permit interrogatories limited to the specific terms and scope as may be directed by the Hearing.

Rule 2-(7.3gg).

Official notice may be taken by the Hearing Officer or Presiding Commissioner of such matters as might be judicially noticed by the District Courts, or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute, or any matters as to which the Hearing Officer or Presiding Commissioner by reason of his/her function is an expert. A party shall, on timely request, be afforded an opportunity to show the contrary.

Rule 2-(7.3hh).

Any party requesting the taking of official notice after the conclusion of the hearing shall set forth the reasons claimed to justify failure to make the request prior to the close of the hearing.

Rule 2-(7.3ii).

All motions other than those made during a hearing shall be in writing and shall state briefly the order or relief applied for and the grounds for such motion. Any such motion shall be filed with the Hearing Officer or Presiding Commissioner and a copy thereof shall be served at the same time, personally or by registered or certified mail, by the party making the motion, upon the other party or parties. Answering statement, if any, shall be filed in writing with the Commission and the Hearing Officer or Presiding Commissioner, if one has been appointed, within three (3) days (excluding Saturdays, Sundays, and official City holidays) after service of the motion upon the party filing the answering statement, and a copy thereof shall be served within the same period upon the other party or parties. **All** motions shall be decided by the Hearing Officer or Presiding Commissioner, without oral argument thereon, unless it is determined by the Hearing Officer or Presiding Commissioner that oral arguments will be heard, in which case the parties shall be notified of such fact and of the time and place for such oral argument. The Commission shall record the oral argument, which, together with the written motion and the written answering statement, if any, and the ruling thereon of the Hearing Officer or Presiding Commissioner conducting the hearing, shall constitute a part of the official record of the proceedings.

Rule 2-(7.3jj).

The Hearing Officer or Presiding Commissioner may continue a hearing from day to day or adjourn it to a later day, by announcement thereof at the hearing or by appropriate notice to the parties.

Rule 2-(7.3kk).

The Hearing Officer or Presiding Commissioner conducting the hearing shall permit the parties to argue orally before him/her and to file briefs within such time as he/she may determine.

Rule 2-(7.3ll).

At the close of the taking of testimony in each proceeding where briefs are allowed, the Hearing Officer or Presiding Commissioner shall fix the time for the filing and service of briefs, giving due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved; and the Hearing Officer or Presiding Commissioner shall fix the order in which such briefs shall be filed. The first or initial brief shall be filed by the party upon whom rests the burden

of proof, except that the Hearing Officer or Presiding Commissioner when in his/her judgment the circumstances or exigencies require, may direct that briefs shall be filed simultaneously.

Rule 2-(7.3mm).

Briefs shall contain:

- (i) A concise statement of the case.
- (ii) An abstract of the evidence relied upon by the party filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears.
- (iii) Proposed findings and conclusions and, if desired, a proposed form of order or regulation, together with the reasons and authorities therefore, separately stated.

Rule 2-(7.3nn).

Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix of the brief. Any analysis of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain. Every brief of more than ten (10) pages shall contain on its front leaves a subject index, with page references, and a list of all cases cited, alphabetically arranged, with references to the pages where the citations appear. All briefs shall be concise as possible.

Rule 2-(7.3oo).

Briefs not filed and served on or before the dates fixed, therefore, shall not be accepted for filing, except by special permission of the Hearing Officer or Presiding Commissioner.

Rule 2-(7.3pp).

Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing and to speak the truth. No corrections or physical changes shall be made in or upon the official transcript of the proceeding, except as provided in this section. Transcript corrections agreed to by opposing attorneys may be incorporated into the record, if and when approved by the Hearing Officer or Presiding Commissioner at any time during the hearing or after the close of evidence, as may be permitted by the Hearing Officer or Presiding Commissioner before the filing of his proposed report, but not less than ten (10) days in advance of the time fixed for filing final briefs. The Hearing Officer or Presiding Commissioner may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of a proceeding.

Rule 2-(7.4).**Public Hearing - Ex Parte Communication****Rule 2-(7.4a).**

Unless required for the disposition of ex parte matters specifically authorized by the ordinance, the Hearing Officer or Presiding Commissioner shall not communicate directly or indirectly with any person or party, nor shall such person or party communicate directly or indirectly with the Hearing Officer or Presiding Commissioner concerning any issues of fact or law in a hearing, unless:

(i) Each party is given written notice of the communication.

Such notice shall contain a summary of the communication, if oral, or a copy of the communication, if written, and the time, place and means of such communication.

(ii) After such notice all parties shall have the right, upon written demand, to respond to such communication, including the right to be present and heard if the communication is oral and has not taken place. If the communication is not written or if oral and completed, any other person has the additional right to a special hearing for the purpose of responding to the ex parte communication.

Rule 2-(7.4b).

Any prohibited ex parte communication received by a Hearing Officer or Presiding Commissioner shall be included in the record. If the prohibited ex parte communication is received orally, the Hearing Officer or Presiding Commissioner shall summarize the communication and include it in the record.

Any party shall be immediately notified of the communication and given a reasonable opportunity to respond, including if necessary, a special hearing.

Rule 2-(7.4c).

The Commission may censure, suspend, or revoke the privileges of practicing before it of any person making ex parte communications to a Hearing Officer or Presiding Commissioner if that person knows or reasonably should know that the ex parte communication violates these rules and regulations.

Rule 2-(7.4d).

The Commission may censure, suspend, or dismiss any Hearing Officer who fails to include a prohibited ex parte communication in the record.

Rule 2-(7.5)**Public Hearing - Settlement Prior To Findings Of Fact And Order.****Rule 2-(7.5a).**

If, after issuance and service of a charge and notice of hearing but prior to the close of the Public Hearing, the Charging Party and the Respondent jointly notify the Commission in writing that they agreed to terms of settlement and adjustment, all of which are set forth in detail in said joint notification to the Commission, the Hearing Officer or Presiding Commissioner may order a postponement of the scheduled Public Hearing date, or a recessing of the Public Hearing if it is already in process.

Rule 2-(7.5b).

Once the parties agree to the terms of settlement, the Hearing Officer or Presiding Commissioner shall have the written terms of settlement and adjustment prepared and signed by the parties. The Commission shall thereupon enter upon the parties an order in accord with the executed written terms of settlement and adjustment. Any such written terms of settlement and adjustment and any order issued pursuant thereto shall be a matter of public record:

Rule 2-(7.5c).

After the Commission has entered upon the parties the order specified in Rule 2-(7 .Sb) of these rules and regulations, it shall dismiss the charge subject to the Charging Party's right to revive the original cause of action before the Commission whenever a Respondent breaches or fails to perform any of the settlement and adjustment.

Rule 2-(8); Reserved**Rule 2-(9). Reserved****Rule 2-(10) Reserved**

Chapter 11.04

Rule 3. EQUAL OPPORTUNITY AND CONSTITUTIONAL RIGHTS (Reserved)

Chapter 11.06

Rule 4. HOUSING (Reserved)

Chapter 11.08

Rule 5. FAIR EMPLOYMENT PRACTICES (Reserved)