

AN ORDINANCE AMENDING CHAPTER 34 TO RENAME THE CHAPTER AS THE NON-DISCRIMINATION ORDINANCE OF THE CITY OF DURHAM AND INCLUDE AN ARTICLE REGARDING EMPLOYMENT AND PUBLIC ACCOMODATIONS

WHEREAS, the City has, since 1982, maintained and enforced prohibitions against housing discrimination through Chapter 34 of its Code of Ordinances by actively engaging outreach and complaint investigation and resolution; and

WHEREAS, the City welcomes all people and recognizes the importance of diversity and therefore desires to expand its non-discrimination provisions beyond housing, to include employment practices and public accommodations; and

WHEREAS the City further desires to protect and safeguard the rights and opportunities of all persons to be free from discrimination in employment and public accommodations, based upon race, color, religion, national origin, sex, handicap, familial status, military status, sexual orientation, gender identity, and protected hairstyle; and

WHEREAS it is imperative that the City exercise its police powers and other statutory authority to ensure that all persons within the City have equal access and opportunities to employment and public accommodations; and

WHEREAS, the City, in order to achieve its desires, wishes to adopt a comprehensive Non-Discrimination Ordinance providing for redress for aggrieved parties, similar in form and function to that enacted by the Durham City Council for housing discrimination complaints; and

WHEREAS, the purpose and intent in enacting this Ordinance is to promote the public welfare of all persons who live, visit, and work in the City, and to promote principles of diversity, inclusion, harmony, and equal treatment for all through education and outreach, and to ensure a mechanism for resolving complaints filed under this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA:

- Section 1. Chapter 34 of the City of Durham Code of Ordinances is amended in accordance with **Exhibit A** to this Ordinance, which is incorporated by reference.
- Section 2. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance or Chapter 34, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance or Chapter 34.
- Section 3. This ordinance shall take effect on July 1, 2021.

APPROVED BY
CITY COUNCIL

JAN 19 2021

CITY CLERK

EXHIBIT A

AN ORDINANCE AMENDING CHAPTER 34 TO RENAME THE CHAPTER AS THE NON-DISCRIMINATION ORDINANCE OF THE CITY OF DURHAM AND INCLUDE AN ARTICLE REGARDING EMPLOYMENT AND PUBLIC ACCOMODATIONS

Chapter 34 - [NON-DISCRIMINATION HUMAN RELATIONS](#)

ARTICLE I. - IN GENERAL

Secs. 34-1. —34-18. —Reserved. Title.

[This Chapter shall be known and may be cited as the "Non-Discrimination Ordinance of the City of Durham."](#)

[Sec. 34-2. Purpose.](#)

- (a) [It is the policy of the City of Durham to bring about through fair, orderly, and lawful procedures the opportunity for every person to obtain employment, access to all places of public accommodation, and housing, without regard to race, color, religion, national origin, sex, ~~handicap~~disability, familial status, military status, sexual orientation, gender identity, and protected hairstyle. The City of Durham is proud of the diversity of its employees and is proud of the diversity of its residents. The City strongly encourages all entities within the City, including those who are excepted from the requirements of this Chapter, to recognize the rights of every individual to work and earn wages through gainful employment, to obtain and enjoy goods, services, facilities, privileges, advantages, and accommodations in all places of public accommodation, and to obtain housing. The denial or deprivation of these rights because of a person's actual or perceived status is detrimental to the health, safety, and welfare of the residents of Durham and is within the power and responsibility of the city to prevent.](#)
- (b) [The general purpose of this Chapter is to provide individuals within the City of Durham freedom from discrimination, in connection with housing, employment, and public accommodations, because of race, color, religion, national origin, sex, ~~handicap~~disability, familial status, military status, sexual orientation, gender identity, and protected hairstyles to promote harmony in human relations and to prevent commercial advantage from unethical practices.](#)
- (c) [The Non-Discrimination Ordinance of the City of Durham is comprised of the Fair Housing Ordinance of the City of Durham, Article II, and the Employment and Public Accommodations Ordinance, Article III, and this Non-Discrimination Ordinance of the City of Durham is enforced by the City of Durham through its Human Relations Commission, enabled and authorized by Article IV.](#)
- (d) [This Chapter shall be construed according to the fair import of its terms.](#)

[Sec. 34-3. Definitions.](#)

The following words, terms and phrases, when used in this ~~article~~Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative hearing means a hearing conducted by the hearing board to adjudicate ~~fair housing~~discrimination complaints that have resulted in a finding of reasonable cause.

Aggrieved person means any person who:

- (1) Claims to have been injured by a discriminatory ~~housing~~practice; or

Commented [CAO1]: Subsections (b) and (d) were moved from Article II, Fair Housing. Subsection (b) was amended to remove specific references to federal fair housing law, in order to make the language more generally applicable.

Commented [CAO2]: Note: The definitions in black text were moved from Article II, Fair Housing, and the colored text reflects the new definitions or revision to existing definitions.

- (2) Believes that ~~he or she~~the person will be injured by a discriminatory ~~housing~~ practice that is about to occur.

Commission means the Durham Human Relations Commission, as established by the city council of the City of Durham by ordinance dated October 7, 1968.

Complainant means the person or group of persons who files a complaint with the commission in accordance with the provisions of this ~~article~~Chapter.

Complaint means a written complaint which has been filed with the commission in accordance with the provisions of this ~~article~~Chapter, alleging one or more discriminating practices.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Covered multifamily dwellings means:

- (1) A building, including all units and common use areas, in which there are four or more units if the building has one or more elevators; or
- (2) Ground floor units and ground floor common use areas in a building with four or more units.

Director means the director of the department where the human relations division is located, or designee of the director, or the city manager.

~~Handicap~~ Disability with respect to a person, means:

- (1) Having a physical or mental impairment which substantially limits one or more of a person's major life activities; or
- (2) Having a record of such impairment; or
- (3) Being regarded as having such an impairment.

Discriminatory practice ~~(or discrimination)~~ means an act that is unlawful under this ~~article~~Chapter, or otherwise has the effect of subjecting a person to differential treatment as a result of that person's actual or perceived race, color, religion, national origin, sex, ~~handicap~~ disability, familial status, military status, sexual orientation, gender identity, or protected hairstyle.

Dormitory property includes housing accommodations owned or operated by a bona fide private, state-owned, or state-supported educational institution for the purpose of housing its students. The term "dormitory property" shall also include housing accommodations owned or operated by a bona fide hospital, nursing home, correctional institution, or similar facility in connection with its purpose of providing for the care or custody of the residents thereof. The term "dormitory property" shall also include other housing accommodations operated and occupied in the style of a dormitory, as that term is commonly understood, taking into account such characteristics as required common usage of kitchen facilities, bathroom facilities and/or sleeping quarters.

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

Employee means any individual employed by or seeking employment from an employer. It does not include (1) any individual employed by the individual's parents, spouse, or child, or (2) an individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility.

Employer means any person employing one or more persons within the City of Durham and any person acting in the interest of an employer, directly or indirectly, including an employment agency. Employer shall include the City of Durham and any City Contractor.

Familial status means one or more individuals (who has not attained the age of 18 years) being domiciled with:

- (1) A parent or another person having legal custody of such individual; or
- (2) The designee of such parent or other person having such custody, with the written permission of such 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 individual who has not attained the age of 18 years.

Family includes a single individual.

Financial institution means any banking corporation or trust company, savings and loan association, credit union, insurance company, or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

Gender ~~means the attitudes, feelings, and behaviors that a culture or society associates with a person's biological sex, means words importing the masculine gender shall include the feminine and neuter.~~

Gender identity means the actual or perceived gender-related identity, expression, appearance, or behavior, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Hearing board means the panel or person constituted in accordance with this ~~article~~ Chapter to hear and adjudicate fair housing discrimination complaints.

Housing accommodation includes any improved or unimproved real property, or part thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one or more individuals.

Military status means being on active duty in, or any reserve component of, any branch of the armed forces of the United States, the State of North Carolina, or any other state, or (2) being a veteran of any such branch of the armed forces.

National origin means an individual's actual or perceived characteristics related to the individual's place of birth, the individual's ancestor's place of birth, language, culture, accent, ethnicity, or appearance of ethnicity.

Person includes one or more individuals, ~~political subdivisions of the state and instrumentalities thereof, including the city or any governmental entity or agency thereof,~~ partnerships, associations, corporations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receipts, or any other legal or commercial entity.

Protected hairstyle means any hairstyle, hair type, or hair texture historically associated with race such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros.

Public accommodation (or place of public accommodation) means any place, facility, store, other establishment, hotel, or motel, which supplies accommodations, goods, or services to the public or which solicits or accepts the patronage or trade of the public. The term does not include any private club, bona fide membership organization, or other establishment that is not in fact open to the public.

Qualifying resident or senior citizen means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing community.

Real estate broker or agent includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, conciliations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

Real estate transaction includes the sale, exchange, rental, or lease of real property, or of any interest therein.

Real property includes buildings, structures, real estate, lands, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

Respondent means a person who is alleged to have committed a discriminatory practice and against whom a complaint has been filed pursuant to this article.

Staff means the director or designees of the director who enforce this article on behalf of the commission.

Sexual orientation means a person's actual or perceived emotional, romantic, or sexual attraction to other people, which includes, but is not limited to, homosexuality, heterosexuality, or bisexuality.

To rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Sec. 34-4. Interpretation and Effect.

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any existing federal or state law. Nothing in this ordinance shall be construed as supporting or advocating any particular lifestyle or religious view. To the contrary, it is the intention of this ordinance that all persons be treated fairly and equally.

Unless otherwise prohibited by law, nothing contained in this Chapter shall be construed to prohibit diversity and inclusion efforts and promotional activities and practices designed primarily to encourage participation by members of any historically marginalized protected group, in furtherance of the purposes of this Chapter.

This Chapter does not create a private cause of action under Article III, the Employment and Public Accommodations Ordinance.

Sec. 34-5. Other Remedies

This ordinance may not be construed to limit any other remedies available under state or federal law.

Sec. 34-6. Severability.

In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

Secs. 34-7. To 34-18. – Reserved.

ARTICLE II. - FAIR HOUSING^[1]

DIVISION 1. - GENERALLY

Sec. 34-19. - Title.

This article shall be known and may be cited as the "Fair Housing Ordinance of the City of Durham."

~~Sec. 34-20. - Purpose.~~

Commented [CA03]: This is deleted because the purpose language was moved into Article I.

~~(a) The general purpose of this article is to provide individuals within the city freedom from discrimination, in connection with real estate transactions, because of race, color, religion, national origin, sex, handicap, or familial status; to promote harmony in human relations; to prevent commercial advantage from unethical practices; and to effectuate within the city the policies embodied in Title VIII of the Federal Civil Rights Act of 1968, as amended, and the Federal Fair Housing Amendment Act of 1988 et seq.~~

~~(b) This article shall be construed according to the fair import of its terms.~~

Secs. 34-20~~1~~. — 34-45. - Reserved.

DIVISION 2. - PROHIBITED ACTS

Sec. 34-46. - Discriminatory practices unlawful.

It is unlawful to commit or to attempt to commit directly or indirectly a discriminatory practice as defined in this article.

Sec. 34-47. - Discrimination in real estate transactions.

(a) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or agent, or for any other person because of the race, color, religion, national origin, sex, handicap/disability, familial status, military status, sexual orientation, gender identity, or protected hairstyle to:

- (1) Refuse to engage in a real estate transaction with a person after the making of a bona fide offer;
- (2) Discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the provision of services or facilities in connection therewith;
- (3) Refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) Refuse to negotiate for a real estate transaction with a person, or otherwise make unavailable or deny a dwelling to any person;
- (5) Represent to a person that real property is not available for inspection, sale, rental or lease, when in fact it is so available; or to fail to bring a property listing to a person's attention, or to refuse to permit a person to inspect real property;
- (6) Make, print, circulate, post, mail, or cause to be made, printed or published, a statement, advertisement or sign, or to use a form of application for a real estate transaction or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or difference with respect to race, color, religion, national origin, sex, handicap/disability, familial status, military status, sexual orientation, gender identity, or protected hairstyle;

- (7) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding entry or prospective entry into the neighborhood of a person of a particular race, color, religion, sex, handicapdisability, familial status, national origin, military status, sexual orientation, gender identity, or protected hairstyle;
 - (8) Offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the provisions of facilities or services in connection therewith;
 - (9) Discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicapdisability of:
 - a. That buyer or renter; or
 - b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - c. Any person associated with that buyer or renter.
 - (10) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services of facilities in connection with such dwelling, because of a handicapdisability of:
 - a. That person; or
 - b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - c. Any person associated with that person.
- (b) For purposes of subsections (a)(9) and (10) of this section, discrimination includes:
- (1) A refusal to permit, at the expense of the handicapped person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises, except that, in the case of rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - (2) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
 - (3) The failure to design and construct those covered multifamily dwellings available for first occupancy after March 13, 1991, in such a manner that:
 - a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or
 - b. With respect to dwellings with a building entrance on an accessible route:
 - 1. The public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons with disabilities;
 - 2. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons with disabilities in wheelchairs; and
 - 3. All premises within such dwellings contain the following features of adaptive design:
 - (i) An accessible route into and through the dwelling;
 - (ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (iii) Reinforcements in the bathroom wall to allow later installation of grab bars; and

- (iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Compliance with the appropriate requirements of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1-1986") suffices to satisfy the requirements of subsection (b)(3) of this section.

Sec. 34-48. - Exemptions.

- (a) The provisions of section 34-47 (other than section 34-47(a)(6)) do not apply to:
 - (1) Any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three such single-family houses at any one time, provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall only apply with respect to one such sale within any 24 month period, provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on ~~his or her~~ such owner's behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at one time, provided further, that the sale or rental of any such single-family house shall be exempted from the application of this article only if such house is sold or rented:
 - a. Without the use, in any manner, of the sales or rental facilities or the sales or rental services of any real estate broker or agent, or of such facilities or services of any person in the business of selling or renting housing accommodations, or of any employee or agent of any such broker, agent, or person; and
 - b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of section 34-47(a)(6).
 - 1. Nothing in subsection (1) of this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, or other such professional assistance as necessary to perfect or transfer the title.
 - 2. For the purposes of subsection (1) of this section, a person shall be deemed to be in the business of selling or renting housing accommodations if:
 - (i) ~~He or she~~ The person has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any housing accommodations or interest therein, or
 - (ii) ~~He or she~~ The person has, within the preceding 12 months, participated as agent, other than in the sale of ~~his or her~~ the person's own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any housing accommodation or interest therein, or
 - (iii) ~~He or she~~ The person is the owner of any housing accommodation designed or intended for occupancy by, or occupied by, five or more families.
- (b) Rooms or units in housing accommodations containing living quarters occupied or intended to be occupied by no more than three families living independently of each other, if the owner actually maintains and occupies one of such living quarters as ~~his or her~~ the owner's residence.
- (c) With respect to discrimination based on sex, the rental or leasing of housing accommodations in a single-sex dormitory property.
- (d) To private clubs, not in fact open to the public, which incident to their primary purpose, provide lodging, which they own or operate for other than a commercial purpose, to their members or give preference to their members.

- (e) To the sale, rental, exchange, or lease of commercial real estate. For purposes of this article, commercial real estate means real property which is not intended for residential use.
- (f) Nothing in this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of a dwelling which it owns for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted because of race, color, national origin, sex, handicapdisability, familial status, military status, sexual orientation, gender identity, or protected hairstyle.
- (g) No provision of this article regarding familial status applies with respect to housing for older persons. The term "housing for older persons" means housing:
 - (1) Provided under any federal or state program that the Secretary of the Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program.
 - (2) Intended for and solely occupied by persons 62 years of age or older.
 - (3) Intended for and operated for occupancy by at least one person 55 years of age or older per unit as shown by the following factors:
 - a. The existence of significant facilities and services specifically designed to meet the physical and social needs of older persons or, if this is not practicable, that such housing is necessary to provide important housing opportunities for older persons;
 - b. That at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit;
 - c. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years or older.
 - (4) Housing shall not fail to meet the requirements for housing for older persons by reason of:
 - a. Persons residing in such housing as of the date of enactment of the ordinance from which this article is derived who do not meet the requirements of subsections (g)(2) and (3) of this section; provided that new occupants of such housing meet the age requirements of subsections (g)(2) and (3) of this section.
 - b. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of subsections (g)(2) and (3) of this section.
 - (5) Housing facilities newly constructed for first occupancy after March 12, 1989 shall satisfy the requirements of subsection (g)(3) of this section if, when 25 percent of the units are occupied, 80 percent of the occupied units are occupied by at least one person 55 years or older.

Sec. 34-49. - Discrimination in financial practices.

It is an unlawful discriminatory housing practice for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, sex, national origin, handicapdisability, familial status, military status, sexual orientation, gender identity, or protected hairstyle. As used in this article, "residential real estate related transaction" means:

- (1) The making or purchasing of loans or providing financial assistance:
 - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - b. Where the security is residential real estate; or
- (2) The selling, brokering, or appraising of residential real estate.

The provisions of this section shall not prohibit any financial institution from using a loan application which inquires into a person's financial and dependent obligations or from basing its actions on the income or financial abilities of any person.

Sec. 34-50. - Discrimination in the provisions of brokerage service.

It is a discriminatory practice to deny any person access to membership or participation in any real estate brokers' organization, multiple listing service, or other service, organization, or facility relating to the business of engaging in real estate transactions, or to discriminate against a person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, handicapdisability, familial status, military status, sexual orientation, gender identity, or protected hairstyle.

Sec. 34-51. - Other unlawful practices.

- (a) It is an unlawful practice for any person to alter, destroy, or conceal any document or object or any other evidence in anticipation of or during the investigation or hearing of a fair housing complaint or to fail to make available to the commission or its duly authorized representatives any evidence subpoenaed or otherwise lawfully demanded with regard to such complaint, or to procure the absence of a witness subpoenaed by the commission.
- (b) Restrictive covenants and conditions.
 - (1) Every provision in an oral agreement or written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof to individuals of a specified race, color, religion, national origin, sex, handicapdisability, familial status, military status, sexual orientation, gender identity, or protected hairstyle is a discriminatory practice and is void.
 - (2) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, color, religion, national origin, sex, handicapdisability, familial status, military status, sexual orientation, gender identity, or protected hairstyle is a discriminatory practice and is void except as permitted by the exemption of section 34-48(d).
- (c) It is an unlawful practice for a person, as a party to a conciliation agreement made under this article, to violate the terms of the agreement.
- (d) It shall be unlawful to:
 - (1) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his-or-herthe person having exercised or enjoyed his-or-hertheir rights under this article or on account of his-or-herthe person having aided or encouraged any other person in the exercise or enjoyment of his-or-hertheir rights under this article;
 - (2) Aid, abet, incite, compel or coerce a person to engage in any of the acts or practices declared unlawful by this article;
 - (3) Obstruct or prevent a person from complying with the provisions of this article or any order issued thereunder;
 - (4) Resist, prevent, impede, or interfere with the commission or any of its members or employees in the lawful performance of a duty under this article.

Sec. 34-52. - Acting for another person no defense.

It shall be no defense to a violation of this article by a person that the violation was requested, sought or otherwise procured by another person.

Sec. 34-53. - Right of handicapped citizenspersons with disabilities to housing.

- (a) Each ~~handicapped person with a disability citizen~~ shall have the same right as any other ~~citizen person~~ to live and reside in residential communities, homes or group homes, and no person or group of persons, including governmental bodies, shall be permitted, or have the authority, to prevent any ~~handicapped citizen~~ person with a disability, on the basis of ~~his or her~~ their handicap, from living and residing in residential communities, homes, and group homes on the same basis and conditions as any other ~~citizen~~ person. Nothing herein shall be construed to conflict with the provisions of G.S. ch. 122C.
- (b) ~~A visually handicapped person~~ Any person with a disability who has or obtains a guide service dog animal shall be accorded the same rights under this article as are accorded in the provisions of G.S. 168-4.2.
- (c) ~~A hearing impaired person who has or obtains a hearing ear dog especially trained for the purpose and registered or certified as a service animal by the North Carolina Department of Health and Human Services shall be accorded the same rights under this article as are accorded in the provisions of G.S. 168-4.2.~~

Secs. 34-54—34-79. - Reserved.

DIVISION 3. - ENFORCEMENT

Sec. 34-80. - Powers of the commission.

The commission shall, in addition to the powers set forth in this article, have the power:

- (1) To receive, initiate, investigate, seek to conciliate, to arbitrate and conduct hearings on complaints filed under this article; to make recommendations to parties named in such complaints; and to approve or disapprove plans to eliminate or reduce the effects of discriminatory practices and monitor compliance with such plans.
- (2) To require entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; to require answers to interrogatories and the production of documents and other tangible things for the purpose of inspection, copying, or translating; to administer oaths and examine witnesses under oath or affirmation and to compel the attendance of witnesses at hearings, depositions and other examinations by members of the commission or its agents, and the production of documents and other tangible things. Witnesses whose depositions are taken or who are summoned before the commission or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses in the courts of this state.
- (3) To apply to the Durham County Superior Court upon the failure of any person to respond to or comply with a lawful interrogatory, subpoena or request for the production of relevant evidence or possible sources of evidence, for an order requiring such person to respond to or comply with the interrogatory, subpoena or request for the production of relevant evidence or possible sources of evidence. The court shall have jurisdiction to issue such order after notice to all proper parties. On petition of the person to whom the subpoena is directed, the court may vacate or modify the subpoena.
- (4) To petition the court for any appropriate relief, if the commission determines following a hearing as provided for in section 34-84 that there is reasonable cause to believe that a violation of this article has occurred, and if efforts at conciliation have not been concluded to the satisfaction of the commission, or if the terms of any conciliation agreement negotiated by the commission, or binding arbitration entered into by the parties, under the provisions of this article, are not being complied with by the respondents.
- (5) To adopt, promulgate, amend and rescind such rules and regulations to effectuate the purposes and policies of this article and the policies and practices of the commission, in connection therewith, including regulations requiring the posting or inclusion in advertising material of notices prepared or approved by the commission and regulations as to filing,

approval or disapproval of plans to eliminate or reduce the effects of discriminatory practices. Such rules and regulations shall be approved by the city council.

- (6) To impanel a hearing board to hear complaints, which board shall consist of five hearing officers who shall be members of the commission nominated by the chair of the commission and approved by at least a majority, a quorum being present and voting. No member of the hearing board shall have a part in the investigation of a complaint, except as to the issuance of subpoenas or interrogatories and other appropriate legal process.
- (7) To seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the commission concludes that such action is necessary to carry out the purpose of this article. The commencement of a civil action under this section shall not affect the commission's continued investigation of any complaint filed pursuant to this article or the commission's initiation of a separate civil action pursuant to other sections of this article.

Sec. 34-81. - Investigations; subpoenas.

- (a) In conducting an investigation or hearing, the commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation or hearing; provided, however, that the commission first complies with the provisions of the Fourth Amendment to the United States Constitution relating to unreasonable searches and seizures.
- (b) The commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the general courts of justice.
- (c) Upon written application to the commission, a respondent shall be entitled to the issuance of a reasonable number of subpoenas subject to the same limitations as subpoenas issued by the commission. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at the respondent's request.
- (d) In case of contumacy or refusal to obey a subpoena, the commission or the respondent may petition for its enforcement in the superior court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

Sec. 34-82. - Provisions for enforcement.

- (a) Any person who claims to have been aggrieved by an unlawful discriminatory housing practice or who reasonably believes that ~~he or she~~ the person will be aggrieved by an unlawful discriminatory housing practice may file a complaint with the city's human relations staff. A fair housing enforcement organization, as defined in regulations adopted under 42 USC 3602 (1968), may file a complaint with the staff on behalf of a person who claims to have been injured by or reasonably believes ~~he or she~~ the person will be irrevocably injured by an unlawful discriminatory housing practice. A complaint shall be filed within one year after the alleged violation occurred or terminated. Complaints shall be in writing, shall state the facts upon which the allegation of an unlawful discriminatory housing practice is based, and shall contain such other information and shall be in such form as the staff requires. The staff shall assist complainants in reducing complaints to writing and in setting forth the information in the complaint as may be required by the staff. Within ten days after receipt of the complaint, the staff shall cause to be served on the respondent, by certified mail or personal service, a copy of the complaint and a notice advising the respondent of ~~his or her~~ the respondent's procedural rights and obligations under this article; within the same time period, the staff shall serve on the complainant, by certified mail or personal service, a notice acknowledging the filing of the complaint and advising the complainant of ~~his or her~~ the respondent's time limits and choice of forums under this article.

- (b) A respondent may file an answer to the complaint against him or her within ten days after receiving a copy of the complaint. The complaint and the answer may be amended at any time with leave of the staff, which shall be granted whenever it would be reasonable and fair to do so. Complaints and answers shall be verified.
- (c) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of the investigation, may be joined as an additional or substitute respondent upon the director sending such person as a respondent, a copy of the complaint and written notice identifying the alleged discriminatory housing practice and advising the respondent of ~~his or her~~the respondent's procedural rights and obligations under this article. The notice shall also explain the basis for the staff's belief that the person to whom the notice is addressed is properly joined as a respondent.
- (d) Within 30 days after the filing of the complaint, the staff shall commence an investigation of the complaint to ascertain the facts relating to the alleged unlawful discriminatory housing practice. If the complaint is not resolved before the investigation is completed, upon completion of the investigation, the staff shall determine whether there are reasonable grounds to believe that an unlawful discriminatory housing practice has occurred or is about to occur. The staff shall conclude its investigation and make a determination of reasonable cause within 100 days after the filing of the complaint. If the staff is unable to complete the investigation and make a determination within 100 days after the filing of the complaint, the staff shall notify the complainant and respondent in writing of the reasons for not doing so.
- (e) At the conclusion of each investigation under this section, the staff shall prepare a final investigative report containing:
 - (1) The names and dates of contacts with witnesses;
 - (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
 - (3) A summary description of other pertinent records;
 - (4) A summary of witness statements; and
 - (5) Answers to interrogatories.
- (f) A final investigative report may be amended if additional evidence is later discovered.
- (g) The staff shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the staff's investigation, information derived from an investigation and any final investigative report relating to that investigation.
- (h) If, it is decided by the director that there is no reasonable cause to believe that the respondent has engaged or is about to engage in a discriminatory practice in violation of this division, the director shall issue a short and plain written statement of the facts upon which the director has based the no reasonable cause determination, dismiss the complaint, and notify the aggrieved person and the respondent of the dismissal by certified mail or personal service within ten days after making such a determination.
- (i) If the director determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the director shall immediately issue a charge on behalf of the aggrieved person and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service. Such charge:
 - (1) Shall consist of a short and plain statement of the facts upon which the director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (2) Shall be based on the final investigative report; and
 - (3) Need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

- (j) Together with the service of the charge, the director shall provide the aggrieved person and the respondent with the following:
 - (1) Information as to how to make an election under section 34-87 and the effect of such an election; and
 - (2) A notice of an opportunity for a hearing under section 34-84 at a time and place specified in the notice unless that election is made.

Sec. 34-83. - Conciliation procedures.

- (a) During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint by the director, the director shall to the extent feasible, attempt to conciliate the complaint.
- (b) In conciliating a complaint, the director will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrences, in the future.
- (c) 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 director.
- (d) The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. Each conciliation agreement shall be made public unless the complainant and the respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.
- (e) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned.
- (f) A conciliation agreement negotiated by the director may include but is not limited to the:
 - (1) Affirmative or prohibitory language regarding the sale, exchange, lease, rental, assignment, or sublease of real property to a person;
 - (2) Extension to all persons of the full and equal enjoyment of the advantages, facilities, privileges and services of the respondent;
 - (3) Reporting as to the manner of compliance;
 - (4) Posting of notices in conspicuous places in the respondent's place of business in a form prescribed by the commission; and
 - (5) Payment to the complainant of actual damages, including compensation for humiliation or embarrassment, and reasonable attorney fees.
- (g) At any time, but not later than one year from the date of a conciliation agreement, the director shall investigate whether the terms of the agreement are being complied with by the respondent. Upon deciding that the terms of the agreement are not being complied with by the respondent, the director shall take informal action to seek voluntary compliance with the agreement. If informal action does not result in compliance, the director, shall file a civil action for the enforcement of the terms of the conciliation agreement.

Sec. 34-84. - Administrative hearing.

- (a) Unless the director has decided that there is no reasonable cause to believe that a discriminatory practice has occurred or is about to occur, an election has been made under section 34-87, or a conciliation agreement has been negotiated under section 34-83, a hearing board, as constituted

under section 34-80(6), shall hold a hearing, after proper notice, under the rules and procedures adopted by the council under this article.

- (b) At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross examine witnesses, and obtain the issuance of subpoenas under section 34-81. Any aggrieved person may intervene as a party in the proceeding. The commission shall be considered a party in the proceeding without the need to intervene and shall maintain the proceeding on behalf of the aggrieved person.
- (c) The director shall have the authority to promulgate rules and regulations providing for expedited discovery.
- (d) The hearing board shall have the authority to conduct hearings under this section, issue subpoenas under section 34-81, conciliate all matters in controversy and enter into binding conciliation agreements, make final findings of fact and conclusions of law, and enter all orders necessary to the conduct of hearings held under this section.
- (e) If the hearing board determines as a result of the hearing that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice under this article, the hearing board shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint and furnish a copy of the order to the complainant, the respondent, and such persons as the commission deems proper.
- (f) If the hearing board finds that a respondent has engaged or is about to engage in a discriminatory housing practice, it shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess 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;
 - (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 filing of this charge; and
 - (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 filing of this charge.

If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice then the civil penalties set forth in subsections (b) and (c) of this section may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

- (g) The hearing board shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the board is unable to commence the hearing within 120 days after the issuance of the charge, it shall notify the director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.
- (h) The hearing board shall make findings of fact and conclusions of law within 30 days after the end of the hearing under this section, unless it is impracticable to do so. If the board is unable to make findings of fact and conclusions of law within such period, or any succeeding 30-day period thereafter, the board shall notify the director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.
- (i) The director shall have the authority to review any finding, conclusion, or order issued under this section not later than 30 days after the finding, conclusion, or order is issued, otherwise the finding, conclusion, or order becomes final.

- (j) The director shall cause any findings of fact and conclusion of law made with respect to any final orders for relief under this section, together with a copy of such order, to be served upon each aggrieved person and each respondent in the proceeding.
- (k) The commission shall make final administrative deposition of a complaint within one year of the date the complaint is filed, unless it is impracticable to do so. If the commission is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

Sec. 34-85. - Judicial review of committee orders.

- (a) Any party aggrieved by a final order for relief under this division granting or denying in whole or in part the relief sought may obtain a review of such order under G.S. 150B-38 et seq.
- (b) Notwithstanding such statute, petitions for judicial review shall be filed in the Superior Court of Durham County. The trial court judge may grant to the petitioner, or to any other party, such temporary relief, restraining order, or other order as the court determined is just and proper and the trial court judge may affirm, modify, or set aside, in whole or in part, the committee's order, or remand the order for further proceedings and enforce the order to the extent that the order is affirmed or modified.
- (c) The term "agency," whenever used in G.S. 150B-38 et seq., shall mean the Durham Human Relations Commission.

Sec. 34-86. - Enforcement of commission orders.

- (a) If, within 60 days after entry of an order of the commission, a respondent has neither complied with nor sought review of such order, any aggrieved person or the commission may apply to the Superior Court of Durham County for any order of the court enforcing the order of the commission.
- (b) Within 30 days after the court's receipt of the petition for enforcement of the commission's order, or within such additional time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record of the proceedings leading to the order. With the permission of the court, the record may be shortened and testimony submitted by tape recording, by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional cost as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.
- (c) The hearing on the petition for enforcement of the commission's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the commission's hearing; except that in cases of alleged irregularities in proceedings before the commission not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the proceedings or the record is inadequate, the judge in ~~his or her~~their discretion, may hear all or part of the matter de novo.
- (d) The court shall issue the order requiring compliance with the commission's order, unless it finds that enforcement of the commission's order would prejudice substantial rights of the party against whom the order is sought to be enforced, because the commission's findings, inferences, conclusions or decisions are:
 - (1) In violation of constitutional provisions;
 - (2) In excess of the statutory authority or jurisdiction of the commission;
 - (3) Made upon unlawful procedure;
 - (4) Affected by other error of law;
 - (5) Unsupported by substantial evidence in view of the entire record as submitted; or
 - (6) Arbitrary or capricious.

- (e) If the court declines to enforce the commission's order for one of the reasons specified in subsection (d) of this section, it shall either:
 - (1) Dismiss the petition;
 - (2) Modify the commission's order and enforce it as modified; or
 - (3) Remand the case to the commission for further proceedings.
- (f) Any party to the hearing on the petition for enforcement of the commission's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.

Sec. 34-87. - Civil action in lieu of administrative hearing.

- (a) After the director or commission makes a finding of reasonable cause, the aggrieved person or the respondent has the right to elect to proceed immediately to the Durham County Superior Court rather than proceed through the administrative hearing process. The election must be submitted in writing to the city human relations department within 20 working days after the receipt by the electing person of service of the commission's decision. The person making the election shall give the notice of doing so to all other complainants and respondents to whom the charge relates.
- (b) If an election is made under this subsection, the commission shall, no later than 60 days thereafter, commence a civil action in the Durham County Superior Court in its own name on behalf of the complainant. In such an action, the commission shall be represented by an attorney employed by the city at the city's expense. If the court, in such an action, finds that the respondent has engaged in or is engaging in a discriminatory housing practice charged in the complaint, the court may enjoin the respondent from engaging in such discriminatory housing practice, award special damages, actual damages and punitive damages.

Sec. 34-88. - Private right of action.

- (a) The complainant has a private right of action under the Civil Rights Act of 1968, as amended, and under this article. The complainant shall file a civil action under this article not later than one year after an alleged discriminatory housing practice has occurred or terminated. The computation of such one-year period shall not include any time during which all administrative proceeding under this article was ending with respect to a complaint or charge under this article based upon such discriminatory housing practice. The foregoing sentence shall not apply to actions arising from a breach of a conciliation agreement.
- (b) If the court finds that the respondent has engaged in or is engaging in an unlawful housing practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful housing practice, award special damages, actual damages and punitive damages. The court, in its discretion, may allow the prevailing party in any action or proceeding under this article, other than the commission, a reasonable attorney's fee and costs.

Sec. 34-89. - Records.

- (a) Every person subject to this article shall make, keep and preserve records relevant to the determination of whether discriminatory practices have been or are being committed, such records being maintained and preserved in a manner and to the extent required under the Civil Rights Act of 1968, as amended, and any regulations promulgated thereunder. Nothing in this article shall be interpreted to require the making, keeping and preserving of records other than and except as required under the Federal Act of 1968, 42 USC 3601 et seq., and any regulations promulgated thereunder.
- (b) In connection with a complaint filed under this article, the commission or commission members, upon complete disposition of the complaint, shall have access at any reasonable time to premises, records and documents relevant to the complaint, and the right to examine, photograph and copy evidence, in compliance with the North Carolina Rules of Civil Procedure.

- (c) Neither a complaint filed with the commission pursuant to this article nor the results of the commission's investigations, discovery or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination or copying under G.S. ch. 132. Each conciliation agreement shall be public record unless the aggrieved person and respondent otherwise agree and either the director or the commission determine that disclosure is not required to further the purposes of this article.
- (d) The provisions of G.S. 143-318.9 et seq. shall not be applicable to the activities of the commission to the extent that it is receiving a complaint or conducting an investigation, discovery or conciliation pertaining to a complaint filed pursuant to this article. Hearings before the hearing board pursuant to section 34-84 hereof shall not be private, but shall be public.
- (e) Nothing said or done in the course of such conciliation may be made public or used as evidence in a subsequent proceeding without the written consent of the persons concerned.

~~Secs. 34-90—34-106.—Reserved.~~

ARTICLE III. - EMPLOYMENT AND PUBLIC ACCOMMODATIONS ORDINANCE

DIVISION 1. - GENERALLY

Sec. 34-90. - Title.

This article shall be known and may be cited as the " Employment and Public Accommodations Ordinance of the City of Durham."

DIVISION 2. - PROHIBITED ACTS

Sec. 34-91. - Discriminatory practices unlawful.

It is unlawful to commit or to attempt to commit directly or indirectly a discriminatory practice in the City of Durham as defined in this article.

Sec. 34-92. - Discrimination in places of public accommodation prohibited.

It shall be unlawful for any owner, proprietor, employer, keeper, or manager in a place of public accommodation to deny the full and equal enjoyment of the accommodations, advantages, facilities, or privileges thereof to any person- in the City of Durham or to discriminate against any person in the City of Durham because of the person's race, color, religion, national origin, sex, handicapdisability, familial status, military status, sexual orientation, gender identity, and protected hairstyle.

Sec. 34-93. - Discrimination in employment prohibited.

It shall be unlawful for any employer to refuse to hire any person in the City of Durham or to discriminate against any person in the City of Durham with respect to hiring, tenure, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of the person's race, color, religion, national origin, sex, handicapdisability, familial status, military status, sexual orientation, gender identity, and protected hairstyle.

Sec. 34-94. - Other unlawful practices.

- (a) It is an unlawful practice for any person to alter, destroy, or conceal any document or object or any other evidence in anticipation of or during the investigation or hearing of a discrimination complaint or to fail to make available to the City or the commission or its duly authorized representatives any evidence subpoenaed or otherwise lawfully demanded with regard to such complaint, or to procure the absence of a witness subpoenaed by the commission.
- b) It shall be unlawful to:

- (1) Coerce, intimidate, threaten, or interfere with any person in the City of Durham in the exercise or enjoyment of, or on account of the person having exercised or enjoyed their rights under this article or on account of the person having aided or encouraged any other person in the exercise or enjoyment of their rights under this Article;
- (2) Aid, abet, incite, compel or coerce a person to engage in any of the acts or practices declared unlawful by this Article;
- (3) Obstruct or prevent a person from complying with the provisions of this Article or any order issued thereunder;
- (4) Resist, prevent, impede, or interfere with the City or its employees or the commission or any of its members in the lawful performance of a duty under this Article.

34-95. – Exceptions.

Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Sections 34-92 and 34-93:

- (a) A religious organization or religious entity that employs an individual of a particular religion to perform work connected with the performance of religious activities by the organization or entity.
- (b) Use of a person's unfavorable discharge from military service as a valid employment or employment eligibility criterion where (i) authorized by federal or state law or regulation or (ii) due to a business necessity.
- (c) Giving preferential treatment to veterans and their relatives.
- (d) An employer who observes the conditions of a bona fide seniority system or bona fide affirmative action plan that is not a pretext to evade the purposes of this ordinance. An affirmative action plan is any plan devised to effectuate remedial or corrective action taken in response to past discriminatory practices against a historically marginalized group, or as otherwise required by state or federal law.
- (e) A religious educational institution or an educational institution operated, supervised, or controlled by a religious organization or religious entity that limits admission or gives preference to an applicant of the same religion.
- (f) A religious organization that limits its non-commercial accommodations, advantages, facilities, membership, and privileges to persons of the same religion.
- (g) A private club in fact not open to the public, which as an incident to its primary purpose provides lodging which it owns or operates for other than a commercial purpose, limits the rental or occupancy to its members, or gives preference to its members.
- ~~(a)~~(h) A private club or other enterprise in fact not open to the public that limits the services or amenities that it provides to its members or gives preference to its members.
- (i) Nothing in this article shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards that are due to a business necessity and that are not prohibited by Federal, State, or local law.
- ~~(b)~~(j) Nothing in this article shall require an employer to hire unqualified individuals or to retain employees when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.

(k) Nothing in this article shall require any individual, business, club, institution, or membership organization to take action in violation of the rights granted by the Constitutions of the United States and the State of North Carolina.

Sec. 34-96. - Acting for another person no defense.

It shall be no defense to a violation of this article by a person that the violation was requested, sought or otherwise procured by another person.

DIVISION 3. - ENFORCEMENT

Sec. 34-97. - Penalties and Enforcement.

- (a) Any person, violating any provisions of this Article shall, under G.S. 14-4(a), be guilty of a Class 3 misdemeanor and shall be fined five hundred dollars (\$500.00).
- (b) In addition to, or in lieu of the remedy provided in subsection (a), any person violating any provisions of this Article may be subject to an enforcement action brought under G.S. 160A-175(d) and (e) for an appropriate equitable remedy, including for a mandatory or prohibitory injunction commanding the defendant to correct the discrimination prohibited under this Article.
- (c) Each day's continuing violation of any provisions of this Article shall be a separate and distinct offense for purposes of all remedies, including civil and criminal.

Secs. 34-98 -- 34-106. - Reserved.

ARTICLE IV. - HUMAN RELATIONS COMMISSION

Sec. 34-107. - Established.

There is hereby established a commission to be known as the human relations commission, herein referred to as the commission, which shall be appointed, organized, and function as hereinafter provided.

State Law reference— Appointment of human relations committee, G.S. 160A-492.

Sec. 34-108. - Composition; appointment and terms of members; filling vacancies.

- (a) The commission shall consist of 17 members. Sixteen members shall be appointed by council. One member shall be appointed by the mayor. Such persons shall be citizens and residents of the city. The goal is that these 17 voting members represent the diverse social, economic, gender, sexual orientation, ability, religious affiliations, and racial and ethnic composition of the city. To assist the council in achieving this goal, the commission shall proactively encourage applicants of diverse backgrounds to apply to serve on the commission.
- (b) The recommended commission membership shall consist of six Black/African-Americans, six White/European Americans, two Hispanic/Latino Americans, and two members from a racial/ethnic group not represented by the preceding racial/ethnic categories. The mayor's appointee shall be from any racial/ethnic category. Both genders shall be equally represented, but neither by more than 53 percent.

The city clerk shall cause public notice to be given when vacancies occur in one of the aforementioned seats. However, after three months from the date of such public notice, if there is no applicant appointed who identifies as one or more of the missing racial/ethnic groups, then the council shall fill the vacancy with otherwise qualified applicants.

- (c) The term of office of each commissioner is three years; the terms are staggered, so that the terms of five members shall expire each year. The term of office of each commissioner expires on June 30 of the last year of the term; provided, however, that a commissioner shall continue in office beyond the expiration of the term until such time as a successor may be appointed. Commissioners are limited to serving two consecutive terms. Citizens must wait for one full term before reapplying for appointment except in unusual circumstances.
- (d) A person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the unexpired part of that term.
- (e) Any member absent for more than two consecutive regular meetings or more than three regular meetings in a year shall be deemed as having an excess of absences and recommendation will be made to the city council for removal from the commission. The commission may excuse the absence of a member of the commission for good cause provided that notice is given prior to the meeting.

Sec. 34-109. - Meetings; officers.

The commission shall fix the time and place for its regular meetings and shall hold at least one regular meeting each month, except for the month of July. The commission shall elect a chair and vice-chair. The chair, vice-chair, the city manager or the director hereinafter provided for may call special or emergency meetings of the commission consistent with G.S. 143-318.9 et seq. The person calling a special or emergency meeting shall promptly notify each member of the commission of the called meeting.

Sec. 34-110. - Voting.

Each member of the commission, including the officers, but not the director, shall have one vote. A quorum shall consist of a majority of the appointed members at any regular or special meeting, and no

business or function of the commission shall be transacted at regular or special meetings unless a quorum is present. Proxies shall not be permitted, and no vote on any questions shall be considered or counted unless cast by such member of the commission. All questions and actions shall require at least a majority vote of the number of members present at any regular or special meeting for passage or approval.

Sec. 34-111. - Rules of procedure.

The commission may adopt rules of procedure to be followed in conducting its affairs.

Sec. 34-112. - Powers and duties of commission.

In order to carry out the general intent and purpose of this article, the commission shall have the following powers and duties:

- (1) To act as public forum in hearing complaints involving racial tension, to bring together the parties involved to discuss the facts, and to assist in the resolution of such complaints.
- (2) To receive complaints alleging discrimination in housing because of race, color, sex, religion, national origin, familial status, [handicapdisability](#), [military status](#), [sexual orientation](#), [gender identity, or protected hairstyle](#), and to investigate, mediate, and conciliate such complaints.
- (3) To develop an atmosphere conducive to the best possible human relations, to conduct studies, suggest areas of concern and recommend any action to the city council that the commission feels is necessary and may be lawfully taken to minimize areas of conflict and to promote harmonious relations.
- (4) To provide open channels of useful communication among the various racial, religious, ethnic and economic groups in the city and between those groups and the city council so that misunderstandings and wide differences leading to conflict may be ameliorated.
- (5) To do research, obtain factual data, hold meetings with citizens and consider and recommend the best and fairest means of progressively improving human relations among all citizens of the city.
- (6) To institute and conduct educational programs that promote fairness and courtesy in dealing with people of all racial, religious, ethnic and economic backgrounds and status and that promote equal treatment, equal opportunity and mutual understanding and respect for all citizens; and to sponsor meetings, forums and courses of instruction intended to lead to a clearer understanding by all citizens of the true meaning of responsible citizenship in the community and of the obligations inherent in being a good citizen; all with the end in view that the programs should contribute in a helpful way to a positive atmosphere of human relations between people of different racial, religious, ethnic or economic status toward each other and to the reaching of a fair and just solution of problems in human relations.
- (7) To render at least annually a written report to the city council. In its report, the commission may make recommendations to the council and propose legislation that the commission considers desirable.
- (8) To promote equitable and proportionate representation of all traditionally under-represented groups on public boards and agencies in the city.

Sec. 34-113. - Director.

- (a) *Appointment.* The city manager shall appoint the director of the department where the human relations division is domiciled and shall perform the duties specified in section (b) below. The director shall be a subordinate of the city manager.
- (b) *Duties.* The director shall assign staff to provide clerical assistance and research support to the commission, conduct the initial investigation of a complaint and shall perform any other duties the commission desires. The director shall be a person who supports the amelioration of conflicts and

tensions among racial, ethnic or economic groups and equal rights, responsibilities and privileges for all citizens of the city. The director shall work closely with the commission in planning, promoting, coordinating and operating programs relating to human relations. The director shall attend official meetings of the commission and may participate in those meetings, but shall have no vote. The director shall maintain liaison with a wide variety of groups and organizations and shall work to establish efficient, effective and dependable communication between those groups and organizations and city government. The director shall report to the city manager any matter which the director believes should be brought to the attention of the city council.