

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO. 39 - 2020

JUNE 11, 2020

AN ORDINANCE

Amending the Administrative Code, Article 181, the Human Relations Commission by editing the following sections: Purpose, Definitions, Unlawful Employment Practices, Unlawful Housing Practices, Unlawful Public Accommodations, Human Relations Commission, Procedure, Enforcement, Judicial Review and Penalty.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN:

SECTION ONE: That Article 181, Human Relations Commission, Sections 181.01, 181.02, 181.03, 181.04, 181.06, 181.07, and 181.08, and 181.99 be amended to read as follows:

**TITLE ELEVEN
DISCRIMINATION**

**ARTICLE 181
Human Relations Commission**

181.01 PURPOSE

In order to assure that all persons (~~real or perceived~~) regardless of real or perceived race, color, religion, national origin, ancestry, ~~or place of birth~~, sex, gender identity, sexual orientation, disability, marital status, familial status, source of income, and age (except cases of public accommodation), and all persons who are users or trainers of support or guide animals for blindness, deafness, or physical and mental disability, ~~or use of a guide or support animal because of blindness, deafness or physical (and mental) disability~~ enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and use of public accommodation facilities, it is necessary that appropriate legislation be enacted.

Nothing in this article shall be construed as supporting or advocating any particular doctrine, position, point of view, life style, or religious view. To the contrary, it is the intention of this article that all persons are treated fairly and equally, and it is the express intent of this article to guarantee fair and equal treatment under law to all people of the City. (13964 §1 4/4/02)

181.02 DEFINITIONS

The following words, terms and phrases when used in this article shall be defined as follows, unless the context clearly indicates otherwise:

1. **Accessible** means being in compliance with the applicable standards set forth in the following:

- a. The Fair Housing Act (Public Law 90-284 as amended, 42 U.S.C. §3601 et seq.);
- b. "Americans with Disabilities Act of 1990" (Public Law 101-336, 42 U.S.C. §12101, et seq.);
- c. "Act of September 1, 1965, P.L. 459, No. 235," as amended; "An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical disabilities and providing for enforcement". (13964 §1 4/4/02)

2. **Age** includes any person forty years of age or older and shall also include any other person so protected by further amendment to the Federal Age Discrimination in Employment Act.

3. **Commercial property** means:

- a. Any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation; and
- b. Any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, facility, business concern or public accommodation.

4. **Commission** means the Human Relations Commission of the City of Allentown.

5. **Disability or Handicap** herein referred to as Disability with respect to a person means:

- a. Physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. Record of such an impairment; or
- c. Regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. §802). (13964 §1 4/4/02).
- d. For employment, disability means a job-related disability which does not substantially interfere with the ability to perform the essential functions of the employment which a person with a disability applies for, is engaged in or has been engaged in. ~~Uninsurability~~ Uninsured or increased cost of insurance under a group or employee insurance plan does not render a disability job related. (13964 §1 4/4/02)

6. **Discrimination** means any exclusion, denial, intimidation, coercion, difference or segregation in treatment in hiring, referring for hire, promoting, training; in membership in employee or labor organizations, in the advertisement, sale, lease, rental, financing or zoning of housing; or in rendering service in places of

public accommodation because of protected class based upon real or perceived race, color, religion, national origin, ancestry ~~or place of birth~~, sex, gender identity, sexual orientation, disability, marital status, familial status (in housing only), source of income, age (except cases of public accommodation), of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association. This shall also include all individuals or independent contractors who are users or trainers of support or guide animals for blindness, deafness, or physical and mental disability (13964 §1 4/4/02).

For the purpose of this ordinance, an employer's granting of benefits to married persons, as defined by the law of the Commonwealth of Pennsylvania that are greater than those benefits granted to non-married persons, shall not constitute unlawful discrimination under this act. (13964 §1 4/4/02; 14834 §1 11/03/10)

It shall not be an act of unlawful discrimination based on sexual orientation under this ordinance for an employer to provide employment benefits to same-sex partners that are not provided to non-married opposite sex partners. (14834 §1 11/03/10)

7. **Employee** does not include:

- a. Any individuals who, as a part of their employment, reside in the personal residence of the employer; or
- b. Any individual employed by said individual's parents, spouse or child;
- c. Those employed by religious, fraternal, charitable or sectarian corporations or associations in the direct provision of services of the organization wherein membership is a bona fide occupational qualification, except such corporations or associations supported, in whole or in part, by government appropriations.

8. **Employer** means any person who employs four (4) or more employees, exclusive of the parents, spouse or children of such person, including the City of Allentown, its departments, boards, commissions and authorities, any other governmental agency within its jurisdiction, but excluding any religious, fraternal, charitable or sectarian organization which is not supported in whole or part by any city appropriations. (13964 §1 4/4/02)

9. **Employment Agency** includes any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer or place employees.

10. **Fair Housing Act** means Public Law 90-284, 42 U.S.C. §3601 et seq.

11. **Familial status** means one or more individuals who have not attained the age of 18 years being domiciled with:

- a. A Parent or other person having legal custody of such individual or individuals; or
- b. 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.

12. **Gender Identity** means self-perception, or perception by others, as male or female, including a person's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth. (13964 §1 4/4/02)

13. **Housing accommodations** include:

a. Any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and

b. Any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "housing accommodation" shall not include any personal residence offered for rent by the owner thereof.

14. **Housing for older persons** means housing:

a. Provided under any State or Federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the State or Federal program; or,

b. Is intended for, and solely occupied by persons sixty-two (62) years of age or older; or,

c. Is intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit.

(1) In determining whether housing qualifies as housing for older persons under this Clause C, the Commission's requirements shall include but not be limited to the following:

(a) That at least eighty percent (80%) of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit; and

(b) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

(2) Housing shall not fail to meet the requirements for housing for older persons by reason of unoccupied units provided, that such units are reserved for occupancy by persons who meet the age requirements of this clause (c). (13964 §1 4/4/02)

15. **Independent contractor** includes any person who is subject to the provisions governing any of the professions and occupations regulated by state licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act (Public Law 90-284, as amended, 42 U.S.C. §3601, et seq.).

16. **Labor organization** includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

17. **Lending institution** means any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money or guaranteeing loans.

18. **Owner** includes lessee, sublessee, assignee, manager, agent, or any other person having the right of ownership or possession or the authority to sell, rent or lease any housing accommodation, including the City and its departments, authorities, boards and commissions.

19. **Pennsylvania Human Relations Act** means Public Law 744, No. 322 as amended.

20. **Person** includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, lending institution and all authorities, boards and commissions thereof.

21. **Personal residence** means a building or structure containing living quarters occupied or intended to be occupied by no more than two (2) individuals, two (2) groups or two (2) families living independently of each other and used by the owner thereof as a bona fide residence for himself and any members of his family forming his household.

22. **Protected class** means any person legally protected from discrimination based upon real or perceived race, color, religion, national origin, ancestry or place of birth, sex, gender identity, sexual orientation, disability, marital status, familial status (in housing only), source of income, age (except cases of public accommodation) of any individual or independent contractor, or because of the disability of an individual with whom the person is known to have an association. This shall also include all individuals or independent contractors who are users or trainers of support or guide animals for blindness, deafness, or physical and mental disability. (13964 §1 4/4/02)

(13964 §1 4/4/02)

23. **Public accommodation resort or amusement** ~~means any place~~ which is open to, accepts or solicits the patronage of the general public or offers goods or services to the general public, including loans, or is listed in the Pennsylvania Human Relations Act, Section 5i, but shall not include any ~~personal professional services~~ accommodations which are in their nature distinctly private, personal and confidential.

24. **Real estate-related transaction** means any of the following:

- a. The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property; or
- b. The purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property; or

c. The selling, brokering, using as collateral or appraising of real property.

25. **Sex** means male or female, and includes the gender of a person, as perceived, presumed or assumed by others. (13964 §1 4/4/02)

26. **Sexual Orientation** means male or female homosexuality, heterosexuality and bisexuality, by preference, practice or as perceived by others. (13964 §1 4/4/02)

UNLAWFUL DISCRIMINATORY PRACTICES

181.03 UNLAWFUL EMPLOYMENT PRACTICES

It shall be an unlawful employment practice for any person or company to engage in the following actions against any individuals or independent contractors identified as a member of a Protected class: because of (real or perceived) race, color, religion, national origin, ancestry or place of birth, sex, gender identity, sexual orientation, disability, marital status, age or use of a guide or support animal because of blindness, or because the user is a handler or trainer of support or guide animals, deafness or physical and mental disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association. (13964 §1 4/4/02)

1. For any employer to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual nor independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required.

a. The provision of this paragraph shall not apply, to (1) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (2) age limitations placed upon entry into Bona fide apprenticeship programs of two years or more approved by the State Apprenticeship and Training Council of the Department of Labor and Industry.

b. Notwithstanding any provision of this section, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ on the basis of sex in those certain instances where sex is a bona fide occupational qualification because of the religious beliefs, practices, or observances of the corporation, or association.

2. For any employer, employment agency, or labor organization, prior to the employment, contracting with an independent contractor or admission to membership, to:

- a. Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the protected class of any applicant for employment or membership. Prior to an offer of employment, an employer may not inquire as to whether an individual has a disability or as to the severity of such disability. An employer may inquire as to the individual's ability to perform the essential functions of the employment. (13964 §1 4/4/02)

- b. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon protected class.
- c. Deny or limit, through a quota system, employment or membership because of protected class.
- d. Substantially confine or limit recruitment or hiring of individuals, with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school or training center or any other employee-referring source which services individuals who are predominantly of the same protected class.
- e. Deny employment because of a prior disability. (13964 §1 4/4/02)
- f. To exclude or otherwise deny equal jobs or benefits to a person because of the disability of an individual with whom the person is known to have a relationship or association. (13964 §1 4/4/02)
- g. For any labor organization because of protected class to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.
- h. For any person, employer, employment agency, or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act; or for any person to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.
- i. For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of protected class.
- j. Section 181.03 shall not be construed to prohibit the refusal to hire or the dismissal of a person who is not able to function properly in the job applied for or engaged in.

Nothing in Section 181.03 shall bar any institution or organization for persons with disabilities from limiting or giving preference in employment or membership to disabled persons. (13964 §1 4/4/02)

181.04 UNLAWFUL HOUSING PRACTICES

1. It shall be an unlawful housing practice for any person or company to engage in the following actions against any individuals or independent contractors identified as a member of a Protected class: ~~any person to because of (real or perceived) race, color, religion, national origin, ancestry or place of birth, sex, gender identity, sexual orientation, disability, marital status, familial status (in housing only), age or use of a guide or support animal because of blindness or because the user is a handler or trainer of support or guide~~

~~animals, deafness or physical and mental disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association: (13964 §1 4/4/02)~~

a. Refuse to sell, lease, finance or otherwise to deny or withhold any housing accommodation or commercial property because of protected class from any person, prospective owner, occupant or user of such housing accommodation or commercial property

b. Evict or attempt to evict an occupant of any housing accommodation before the end of the term of a lease because of pregnancy or the birth of a child.

2. Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property or otherwise withhold financing of any housing accommodation or commercial property from any person because of protected class.

3. Discriminate against any person in the terms or conditions of selling or leasing any housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation or commercial property because of protected class.

Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental the landlord may, where it is reasonable to do so, grant permission for a modification if the renter agrees to restore the interior of the premises to the condition that existed before the modification, with reasonable wear and tear excepted. (13964 §1 4/4/02)

Refuse 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 housing accommodation.

4. Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodation or commercial property because of protected class.

5. Print, publish, circulate or cause to be made any statement or advertisement: (i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property which indicates any preference, limitation, specification, or discrimination based upon protected class.

6. Make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning protected class in connection with the sale or lease of any housing accommodation or commercial property or loan of any money whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing combination or commercial property.

7. Construct, operate, offer for sale, lease or rent or otherwise make available housing or commercial property which is not accessible.

181.05 UNLAWFUL REAL ESTATE PRACTICES

It shall be unlawful real estate practice to:

1. Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings or commercial property, or to discriminate against him in the terms or condition of such access, membership, or participation, on account of protected class.

2. For any person or other entity whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of protected class.

3. Induce, solicit or attempt to induce or solicit for commercial profit any listing, sale or transaction involving any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or do not reside, persons of any particular protected class.

4. Discourage, or attempt to discourage, the purchase or lease of any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or may in the future reside in increased or decreased numbers, persons of any protected class.

5. Misrepresent, steer, create or distort a circumstance, condition or incident for the purpose of fostering the impression or belief, on the part of any owner, occupant or prospective owner or occupant of any housing accommodation or commercial property, that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area which would be adversely impacted by the residence, or future increased or decreased residence, of persons of any protected class.

6. In any way misrepresent or otherwise misadvertise within a neighborhood or community, whether or not in writing, that any housing accommodation or commercial property within such neighborhood or community is available for inspection, sale, lease, sublease or other transfer, in any context where such misrepresentation or misadvertising would have the effect of fostering an impression or belief that there has been or will be an increase in real estate activity within such neighborhood or community due to the residence, or anticipated increased or decreased residence, of persons of any protected class.

7. For any person to harass, threaten, intimidate, harm, damage or otherwise penalize any person, group or business because he or they exercised or encouraged others to exercise their rights under this article, or because he or they have complied with the provisions of this article, or enjoyed the benefits of this article, or because he or they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing hereunder.

8. For any person to aid, abet, incite, induce, compel or coerce the doing of an unlawful practice prohibited by this article or to obstruct or prevent any person from complying with the provisions of this article or any order issued hereunder.

9. For any person who with intent to mislead in any proceeding under this Act to destroy or mutilate, falsify, alter or refuse to supply records and documents produced pursuant to subpoena or other lawful order under this section.

10. A. Nothing in this Act prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religious creed, ancestry, national origin, marital status, sex, gender identity, sexual orientation, age, disability, use of a guide or support animal because of a physical disability or because the user is a handler or trainer of guide or support animals, or familial status. (13964 §1 4/4/02)

B. Nothing in this Act, regarding age or familial status, shall apply with respect to housing for older persons.

C. Nothing in this Act 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 dwellings which it owns operates 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 on account of race, color or national origin.

D. Nothing in this Act shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

E. Nothing in this Act shall apply with respect to discrimination based on sex in the rental or leasing of housing accommodations in a single-sex dormitory.

181.06 UNLAWFUL PUBLIC ACCOMMODATIONS PRACTICES

It shall be an unlawful public accommodation practice for any person or company to engage in the following actions against any individuals or independent contractors identified as a member of a Protected class: ~~person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement because of (real or perceived) race, color, religion, national origin, ancestry or place of birth, sex, gender identity, sexual orientation, disability, marital status, age or use of a guide or support animal because of blindness or the training of such animal because the user is a handler or trainer of support or guide animals, deafness or physical and mental disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association:~~ (13964 §1 4/4/02)

1. Refuse, withhold from or deny to any person because of protected class, either directly or indirectly, any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation, resort or amusement.

2. Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld or denied to any person on account of protected class objectionable or not acceptable, desired or solicited.

3. Obstruct any person from enjoyment of his rights under this Article relating to public accommodations.

4. Construct, operate or otherwise make available such place of public accommodation, resort or amusement which is not accessible.

181.07 HUMAN RELATIONS COMMISSION

A. Establishment

There is hereby established the Human Relations Commission of the City of Allentown composed of thirteen (13) members, who shall by first choice be residents of the City appointed by the Mayor subject to the approval and confirmation of City Council and who shall serve without compensation. In the event the requirements of the position and/or availability of volunteers cannot be found within the City then the members need not be residents of the City of Allentown but must be either a City of Allentown taxpayer, maintain a business, be employed or go to school in the City of Allentown.

The members shall be eighteen (18) years or older and shall serve overlapping terms of three (3) years each; one of said thirteen (13) members shall be appointed from among the members of the Board of School Directors of the School District of the City upon recommendation of the Board of School Directors; said member shall be a member of the Human Relations Commission only so long as he or she continues to be a member of the Board of School Directors. There shall be non-voting high school representatives, one from Allen High School, one from Dieruff High School, one from Central Catholic High School and a representative from other schools in the City of Allentown provided they are a resident of the City. The student representatives shall serve terms of one (1) year each. Any vacancy in an unexpired term shall be filled in the same manner as original appointments. (14890 §1 5/5/11)

B. Powers and Duties

The Commission is hereby vested with the authority to administer and enforce this ~~Article~~ Ordinance and shall be given sufficient administrative and legal support from City staff persons to carry out the following powers and duties:

1. To meet and function at any place within the City;

2. To adopt, promulgate, amend and rescind rules and regulations to effect the policies and provisions of this Article and to make recommendations to agencies of the City of Allentown and the City Council thereof to effect such policies;

3. To initiate, receive, investigate and pass upon complaints charging unlawful discriminatory practices in violation of Sections 181.03, 181.04, 181.05 and 181.06 taking place within the City limits of Allentown.

4. To study the problems of discrimination and foster, through community effort or otherwise, good will among the groups and elements of the population of the City;

5. To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination.

6. From time to time, but not less than once a year, to report to the Mayor or his designee, and the City Council of the City of Allentown describing in detail the investigations, proceedings, hearings and studies it has conducted and their outcome, the decisions it has rendered and the other work performed by it, and make recommendations for such further legislation concerning abuses and discrimination.

7. The Human Relations Commission shall annually, prepare a written report of their year's activities, a (1) one year plan and long term goals and scenarios that promote the elimination of discrimination and strife among racial or ethnic groups using a template provided by City Council. The report shall be given to the Mayor and ~~Allentown School Board~~, and shall be presented to Allentown City Council at a public meeting. (14800 § 06/02/10)

C. The Department of Community Development shall provide administrative support services to the Commission. (13230 §1 12/16/93)

181.08 PROCEDURE

A. FILING A COMPLAINT

1. Any individual claiming to be aggrieved or showing evidence an injury is about to occur by an unlawful discriminatory practice, may make, sign and file with the Commission a verified complaint in writing which shall state the name and address of the person or persons alleged to have committed the unlawful practice and the particulars thereof. The complaint shall also contain such other information as may be required by the Commission. The Commission, upon its own initiative, may in like manner sign and file a complaint. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his/her answer.

2. Upon receipt of a complaint from a City employee or any citizen against the City of Allentown, the Commission may, independent of the City and City staff, retain outside legal counsel to handle such complaint in its entirety on behalf of the Commission. Upon disposition of the complaint, the City, after consultation between the Mayor or designee, and legal counsel, shall pay a reasonable fee to such legal counsel. Neither City staff members nor City legal counsel may represent the complainant in any such case.

TIME PERIOD FOR FILING COMPLAINT

3. Any complaint filed pursuant to this section must be so filed within one hundred eighty days after the alleged act of discrimination, unless otherwise required by the Fair Housing Act. The time limits for filing under any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.

WITHDRAWING COMPLAINT

4. Any complaint may be withdrawn at any time by the party filing the complaint.

B. PRELIMINARY INVESTIGATION

1. After the filing of any complaint, when there is reason to believe an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation. In the conduct of such investigation the Commission may issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents. The Commission may seek enforcement of its subpoena by petition to the Court of Common Pleas of Lehigh County.

2. The Commission shall send a copy of the complaint to the named respondent within thirty days from the date of docketing the complaint, unless otherwise required by the Fair Housing Act.

3. A respondent shall file a written, verified answer to the complaint within thirty days of service of the complaint, unless otherwise required by the Fair Housing Act. The Commission, upon request of the respondent, may grant an extension of not more than thirty additional days, unless otherwise required by the Fair Housing Act.

4. After service of the complaint, the Commission shall encourage voluntary and informed predetermination settlements between parties.

C. ALLEGATION AND NOTICE

If it shall be determined after such investigation that there is no basis for the allegations of the complaint, the Commission shall, within ten (10) days from such determination, cause to be issued and served upon the complainant and respondent written notice of such determination. The notices shall also state that the complaint will be dismissed unless within ten (10) days after such service the complainant or his attorney file, with the Commission, a request for a review. The Commission shall, upon request for such a review, ~~provide the complainant and his attorney, if any, an opportunity to appear before the Commission, a member thereof or a staff representative of the Commission, at the election of the Commission to~~ allow complainant to provide with their request any if any present such additional information as may be available to support the allegations of the complaint. ~~requesting reconsideration.~~

D. CONCILIATION

If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference and conciliation. The Commission and staff shall not disclose identities of the parties except as required by the Fair Housing Act.

E. ESTABLISHMENT OF HEARING

1. If the Commission, in its discretion, finds it is not possible to eliminate such unlawful practices by persuasion, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended requiring the party named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the

Commission at a time and place to be specified in such notice. The Commission may appoint a hearing examiner or designate one or more of its members to preside at such a ~~meeting~~ hearing, ~~or it may at its election conduct such hearing en banc.~~

2. When notice of hearing is given as set forth in subsection E.1.(e)(e) and an election procedure is required by the Fair Housing Act, either party may elect, as an alternative to Public Hearing before the Commission, to have the claims asserted in the complaint decided in a civil action brought under the original jurisdiction of Lehigh County Court of Common Pleas. The written notice of the Commission shall be sent to all parties and will inform them of their right to take civil action. An election must be made within twenty (20) days after ~~receipt~~ service of the notice of hearing. A party making this election shall notify the Commission and all other parties. If an election for civil action is made by either party, the Commission shall, within thirty (30) days from the date of election, commence and maintain a civil action on behalf of the Complainant. In any action brought under this subsection:

a. If, after a trial, Court of Common Pleas finds that a respondent engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Court may award attorney's fees and costs to the complainant on whose behalf the Commission commenced the action in addition to attorney's fees and costs incurred by the Commission.

b. If, after a trial, Court of Common Pleas finds that a respondent has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the Court may award attorney's fees and costs to the prevailing respondent if the respondent proves that the complaint upon which the civil action was based was brought in bad faith.

F. HEARING

The case in support of the complaint shall be presented to the Commission or before a hearing examiner designated by the Commission for the purpose of hearing said complaint by its attorney or agents, by the complainant's attorney or by a designated agent of the complainant. The respondent may appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant may likewise appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

G. FINDINGS

1. If upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent and complainant an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or commercial property upon such equal terms and conditions and with

such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations or commercial property, upon such equal terms and conditions to any person discriminated against or all persons, any other verifiable, reasonable out-of-pocket expenses caused by unlawful discriminatory practice, or other compensation as provided under the Pennsylvania Human Relations Act.

2. In those cases alleging a violation of Section 181.04 or 181.05 and violations of the Fair Housing Act, the Commission may award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

a. Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Section 181.04 or 181.05 and violations of the Fair Housing Act of this Act:

i. In an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice;

ii. In an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one other discriminatory practice during the five-year period ending on the date of this order; or

iii. In an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed more than one other discriminatory practice during the seven-year period ending on the date of this order.

b. If however the acts constituting the discriminatory 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 practice, then the civil penalties set forth in subparagraphs (ii) and (iii) may be imposed without regard to the period of time within which any subsequent discriminatory practice occurred.

c. If upon all the evidence at the hearing, in those cases alleging a violation of Section 181.04 or 181.05, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney's fees and costs to prevailing complainants.

d. If, upon all the evidence at the hearing, in those cases alleging a violation of Section 181.04 or 181.05, the Commission finds that a respondent has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the Commission may award attorney's fees and costs to a prevailing respondent if the respondent proves that the complaint was brought in bad faith.

H. COMMONWEALTH LICENSE

When the respondent is a licensee of the Commonwealth of Pennsylvania, the Commission shall inform the appropriate State licensing authority of the order with the request that the licensing-authority take such action as it deems appropriate against such licensee.

I. COMPLAINT DISMISSAL

If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

J. RULES AND RECORDS OF HEARING

The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. ~~Three~~ One or more members of the Commission or a hearing examiner designated by the Commission shall constitute the Commission for any hearing required to be held by the Commission under this act. The recommended findings, conclusions and order made by said members or hearing examiner shall be reviewed and approved or reversed by the Commission before such order may be served upon the parties to the complaint. The recommended findings, conclusions and order made by said ~~members~~ member(s) or hearing examiner shall become a part of the permanent record of the proceeding and shall accompany any order served upon the parties to the complaint.

181.98 SEVERABILITY

If any clause, sentence, paragraph or part of this act, or the application thereof, to any person or circumstance, shall, for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act nor the application of such clause, sentence, paragraph or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

181.99 ENFORCEMENT, JUDICIAL REVIEW AND PENALTY

A. Injunction

If the Commission concludes, at any time following the filing of a complaint under this Act, that prompt judicial action is necessary to prevent immediate and irreparable harm, the Commission may commence an action in court of common pleas, and that court may grant an appropriate preliminary or special injunction pending final disposition of the complaint. Any such order or relief shall be granted in accordance with Pennsylvania Rules of Civil Procedure Section 1531.

B. Enforcement

The complainant, or the Commission may secure enforcement of the order of the Commission ~~or other appropriate relief~~. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition ~~as in proceedings in equity~~.

The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of enforcement or judicial review of the order.

Any failure to obey an order of the court may be punishable by such court as contempt thereof.

C. Enforcement by Private Person

1. In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or for whatever reason, closes the complainant's case, or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act. (13964 §1 4/4/02)

2. An action under this subsection shall be filed within two years after the date of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.

3. If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this act.

4. The court shall serve upon the Commission any final order issued in any action brought under this subsection.

5.a. If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney's fees and costs as provided under the Pennsylvania Human Relations Act, to the prevailing plaintiff.

b. If, after a trial held pursuant to subsection (c), the court of common pleas finds that a defendant has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney's fees and costs to the prevailing defendant if the defendant proves that the complaint was brought in bad faith.

D. Penalties

Any person who shall willfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this act, or shall willfully violate an order of the Commission, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not more than six hundred dollars (\$600.00), or to undergo imprisonment not exceeding thirty (30) days, or both, in the discretion of the court, but procedure for the review of an order shall not be deemed to be such willful conduct.

The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply.

~~E. The time limits for filing under any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.~~

~~F.E.~~ Except as otherwise provided, any order of the Commission may be reviewed under the provisions of the Act of December 2, 1968, P.L. 1133 (53 P.S. §11300) known as the "Local Agency Law", as amended.

~~G. F.~~ Where a provision of this ~~Article~~ Ordinance is found to be in conflict with a provision of any other Ordinance of the City, or in any regulation issued under the authority of such Ordinance, the provisions which establish the higher standard for the protection of health, safety and welfare shall prevail. The Commission, acting with the advice of legal counsel, shall make the determination on all ordinance conflicts related to this Chapter.

SECTION TWO: That this Ordinance take effect then (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.