



RULES AND REGULATIONS

OF

ELKHART HUMAN RIGHTS COMMISSION

AMENDED 2004, 2023

The Elkhart Human Relations Commission, on June 3, 2004 and February 23, 2023 amended the Official Rules and Regulations of the Elkhart Human Relations Commission, the final amended version of which became effective February 23, 2023 and is contained herein.

TABLE OF CONTENTS

RULE I—DEFINITIONS

Section 1.1	DEFINITIONS	1
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RULE II—GENERAL INFORMATION

Section 2.1	AUTHORITY	5
Section 2.2	SCOPE OF COVERAGE	6
Section 2.3	ADOPTION AND AMENDMENT	6
Section 2.4	VOLUNTARY DISQUALIFICATION	6
Section 2.5	INCAPACITY OF THE CHAIRPERSON	6
Section 2.6	ADDENDUM TO THE FHAP MOU	7

RULE III—FILING AND PROCESSING A COMPLAINT

Section 3.1	FILING A COMPLAINT WITH COMMISSION	8
Section 3.2	MANNER OF FILING	8
Section 3.3	CHARGES FILED WITH OTHER AGENCIES	9
Section 3.4	NECESSARY CONTENT, FORM OF COMPLAINT	9
Section 3.5	WITHDRAWAL OF A COMPLAINT	10
Section 3.6	ADMINISTRATIVE CLOSURE	10
Section 3.7	THE ANSWER	12
Section 3.8	AMENDMENTS TO THE COMPLAINT AND ANSWER	13
Section 3.9	MOTION FOR A MORE DEFINITE ANSWER	13
Section 3.10	TIME LIMITATIONS ON PROCESSING HOUSING COMPLAINTS	14

RULE IV—SERVICES OF PROCESS

Section 4.1	MANNER OF FILING	15
Section 4.2	MOTIONS; FORM	15
Section 4.3	NOTICES; FORM AND PERIOD	15
Section 4.4	RULINGS ON MOTIONS	15

RULE V—SUBPOENAS

Section 5.1	ISSUANCE	16
Section 5.2	TYPES OF SUBPOENA	17
Section 5.3	QUASHING OR MODIFYING SUBPOENA	17
Section 5.4	FAILURE TO OBEY	17
Section 5.5	CONFIDENTIALITY	18
Section 5.6	CONFIDENTIALITY OF INVESTIGATIVE FILES	18

RULE VI—DISCOVERY

Section 6.1	PRIOR TO SETTING A PUBLIC HEARING	19
Section 6.2	AFTER SETTING A PUBLIC HEARING	19

RULE VII—PARTIES

Section 7.1	SUBSTITUTION	20
Section 7.2	INTERVENTION	20
Section 7.3	JOINDER OF PERSONS	20

RULE VIII—PRACTICE BEFORE THE COMMISSION

Section 8.1	APPEARANCE BEFORE THE COMMISSION	22
Section 8.2	VENUE	22

RULE IX—INVESTIGATION

Section 9.1	PROCEDURE PRIOR TO INVESTIGATION	23
Section 9.2	INVESTIGATION PRIOR TO CAUSE FINDING	23
Section 9.3	FACT-FINDING CONFERENCE	23
Section 9.4	PROBABLE CAUSE RECOMMENDATION	23
Section 9.5	REVIEW OF RECOMMENDATION	23
Section 9.6	DETERMINATIONS	24

RULE X—CONCILIATION PROCESS

Section 10.1	CONCILIATION	26
Section 10.2	CONCILIATION—EXECUTED	28

RULE XI—NOTICE OF HEARING

Section 11.1	NOTICE	29
--------------	--------	----

RULE XII—HEARINGS

Section 12.1	PREPUBLIC HEARING CONFERENCE	30
Section 12.2	RULES OF PRACTICE GOVERNING HEARINGS	32
Section 12.3	REOPENING PUBLIC HEARINGS	34
Section 12.4	BRIEFS AND POST-HEARINGS	34

RULE XIII—ORDERS

Section 13.1	RECOMMENDED ORDER	35
Section 13.2	FINAL ORDER	35
Section 13.3	ENFORCEMENT OF FINAL ORDER	36

RULE XIV—INJUNCTIONS

Section 14.1	EMERGENCY SITUATIONS	37
--------------	----------------------	----

RULE XV—JUDICIAL REVIEW

Section 15.1	FILING A REVIEW	37
--------------	-----------------	----

RULE XVI—REVOCATION /SUSPENSION OF LICENSES

Section 16.1	LICENSEE AND LICENSING AGENCY	38
--------------	-------------------------------	----

RULE XVII—CONSTRUCTION OF REGULATIONS

Section 17.1	HOW CONSTRUED AND PARTIAL INVALIDITY	38
--------------	---	----

RULE XVIII—DEFAULT

Section 18.1	ENTRY	39
--------------	-------	----

Section 18.2	ORDER	39
--------------	-------	----

Section 18.3	SETTING ASIDE DEFAULT	39
--------------	-----------------------	----

Rule I DEFINITIONS

Section 1.1 – Definitions

When used in these rules, unless the context clearly requires otherwise, the following terms shall have the meaning as indicated.

- (A) “Administrative Law Judge” shall mean the person to conduct a Public Hearing and to rule on all pre-hearing requests, motions, and petitions.
- (B) “Affirmative Action” shall mean those acts which the Commission deems necessary to assure compliance with the Elkhart Human Relations Commission Ordinance.
- (C) “Aggrieved Party” or “Aggrieved Persons” means an individual or people who claim they have been injured by a discriminatory practice or believe they will be injured by a discriminatory practice that is about to occur.
- (D) “Chairperson” means the individual selected by the Commission membership once each year to serve as chair pursuant to the Ordinance.
- (E) “Complaint” or “Charge” shall mean any written grievance filed by a Complainant with the Commission. The original shall be signed by the Complainant.
- (F) “Complainant” or “Charging Party” shall mean a person, including the commission, who files a complaint under the Fair Housing Ordinance.
- (G) “Commission” shall mean the FHAP agency known as the Elkhart Human Relations Commission.
- (H) “Commissioner” shall mean a duly appointed member of the Commission.
- (I) “Conciliation” means the attempted resolution of issues raised by a complaint or by investigation of a complaint, through informal negotiations involving the complainant, respondent, and the Commission Staff.
- (J) “Conciliation Conference” shall mean a meeting, between the Director, or a staff member, and the Respondent, or an agent of the Respondent who is duly authorized by law or in writing to represent the Respondent, for the purpose of negotiating the provisions of a conciliation agreement.
- (K) “Conciliation Agreement” shall mean a formal agreement formulated which is entered into in lieu of adjudication. The Conciliation Agreement shall be calculated to give justice to the Complainant, and to vindicate the public policy of the City of Elkhart as expressed in the Ordinances.
- (L) “Day” shall mean a calendar day unless the context clearly requires otherwise.
- (M) “Department of Law” shall mean the Department of Law of the City of Elkhart.

(N) “Director” refers to the Human Relations Director.

(O) “Disabled” or “Disability” means, with respect to a person:

1. A physical or mental impairment that substantially limits one (1) or more of the person’s major life activities;
2. A record of having an impairment described in subdivision (1); or
3. Being regarded as having an impairment described in subdivision (1).

The term does not include current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21U.S.C.§802)). The term does not include an individual solely because the individual is a transvestite.

(P) “Discriminatory Housing Practice” shall mean the exclusion of a person or persons by another person from equal opportunity, or a system which excludes persons from equal opportunity in employment, education, public conveniences, and accommodations because of race, religion, color, sex disability, national origin, or ancestry. A discriminatory practice also means the refusal to sell or rent after the making of a bona fide offer; the refusal to negotiate for the sale or rental or otherwise making unavailable or denying, or otherwise discriminating against any person in the terms, conditions, privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental of a dwelling because of a person’s race, color, religion, sex (including sexual harassment, sexual orientation, and gender identity), familial status, disability, national origin.

A “discriminatory practice” shall also include the following:

4. Advertising for the sale or rental of a dwelling in a manner that indicates any preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, or national origin;
5. Falsely representing that a dwelling is not available for inspection, sale, or rental based on race, color, religion, sex, disability, familial status, or national origin;
6. Coercion, intimidation, threats, or interference with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act.
7. Blockbusting based on representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, or national origin;
8. Discrimination because of race, color, religion, sex, disability, national origin, or familial status by persons or entities whose business includes engaging in residential real estate transactions in the making of a loan or the granting of financial assistance

for residential real estate in the selling, brokering, or appraisal of residential real estate, or by the denial of access to or participation in a multiple listing service or other real estate broker organization or services.

Every discriminatory practice relating to the acquisition or sale of real property, education, public accommodations, or employment shall be considered unlawful unless it is specifically exempted by the Elkhart Human Relations Commission Ordinance.

- (Q) “Final Order” shall mean an order entered by the Commission after a Public Hearing or after the Administrative Law Judge has filed his/her Recommended Order.
- (R) “FHAP” means a Fair Housing Assistance Program partnership between the federal government and state and local agencies to provide protection to the public against discrimination in housing. Under this partnership, the Elkhart Human Relations Commission is substantially equivalent to the Department of Housing and Urban Development’s Office of Fair Housing and Equal Opportunity.
- (S) “HUD” means the Department of Housing and Urban Development’s Office of Fair Housing and Equal Opportunity
- (T) “Inquiry” means when an agency first receives information regarding an alleged discriminatory practice. This allegation of discrimination has not yet been determined as jurisdictional.
- (U) “Majority of the Commission” shall mean a simple majority of the current Commission membership, exclusive of any vacancies.
- (V) “Notice” shall mean either personal hand delivery or mailing by certified mail with return receipt requested. Notice shall include a concise statement of the question determined or to be determined, the date, place, and time of appearance where applicable, and a statement of the right of the party, where available, to appeal decisions adverse to him. Where a party is given notice of an event which is to take place in his case, notice shall be given at least ten (10) days prior to that event unless a longer or shorter period of time is specifically prescribed by these rules.
- (W) “No Reasonable Cause” or “No Probable Cause” shall mean that there exists a reasonable ground supported by the facts and circumstances strong enough themselves to warrant a reasonable person to believe that discriminatory practices have taken place against the Complainant in violation of the Ordinance.
- (X) “Order by Default” shall mean an order issued by the Commission, after proper notice, against a Respondent who has failed to answer a complaint or against a party who has failed to appear at a Public Hearing at which such party is required to appear by these rules. Upon the concurrence of a majority of the Commissioners, an Order by Default shall have the same scope and effect as a final order issued by the Commission subsequent to a Public Hearing.
- (Y) “Ordinance” shall mean the Elkhart Human Relations Commission Ordinance, No. 4235 and No. 4210 of the City of Elkhart, Indiana.

- (Z) “Parties” shall mean the Complainant, the Respondent, an intervener, and where appropriate, the Director or Staff of the Elkhart Human Relations Commission.
- (AA) “Person” includes the City of Elkhart, one or more individuals, partnerships, associations, organizations, corporations, trustees in bankruptcy, receivers and other organized groups of persons, by shall exclude those employers.
- (BB) “Quorum” shall mean majority of the Commission membership.
- (CC) “Reasonable Cause” or “Probable Cause” shall mean that there exists reasonable grounds supported by facts and circumstances strong enough themselves to warrant a cautious person in the belief that discriminatory practices have taken place against the Complainant in violation of the Elkhart Human Relations Commission Ordinance.
- (DD) “Respondent” shall mean one or more persons against whom a complaint has been filed.
- (EE) “Staff” shall mean those individuals employed by the City of Elkhart assigned to work with the Human Relations Commission.

RULE II GENERAL INFORMATION

Section 2.1 – Authority

(A) Enabling Act

Indiana Code 22-9.5-4-1(b), authorizes the establishment of local civil rights commissions by city ordinance.

(B) Authority from the Municipal Code

The Elkhart Human Relations Commission Ordinance, No. 3333, originally passed September 16, 1981, established the Human Rights Commission. Ordinance Number 3333 was amended by Ordinance Number 4235, which became effective February 9, 1996. That law prohibits the denial of equal opportunity to individuals because of their race, religion, color, sex (including sexual harassment), gender identification, sexual orientation, disability, national origin, or ancestry in the areas of education, employment, public accommodations, or abetting discrimination, obstruction of witnesses, destroying relevant documents or retaliating against Complainants or other participants in the investigations or proceedings under the Ordinance. Likewise the acquisition of real property through purchase or rental.

The Commission is empowered by that law to receive and investigate charges of discriminatory practices in these areas.

The Elkhart Human Relations Commission has jurisdiction within the corporate limits of the City of Elkhart, Indiana.

There shall be no more than three (3) Commission members of the same political party.

A Commission member shall forfeit his or her appointment to the Commission if he or she misses an excess of three (3) meetings in a calendar year.

(C) Commission Participation by Electronic Means

City of Elkhart Resolution No. 21-R-01 *A Resolution Establishing The Policy By Which Members Of The Human Relations Commission May Participate By Electronic Means Of Communication* prescribes the new requirements by which members of a governing body of a public agency of a political subdivision may participate in a meeting by electronic means.

(D) Housing Complaints for City Owned Property

In the event that there are any fair housing complaints against a rental property owned by the City of Elkhart, the Human Relations Commission staff will explain the complainant's rights to file a housing discrimination claim. Staff will provide contact information for the United States Department of Housing and Urban Development (HUD) – Office of Fair Housing and Equal Opportunity (FHEO) Division for intake and investigation of the complaint.

Section 2.2 – Scope of Coverage

(A) Application

These rules govern procedures in administrative adjudicatory proceedings conducted before the Elkhart Human Relations Commission. Administrative adjudication means the administrative investigation, Public Hearing, and determination by an agency of issues or cases applicable to particular persons. Such proceedings are adversarial, wherein the rights of more than one party are to be adjudicated by the Commission. These rules are not applicable to a Commission proceeding which is not an adjudication proceeding.

Section 2.3 – Adoption and Amendment

(A) Authority

Section 5(c) of the Ordinance 4235 and Article IV, Section 2, of Ordinance Number 4106 authorizes the Commission to adopt, promulgate, amend, and rescind such rules and regulations, procedural, and substantive, as may be consistent with provisions of the Ordinance and State Laws.

(B) When Effective

These rules shall be adopted by a majority of the Commission at a regular meeting in order to become effective. Amendments to these rules must be adopted according to the Ordinance by a majority of the Commission at a regular meeting. After adoption these rules and amendments thereto become effective. Copies shall be available to the public.

Section 2.4 – Voluntary Disqualification

(A) How to Disqualify

If at any time during the processing of a charge, a Commissioner is called upon to participate in a decision involving the rights of the respective parties, and such Commissioner has a direct or indirect interest in the final outcome of such case, the Commissioner shall disqualify himself/herself from any participation in that case.

Section 2.5 – Incapacity of the Chairperson

(A) Assumption of Duties by Vice-Chairperson

In the event of the incapacity of the Chairperson to fulfill his/her duties under these rules, the Vice-Chairperson shall assume such duties for the duration of the incapacity.

Section 2.6 – Addendum to the Memorandum of Understanding with the U.S. Department of Housing & Urban Development (HUD) – Statement of Consistency with *Bostock v Clayton County, GA*, 590 U.S. ___ (2020)

(A) Purpose

The purpose of the Addendum is to ensure consistency in application to the Fair Housing Assistance Program so that the substantive rights protected under the Elkhart Fair Housing Ordinance remain substantially equivalent to those protected by the federal Fair Housing Act, as required by 42 U.S. Code §§ 3610(f) and 3616.

(B) Authority

On February 11, 2021, pursuant to and in order to implement the holding of *Bostock V. Clayton County, GA*, 590 U.S. (2020), HUD’s Acting Assistance Secretary for Fair Housing and Equal Opportunity (FHEO) issued a memorandum directing that discrimination because of sex, as used in the federal Fair Housing Act, includes discrimination because of sexual orientation and gender identity and that complaints alleging housing discrimination because of sex involving sexual orientation and gender identity are jurisdictional under the Act. Because this finding relates to substantive rights protected by the Act, agencies participating in the Fair Housing Assistance Program must either administer a law that explicitly prohibits discrimination because of gender identity and sexual orientation or must apply its fair housing law in a manner consistent with *Bostock* and the FHEO Memorandum.

(C) Acknowledgement

The Elkhart Human Relations Commission acknowledged on March 11, 2021, that its fair housing law either provides express protections for both sexual orientation and gender identity or that the Commission will apply its fair housing law such that discrimination because of sex includes sexual orientation and gender identity.

RULE III FILING AND PROCESSING A COMPLAINT

Section 3.1 – Filing Complaint with Commission

(A) Who May File

Any person claiming to be aggrieved by a discriminatory practice or any other act contrary to the provisions of the Ordinance may file a complaint with the Commission in accordance with the rules hereinafter stated.

(B) Director Initiated Complaint

If the Director has reason to believe that an act of unlawful discrimination has been committed against a person or against a class of people, the Director may initiate a complaint in order to uphold the public policy of the City of Elkhart as expressed in the Ordinance.

(C) Expansion of an Individual Complaint

Where a complaint is filed in accordance with these rules and the Director determines that relief for more than the individual Complainant is appropriate, the Director may seek amendment of the complaint by motion to the Chairperson, or the Director may file a separate complaint with respect to the acts of discrimination against such other individuals. Such separate complaint may be consolidated with the original or amended complaint of the Complainant for the purposes of all subsequent proceedings or may be docketed separately at the discretion of the Director.

(D) Commission Staff

All investigations shall be impartial and shall be limited in each instance to the discriminatory practices alleged in the complaint.

Section 3.2 – Manner of Filing

(A) Where to File

Charges shall be filed with the Commission at its office, 201 S. Second Street, Elkhart, Indiana 46516, either personally, electronically, by phone, or by mail.

(B) What Constitutes Filing

The complaint shall be deemed filed as of the date of:

- (i) The postmark, if the complaint is filed by mail or electronically, or its receipt at the Commission's office if no postmark is visible;
- (ii) Receipt at the Commission's office if the complaint is filed by personal delivery;

- (iii) Oral presentation in the Commission's office to a Staff member who receives the information and prepares a written charge.

(C) Time Limit on Filing

A complaint must be filed within one (1) year of the alleged discriminatory housing practice has occurred or terminated, whichever is later.

(D) Docketing of Complaint

Each complaint shall be given a case number and the date of receipt of the complaint shall be indicated on the complaint.

(E) Acknowledgement to Parties in Housing Cases

In every case where a complainant alleges a discriminatory housing practice or housing-related practice prohibited by the City of Elkhart Fair Housing Ordinance, notice shall be served in writing to the complainant and respondent that the complaint has been duly filed with HUD.

Section 3.3 – Complaints Filed with Other Agencies, State & National

- (A) A complaint filed with the Equal Employment Opportunity Commission shall be deemed filed with the Elkhart Human Relations Commission on the date it was received by the Equal Employment Opportunity Commission, provided that the complaint conforms to the requirements of the Elkhart Human Relations Commission Ordinance.
- (B) If any person files a complaint with the Elkhart Human Relations Commission he/she shall have no recourse to the Indiana Civil Rights Commission concerning any of the matters alleged in such charge, and any person who files a complaint with the Indiana Civil Rights Commission shall have no recourse with the Elkhart Human Relations Commission concerning any of the matters alleged in such charge, however, nothing shall affect such person's right to pursue any and all rights and remedies available in any other state or federal forum.
- (C) If HUD has referred a complaint to the Commission Staff or has deferred jurisdiction over the subject matter of the complaint to the commission, the Commission Staff shall promptly investigate the allegations set forth in the complaint.

Section 3.4 – Necessary Content, Form of the Complaint

(A) Content of the Complaint

To be processed by the Commission, the complaint shall be in writing and sufficiently complete so as to reflect properly:

- (i) The full name and address of the Aggrieved.

- (ii) The full name and address of the Respondent against whom the complaint has been filed.
- (iii) A description and the address of the dwelling which is involved, if appropriate.
- (iv) The alleged discriminatory practice and a statement of particulars thereof.
- (v) The date or dates and places of the alleged discriminatory practice and if such discriminatory practice is alleged to be of a continuing nature, the dates within which such continuing acts as alleged to have occurred.
- (vi) A statement as to any other action, civil or criminal, instituted in any other based upon the grievance alleged in the complaint, together with a statement as to the status or disposition of any other such action.

Any complaint which is deemed insufficient under the provisions of this section shall be docketed pursuant to the provision of Section 3.2(D) and the Complainant afforded a reasonable time upon notice, not to exceed 10 days, in which to perfect the charge. When docketed the ninety day limit for filing a complaint under Section 3.2(C) shall be tolled.

(B) Form of the Complaint

To be processed by the Commission Staff, the complaint must be on a form provided by the Commission Staff and signed by the aggrieved party.

(C) Staff Assistance

The Commission Staff shall provide assistance in drafting and filing charges.

Section 3.5 – Withdrawal of a Complaint

(A) Who May Withdraw

A complaint, or any part thereof, may be withdrawn only upon written request as herein set forth:

- (i) If the request for withdrawal is made before a Public Hearing has been held, and notice thereof sent, the complaint may be withdrawn at the discretion of the Complainant. The Commission shall be notified of the withdrawal at its next regular meeting to affect formal closure of the complaint.
- (ii) If the request for withdrawal is made after a Public Hearing has been held, the written consent of a majority of the Commissioners shall be obtained to affect formal withdrawal and closure of the complaint.

(B) Formal Withdrawal of a Complaint

The withdrawal request must be written; it must be signed and dated by complainant or complainant's authorized representative and notarized; identify the respondent(s) to whom the withdrawal applies; contain the HUD and FHAP agency complaint numbers; state the reason(s)

complainant seeks to withdraw the complaint; contain a statement that the withdrawal was not obtained by coercion or threat of retaliation from any person, including but not limited to the respondent; and identify the terms of the resolution.

(C) Notice of Withdrawal

All parties to the complaint shall be notified of the withdrawal and that the investigation would be terminated as a result of the withdrawal, and that the complainant could re-file the complaint if the terms of the resolution are not satisfied and the re-filing is received within the time limit for filing a complaint under the substantially equivalent law

Section 3.6 – Administrative Closure

Any complaint may be administratively closed upon the vote of a majority of the Commission upon any of the following grounds:

- (A) Where a complaint on its face discloses that it was not timely filed.
- (B) Where a complaint on its face discloses that it is not within the jurisdiction of the Commission.
- (C) Where the Director and Staff have been unable to locate the Complainant after diligent effort to do so.
- (D) Where a Complainant, after warning by the Director or Staff of the consequences of his/her acts, refuses to cooperate with the investigation of his/her complaint by providing the Director and Staff with information relating thereto within his/her possession within ten (10) days after such information is requested.
- (E) Where, upon warning by the Director or Staff, the Complainant misses mutually agreed upon appointment times without adequate cause or declines to meet with the Director or Staff to prepare his/her case for hearing.
- (F) Where a Complainant has refused to accept a settlement offer made by the Respondent, which is approved the Director, and which settlement constitutes the maximum award which could be made under law by the Commission.

Notice of administrative closure shall be served on all parties to the complaint at each party's last known address by certified mail, return receipt requested or by electronic mail. Such notice shall advise the Complainant that he/she may appeal the decision of the Commission. Any Complainant may apply in writing to the Commission for the reopening of any case closed pursuant to this section. Such application shall be made within ten (10) days after notice of closure has been given and upon notice to all parties of the charge. Reopening shall be granted only in extraordinary circumstances where the Commission with regard to an application for reopening in any case

closed pursuant to this rule shall be in writing, shall include an appropriate order and shall be served upon all parties by registered or certified mail, return receipt requested.

Section 3.7 – The Answer

(A) Notice to Respondent

Upon receiving and accepting a complaint, the Commission Staff shall promptly notify the appropriate party by proper notice that such party has been named a Respondent in a complaint submitted to the Commission. A copy of the complaint will be provided to the Respondent with such notice.

(B) Filing an Answer

The Respondent shall itself, or by its duly authorized representative, answer the charge. The answer shall be in writing, and signed by the Respondent or its duly authorized representative. The answer shall be filed within ten (10) days after service of the complaint upon the Respondent.

(C) Immediate Relief

Respondent may choose not to file an answer and in the alternative, choose to grant immediate relief to the Complainant within five (5) days after service upon Respondent of a copy of the charge. If Complainant accepts the offer of relief, the complaint shall be dismissed subject to full performance by the Respondent of the proposed offer.

(D) Failure to File an Answer

If Respondent fails to file answer to the complaint within ten (10) days after service of the complaint upon Respondent, the Commission will deem this failure to answer to be an admission to the truth of the charge, and it shall proceed pursuant to Rule XVIII for an Order by Default.

Failure to file an answer to the complaint does not inhibit the investigation of the complaint.

(E) New Matter

Any new allegation raised in the answer shall be deemed denied without the necessity of reply from the Complainant.

(F) Extension of Time

Upon timely written request and a showing of good cause, the Director or Staff may extend the time within which the answer may be filed if the rights of the Complainant will not be prejudiced as a consequence.

Section 3.8 – Amendments to the Complaint and Answer

(A) Amendment to the Complaint

At any time prior to the issuance of the notice of Public Hearing a complaint may be amended as a matter of right by the Complainant in order to clarify the allegations, to correct errors, or to include additional allegations of discrimination. After the issuance of a notice of Public Hearing, the Administrative Law Judge may permit the complaint to be amended as justice requires.

(B) Amendment to the Answer

The Respondent may amend his/her answer as a matter of right at any time up to ten (10) days prior to the date scheduled for the Public Hearing and, thereafter, as justice requires, upon written request and a showing of good cause.

(C) Notice of Amendments

The parties shall be given proper notice of all amendments.

(D) Issues Not in the Pleadings

When issues not raised in the complaint as amended or answered are heard by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after final order; by failure to so amend shall not affect the adjudication of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the pleadings, the Administrative Law Judge may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to show that the admission of such evidence would prejudice him/her in maintaining his/her defense on the merits. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

Section 3.9 – Motion for a More Definite Statement

(A) Definition

Any person named as a Respondent by the complaint may file a motion in writing within ten (10) days after service thereof requesting the allegations in the complaint be made more definite and certain. Such motion shall point out the deficiencies complained of and details desired. The Chairperson or in his/her absence the Vice Chairperson of the Commission shall rule on the motion, and if the motion is granted, shall fix the time within the Complainant shall comply and within which the Respondent's answer to the complaint shall be filed.

(B) The Degree of Specificity Required

The motion to make more specific shall be utilized only to clarify the issues sufficiently to enable the moving party to prepare such party's defense to the allegations raised in the complaint.

Section 3.10 – Time Limitations on Processing Housing Charges

For any complaint or part of a complaint alleging a discriminatory housing practice or housing related practice prohibited by the Elkhart Human Relations Commission Ordinance, the following proceeding limitation periods shall apply:

(A) Commencement of Proceedings

The Director or Staff shall commence proceedings with respect to such complaint or part of a complaint before the end of the thirtieth (30) day after the receipt of the charge.

(B) Completion of Investigation

The Director or Staff shall investigate allegations of the complaint and complete the investigation in no more than one hundred (100) days after receipt of the complaint unless completion within that time limit is impracticable. If the Staff is unable to complete its investigation within one hundred (100) days, the Complainant and Respondent shall be notified in writing of the reasons for not doing so.

RULE IV SERVICE OF PROCESS

Section 4.1 – Manner of Filing

(A) Charges, Answers, Amendments Thereto

The charge, the answer, and amendments to either complaint or to the answer shall be filed with the Commission Staff as provided by Rule III.

(B) Motion, Petitions, Etc.

Motions, petitions, requests, and other pleadings shall be served like subpoenas.

(C) Notices and Orders

Any notice or order provided for in these rules shall be served as subpoenas as Indiana Court Trial Rules.

Section 4.2 – Motions; Form

After the initial filing of the charge, applications to the Commission to take any action or to enter any order shall be by motion. Motions must be made in writing, unless made during a hearing. Motions submitted to the Commission shall state specifically the grounds therefor and shall set forth the action or orders sought.

Section 4.3 – Notices; Form and Period

In all cases in which the Commission is the moving party, all notices provided for herein shall be in writing, and shall be given at least ten (10) days prior to the event of which notice is given, unless a longer period of notice is prescribed in these rules. Every notice shall set forth therein a statement of the fact or law involved to advise the person notified of the matters at issue to be heard, or determined by the Commission, together with the time and place of any hearing or the time before which any action called for or permitted by the notice must be taken. Such statement may be informal and need not conform to the requirements of a pleading in court.

Section 4.4 – Rulings on Motions

The Administrative Law Judge shall rule on all motions concerning the case to which he has been assigned, with the exception of motions to quash or to modify subpoenas. Motions, or any other petitions which come to the Commission prior to the appointment of a Administrative Law Judge, shall be ruled on by the Chairperson or in the Chairperson's absence by the Vice-Chairperson. All rulings and motions shall be final, except for a ruling which grants a motion to dismiss. Where a motion to dismiss is granted it shall require the concurrence of a majority of the membership.

RULE V SUBPOENAS

Section 5.1 – Issuance

(A) Power to Subpoena

The Commission shall have the power to subpoena. This power includes the authority to compel the attendance of witnesses, and to require the production for examination of any books and papers relating to any matter under investigation or in question before the Commission.

(B) Procedure for Issuance

The Chairperson may issue subpoenas upon the Director's application after the Chairperson consults with a representative of the Department of Law. The Chairperson shall issue the subpoena if he/she determines that the materials or witnesses sought are relevant to the Staff's investigation, that the subpoena is not reasonable or oppressive to the person who would be served, and that the Commission has jurisdiction in the matter.

(C) Administrative Law Judge Subpoena

The Administrative Law Judge shall conduct a Public Hearing pursuant to the rules and shall have the same power to issue subpoenas as the Commission, after consultation with the Department of Law.

(D) Form of Subpoena

A subpoena issued by the Commission shall be signed by the Chairperson or Administrative Law Judge and the Department of Law. It shall state the full name of the Commission, the title of the case with which the subpoena is concerned, and in all other respects shall conform to the format used for subpoenas in the Elkhart Superior Court.

(E) Service of Subpoenas

A subpoena issued by the Commission may be served by any person. Service shall be made by delivering a copy of the subpoena to the person named therein. Delivery may be made by:

- (i) Sending a copy of the subpoena by registered or certified mail with a return receipt requested;
- (ii) Delivering a copy of the subpoena personally to the person named therein;
- (iii) Delivering a copy of the subpoena to the dwelling house of the person named therein and posting it in a conspicuous place thereon;
- (iv) Serving the agent of the person named therein.

Whenever service is made under subsection (iii) or (iv), a copy of the subpoena shall also be sent by first class mail to the last known address of the person named in the subpoena.

(F) Proof of Service

When a subpoena is served personally by the sheriff or deputy, such return shall be proof of service. When a subpoena is served personally by any other person, the service must be shown by affidavit.

Section 5.2 – Types of Subpoenas

(A) For Production of Documentary Evidence

A subpoena may command a person to produce books, papers, documents, or other tangible things. The items sought to be produced shall be described with a degree of specificity sufficient to enable the party to understand that which is being sought.

(B) For Attendance and Giving of Testimony

The subpoena may command the person to whom it is directed to attend and give testimony at a time and place therein specified.

Section 5.3 – Quashing or Modifying Subpoena

(A) Motion to Quash or to Modify

A person who receives a subpoena may ask the Chairperson or Administrative Law Judge, by way of motion, to quash or modify the subpoena. Such a motion shall be filed in the manner and form outlined in Rule IV, and shall indicate the grounds for the request.

(B) Decision of the Chairperson

After consulting with a representative of the Department of Law, the Chairperson or Administrative Law Judge shall do one of the following:

- (i) Quash or modify the subpoena, if he/she determines that the materials or witnesses sought are not relevant to the Staff's investigation, or that the Commission has no jurisdiction in the matter;
- (ii) Deny the motion, if he/she determines that the grounds of the motion do not support an order to quash or to modify.

Section 5.4 – Failure to Obey a Subpoena

(A) Contempt

A person who refuses to obey a subpoena issued pursuant to this section may be held in contempt upon proper application to a circuit or superior court with jurisdiction.

(B) Dismissal or Default

If a person who without good cause fails or refuses to comply with a subpoena is a party or an agent or representative of a party, the Commission in the case of a Complainant may dismiss the charge, or in the case of a Respondent, the Commission may enter a finding against the Respondent as to liability and/or bar the Respondent from introducing any document or thing that was the subject of the subpoena at any further stage of the Commission's adjudicative process, including without limitation, at Public Hearing.

Section 5.5 – Confidentiality

Nothing in these rules shall be construed as making public or requiring the production of records or information which is made confidential by law.

Section 5.6 – Confidentiality of Investigative Files

Neither the Commission or Staff or other agents shall make available to members of the public any document, written statement or summary of interviews, tapes of other records relating to a complaint or pre-complaint counseling without express approval and consent of the affected parties, except in the following circumstances:

- (A) Where an investigative file is subject to federal confidentiality requirements due to a deferral relationship. Public access shall be limited to formal pleadings and motions filed pursuant to proceedings in open court or before the Commission, only after a "Reasonable Cause" determination has been issued and a Public Hearing has been set.
- (B) Information relating to a case may be communicated to agents of other public civil rights enforcement or monitoring organizations who are subject to confidentiality requirements similar to the Human Relations Commission.
- (C) At any stage in the processing of a complaint a person may review all records, tapes, or interview notes, which record the content of any testimony or witness statement supplied by the person or by the entity for which the person is an agent. Likewise the person may review any document which the person supplied to the Commission or which was supplied by the corporation for which the person is an agent.

RULES VI DISCOVERY

Section 6.1 – Prior to the Setting of a Public Hearing

Prior to the setting of a Public Hearing, the Commission shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure as a necessary aid to its investigatory function. The Chairperson, or in his/her absence the Vice Chairperson, shall issue all protective or enforcement order of the Chairperson, or Vice Chairperson, the Commission may seek a decree of court for enforcement of such order, or the Commission may otherwise penalize a party as provided in Rule V, Section 5.4.

Section 6.2 – After the Setting of a Public Hearing

Whenever a Public Hearing before the Commission is set as provided by these rules, the parties shall be entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure except where this would be inconsistent with a previously determined discovery bar pursuant to the Commission's authority under Section 5.4(B). If a party or witness does not comply with the protective or enforcement order of the Administrative Law Judge, the Commission may seek a decree of court for the enforcement of such order, or the Commission may otherwise penalize a party as provided in Rule V, Section 5.4.

RULE VII PARTIES

Section 7.1 – Substitution

(A) Relation Back

Whenever the claim or defense asserted in an amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him/her, the party to be brought in by amendment:

- (1) Has received such notice of the institution of the action that he/she will not be prejudiced in maintaining his/her defense on the merits; and
- (2) Knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him/her.

Section 7.2 – Intervention

(A) Who May Intervene

Any person not initially joined in the action or proceeding shall be permitted to petition for intervention upon the filing of a motion which sets forth the grounds for said intervention. A petition to intervene may be granted or denied as justice may require.

Section 7.3 – Joinder of Persons Needed for a Just Adjudication

(A) Persons to be Joined if Feasible

A person subject to service of process shall be joined as a party before the Commission if:

- (i) In his/her absence complete relief cannot be accorded among those already parties; or
- (ii) He/she claims an interest relating to the subject of the action and is so situated that the disposition of the action in his/her absence may:
 - (a) As a practical matter impair or impede his/her ability to protect that interest, or
 - (b) Leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his/her claimed interest.

If a person has not been so joined, the Commission shall order such person to be made a party.

(B) Whenever Joinder is Not Feasible

Notwithstanding subdivision (A) of this section when a person described in subsection (i) and (ii) is not made a party, the Administrative Law Judge may treat the absent party as not indispensable and allow the action to proceed without such party or the Administrative Law Judge may treat such absent party as indispensable and dismiss the action if such party is not subject to process. In determining whether or not a party is indispensable the Administrative Law Judge shall consider the following factors:

- (i) The extent to which a judgment rendered in the person's absence might be prejudicial to such party or those already parties;
- (ii) The extent of which, by protective provisions in the final order, by the shaping of relief or by other measures the prejudice can be lessened or avoided;
- (iii) Whether a final order rendered in the person's absence will be adequate;
- (iv) Whether the charging will have an adequate remedy if the complaint is dismissed for non-joinder.

RULE VIII PRACTICE BEFORE THE COMMISSION

Section 8.1 – Appearance before the Commission

(A) Who May Appear for a Party

Any party may appear before the Commission in their own behalf, or by an attorney admitted to practice and in good standing before the bar of any of the United States or the District of Columbia.

Section 8.2 – Venue

(A) Preservation of Centralized Neutral Forum

It is the policy of the Commission to maintain an objective neutral forum equally accessible to all participants in the proceedings before the Commission. In order to preserve this policy, hearings shall be held at the Elkhart City Hall 229 S. Second Street; Elkhart, Indiana unless otherwise ordered by the Commission.

RULE IX INVESTIGATION

Section 9.1 – Processing Procedure Prior to Investigation

(A) Docketing a Complaint

Each complaint shall be given a case number reflecting the order of the date of filing with the Commission and the type of discrimination alleged.

(B) Mailing of Notice

The Respondent shall be sent by email or registered or certified mail, return receipt requested, a copy of the verified charge, and interrogatories, if applicable, and a statement of Respondent's options under Section 3.7.

(C) Selection of Investigator

The Director may conduct the investigation of the complaint or assign all or any part thereof to a member of the Staff.

Section 9.2 – Investigation Prior to a Finding of Probable Cause

If the Respondent chooses to defend against the charge, pursuant to Section 3.7(B), the Director shall initiate a full investigation of the charge. Based on the results of the investigation, the Director shall recommend whether the probable cause exists to believe that an illegal act of discrimination occurred in violation of the Ordinance.

Section 9.3 – Fact-Finding Conference

The Director may require a fact-finding conference with the parties prior to a recommendation on a complaint of discrimination. The conference is primarily an investigative forum intended to define the issues, to determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for negotiated settlement of the charge.

Section 9.4 – Probable Cause Recommendation

Subsequent to the completion of the preliminary investigation, the Director will formulate a recommendation as to whether there exists probable cause or no probable cause to believe that an act of discrimination did occur in violation of the Ordinance. Such a recommendation will be developed only after the receipt of an answer from the Respondent, or at the expiration of the twenty (20) day period immediately following the charge, whichever is sooner.

Section 9.5 – Review of the Director's Recommendation

The Director or Staff shall present his/her recommendation concerning probable cause to the full Commission in executive meeting. Upon the vote of a majority at a public meeting of the Commission membership excluding members abstaining, the Commission shall make its finding as prescribed by Section 9.6.

Section 9.6 – Determinations

(A) Finding of Probable Cause

If a majority of the Commissioners who are reviewing the case excluding abstaining members, agree on a finding of probable cause, the Staff shall immediately notify the respondent and complainant. Conciliation efforts shall begin pursuant to Rule X.

Within twenty (20) days of the receipt of the Determination, the complainant or respondent shall elect in writing to have the case filed in court. The party making the election must notify the commission and all parties to the case in writing.

If a timely election is made, the commission shall not later than thirty (30) days after the election is made, file and maintain a civil action on behalf of the aggrieved person in a court where the alleged discriminatory housing practice occurred.

If a timely election is not made, the Commission shall schedule a Public Hearing on the finding of reasonable cause.

(B) Finding of No Probable Cause

If a majority of the Commissioners reviewing the case excluding abstaining members, decide in favor of a finding of no probable cause, the Complainant and Respondent shall be informed by proper notice of that decision. The right of the Complainant to file a request for reconsideration of the finding pursuant to Section 9.6(D) shall be indicated in the notice. If the Complainant fails to file a request for reconsideration within ten (10) days of receiving the notice, the determination of no probable cause shall be final.

(C) Remanding the Case for Further Investigation

If a majority of the Commissioners who are reviewing the case, excluding abstaining members, decide that the information or evidence presented requires clarification, additional information or additional investigation before a determination can be made, the Commissioners may remand the case to the Commission Staff and request such additional information or evidence. After such information has been secured the Commission Staff shall present the requested information to the Commission at a regularly scheduled meeting for their consideration in making a probable cause or no probable cause determination on the complaint.

(D) Reconsideration of No Probable Cause Finding

1. If the Complainant believes himself/herself to be aggrieved by a finding of no probable cause, he/she may file a written request for reconsideration with the Commission. Such a request must be filed within ten (10) days of his/her

receipt by proper notice of the no probable cause finding. Such request shall be filed in accordance with the procedure for filing set out in Section 3.2(A).

2. Upon receiving a written request for reconsideration, the Commission shall review and rule on the request.
3. The Commissioners shall schedule a meeting to be attended by the Complainant, and a representative of the Department of Law. A member of the Staff of the Commission may also attend.
4. The Commissioners shall base their decision on the results of the investigation, and upon the Complainant's arguments presented at the meeting. The Commissioners shall not reconsider its finding of no probable cause unless new information is presented at the meeting which when taken together with the results of the preliminary investigation, persuade the Commission to reconsider its original.
 - (a) If the Commissioners determine that the finding of "no probable cause" should be reconsidered based upon new information, the complaint shall be processed as though an original finding of probable cause has been made upon the adoption by a majority of the Commission. The Respondent shall receive proper notice of this determination.
 - (b) If the Commissioners determines that the finding of "no probable cause" should be upheld, the complaint shall be dismissed upon adoption of such recommendation by a majority of the Commission. The Complainant and the Respondent shall be informed by proper notice of the Commission's ruling.
 - (c) In the event the Commissioners determine that there was information which was not presented to the Commission at the time the "no probable cause" finding was made, but that the new information requires clarification or additions before a resubmission should be made, recommendation for reconsideration, the Commissioners, may remand the complaint to the Commission's Staff to secure such additional information. After such information has been secured, the requested information shall be given to the Commission.
5. The Commissioner's decision to resubmit the complaint to the Staff for further investigation and recommendation shall be final.
6. The complainant shall not be entitled to request reconsideration of a subsequent finding of "no probable cause" after resubmission of a complaint to the Staff under this section.

RULE X CONCILIATION PROCESS

Section 10.1 – Conciliation

(A) Statement of Policy

It is in the interests of all the parties involved in a dispute pursuant to the Ordinance to settle a controversy between Complainant and Respondent without the necessity of a Public Hearing. The Director of the Commission is therefore authorized to conduct conciliation between parties at any time upon request of any party, and is authorized to promote a pre-Public Hearing conciliation between parties upon a finding of probable cause.

(B) Conciliation Agreement

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 complainant, other persons similarly situated, and the public interest.

- I. A conciliation agreement is an agreement between a respondent and the complainant and is subject to commission approval. A conciliation agreement may provide for binding arbitration or other methods of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate monetary relief.
- II. A conciliation agreement shall be made public unless the complainant and the respondent agree otherwise and the commission determines that disclosure is not necessary to further the purposes of the Ordinance.
- III. Nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under the Ordinance without the written consent of the persons concerned.
- IV. After completion of the investigation, the commission shall make available to the complainant and the respondent, information derived from the investigation and the final investigative report relating to the investigation.

Types of relief that may be sought for the Complainant:

1. Monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney's fees;
2. Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the connection with a dwelling, or other specific relief;
3. Injunctive relief appropriate to the elimination of discriminatory housing practice affecting the complainant or other persons;
4. A conciliation agreement may provide for binding arbitration of dispute arising from the complaint.

Types of relief that may be sought for the Public Interest:

1. Elimination of discriminatory housing practices.
2. Prevention of future discriminatory housing practices
3. Remedial affirmative activities to overcome discriminatory housing practices.
4. Report requirements.
5. Monitoring and enforcement activities.
6. Assess a civil penalty against Respondent in an amount provided for in the Ordinance.

Upon the issuance of a reasonable cause finding, the Director or staff shall initiate a conciliation conference prior to the setting of a Public Hearing. Notice shall be sent to the respondent and complainant asking that they participate in conciliation efforts.

The parties shall have seven (7) days to respond to the request. If the parties opt to decline the conciliation efforts, then the matter will proceed to the Public Hearing.

(A) Setting Time and Date

When the Commission Staff has received notice that the Respondent has requested a conciliation conference, a date, time, and place for the conference shall be set which is convenient to the parties.

(B) Who Shall Attend

The conciliation conference shall be attended by the Respondent or Respondent's agent, and the Director or a member of the Staff. The Complainant shall be notified of the time and place of the conciliation conference and he/she may attend.

(C) Conduct of Conciliation Conference

At the conciliating the complaint, the Director or Staff shall attempt to achieve a just resolution if the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the complainant, and take such actions as will assure the elimination of the discriminatory housing practices, or the prevention of their occurrence in the future.

All discussions which take place at the conciliation conference are confidential. No declarations or statements made during the course of the conference or in furtherance of conciliation may be used either for or against a party in the investigation, at a Public Hearing, or at any subsequent legal proceeding concerning the matter, unless waived by the written consent of the Complainant and the Respondent.

(D) Unsuccessful Conciliation after Case is Caused

A Public Hearing shall be held on the complaint if:

- (i) The Respondent or the Complainant cannot agree to the terms of the consent agreement as formulated by the Director or as negotiated or;
- (ii) The Respondent does not request, within seven (7) days of receipt of the request, that a conciliation conference take place.

Section 10.2 – Conciliation Agreement- Fully Executed

(A) Successful Conciliation and Publication of Conciliation Agreement in Housing Cases

If the terms of a consent agreement are approved by all parties involved, as indicated by the signatures of the Complainant and Respondent thereon, the agreement shall become effective upon the approval of the Commission. The Commission shall approve the agreement following its signature by the parties, and such approval shall be evidenced by the signing of the agreement by a majority of the Commissioners. In housing cases, a conciliation agreement shall be made public unless the Complainant and Respondent agree otherwise and the Commission determines that disclosure is not necessary to further the purposes of the Elkhart Human Relations Commission Ordinance.

(B) Supervision of Conciliation Agreement

After a conciliation agreement has gone into effect, the Commission Staff shall retain supervisory authority over it for the purposes of insuring that the provisions of the agreement are complied with. If the Commission determines that the agreement is not being complied with, it may seek a decree of enforcement from the superior or circuit court of Elkhart County.

RULE XI NOTICE OF HEARING

Section 11.1 – Notice

(A) When Required

If, pursuant to these rules, a hearing is required, the hearing date shall be set by the Administrative Law Judge and the Administrative Law Judge shall cause notice thereof to be served upon all parties according.

(B) Contents of Notice

All notices of hearing shall state the date, time, and place of the hearing, and that the parties may appear with or without counsel at the hearing. All such notices shall advise the party that his/her failure to appear will result in an adverse Order by Default against him/her.

(C) Time

Notice of Hearing shall be delivered or mailed no less than forty-five (45) days prior to the date upon which the hearing is to be held.

(D) Extension of Time

Upon application, the Administrative Law Judge may extend the date on which the hearing has been set for good cause shown.

(E) Notice to the Public

Notice to the Public shall follow the rules set out in I.C. 5-3.

RULE XII HEARINGS

Section 12.1 – Pre-Public Hearing Conference

(A) Simplification and Stipulation

In any case before the Commission, the Administrative Law Judge may direct the parties and/or their attorneys or representatives to appear before him/her for a prehearing conference to consider:

- (i) The simplification of the issues;
- (ii) The necessity or desirability of amendments to the pleadings;
- (iii) The possibility of obtaining admissions of fact or documents to avoid unnecessary proof;
- (iv) A limitation on the number of expert witnesses;
- (v) An exchange of the names of witnesses to be called during the hearing, and an indication of the general nature of their expected testimony; (vi) Such other matters as may aid in the disposition of the action.

(B) When Called – Notice

Unless otherwise ordered by the Commission, the pre-public hearing conference shall not be called until after attempts at conciliation pursuant to these rules have failed.

(C) Participants

At least one attorney planning to take part in the hearing shall appear for each of the parties and participate in the pre-Public Hearing conference. However, when a Respondent or Complainant chooses to represent himself/herself at a final hearing, such a party may appear at the pre-Public Hearing conference without counsel.

(D) Conference of Attorneys

Unless otherwise ordered by the Administrative Law Judge, attorneys for each of the parties shall meet and confer at least three (3) days prior to the pre-Public Hearing conference, and for the following purposes:

- (i) The attorney for each party shall mark for identification and provide opposing counsel an opportunity to inspect and copy all exhibits which he/she expects to introduce at the Public Hearing. Numbers or marks placed on such exhibits shall be pre-fixed with the symbol “P/H/C”, denoting its pre-Public Hearing conference designation. When the exhibit is introduced at Public Hearing the pre-Public Hearing conference designation will be stricken. The exhibits must also indicate the party identifying same. Exhibits of such nature as to prohibit or make impracticable their production

at conference shall be identified and notice given regarding their intended use. Necessary arrangements must be made to afford opposing counsel an opportunity to examine such exhibits.

- (ii) Written stipulations shall be prepared with reference to all exhibits changed or identified. The stipulation shall contain all agreements of the parties with reference to the exchanged and identified exhibits, and shall include, but not be limited to, the agreement of the parties with reference to the authenticity of the exhibits, their admissibility in evidence, their use in opening statements, and provision made for the inspection of identified exhibits. The original of the exhibit stipulations shall be presented to the Administrative Law Judge at the pre-Public Hearing conference.
- (iii) The attorneys shall stipulate in writing with reference to all facts and issues not in genuine dispute. The original of the stipulations shall be presented to the Administrative Law Judge at the time of the pre-Public Hearing conference.
- (iv) Attorneys for each of the parties shall furnish opposing counsel with a written list of the names and addresses of all witnesses then known. The original of each witness list shall be presented to the Administrative Law Judge at the time of the pre-Public Hearing conference.
- (v) The possibility of a compromise settlement shall be fully discussed and explored.

(E) Preparation For Conference of Attorneys

Each attorney shall familiarize himself/herself with all aspects of the case in advance of the conference of attorneys and be prepared to enter into stipulations with reference to as many facts, issues, and exhibits as possible.

(F) Witnesses or Exhibits Discovered Subsequent to Conference of Attorneys and Before a Pre-Public Hearing Conference

If, after the conference of attorneys and before the pre-Public Hearing conference, counsel discovers additional information required to be disclosed at the conference of attorneys, this information shall immediately be furnished to opposing counsel. The original of any such disclosures shall be presented to the Administrative Law Judge at the pre-Public Hearing conference.

(G) Witnesses or Exhibits Discovered Subsequent to Pre-Public Hearing Conference

If, following the pre-Public Hearing conference or during hearing, counsel discovers additional exhibits or the names of additional witnesses, the same information required to be disclosed at the conference between attorneys shall immediately be presented to opposing counsel.

(H) Additional Pre-Public Hearing Conference

If necessary or advisable, the Administrative Law Judge may adjourn the pre-Public Hearing conference from time to time or may order an additional pre-Public Hearing conference.

(I) Pre-Hearing Statement

The Administrative Law Judge may make a written report which recites the action taken at the pre-Public Hearing conference, the amendments allowed to the pleadings, and agreements made by the parties as to any of the matters considered which limit the issues before the Commission to those not disposed of by admissions or agreement at the pre-Public Hearing conference. Such a statement when entered shall control the subsequent course of action, unless modified thereafter to prevent manifest injustice. The Administrative Law Judge may at the start of the Public Hearing, after witnesses have been sworn and preliminary motions been considered, read into the record his/her statement regarding the scope of the hearing as defined in the pre-Public Hearing conference. Objections to the pre-Public Hearing statement may be noted on the record for appeal purposes.

Section 12.2 – Rules of Practice Governing Hearings

(A) Who May Appear

At Public Hearings all parties to the proceedings may appear in person or by counsel and shall be allowed to present and cross-examine witnesses and to submit evidence, both oral and documentary. The case in support of the Complainant may be presented by the Complainant or by an attorney retained by the Complainant.

(B) Conduct of the Public Hearing

The hearing after a determination of probable cause shall be public, and it shall be conducted in an informal manner, without strict reliance upon technical rules of evidence as required in proceedings in judicial courts. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence and shall consider only the evidence introduced into the record.

(C) Real Evidence

The original charge, the answer, the finding of probable cause, all requests for discovery and all replies thereto, all required notices and proof of service for such notices, and all other pleadings of the parties shall automatically be made a part of the record. Other real evidence (e.g. letters, documents, etc.) to be considered by the Administrative Law Judge, must be offered and accepted into evidence at the hearing.

(D) Presence of Parties

No evidence shall be received at any Public Hearing except upon reasonable opportunity for all parties to be present. Each Complainant and Respondent shall, unless excused by the Administrative Law Judge, be present in person at each hearing and may be represented by counsel if they desire. A corporate Respondent may appear at hearing by any duly appointed representative

or by counsel. This provision shall not be construed to apply to reconsideration hearings initiated by the Complainant after a determination of no probable cause.

(E) Issues Heard at the Public Hearing

The issues heard at the Public Hearing will be those which are raised in the pleadings. Issues not raised in the pleadings will be heard at the Public Hearing only upon an explicit finding by the Administrative Law Judge that no undue prejudice will result to a party if such issues are heard. The Administrative Law Judge may order a continuance upon his/her own motion or upon the motion of a party in order to permit a party to meet any newly raised issues.

(F) Separation of Witnesses

Upon motion of a party, the Administrative Law Judge may order the separation of witnesses.

(G) Continuance

For good cause shown, the Administrative Law Judge may grant a continuance on the motion of any party, or upon his/her own motion. Any continuance in excess of thirty (30) days must be approved by the Chairperson of the Commission.

(H) Evidence Concerning Retaliatory Action

Evidence concerning retaliatory action taken against any person shall be heard at hearing notwithstanding the absence of such an allegation in the pleadings. Retaliatory action means any action taken which is adverse to a party because:

- (i) A person filed the complaint which is the basis of the action;
- (ii) A person gave testimony at a hearing; and/or
- (iii) A person assisted the Commission Staff in any way in connection with the Staff's investigation of the charge.

The Administrative Law Judge may give to the Respondent such time as he/she deems appropriate in order that the Respondent might meet an allegation of retaliatory action. The Administrative Law Judge may grant a continuance for this purpose. Nothing in this section shall be construed, however, as limiting the rights of an aggrieved individual to file a separate complaint with the Commission Staff concerning such alleged retaliatory action.

(I) Duties of the Administrative Law Judge

The Administrative Law Judge shall have the power to administer oaths and affirmations, issue subpoenas, rule on offers of proof and receive relevant oral or documentary evidence, take or cause depositions to be taken, regulate conferences for the settlement or simplification of the issues by consent of the party or parties, and dispose of procedural motions and similar matters.

(J) Improper Conduct

The Administrative Law Judge may exclude from the Public Hearing rooms or from further participation in the proceeding, any person who engages in improper conduct before him/her except a party, a party's attorney, or a witness engaged in testifying. Improper conduct shall consist of action which severely impedes or makes impossible an orderly administrative adjudication.

Section 12.3 – Reopening Public Hearings

(A) Motion by a Party

After the Public Hearing has been closed, but prior to the decision by the Commission in the case, any party may file a motion with an Administrative Law Judge asking that the Public Hearing be reopened. The motion will state the reasons why the Administrative Law Judge should grant or deny the motion in writing, with a copy thereof to the parties. If he/she orders that the Public Hearing be reconvened, proper notice shall be sent to all parties to the action. Such notice shall include the Administrative Law Judge's written ruling, together with the date and time of the reconvened Public Hearing.

(B) Motion by the Commission

The Commission may, by majority vote, order the Public Hearing to be reconvened prior to its final determination in the case. When such an order is given, proper notice shall be sent to all parties involved in the case, in accordance with these rules. In its discretion, the Commission may specify an issue or issues which they wish the parties to address themselves.

Section 12.4 – Briefs and Post-Public Hearing Procedure

(A) Who May File Briefs

Briefs may be filed by a party, or any interested person, either before or during the course of a Public Hearing, or within such time thereafter as the Administrative Law Judge shall designate. Failure to file a brief shall in no way prejudice the rights of any party.

(B) At the Close of Public Hearing

At the close of the Public Hearing the Administrative Law Judge may order the parties to submit a suggested findings of fact, conclusions of law, and a recommended order.

RULE XIII ORDERS

Section 13.1 – Recommended Order

(A) Formulation by Administrative Law Judge

The Administrative Law Judge shall review the evidence which was presented at the Public Hearing, together with supporting briefs, if any. If, upon review, the Administrative Law Judge finds the evidence supports a finding for the Complainant, then he/she shall, after consultation with and review by the Commission Attorney, file with the Commission a recommended order in favor of the Complainant. If, upon review, the Administrative Law Judge finds the evidence supports a finding for the Respondent, then he/she shall, after consultation with and review by the Commission Attorney, file with the Commission a recommended order in favor of the Respondent. The Administrative Law Judge's recommended order shall be in writing, signed by him/her, and shall state the Administrative Law Judge's findings of fact and conclusions of law.

(B) The Administrative Law Judge's recommended order shall be filed with the Commission including the proposed findings of fact and conclusions of law, within a reasonable time after the Public Hearing on the charge. The recommended order shall be filed together with a complete record of the proceedings (other than a transcript of the oral testimony). Proper notice of such filing shall be given to all persons who were parties to the Public Hearing.

Section 13.2 – Final Order

(A) Action by Commission

The Commission shall consider the evidence introduced at the Public Hearing in light of the Administrative Law Judge's Recommended Order, and shall determine whether the evidence supports the order recommended by the Administrative Law Judge. The Commission shall give substantial weight to the findings of the Administrative Law Judge based on credibility and demeanor of witnesses. If the evidence introduced at the Public Hearing when considered in the light most favorable to the Administrative Law Judge's decision supports the conclusions made or inferences drawn by the Administrative Law Judge, then the order recommended by the Administrative Law Judge should be affirmed as long as such recommendation is not contrary to law.

(B) Majority of the Commissioners

A final order can only be issued upon the concurrence of a majority of the Commissioners, as evidence by their signatures thereon.

(C) Contents

The final order shall contain the Commission's findings of fact encompassing the relevant facts shown by the evidence, and conclusions of law, as well as a full description of the relief granted, if any. The Commission's findings shall be specific and shall clearly indicate in what way Respondent's actions were, or were not, in violation of the Ordinance. Each Commissioner who participated in the issuance of the final order may write a concurring or dissenting opinion, and attach it thereto.

(D) Possible Remedies

Upon finding of unlawful discriminatory practices within the meaning of the Ordinance, the Commission may impose any or all of the following remedies:

- (i) Require the party to cease and desist from the unlawful discriminatory practice;
- (ii) Require the party to take affirmative action, including the posting of signs or advertisements, and the restoration of the Complainant's monetary losses which resulted from the discriminatory practices, as provided by the Elkhart Human Relations Commission Ordinance
- (iii) Require proof of compliance with the final order to be filed with the Commission at periodic intervals.

Section 13.3 – Enforcement of the Final Order

(A) Showing for Enforcement

If the Commission determines that the person upon whom a final order has been served is not complying, it may seek decree for the enforcement of such order in an appropriate circuit or superior court upon a showing that such person is subject to the Commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought, and such court shall have jurisdiction to enforce such order or orders by a prohibitory or mandatory injunction, or by a petition for enforcement.

RULE XIV INJUNCTIONS

Section 14.1 – Emergency Situations

(A) Director Determination

Where a complainant has been filed with the Commission, the Director may determine that irreparable harm will be suffered by the Complainant if the alleged discriminatory practices are allowed to continue. This determination may be made only after the Director has consulted the staff attorney.

(B) Petition to Chairperson for Order to File in Court

When the Director has determined that irreparable harm will be suffered by the Complainant if the alleged discriminatory practices are allowed to continue, the Director by the staff attorney shall petition the Chairperson for a preliminary order authorizing the Director to file a request in circuit or superior court for a temporary restraining order, preliminary injunction, or permanent injunction. The Chairperson shall issue such a preliminary order if he/she finds:

- (i) That the Commission has jurisdiction over the parties and over the subject matter;
- (ii) That the Complainant is suffering, and will continue to suffer, irreparable harm if a temporary emergency order of the Court is not obtained; and
- (iii) That the Complainant is likely to succeed on the merits of his/her complaint filed with the Commission.

The Chairperson's preliminary order under this section shall issue only after such preliminary order has been approved by the Department of Law. The preliminary order shall be in writing and it shall become a part of the permanent record of the Commission's proceedings relating to the charge.

- (C) The Department of Law shall file suit on behalf of the Commission in superior or circuit court, for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction following satisfaction of the procedural steps set out in these rules and the issuance of a preliminary order to so proceed by the Chairperson.

RULE XV JUDICIAL REVIEW

Section 15.1 – Filing for Review

(A) Who May Seek Review

Either the Complainant or the Respondent may seek judicial review of a final order of the Commission, if aggrieved by such order.

(B) Rules Governing Review

All proceedings for judicial review of final orders shall be governed by the Administrative Orders and Procedures Act, Sec. 4-21.5-1 et seq., of the Indiana Code.

(C) Record of Hearing

For purposes of judicial review, the record of the Public Hearing shall consist of a transcript of the oral testimony (when available), the exhibits admitted into evidence, all notices, pleadings, exceptions, motions, requests, and other papers filed with the Commission with the exception of briefs or arguments of law. The cost of producing such record for judicial review shall be borne by the party making the appeal. The Commission may require the deposit of reasonable security for the payment of such cost before producing such record.

RULE XVI REVOCATION OR SUSPENSION OF LICENSES

Section 16.1 – Notice of Licensee and Licensing Agency

(A) Procedure

Any licensee of the City of Elkhart who is found to have committed a discriminatory practice shall be put on notice by order of the Commission that failure to comply with its final order will subject said licensee to the possible suspension or revocation of such license. The licensing agency within the City of Elkhart shall be given notice of the Commission's determination, and upon failure of the licensee to comply with the Commission's final order, the Commission shall request the licensing agency to conduct a hearing on the matter of whether or not such licensee shall continue to be licensed.

RULE XVII CONSTRUCTION OF THESE REGULATIONS

Section 17.1 – How Construed and Partial Invalidity

(A) Broad Construction

These regulations and rules shall be liberally construed to accomplish the purpose of the Fair Housing Ordinance and the policies of the Commission.

(B) Partial Invalidity

If any provision of these rules or the application of a provision to any person or circumstances shall be held invalid, the remainder of these rules or the application of a rule to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(C) Time Limitations

All time limitations within these rules shall be construed so as to do substantial justice to the parties involved.

RULES XVIII DEFAULT

Section 18.1 – Entry

When a party has failed to plead or otherwise defend as provided by these rules or when a party has failed to appear for a Public Hearing after a proper notice, and that fact is made to appear by affidavit or otherwise, the party has defaulted.

Section 18.2 – Order

(A) Failure to Answer a Complaint

The Complainant may apply to the Chairperson for an Order by Default in cases where the Respondent has failed to answer the complaint within the time allowed by these rules.

(B) Failure to Appear at Public Hearing

Either party may apply to the Administrative Law Judge for an Order by Default in cases when, after proper notice, the other party has failed to appear at a Public Hearing.

(C) Order Approved by Commission

To be effective, all Orders of Default shall be approved by a majority of the Commissioners.

(D) Hearing of Evidence After Default Order

The Chairperson or the Administrative Law Judge may order that a Public Hearing take place after an Order by Default has been granted for the purposes of determining the truth of the allegations, the amount of damages, recoverable, or for the purposes of investigating any other matter related to the Order by Default.

(E) Notice

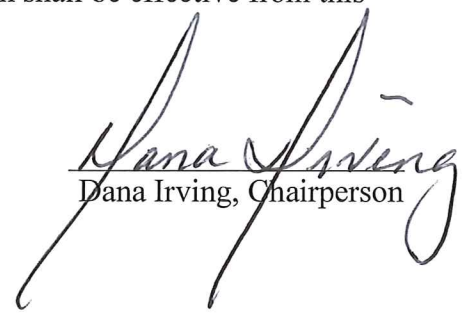
The Commission shall give notice in writing by email or certified mail with return receipt requested, addressed to the non-answering Respondent or non-appearing party at his/her last known place of residence, or place of business, which shall contain a statement that such party's failure to answer a complaint or appear at a Public Hearing has caused an Order by Default to be entered against such non-answering Respondent or non-appearing party.

Section 18.3 – Setting Aside Default

Upon motion made within thirty (30) days after receipt of the notice of the entering of an Order by Default and upon good cause shown, the Chairperson or the Administrative Law Judge may set aside such order.


The Elkhart Human Relations Commission, after a public meeting, hereby amends its previously adopted Fair Housing Rules and Regulations and which shall be effective from this date forward.

Adopted date: February 23, 2023


Dana Irving, Chairperson

Board of Commissioners:

Mary Jo Weyrick




Patty Gorostieta



Crystal Welsh

Reviewed and approved by the Legal Department of the City of Elkhart, Indiana.



Rose M. Rivera, City Attorney