

ORDINANCE NO. 4210

AN ORDINANCE AMENDING ORDINANCE NO. 4106,
THE FAIR HOUSING ORDINANCE OF
THE CITY OF ELKHART, INDIANA

WHEREAS, on April 19, 1993, the City of Elkhart, by its Common Council, passed Ordinance No. 4106, The Fair Housing Ordinance of the City of Elkhart, Indiana in order to meet certain interests of the City of Elkhart that relate to Fair Housing.

WHEREAS, the U.S. Department of Housing and Urban Development, Office of Fair Housing Initiative and Voluntary Programs has reviewed the City of Elkhart's Fair Housing Ordinance No. 4106 and has suggested amendments to the ordinance in order to have the City of Elkhart's ordinance be substantially equivalent with the federal law; and

WHEREAS, the State of Indiana has adopted and amended its Fair Housing statutes to be substantially equivalent with the federal law;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF ELKHART, INDIANA, THAT:

1. Ordinance No. 4106 be amended as follows:

ARTICLE I

Section 1. This ordinance supersedes and repeals Ordinance No. 2308, in its entirety.

ARTICLE II

PURPOSES AND RULES OF CONSTRUCTION

Section 1. The Purposes of this Ordinance are as follows:

- (a) To provide for fair housing practices within the City of Elkhart, Indiana;

(b) To create a procedure for investigating and conciliating complaints of discriminatory housing practices.

(c) To provide rights and remedies substantially equivalent to those granted under state and federal law.

Section 2. Commission of Discriminatory Act Because of Familial Status.

Under this Ordinance, a discriminatory act is committed because of familial status if the act is committed because a person who is the subject of discrimination is:

(a) Pregnant;

(b) Domiciled with an individual younger than eighteen (18) years of age in regard to whom the person:

(i) Is the parent or legal custodian; or

(ii) Has the written permission of the parent or legal custodian for domicile with that person; or

(c) In the process of obtaining legal custody of an individual younger than 18 years of age.

Section 3. Definitions.

Applicability. The definitions in this section apply throughout this Ordinance.

a. "Aggrieved person" defined. - "Aggrieved person" includes any person who:

(i) Claims to have been injured by a discriminatory housing practice;

or

(ii) Believes that the person will be injured by a discriminatory housing practice that is about to occur.

b. "Commission". Commission refers to the Elkhart Human Relations Commission.

c. "Complainant". Complainant means a person, including the commission, who files a complaint pursuant to Article VI, Section 1.

- d. "Conciliation". means the attempted resolution of issues raised by a complaint or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.
- e. "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.
- f. "Discriminatory housing practice" means an act prohibited at Article V.
- g. "Dwelling" means:
- (i) any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residency by one (1) or more families; or
 - (ii) any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described at subsection (g)(i).
- h. "Family" "Family" includes a single individual.
- i. "Disability"
- (a) "Disability" means, with respect to a person:
 - (i) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities;
 - (ii) A record of having such an impairment, or
 - (iii) Being regarded as having an impairment.
 - (b) The term disability does not include current illegal use of or addiction to a controlled substance as defined in Section 802 of Title 21 of the United States Code [I.C. 22-9.5-2-10(b)]; nor
 - (c) The term does not include an individual solely because that individual is a transvestite.
- j. "Aggrieved Person" - means one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives,

mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

k. "Respondent" means:

- (i) The person accused of a violation of this Ordinance in a complaint of discriminatory housing practice; or
- (ii) Any person identified as an additional or a substitute respondent pursuant to Article VI, Section 4 or an agent of an additional or a substitute respondent.

l. "To Rent" includes to lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

ARTICLE III

EXEMPTIONS

Section 1. Sale or rental of Single Family Houses.

a. Article V, Section 1 does not apply to the following:

(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three (3) such single-family houses at any one time; provided that in the sale of such single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of such house prior to the sale, the exemption shall apply only to one such sale within any twenty-four (24) month period. The private individual owner may not own any interest in, nor have owned or reserved on his behalf, title to or any right to all or a portion of the proceeds from the sale or rental of more than three (3) such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from application of this section only if such house is sold or rented:

(i) without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesman, or any person in the business

of selling or renting dwellings, or of any employee or agent of any such broker, agent or salesman, or person and

(ii) without the publication, posting or mailing, after notice of advertisement or written notice in violation of Article V, Section 2 of this ordinance, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies and other such professional assistance as necessary to perfect or transfer this title, or

(iii) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(iv) For the purposes of subsection (a), a person shall be deemed to be in the business of selling or renting dwellings if:

(a) the person, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(b) the person, within the preceding twelve (12) months, participated as agent, other than in the sale of his/her own personal residence, in providing sales or rental facilities or services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(c) the person is the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five (5) or more families.

Section 2. Religious Organizations. This Ordinance does not prohibit a religious organization, an association, or a society or a nonprofit institution or an organization operated, supervised, or controlled by or in conjunction with a religious organization, an association, or a society from:

(a) limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or

(b) giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

Section 3. Private Clubs. This Ordinance does not prohibit a private club not open to the public that, as an incident to the club's primary purpose, provides lodging that the club owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to the members or from giving preference to the members, unless membership in the club is restricted because of race, color, or national origin.

Section 4. Housing for older persons.

(a) as used in this Ordinance, "housing for older persons" means housing that the commission shall determine in accordance with HUD determinations, that is:

- (i) Specifically designed and operated to assist elderly persons under federal or state program;
- (ii) Intended for, and solely occupied by persons sixty-two (62) years of age or older; or
- (iii) Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit.

(b) Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirement of subsection (a)(ii) or (a)(iii) does not fail to meet the requirements for housing older persons if:

- (i) The unoccupied units are reserved for persons who meet the age requirements of subsection (a)(ii) or (a)(iii); or
- (ii) The occupants who do not meet the age requirements of subsection (a)(ii) or (a)(iii) have resided in the housing since September 13, 1988 or an earlier date, and the persons who became occupants after September 13, 1988, meet the age requirements of subsection (a)(ii) or (a)(iii).

(c) The Commission shall adopt rules to establish criteria for making determinations under subsection (a). These rules must include at least the following provisions:

(i) Except as provided in subsection (ii), the housing must provide significant facilities and services specifically designed to meet the physical or social needs of older persons.

(ii) If the provision of the facilities and services described in subsection (c) (i) is not practicable, the housing must be necessary to provide important housing opportunities for older persons.

(iii) At least eighty percent (80%) of the units must be occupied by at least one (1) person who is at least fifty-five (55) years of age.

(iv) The owner or manager of the housing must publish and adhere to provide housing for persons who are at least fifty-five (55) years of age.

(d) The provisions of Article II, Section 2 relating to familial status do not apply to housing for older persons.

Section 5. Appraisals of Property.

This Ordinance does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, familial status, or national origin.

Section 6. Health or safety restrictions - other laws not affected.

(a) This Article does not affect a reasonable local, or state restriction on the maximum number of occupants permitted to occupy a dwelling or restrictions relating to health or safety standards.

(b) This Article does not affect a requirement of nondiscrimination in any other local, state or federal law.

(c) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of

other individuals or whose tenancy would result in substantial physical damage to the property of others.

ARTICLE IV

ADMINISTRATIVE PROVISIONS

Section 1. Commission to Administer Ordinance. The commission shall administer this Ordinance.

Section 2. Adoption of Rules. The commission may adopt, promulgate, amend and rescind such rules and regulations, procedural and substantive, as are consistent with the provisions of this ordinance or its intent and purpose as the commission may deem necessary. Such rules and regulations shall be adopted, amended, or rescinded by the commission only after a public hearing thereon, notice of the public hearing shall be given by two (2) publications in a newspaper of general circulation printed in the City of Elkhart, Indiana, such publications to be one (1) week apart. The first publication to be not more than thirty (30) days nor less than fifteen (15) days before date of such hearing.

Section 3. Action on complaints alleging violation of Ordinance.

As provided by Article VI, Section 1, the commission shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this Ordinance.

Section 4. Delegation of powers and duties to executive director.

The commission may, by rule, authorize the executive director of the commission to exercise the commission's powers and perform the commission's duties under this Ordinance.

Section 5. Cooperation with other entities. The commission shall cooperate with and, as appropriate, may provide technical and other assistance to federal, state, local, and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices.

Section 6. Subpoenas and discovery provisions.

(a) The commission may issue subpoenas and order discovery as provided by this section in aid of investigations and hearings under this Ordinance.

(b) Subpoenas and discovery in aid of investigations may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in a circuit or superior court. Subpoenas and discovery in aid of hearings are subject to Ind. Code 4-21.5.

Section 7. Acceptance of gifts and grants. The commission may accept gifts and grants from any public or private source for the purpose of administering this Ordinance.

Section 8. Fair Housing Fund. The Fair Housing Fund (referred to as the "fund") is established. The fund shall be administered by the Commission. Money deposited in the fund does not revert to the general fund at the end of the fiscal year. Gifts and grants received as authorized by Section 7 shall be deposited to the credit of the fund.

ARTICLE V

DISCRIMINATIONS PROHIBITED

Section 1. Discrimination in connection with sale or rental of dwellings prohibited.

(a) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, disability, or national origin.

(b) A person may not discriminate against any person in the terms, conditions, or 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 race, color, religion, sex, familial status, disability, or national origin.

Section 2. Notices, statements, or advertising. A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination.

Section 3. Representations regarding availability of dwelling for inspection. A person may not represent to any person because of race, color, religion, sex, disability, familial status, or national origin that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

Section 4. Representations regarding entry of certain persons into neighborhood. A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, handicap, familial status, or national origin.

Section 5. Disabled persons.

(a) A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:

- (i) The buyer or renter;
- (ii) A person residing in or intending to reside in the dwelling after the dwelling is sold, rented, or made available; or
- (iii) Any person associated with the buyer or renter.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

- (i) The person;
- (ii) A person residing in or intending to reside in the dwelling after the dwelling is sold, rented or made available; or
- (iii) Any person associated with the person.

(c) For the purpose of Article V, Section 5 only, discrimination includes the following:

- (i) A refusal to permit, at the expense of the disabled person, reasonable modification of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises except that, in the case of a rental, the landlord may, where it is reasonable to do

so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(ii) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.

(iii) In connection with the design and construction of covered multifamily dwellings that are described at 42 U.S.C.A. § 3604 (F)(3)(C), a failure to design and construct those dwellings in a manner that:

(1) The public use and common use parts of the dwellings are readily accessible to and usable by handicapped persons;

(2) All the doors are designed to allow passage into and within all premises within the dwellings and are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within the dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(c) Reinforcements in bathroom walls to allow later installations of grab bars; and

(d) Usable kitchen and bathrooms so that an individual in a wheelchair can maneuver about the space.

(d) As used in subsection (c) (iii), "covered multifamily dwellings" means:

- (i) Buildings consisting of four (4) or more units if the buildings have one (1) or more elevators; and
- (ii) Ground floor units in other buildings consisting of four (4) or more units.

(e) Compliance with the rules of the fire prevention and building safety commission that incorporate by reference the appropriate requirements of the American National Standard for buildings and facilities provided accessibility and usability for physically handicapped people (ANSI A117.1) satisfies the requirements of Article V, Section 5 (c)(iii).

(f) This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Section 6. Loans of financial assistance.

(a) As used in this Article, "residential real estate related transaction" means the following:

(i) Making or purchasing loans or providing other financial assistance:

(1) To purchase, construct, improve, repair, or maintain a dwelling; or

(2) To secure residential real estate.

(ii) Selling, brokering, or appraising residential real property.

(b) A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status, or national origin.

Section 7. Brokers' organizations, services, or facilities.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, disability, familial status, or national origin.

Section 8. Coercion, intimidation, threats, or interference.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any other person:

- (a) In the exercise or enjoyment of any right granted or protected by this Article; or
- (b) Because the person has exercised or enjoyed, or has encouraged another person in the exercise or enjoyment of, any right granted or protected by this Article.

ARTICLE VI

ADMINISTRATIVE ENFORCEMENT

Section 1. Duty of commission to investigate discriminatory housing practices. Filing of complaint - Amendment - Notice.

- (a) The commission shall investigate alleged discriminatory housing practices.
- (b) A complaint concerning an alleged discriminatory housing practice must be:
 - (1) In writing;
 - (2) Under oath; and
 - (3) In the form prescribed by the commission.
- (c) An aggrieved person may, not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the commission alleging the discriminatory housing practice.

(d) Not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, the commission may file the commission's own complaint.

(e) A complaint under this Ordinance may be amended at any time.

(f) When a complaint is filed under this Ordinance, the commission shall do the following:

(i) Give the aggrieved person notice that the complaint has been received.

(ii) Advise the aggrieved person of the time limit and choice of forums under this Ordinance.

(iii) Not later than twenty (20) days after filing of the complaint or the identification of an additional respondent under Article 6, Section 4, serve on each respondent:

(1) A notice identifying the alleged discriminatory practice and advising the respondent of the procedural rights and obligations of a respondent under this Ordinance; and

(2) A copy of the original complaint.

Section 2. Answer to complaint.

(a) Not later than ten (10) days after receipt of notice and a copy of the complaint pursuant to Article VI, Section (1)(f)(iii), a respondent shall file an answer to the complaint.

(b) An answer must be:

(i) In writing; and

(ii) In the form prescribed by the commission.

(c) An answer may be amended at any time.

(d) An answer does not inhibit the investigation of a complaint.

Section 3. Investigation of complaints referred by federal government -

Completion of investigation.

(a) If the federal government has referred a complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission shall promptly investigate the allegations set forth in the complaint.

(b) The commission shall investigate all complaints, filed under this Ordinance and except as provided by subsection (c) shall complete an investigation not later than one hundred (100) days after the date the complaint is filed, or if the commission is unable to complete the investigation within the one hundred (100) day period, shall dispose of all administrative proceedings related to the investigation not later than one (1) year after the date the complaint is filed.

(c) If the commission is unable to complete an investigation within the time period prescribed by Article VI, Section (3)(b), the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

Section 4. Joinder of additional or substitute respondents.

(a) The commission may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation the commission determines that the person should be accused of a discriminatory housing practice.

(b) In addition to the information required in the notice pursuant to Article VI, Section 1(f)(iii), the commission shall include in a notice to a respondent joined pursuant to this Ordinance an explanation of the basis for determination that the person is properly joined as a respondent.

Section 5. Conciliation Agreements.

(a) The commission shall, during the period beginning with the filing of a complaint, to the extent feasible, engage in conciliation with respect to the complaint.

(b) A conciliation agreement is an agreement between a respondent and the complainant and is subject to commission approval.

(c) 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 relief, including monetary relief.

(d) 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 this Ordinance.

(e) Nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under this Ordinance without the written consent of the persons concerned.

(f) After completion of the commission's investigation, the commission shall make available to the aggrieved person and the respondent, information derived from the investigation and the final investigation report relating to that investigation.

Section 6. Action for temporary or preliminary relief.

(a) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this Ordinance, the commission may file a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint in the Elkhart Circuit Court or any Elkhart Superior Court.

(b) A temporary restraining order or other order granting temporary or preliminary relief under this Ordinance is governed by the Indiana Rules of Trial Procedure.

(c) The filing of a civil action under this ordinance does not affect the initiation or continuation of administrative proceedings pursuant to Article VI, Section 14.

Section 7. Final Investigative Report.

(a) The commission shall prepare a final investigative report showing the following:

(1) The names and dates of contacts with witnesses.

- (2) A summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts.
- (3) A summary description of other pertinent records.
- (4) A summary of witnesses statements.
- (5) Answers to interrogatories.

(b) A final report under this Ordinance may be amended if additional evidence is discovered.

Section 8. Determination of Reasonable Cause.

(a) The commission shall determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

(b) The commission shall make the determination under subsection (a) not later than one hundred (100) days after the date a complaint is filed unless:

- (i) It is impracticable to make the determination; or
- (ii) The commission has approved a conciliation agreement relating to the complaint.

(c) If it is impractical to make the determination within the time period provided by Article VI, Section 8(b) the commission shall notify the complainant and respondent in writing of the reasons for the delay.

(d) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall immediately issue a finding of reasonable cause on behalf of the aggrieved person.

(e) Not later than twenty (20) days after the commission issues a finding of reasonable cause, the commission shall send a copy of the finding of reasonable cause with information concerning the election pursuant to Article VI, Section 12 to the following:

- (i) Each respondent, together with a notice of the opportunity for a hearing provided by Article VI, Section 14;
- (ii) Each aggrieved person on whose behalf the complaint was filed.

Section 9. Finding of Reasonable Cause - Contents

(a) A finding of reasonable cause issued pursuant to Article VI,
Section 8:

- (i) Must consist of a concise statement on which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
- (ii) Must be based on the final investigative report; and;
- (iii) Need not be limited to the facts or grounds alleged in the complaint.

Section 10. Dismissal of Complaint.

(a) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint.

(b) The commission shall make available for public disclosure each dismissal pursuant to this Ordinance.

Section 11. Finding of Reasonable Cause Precluded after Commencement of Civil Actions.

The commission may not issue a finding of reasonable cause pursuant to this Ordinance regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

Section 12. Election to have Claims Decided in Civil Action.

(a) A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in a finding of reasonable cause decided in civil action as provided by Article VI, Section 13.

(b) The election must be made not later than twenty (20) days after the date of receipt by the electing person of service pursuant to Article VI, Section 8(e) or, in the case of the commission, not later than twenty (20) days after the date the finding of reasonable cause was issued.

(c) The person making the election shall give notice to the commission and to all other complainants and respondents to whom the finding of reasonable cause relates.

Section 13. Filing of Civil Action - Intervention by Aggrieved Persons - Granting of Relief.

(a) If a timely election is made pursuant to Article VI, Section 12, the commission shall, not later than thirty (30) days after the election is made, file a civil action on behalf of the aggrieved person seeking relief pursuant to this Ordinance in the Elkhart Circuit Court or any Elkhart Superior Court.

(b) An aggrieved person may intervene in the action.

(c) If the court finds that a discriminatory practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action pursuant to Article VII, Section 2.

(d) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved person has not complied with discovery orders entered by the court.

Section 14. Hearing.

(a) If a timely election is not made pursuant to this Ordinance the commission shall provide for a hearing on the finding of reasonable cause.

(b) Except as provided by subsection (c), Ind. Code 4-21.5 governs a hearing and appeal of a hearing pursuant to this Ordinance.

(c) A hearing pursuant to this Ordinance may not continue regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under federal or state law seeking relief with respect to that discriminatory housing practice.

Section 15. Order for Appropriate Relief - Penalties.

(a) If the commission determines at a hearing pursuant to Article VI, Section 14, a respondent has engaged or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney's fees, court costs, and other injunctive or equitable relief.

(b) To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following:

(i) Ten Thousand (\$10,000.00) Dollars if the respondent has not been adjudged by order of the commission or a court to have committed a prior discriminatory housing practice.

(ii) Except as provided by Article VI, Section 15(c), Twenty-five Thousand (\$25,000.00) Dollars if the respondent has been adjudged by order of the commission or court to have committed one (1) discriminatory housing practice during the five (5) year period ending on the date of the filing of the finding of reasonable cause.

(iii) Except as provided by Article VI, Section 15(c), Fifty Thousand (\$50,000.00) Dollars if the respondent has been adjudged by order of the commission or a court to have committed two (2) or more discriminatory housing practices during the seven (7) year period ending on the date of the filing of the finding of reasonable cause.

(c) If the acts constituting the discriminatory housing practice that is the object of the finding of reasonable cause are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties stated at Article VI, Section 15(b)(ii) and (b)(iii) may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(d) The commission may sue to recover a civil penalty due pursuant to this Ordinance.

Section 16. Certain Contracts, Sales, Encumbrances, or Leases Unaffected by Order.

An order by the Commission pursuant to Article VI, Section 15, does not affect a contract, a sale, an encumbrance, or a lease that:

- (a) Was consummated before the commission issued the order; and
- (b) Involved a bona fide purchaser, an encumbrancer, or a tenant who did not have actual notice of the finding of reasonable cause filed pursuant to this Ordinance.

Section 17. Respondents subject to licensing or regulation by governmental agencies. Forwarding of findings, orders, and recommendations to agencies.

If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty (30) days after the date of the issuance of the order:

- (a) Send copies of the findings and the order to the governmental agency; and
- (b) Recommend to the governmental agency appropriate disciplinary action.

Section 18. Issuance of subsequent orders to same Respondent. Forwarding of copies to Indiana attorney general.

If the commission issues an order against a respondent against whom another order was issued within the preceding five (5) years pursuant to Article VI, Section 17, the commission shall send a copy of each order issued pursuant to that section to the attorney general.

ARTICLE VII

ENFORCEMENT BY PRIVATE PERSONS.

Section 1. Filing of Action by Aggrieved Person.

(a) An aggrieved person may file a civil action in the Elkhart Circuit Court or any Elkhart Superior Court not later than one (1) year after the occurrence of the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into pursuant to this Ordinance whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or breach.

(b) The one (1) year period does not include any time during which an administrative hearing pursuant to this Ordinance, is pending with respect to a complaint or finding of reasonable cause pursuant to this Ordinance based on the discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement.

(c) An aggrieved person may file an action pursuant to Article VII whether or not a complaint has been filed pursuant to Article VI, Section 1, and without regard to the status of any complaint filed pursuant to Article VI, Section 1.

(d) If the commission has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action pursuant to this Ordinance with respect to the alleged discriminatory housing practice that forms the basis for the complaint except to enforce the terms of the agreement.

(e) An aggrieved person may not file an action pursuant to Article VII with respect to an alleged discriminatory housing practice that forms the basis of a finding of reasonable cause issued by the commission if the commission has begun a hearing on the record pursuant to this Ordinance with respect to the finding of reasonable cause.

Section 2. Award of Relief.

If the court finds that a discriminatory housing practice has occurred or is about to occur in an action under this Article the court may award to the prevailing party:

- (a) Actual and punitive damages.
- (b) Reasonable attorney's fees.
- (c) Court costs.
- (d) Subject to Article VII, Section 3, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

Section 3. Certain contracts, sales encumbrances, or leases unaffected by relief granted.

Relief granted pursuant to this Ordinance does not affect a contract, a sale, an encumbrance, or a lease that:

- (a) Was consummated before the granting of the relief; and
- (b) Involved a bona fide purchaser, an encumbrancer, or a tenant who did not have actual notice of the filing of a complaint or a civil action under this Ordinance.

Section 4. Intervention by the commission.

- (a) The commission may intervene in an action filed under Article VII if the commission determines that the case is of general public importance.
- (b) The commission may obtain the same relief available pursuant to Article VIII, Section 2.

ARTICLE VIII

ENFORCEMENT BY THE COMMISSION

Section 1. Filing of Civil Action.

The commission may file a civil action for appropriate relief if the commission has reasonable cause to believe that:

- (a) A person has engaged in a pattern or practice of resistance to the full enjoyment of any right granted by this Ordinance; or
- (b) A person has been denied any right granted by this Ordinance and that denial raises an issue of general public importance.

An action pursuant to this Article may be filed in the Elkhart Circuit Court or any Elkhart Superior Court.

Section 2. Award of Relief.

If an action is filed pursuant to this Article, the Court may do the following:

(a) Award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this Ordinance as necessary to ensure the full enjoyment of the rights granted by this Ordinance;

(b) Award other appropriate relief, including monetary damages, reasonable attorney's fees, and court costs;

(c) To vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed the following:

(i) Fifty Thousand (\$50,000.00) Dollars for a first violation.

(ii) One Hundred Thousand (\$100,000.00) Dollars for a second or subsequent violation.

Section 3. Intervention in Civil Action.

A person may intervene in an action under this Article if the person is:

(a) An aggrieved person to the discriminatory housing practice; or

(b) A party to a conciliation agreement concerning the discriminatory housing practice.

(c) The Court may grant an intervening party the same relief that may be granted to a plaintiff in a civil action under Article VII.

ARTICLE IX

PREVAILING PARTY

Section 1. Attorney's fees and court costs.

(a) A court in a civil action brought pursuant to this Ordinance or the commission in an administrative hearing pursuant to Article VI, Section 15, may award

reasonable attorney's fees to the prevailing party and assess court costs against the non-prevailing party.

(b) Nothing in this section subjects a complainant to attorney's fees, court costs, or criminal penalties in connection with filing of a complaint.


ARTICLE X

SEVERABILITY

If any provision or term of this Ordinance is held invalid, the invalidity shall not affect other applications of the provisions or terms of this Ordinance which reasonably can be given effect without the invalid provision or term for the application thereof.

This Ordinance shall be in full force and effect from and after its passage, any and all necessary approval by the Mayor, and its legal publication thereof.

ORDAINED THIS 7th day of August, 1995.


Arvis L. Dawson, President of the Elkhart City
Common Council

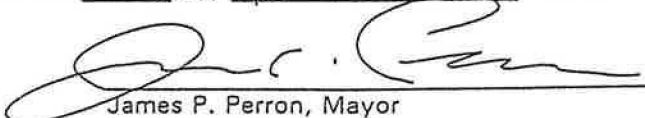
ATTEST:


Sue M. Beadle, City Clerk

PRESENTED to the Mayor by me this 8th day of August, 1995.


Sue M. Beadle, City Clerk

APPROVED by me this 5th day of August, 1995.


James P. Perron, Mayor

ATTEST:


Sue M. Beadle, City Clerk

