

ORDINANCE NO. 26-10

AN ORDINANCE AMENDING THE PROCEDURES OF THE CITY OF WEST
LAFAYETTE HUMAN RELATIONS COMMISSION

WHEREAS, the West Lafayette Human Relations Commission desires to modify its process for the handling of complaints to include mediation, for the scheduling of its meetings, and has therefore recommended amendments to the ordinances governing how it processes complaints and its meeting times and locations; and

WHEREAS, the West Lafayette Human Relations Commission has unanimously recommended the amendments set out herein by resolution dated February 16, 2010.

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE that:

Certain Sections of CHAPTER 24 of the West Lafayette City Code be AMENDED as follows:

Sec. 24.02. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"*Age*" means and includes any person who is at least forty years of age.

"*Attorney*" means a person duly authorized and licensed by the State of Indiana or any other state to engage in the practice of law.

"*Commission*" means the City of West Lafayette Human Relations Commission.

"*Complainant*" means a person for or on whose behalf a complaint alleging unlawful discrimination has been filed or issued.

"*Disability*" means a mental or physical condition which constitutes a handicap.

"*Discriminate*" or "*discrimination*" means and includes any act, attempted act, policy or practice which results in the unequal treatment, separation or segregation of or which otherwise adversely affects any person who is a member of a class protected by this title, and for purposes of discrimination based upon sex it includes sexual harassment.

"*Educational institution*" means a public or private institution located or operating in the city which performs educational services and includes an academy, college, university, elementary or secondary school, extension course, kindergarten, nursery school system, and a business, nursing, professional, secretarial, technical or vocational school; and further includes any

agent or employee of an educational institution.

"*Employ*" means to use or be entitled to use and benefit of the services of a person as an employee.

"*Employee*" means and includes all persons who seek to, apply to, or perform services for any employer for compensation, whether in the form of wages, salaries, commission or otherwise.

"*Employer*" means and includes any person within the city who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the city.

"*Employment*" means the state of being employed as an employee by an employer.

"*Employment agency*" means any person located or operating in the city regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer.

"*Hearing committee*" means a committee of three commissioners who have been designated by the chair of the commission to hear a complaint after a determination of probable cause.

"*Hire*" means to engage or contract for, or attempt to engage or contract for, the services of any person as an employee.

"*Labor organization*" means and includes any person, employee representation committee or plan in which employees participate, or any agent or employee thereof, which operates in the city or whose members live or are employed in the city, and which exists wholly or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment and shall include any conference, general committee, joint or system board or joint council.

"***Mediation***" means a confidential process by which a neutral person, acting as Mediator, assists parties to a dispute in reaching a mutually acceptable settlement of a complaint; a Mediation may also involve clarification of disputed issues, exploration of areas of compromise, and finding points of agreement for purposes of expediting further proceedings.

"***Mediator***" means a neutral person that is listed on the registry of mediators maintained by the Indiana Supreme Court Commission for Continuing Legal Education or successor agency, or any other neutral and qualified person selected by the Commission to mediate a Mediation.

"*National origin*" means the place of birth of an individual or of any of the person's lineal ancestors.

"*Person*" means and includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, public bodies or public corporations, including but not limited to the city or any department or unit thereof,

any other legal or commercial entity, and any agent or employee of all the foregoing.

"*Public accommodations*" means and includes all services or facilities, other than governmental, of any kind offered or located within the city which are generally open or offered to the public or which generally solicit public patronage or usage, whether operated for profit or not.

"*Public services*" means and includes all activities, services or facilities offered to the public within the city by any governmental agency or unit of government owned, operated or managed by any local, state or federal government.

"*Real estate broker*" means a real estate broker and real estate salesperson as defined by Indiana Code § 25-34.1-1-2(2).

"*Real property*" means any right, title, interest in or to the possession, ownership, enjoyment of occupancy of any parcel or land in the city, any building situated thereon, or any portion of such buildings.

"*Religious or denominational education institutions*" mean an educational institution located or operating in the city which is operated, supervised, controlled or sustained primarily by a religious or denominational organization, or is one which is stated by the parent church body to be and is, in fact, officially related to that church through church representation on the board of the institution and through substantial church financial assistance to the institution, providing the institution has certified, in writing, to the commission that it is a religious or denominational educational institution; and further includes any agent or employee of such an institution.

"*Respondent*" means a person against whom a complaint alleging unlawful discrimination has been filed or issued.

"*Sex*" means the character of being male or female and encompasses, but is not limited to, pregnancy, childbirth, disabilities related to pregnancy or childbirth and sexual harassment.

"*Sexual harassment*" may mean and include unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct, or communication of a sexual nature when:

(1) Submission to that conduct, or communication, is made a term or condition, either explicitly or implicitly, of obtaining the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services or the services of an educational institution; or

(2) Submission to or rejection of that conduct or communication is used as a factor in decisions affecting that individual in obtaining the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services or the services of an educational institution; or

(3) That conduct or communication has the purpose or effect of substantially interfering with

an individual in regard to, or creating an intimidating, hostile or offensive environment in regard to the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

"Status with regard to public assistance" means the condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements.

Sec. 24.06. Officers; meetings.

The human relations commission shall elect from the commission members, once each year, a chair, vice-chair and secretary. The commission shall hold one regular meeting each quarter and such special meetings as the chair may deem necessary. All meetings will be open public meetings, conducted at the City Hall **or any other designated place and shall take place at reasonable times.** ~~All meetings will be conducted between the hours of 9:00 A.M. and 8:00 P.M.~~

All continuations and adjournments will be open public meetings. ~~conducted at the City Hall or within the corporate limits of the city.~~

Sec. 24.07. Powers and duties.

The human relations commission shall have the following powers and duties:

- (a) To create subcommittees and advisory committees as in its judgment will aid in effectuating the purpose of this section;
- (b) To issue such publications and such results of investigation and research as in its judgment will tend to minimize or eliminate discrimination because of race, color, creed, religion, ancestry, national origin, sex, disability, age, marital status or status with regard to public assistance;
- (c) To accept complaints for filing. Complaints of discrimination shall be received and investigated by the human relations commission. To be acceptable, a complaint shall be sufficiently complete so as to reflect properly the name and address of the complainant; the name and address of respondent against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates and places of the alleged discriminatory practice; if it is of a continuing nature, the dates between which continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance as is alleged in the complaint; together with a statement as to the status or disposition of such other action. No complaint shall be valid unless filed within ninety days from the occurrence of the alleged discriminatory practice, or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or labor union; provided, that complaints filed only with the Equal Employment Opportunity Commission shall be

deemed to have been filed simultaneously with the human relations commission for purposes of measuring the ninety-day limitation, as long as the complaint is otherwise within the human relation commission's jurisdiction; provided further, that any person who files a complaint with the Indiana Civil Rights Commission shall have no recourse to the city human relations commission concerning any of the matters alleged in such complaint, except upon transfer of the case; provided, further, that the human relations commission shall have no jurisdiction over the state or any of its agencies, or over the city or any of its departments;

(d) To appoint a Mediator to facilitate Mediation of a complaint. The chair of the human relations commission may, at any time, refer the parties to attend Mediation, whereupon the parties may choose to sign a statement agreeing to Mediation and to pay any expenses thereof. All parties shall attend any such Mediation in person or by telephonic or other electronic means, participate in good faith, and pay the costs of such Mediation, including fees for the Mediator, if any;

~~(d)~~ **(e)** To investigate each complaint properly filed. Upon the proper filing of a complaint and if a complaint is not fully resolved by a Mediation, the chair of the human relations commission shall appoint a member of the commission to investigate the complaint and determine whether there is probable cause to believe that a prohibited act of discrimination occurred. When the recommendation after the investigation is no probable cause, the complainant shall be furnished a copy of the findings of fact and recommendations and shall be given ten days to make a written request, with the reasons therefor, to the chair of the commission for review of the finding. Upon the receipt of the request for review, the chair or chair's designee shall review the request and the decision of the reviewing commissioner regarding probable cause shall be final;

~~(e)~~ **(f)** To schedule and conduct a conciliation conference. After a determination of probable cause, the chair may appoint a commissioner to undertake conciliation of all issues in the complaint or require the parties to participate in Mediation. Prior to a public hearing to adjudicate the complaint, the human relations commission may schedule a conciliation conference. All parties shall attend any such conciliation conference;

~~(f)~~ **(g)** To schedule complaints for public hearings upon a determination of probable cause if a complaint is not fully resolved by a Mediation. The chair shall appoint a hearing committee or refer the case for hearing by the full commission. However, no commissioner who has participated in the determination of probable cause shall sit as a commissioner to hear the case;

~~(g)~~ **(h)** To prevent any person from discharging, expelling, or otherwise discriminating against any other person because the person filed a complaint or testified in any hearing before the commission or in any way assisted in any matter under investigation;

~~(h)~~ **(i)** To issue a temporary emergency order against any person requiring such person to do an act preserving the possibility of a remedy for a complaint or to refrain from doing an act damaging the possibility of a remedy during the investigation of the complaint; provided, however:

(1) That no emergency order shall be issued unless a time and place for hearing on the temporary order is designated in the order,

(2) That the hearing on the temporary emergency order shall be held within ten days following the issuance of the temporary order, unless continued by the commission at the request of the respondent. At such hearing the complainant shall show that a failure to continue the temporary order would damage a remedy. The commission shall thereupon weigh the comparative hardship to the complainant and respondent and issue a decision continuing or terminating the temporary emergency order, pending final disposition of the complaint. The respondent may waive the hearing on the temporary emergency order without prejudice to the defense of the matters charged in the complaint, in which case the temporary order shall remain in effect pending final disposition of the complaint,

(3) The commission may by rule provide for issuance of its temporary order by a majority of the commission, and it may compel compliance with any such temporary order by bringing an action in any circuit or superior court for prohibitory or mandatory injunction upon showing that such person is subject to the court's jurisdiction; resides or transacts business within the county in which the proceeding is brought; and that such injunction is necessary to protect the complainant's rights under this section until the complaint is resolved through **Mediation**, conciliation, or public hearing;

~~(i)~~ (j) To reduce the terms of ~~conciliation~~ **settlement** agreed to by the parties in writing at **either a Mediation or at a conciliation conference**, to be called a consent agreement, which the parties and a majority of the commissioners shall sign. When so signed, the consent agreement shall have the same effect as a cease and desist order pursuant to subsection ~~(h)~~ (i) of this section. If the commission determines that a party is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement, and the party is subject to the commission's jurisdiction, and resides or transacts business within the county in which the petition for enforcement is brought;

~~(j)~~ (k) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath and require the production for examination of all books and papers relating to any matter under investigation or in question before the commission. The commission may make rules governing the issuance of subpoenas by individual commissioners. *Contumacy or refusal to obey a subpoena or temporary emergency order issued pursuant to this section shall be a breach of this chapter and such person shall be liable to a penalty therefore, if adjudged by the circuit or superior court, of the payment of a penalty not to exceed three hundred dollars.* Each penalty shall be deposited in the general fund of the city; provided, however, that the payment of such penalty by a party shall not impair the commission's ability to grant affirmative relief and compensatory damages to the complainant, should justice so require;

~~(k)~~ (l) To state its findings of fact after hearing, which statement shall be made in a written opinion containing both the findings of fact and the principles of law applied. All written opinions shall be compiled and maintained as public record and, in making decisions, the commission shall give due consideration to its prior decisions which may be applicable. If a majority of the commissioners who hear the case finds that a person has engaged in unlawful discriminatory practice, the commission shall cause to be served on the person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action necessary to effectuate the purposes of

this section.

(1) If unlawful discrimination is found in the area of employment, an order shall be issued requiring the respondent to take such affirmative action including but not limited to hiring, reinstatement and upgrading of employees or people deprived of employment, with or without compensatory damages to which the complainants would have been entitled had they not been deprived of equal opportunity; provided, that this subsection shall not be construed to require any employer to modify physical accommodations or administrative procedures to accommodate a handicapped person,

(2) If unlawful discrimination is found in the area of housing or acquisition of real property, an order may be issued requiring a respondent to take affirmative action, including but not limited to renting, selling or leasing to a person deprived of equal opportunity. Compensation for the denial of equal opportunity shall be allowed within the discretion of the commission,

(3) If unlawful discrimination is found in the area of public accommodation, an order shall be issued requiring respondent to take affirmative action, including but not limited to providing services, goods or access to property, reinstatement to membership, reinstatement to membership, posting of notice that a facility is a public accommodation, with or without compensatory damages for a complainant being denied equal opportunity,

(4) If unlawful discrimination is found in the area of education, an order may be issued requiring a respondent to take affirmative action including but not limited to a review and revision of school boundaries, revision of teaching aids and materials, human relations training for personnel recruitment of minority people for professional staff, with or without compensatory damages to which the complainant would have been entitled except for the denial of equal opportunity,

(5) If upon all the evidence, the commission finds that a person has not engaged in any such unlawful practice or violation of this section, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the complaint as to such person,

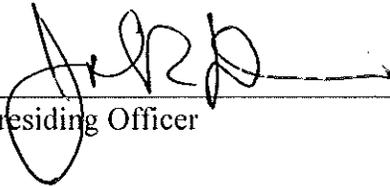
(6) Judicial review of such cease and desist order, or other final order, or other affirmative action or damages as referred to in this chapter may be obtained by filing in the circuit or superior courts. The scope of review shall be in accordance with the provisions set out in Indiana Code § 22-9-1-12.1. If no proceeding to obtain judicial review is instituted within fifteen days from the receipt of notice by a person that such order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of such order in circuit or superior court upon 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, or may request the city attorney or attorney representing the complainant to seek enforcement;

(4) (m) To refer the complaint to the Indiana Civil Rights Commission for investigation and resolution.

INTRODUCED ON FIRST READING ON THE 4 DAY OF October, 2010.

DULY ORDAINED, PASSED, AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, ON THE 1 DAY OF November, 2010, HAVING BEEN PASSED BY A VOTE OF 4 IN FAVOR AND 2 OPPOSED, THE ROLL CALL VOTE BEING:

	AYE	NAY	ABSENT	ABSTAIN
Bunder	✓			
Burch		✓		
Dietrich	✓			
Hoggatt	✓			
Hunt	✓			
Keen		✓		
Thomas			✓	



Presiding Officer

Attest:



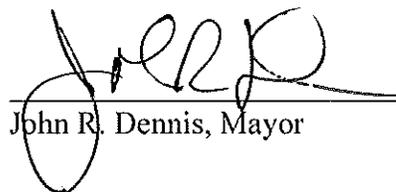
Judith C. Rhodes, Clerk-Treasurer

PRESENTED BY ME TO THE MAYOR OF THE CITY OF WEST LAFAYETTE, INDIANA ON THE 3 DAY OF November, 2010, AT THE HOUR OF 4:00 P.M.



Judith C. Rhodes, Clerk-Treasurer

THIS ORDINANCE APPROVED AND SIGNED BY ME ON THE 4 DAY OF November, 2010, AT THE HOUR OF 9:00 A.M.



John R. Dennis, Mayor

Attest:



Judith C. Rhodes, Clerk-Treasurer