

WEST LAFAYETTE HUMAN RELATIONS COMMISSION
PROCEDURES FOR RESOLVING COMPLAINTS OF DISCRIMINATION

I. FILING OF A COMPLAINT

- A. Who May File. Any person claiming to be aggrieved by an act of discrimination contrary to the provisions of Section 24.08 of the WEST LAFAYETTE CITY CODE (the “Ordinance”) may file a complaint with the West Lafayette Human Relations Commission (“WLHRC”) in accordance with the procedures set forth herein. Any person filing such a complaint shall be referred to as the Complainant.
- B. Where to File. Complaints shall be filed in the Office of the Mayor, which shall promptly notify the Chair of the WLHRC of the filing of a Complaint.
- C. What Constitutes Filing. A Complaint must be made in writing, signed, and properly verified by the individual who alleges the discrimination and must be legible. Forms shall be available for use in filing complaints. A Complaint shall be deemed filed as of the date postmarked, if mailed and actually received, or as of the date received in the Mayor’s if delivered in person. The date on which the Complaint is filed will be indicated on the Complaint.
- D. Time Limit on Filing. A Complaint must be filed within ninety (90) days after the alleged act of discrimination has occurred, or as otherwise allowed by the Ordinance.

II. GENERAL PROVISIONS

- A. Complaints Filed with Other Agencies. A person who has filed a complaint with the Indiana Civil Rights Commission (“ICRC”) shall have no recourse to the WLHRC concerning any of the matters alleged in such complaint, except upon transfer of the case. A person who files a complaint with the WLHRC may not also file a complaint with the ICRC concerning any of the matters alleged in such complaint, but the WLHRC, in its discretion, may transfer a complaint filed with it to the ICRC. IND. CODE § 22-9-1-12.1(d). The WLHRC, in its discretion, may consider complaints that have been filed with the EEOC and remain pending, but the burden will be upon the Complainant to demonstrate extraordinary circumstances establishing why such complaint should be heard or considered.
- B. Filing. All materials required to be filed by these Procedures or the Ordinance shall be addressed to the WLHRC and shall be filed with the Mayor’s Office.
- C. Service. Unless otherwise provided for by the WLHRC, after the filing of the initial Complaint, each party shall be responsible for serving on the other party a copy of any written materials required to be filed with the WLHRC. Service shall be by first class mail, and shall be deemed complete upon mailing, or by personal delivery. Each party shall be responsible for keeping the WLHRC

advised of his/her correct mailing address and telephone number as long as a Complaint remains pending. Documents that are required to be served shall contain a certificate certifying that service has been made.

- D. Notification. Any notification required to be given by these Procedures, the Ordinance, or an order or direction by the WLHRC, its Chair and/or their designees, including an Investigator or Reviewing Commissioner, shall be given in writing. Notification shall be served by first class mail, which shall be deemed complete upon mailing, or by personal delivery.
- E. Verification. A document that is required to be “verified” should contain an affirmation, under penalties of perjury, that the statements contained in the document are true and correct.
- F. Extensions of Time. The WLHRC, its Chair, and/or their designees, including an Investigator or Reviewing Commissioner, shall have the authority, in their discretion, to extend the time limits provided herein on their own motion or for good cause shown by a party.
- G. Continuances. For good cause, the WLHRC, its Chair, and/or their designees, may grant a continuance of a Conciliation Conference or a public hearing on a Complaint, provided however that no continuance shall be granted for longer than thirty (30) days.
- H. The WLHRC File. A file shall be created for each Complaint, in which the documents relating to the case shall be maintained, including: the Complaint, Answer or other documents filed by the parties; any correspondence relating to the case; the determination with regard to whether or not probable cause exists; any Consent Agreement; any decisions by the WLHRC, its Chair, and/or their designees, including an Investigator or Reviewing Commissioner; and other records required by law to be retained.
- I. Public Records Requirements. The Complaint, any Answer thereto, and any decision by the WLHRC are public records that shall be subject to disclosure in accordance with State open records laws. Unless otherwise provided by order of the Court, subpoena, administrative decision (including a decision by the Public Access Counselor), or otherwise provided by law, pursuant to IND. CODE § 5-14-3-3 and IND. CODE § 5-14-3-4, the WLHRC shall not make disclosure to the public of records maintained by the WLHRC that are intra-agency or interagency advisory or deliberative material related to a Complaint or the investigation thereof without the express approval and consent of all affected parties.

III. INITIAL REVIEW OF COMPLAINT

- A. Determination of Whether Complaint is Acceptable. Within seven (7) days of the receipt of a Complaint, the Chair of the WLHRC, or his/her designee where necessary, with the assistance of the City Attorney, if necessary, shall review the

Complaint to determine whether it is acceptable under the provisions of the Ordinance. The Complaint will be deemed to be unacceptable if:

1. It has been filed more than ninety (90) days after the alleged act of discrimination occurred, unless it is otherwise allowed under the provisions of the Ordinance;
 2. The alleged act of discrimination occurred outside of the municipal boundaries of the City of West Lafayette;
 3. The subject matter of the Complaint fails to allege an act of discrimination covered by the Ordinance or otherwise falls within an exclusion contained in the Ordinance;
 4. The Complaint fails to contain the information required by the Ordinance; or
 5. The Complaint indicates that the Complainant has filed a complaint with the ICRC concerning any of the matters alleged in such Complaint, except if the Complaint was received by the WLHRC upon transfer of the case from the ICRC.
- B. Notification. After completing the review of the Complaint, the Chair or his/her designee shall promptly serve the Complainant with notification in writing of the results of the review. A copy of the notification shall be served at the same time on the party alleged to have committed an act of discrimination in violation of the Ordinance (the “Respondent”), together with a copy of the Complaint.
- C. Determination that the Complaint is not Acceptable. If the Complaint is found to be unacceptable, the notification to the Complainant shall state this and the reasons why the Complaint is not acceptable. If the Complaint is not acceptable due to a defect that appears to be capable of remedy, the notification shall allow the Complainant ten (10) days from the date of service of the notification in which to supplement or amend the Complaint to remedy any defect.

Within seven (7) days of the receipt of a supplemented or amended Complaint, the Chair of the WLHRC, or his/her designee where necessary, with the assistance of the City Attorney, if necessary, shall review the supplemented or amended Complaint to determine whether the supplemented or amended Complaint is acceptable under the provisions of the Ordinance. If the supplemented or amended Complaint is acceptable after this review, the supplemented or amended Complaint will proceed in accordance with these Procedures.

If, upon review under this subsection, the Complaint is still not acceptable because of a defect that cannot be remedied, or if an unacceptable Complaint is not properly supplemented or amended within the time period allowed, the Complaint shall be dismissed administratively without prejudice in accordance

with these Procedures and without further action of the WLHRC. The WLHRC shall serve notification of the dismissal on the parties, and close the file.

- D. Determination that the Complaint is Acceptable. If the Complaint is found to be acceptable, the notification served by the WLHRC shall state this and the Respondent shall be advised of his/her right and responsibility to submit an Answer, in writing, responding to the allegations of the Complaint. If the Complaint is acceptable, the notification to the Respondent shall be served by certified mail, return receipt requested, and a copy of the Complaint shall be included. Each party shall also be provided with a copy of these Procedures at this time.

IV. RESPONSE TO A COMPLAINT

- A. Filing an Answer. The Respondent shall file an Answer to the Complaint within twenty-one (21) days after service of the notification that a Complaint has been found to be acceptable, and shall serve the Answer on the Complainant and file the Answer with the WLHRC. The Answer shall respond to each allegation set forth in the Complaint and may set forth additional affirmative allegations that the Respondent believes to be relevant. The Answer shall be signed by the Respondent.
- B. Failure to Answer. If the Respondent fails to file an Answer to the Complaint within twenty-one (21) days after service of the notification that the Complaint has been found to be acceptable, the WLHRC, its Chair, or their designee, shall deem this failure to be an admission that there is probable cause to believe that a prohibited act of discrimination occurred and shall proceed as if there has been a finding of probable cause.

V. APPOINTMENT OF AN INVESTIGATOR

Within twenty-four (24) days after service of notification that a Complaint has been found to be acceptable, or within three (3) days after the receipt of the Respondent's Answer, whichever first occurs, the Chair shall appoint an Investigator (or co-Investigators) from the membership of the WLHRC. The Chair will promptly notify the Investigator(s) appointed; provide the Investigator(s) with copies of the Complaint, including any amendments or supplements; Answer; and any other documents that have been submitted by the parties; and charge the Investigator(s) with the investigation of the Complaint.

VI. DETERMINATION OF PROBABLE CAUSE

- A. Probable Cause. The Investigator shall investigate the Complaint and shall make a determination as to whether or not there is probable cause to believe that a prohibited act of discrimination occurred. Probable cause as used herein shall mean that there are reasonable grounds to believe that a prohibited act of discrimination occurred as alleged in the Complaint. In making a determination of whether probable cause exists, the Investigator may consider the credibility of

the parties and determine what weight should be given to the information and documents submitted by the parties.

- B. Initial and Response Submissions. Within seven (7) days of his/her appointment, the parties shall be served with notification that the Investigator has been appointed and that each party may submit to the Investigator, through the Mayor's Office, a written position statement consisting of no more than five (5) pages, together with any other documentary evidence supporting his or her position (collectively referred to as the "Initial Submission"). The Initial Submissions must be filed in the Mayor's Office no later than fourteen (14) days after service of notification of the Investigator's appointment, provided however that a party may elect to rest on his/her Complaint or Answer and any documents previously submitted. Each party must serve the other party with a copy of his/her Initial Submission at the time it is filed.

Each party shall have ten (10) days after service of the other party's Initial Submission in which to file and serve a Response Submission thereto, consisting of a position statement of no more than two (2) pages, together with any additional documentary evidence. Thereafter, no further submissions shall be allowed by either party, except at the request of the Investigator or for good cause shown.

A party's submissions may include verified statements from non-parties and may identify non-parties alleged to have knowledge. Each party shall provide the Investigator with the current address, telephone number(s), or other means of contact for that party and any other person or entity that the party wishes to have contacted.

- C. Investigation Procedures. After receipt of the parties' initial and responsive submissions or the expiration of the time allowed for such submissions, the Investigator shall undertake such further investigation as is deemed warranted in his/her discretion, which may include but not necessarily be limited to: requests for further written submissions from the parties; meetings or communications with the parties; communications with other persons who are alleged to have knowledge regarding the alleged discrimination; and requiring the production and examination of documents and records relating to any matter under investigation.

In the event that further submissions are requested from a party or third parties, the Investigator shall establish a date by which such submissions must be made. Any additional submissions by a party shall be served and filed as described herein. The Investigator may in his/her discretion provide a party with an opportunity to review and respond to any materials or information received from a third party.

The Investigator shall make notes or memoranda of any material facts obtained during the investigation. To the fullest extent allowed by law, the documents

obtained by and/or created by the Investigator in connection with the determination of probable cause, including but not limited to the parties' submissions and the Investigator's notes and memoranda, are intra-agency or interagency advisory or deliberative material communicated for the purpose of decision making.

- D. Report of Probable Cause. Within fourteen (14) days after the date on which the time for making submissions (initial, responsive, or other) expires, the Investigator shall file a written report stating his/her findings of material facts and determination with regard to whether probable cause exists, which shall be mailed to all parties. The Investigator shall make written findings of the material facts relied upon in making the determination of probable cause, including when appropriate, findings with regard to the credibility of the parties, their witnesses, and other information.
- E. Determination That There is Probable Cause. If the Investigator determines that probable cause exists, the case will proceed in accordance with the procedures set forth below. In the event of such a finding, the Investigator's report may include a recommendation with regard as to whether a Conciliation Conference should be scheduled.
- F. Determination That Probable Cause Does Not Exist. When there is a finding that probable cause does not exist, the Complainant shall be contemporaneously served with notification of his/her right to request a review of the determination. Any request for review must be made in writing and shall state the reasons why review is requested. The request shall be based upon the information and documentation already provided to the Investigator, and no new documentation shall be filed in connection with a request for review or any response thereto. The request shall be filed with the Mayor's Office and served on the Respondent no later than ten (10) days after notification of the right of review is mailed. The Respondent may serve and file a response to the request for review no later than seven (7) days after the date of service of the request, but a response is not mandatory.
- G. Review of Probable Cause Determination. No later than ten (10) days after the filing of a request for review or three (3) days after the filing of a response to a request for review, whichever first occurs, the Chair or his/her designee shall appoint a Reviewing Commissioner to make a review the Investigator's determination of no probable cause. The Reviewing Commissioner shall make an independent determination of whether probable cause exists based upon the documents and information previously submitted, finding that probable cause exists or concurring in the Investigator's finding of no probable cause. The decision of the Reviewing Commissioner shall be made within ten (10) days of the Reviewing Commissioner's appointment. The decision of the Reviewing Commissioner regarding probable cause shall be final.

A report of the Reviewing Commissioner's decision shall be prepared and served upon all parties. In the event that the Investigator's finding of no probable cause is affirmed, the WLHRC shall dismiss the case. In the event that the Reviewing Commissioner determines that probable cause does exist, the case shall proceed as set forth in these Procedures.

VII. CONCILIATION CONFERENCE

- A. Notification. After a determination of probable cause and prior to any public hearing to adjudicate the Complaint, the Chair may appoint a commissioner to undertake conciliation of all issues raised by the Complaint. The Conciliation Commissioner should generally be a commissioner who participated in the determination of probable cause at either the investigation or review level. The parties shall be served with notification of the date, time, and place of the Conciliation Conference, and that each party's attendance is required.
- B. Conciliation Conference. The Conciliation Commissioner shall outline ground rules at the outset of the Conciliation Conference and shall provide each party with an opportunity to state his/her position. The Conciliation Commissioner shall attempt to facilitate an agreement between the parties, but continuation of the conciliation process and any agreement are totally voluntary. If either party desires to terminate the conciliation process, or if the Conciliation Commissioner believes that further efforts at conciliation are not likely to result in an agreement, the Conciliation Commissioner shall terminate the Conciliation Conference. If an agreement is reached between the parties during the Conciliation Conference, it shall be reduced to writing as a "Consent Agreement" and signed by each party.
- C. Report of Conciliation Conference and Consent Agreement. The Conciliation Commissioner shall file his/her report of the Conciliation Conference, indicating whether or not an agreement was reached, within seven (7) days after the Conciliation Conference and shall serve the parties with copies of the report. In the event of an agreement between the parties, the Conciliation Commissioner shall also file the written Consent Agreement, which shall be signed by a majority of commissioners and subject to enforcement as provided in the Ordinance.
- D. Negotiations Not Admissible. No other information pertaining to the conciliation process, including, but not limited to terms of negotiations between the parties shall be given to WLHRC commissioners who did not participate in the Conciliation Conference, nor shall the terms of any negotiations not reduced to a written Consent Agreement be admissible at any public hearing regarding the Complaint.

VIII. PUBLIC HEARING

- A. Scheduling. If no Conciliation Conference is to be scheduled or efforts at conciliation are not successful, a public hearing on the Complaint shall be scheduled. The Chair shall appoint a Hearing Committee or refer the case for hearing by the full WLHRC, provided however that no commissioner who has participated in any determination of probable cause or the Conciliation Conference shall sit as a commissioner to hear the case. The hearing shall be scheduled no later than thirty (30) days after the determination of probable cause or, if a Conciliation Conference is scheduled, no later than thirty (30) days after the filing of the report from the Conciliation Conference.
- B. Notification of Public Hearing. The parties shall be served by certified mail, return receipt requested, with a notice of:
1. The date, time, and place of the public hearing on the Complaint.
 2. The parties' right to present evidence and testimony and to examine witnesses and that the parties may appear with or without counsel.
 3. That a party's failure to appear may result in a ruling adverse to that party and could result in a fine.
 4. The parties' right to subpoena witnesses and require production and examination of documents and records relating to any matter relevant to the issues before the WLHRC.

The notification shall be served on the parties no later than seven (7) days after the filing of the report of probable cause, if no Conciliation Conference is scheduled, or otherwise no later than seven (7) days after the filing of the report of the Conciliation Conference.

- C. Pre-trial Discovery Submissions. Not less than fourteen (14) days before the date of the public hearing, each party shall serve on the opposing party and file with the WLHRC:
1. The name, address, and telephone number of each individual likely to have knowledge or information relevant to the disputed facts.
 2. The name, address, and telephone number of each witness who will testify for the respective party.
 3. Copies of any documentation that may be relied upon at the hearing to substantiate to their respective positions, provided however that a party may designate documents previously submitted, without submitting additional copies of such documents. Documents previously submitted within the context of the investigation or Conciliation Conference, and designated under this section, shall become part of the public record.

D. Submissions to the WLHRC. Each party may serve and file with the Mayor's Office a written brief or position statement directed to the WLHRC, not exceeding five (5) pages, no later than seven (7) days prior to the hearing. Alternatively, a party may submit a copy of his/her initial position statement.

E. Subpoenas. Upon the written request of a party, the WLHRC, its Chair, or any individual commissioner may issue subpoenas to witnesses requiring their attendance at a public hearing on the Complaint and/or requiring the production for examination of all books and other documents relating to any matter under investigation by or in question before the WLHRC.

F. Conduct of the Hearing

1. The Chair, or his/her designee, and other commissioners who have not directly participated in the investigation or Conciliation Conference will preside over the hearing and will determine, by majority vote, the result of the conflict (the "Hearing Committee").
2. The Chair or his/her designee will govern the course of the hearing, administering oaths and affirmations, and ruling on offers of proof (including excluding irrelevant, immaterial, or unduly repetitious evidence). The hearing shall be conducted in an informal manner according to these Procedures and without recourse to the technical rules of evidence required in judicial courts
3. All evidence must be offered and received at the hearing in order to be considered by the WLHRC in making its determination.

G. Decision.

1. At the conclusion of the hearing, the Hearing Committee will deliberate or may continue the hearing to another time, at the Hearing Committee's discretion. Notice of any continued hearing shall be served on both parties.
2. A decision must be issued upon the concurrence of a majority of the Hearing Committee commissioners. Based upon the deliberations of the Hearing Committee commissioners, the Chair or his/her designee will appoint a commissioner in the majority to prepare a draft written decision, containing the findings of material fact and principles of law applied in reaching the decision and outlining a full description of the relief to be granted, if any.
3. The written decision shall be considered and voted on at a public meeting, with notice of said meeting being served on both parties, within fourteen (14) days of any final public hearing on the Complaint. Any decision rendered in this matter and in accordance with these procedures is to be considered to be the final decision of the WLHRC.

4. If the WLHRC finds that a person has engaged in an unlawful discriminatory practice, the WLHRC 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 as is necessary to effectuate the purpose of the Ordinance.

IX. ENFORCEMENT AND REVIEW.

A Consent Agreement, cease and desist order, or other final order or affirmative action or damages of the WLHRC shall be subject to judicial enforcement and review as provided in the Ordinance.

WEST LAFAYETTE HUMAN RELATIONS COMMISSION
COMPLAINT HANDLING FLOW

(Who is Responsible for What and When)

Complaint Received: The Mayor's Office receives and marks the Complaint as filed and sets up a file. The Chair of the WLHRC will receive the Complaint from the Mayor's office.

Is Complaint Appropriate: The Chair, or his/her designee, and the City Attorney will review the Complaint to determine if it is acceptable. This will be performed within seven (7) days of receipt of the Complaint by the Mayor's Office.

Notification That Complaint Is Not Acceptable: The Chair or his/her designee will notify the parties that the Complaint is not acceptable, the reasons why it is not acceptable, and any other pertinent information. The notification sent to the parties that the Complaint is not acceptable shall include notice that the Complainant has ten (10) days to supplement or amend the Complaint to remedy any deficiency. If the deficiency is not remedied, the case is administratively dismissed.

Notification That The Complaint Is Acceptable: The Chair or his/her designee will send notice to the Complainant and Respondent that the Complaint is acceptable and the Respondent will be advised of his/her right and obligation to submit a written Answer responding to the allegations of the Complaint. The Answer must be filed within twenty-one (21) days of the mailing of the notification that the Complaint was acceptable.

Appointment of Investigator: The Chair shall appoint an Investigator to investigate the Complaint and determine whether or not there is probable cause to believe that a prohibited act of discrimination occurred. The Investigator shall be appointed within twenty-four (24) days after service of notification that a Complaint has been found acceptable, or within three (3) days after the receipt of the Respondent's Answer, whichever occurs first.

Initial Submissions: Within seven (7) days of the appointment of the Investigator, the parties shall be notified of the Investigator's appointment and of the ability of each party to submit a position statement and documentary evidence to the Investigator within fourteen (14) days after service of notification of the Investigator's appointment.

Response Submissions: Within ten (10) days after service of the other party's Initial Submission, each party shall have the opportunity to serve a Response Submission thereto.

Additional Submissions: Additional submissions to the Investigator are allowed at the Investigator's discretion.

Report of Probable Cause: Within fourteen (14) days after the date on which the time for making all submissions expires, the Investigator shall file a written report stating his/her findings of material facts and his/her determination with regard to whether probable cause exists, which shall be served upon all parties.

Determination That Probable Cause Does Not Exist. When the Investigator indicates probable cause does not exist for the alleged act of discrimination, the Complainant shall be contemporaneously served with notification of his/her right to request a review of the Investigator's determination. The Complainant may request, in writing, a review of the Investigator's decision no later than ten (10) days after notification of the right of review is mailed. The Respondent may serve and file a response to the request for review no later than seven (7) days after the date of service of the request, but a response is not mandatory.

Review of Probable Cause Determination. The Chair or his/her designee shall appoint a Reviewing Commissioner to make a review the Investigator's determination of no probable cause no later than ten (10) days after the filing of a request for review or three (3) days after the filing of a response to a request for review, whichever first occurs. The decision of the Reviewing Commissioner shall be made within ten (10) days of the Reviewing Commissioner's appointment. A report of the Reviewing Commissioner's decision shall be prepared by the Reviewing Commissioner and served upon all parties.

Conciliation Conference: After a determination of probable cause and prior to any public hearing to adjudicate the Complaint, the Chair may appoint a commissioner to undertake conciliation of all issues raised by the Complaint. The conciliation process rules are determined by the Conciliation Commissioner. The conciliation process and any agreements made between the parties as a result of the conciliation process are voluntary. If an agreement is reached between the parties during the Conciliation Conference, it shall be reduced to writing by the Conciliation Commissioner as a "Consent Agreement" and signed by each party.

Report of Conciliation Conference and Consent Agreement. The Conciliation Commissioner shall file his/her report of the Conciliation Conference, indicating whether or not an agreement was reached, within seven (7) days after the Conciliation Conference and shall serve the parties with copies of the report. In the event of an agreement between the parties, the Conciliation Commissioner shall also file the written, signed Consent Agreement, which shall be signed by a majority of commissioners and subject to enforcement as provided in the Ordinance.

Public Hearing: The Chair or his/her designee shall schedule a public hearing if no Conciliation Conference is held or if efforts at conciliation are not successful. The hearing shall be scheduled no later than thirty (30) days after the determination of probable cause or, if a Conciliation Conference is scheduled, no later than thirty (30) days after the filing of the report from the Conciliation Conference. Notice of the public hearing shall be served upon the parties no later than seven (7) days after the filing of the report of probable cause, if no Conciliation Conference is scheduled, and otherwise no later than seven (7) days after the filing of the report of the Conciliation Conference.

Pre-Hearing Discovery Submissions: Each party shall serve on the opposing party those disclosures required by the WLHRC Procedures no less than fourteen (14) days before the date of the public hearing.

Submissions to the WLHRC. Each party may serve and file with the Mayor's Office a written brief or position statement directed to the WLHRC no later than seven (7) days prior to the hearing.

Decision: A decision must be issued upon the concurrence of a majority of the Hearing Committee commissioners. A written decision must be issued and considered and voted upon at a public meeting within fourteen (14) days of any final public hearing on the Complaint. Any decision rendered in this matter and in accordance with these procedures is to be considered to be the final decision of the WLHRC.

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