



**Human Rights Commission
Housing Committee Meeting
October 7, 2021
Virtual/Electronic Meeting
1:00pm**

Agenda Packet Attachments

1. Housing Committee Agenda
2. DRAFT 09-09-2021 HRC Housing Committee Meeting Minutes
3. DRAFT Human Rights Ordinance with FHAP revisions (revised 09-30-2021)

Attachment 1



**Human Rights Commission
AGENDA
Housing Committee
October 7, 2021
Virtual/Electronic Meeting
1:00 pm**

Please take Notice that this virtual meeting of the Human Rights Commission is for the purposes of planning, developing and drafting management and administration documents for the Human Rights Commission. For the purpose of addressing issues during the quarantine, this virtual meeting will be a limited public forum to discuss the agenda items designated under Section 5 below and to ensure the continuity of services provided by the Commission. The Commission Chair may limit public comments or discussion points that are unrelated to agenda items under Section 5 or that pertain to topics outside the scope of this Agenda. Members of the public are limited to three minutes of comment time per person related to the Agenda below. A maximum of sixteen public comment time slots are allotted per meeting. This will be a virtual/electronic meeting open to the public and registration information is available at www.charlottesville.gov/zoom.

Link to Human Rights Commission shared Box folder: <https://app.box.com/s/xty3wnn2s1tj8h7trkknvd79bipyxezy>

1. WELCOME

- a. CALL TO ORDER
- b. ROLL CALL
- c. MISSION (recited by all): *Act as a strong advocate to justice and equal opportunity by providing citywide leadership and guidance in the area of civil rights.*

2. MATTERS BY THE PUBLIC

- a. PUBLIC COMMENT (Webinar attendees use the "raise hand" function, phone attendees use *9)
- b. COMMISSION RESPONSE TO MATTERS BY THE PUBLIC

3. MINUTES

- a. 09-09-2021 HRC Housing Committee Meeting Minutes*

4. WORK SESSION

- a. Right to counsel advocacy
- b. CLIHC Partnership
- c. Support for Midway Manor residents
- d. TJPDC Virginia Eviction Reduction Program (VERP) updates
- e. FHAP process updates
- f. Other business

5. MATTERS BY THE PUBLIC

- a. PUBLIC COMMENT (Webinar attendees use the "raise hand" function, phone attendees use *9)
- b. COMMISSION RESPONSE TO MATTERS BY THE PUBLIC

6. NEXT STEPS & ADJOURN

* ACTION NEEDED

Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call the ADA Coordinator at (434) 970-3182 or submit a request via email to ada@charlottesville.gov. The City of Charlottesville requests that you provide a 48 hour notice so that proper arrangements may be made.

Attachment 2



**Human Rights Commission
Meeting Minutes
Housing Committee Meeting
September 9, 2021
Virtual/Electronic Meeting
7:00 pm**

Public link to meeting rebroadcasts on Boxcast: <https://boxcast.tv/channel/vabajtzeuyv3iclkx1a>

Public link to HRC documents on Box: <https://app.box.com/s/xy3wnn2s1tj8h7trkknvd79bipyxezy>

1. WELCOME

- a. CALL TO ORDER
 - i. Chair, Kathryn Laughon, called the meeting to order at 6:05 pm
- b. ROLL CALL
 - i. Kathryn Laughon
 - ii. Mary Bauer
- c. MISSION (recited by all): *Act as a strong advocate to justice and equal opportunity by providing citywide leadership and guidance in the area of civil rights.*
 - i. Mission statement skipped.

2. MATTERS BY THE PUBLIC

- a. None

3. MINUTES

- a. None

4. BUSINESS MATTERS

- a. None

5. WORK SESSION

- a. Next steps regarding right to counsel in evictions advocacy
 - i. Mary talked to LAJC and National Coalition for Civil Right to Counsel (NCCRC)
 1. Seems that LAJC is being offered a \$300,000 contract for three years, which allows them to pay for the salary of one lawyer
 2. Covers 100 cases over the course of a year
 - ii. Also talked to Nancy Carpenter to say that HRC thinks additional advocacy is necessary because the offered amount is less than expected—she agrees
 1. **Mary and Nancy will schedule a time to talk soon**
 2. Mary expresses disappointment in the City's position on the fund
 - a. The City is currently offering \$100,000 per year, which is far from sufficient in providing representation to tenants in eviction proceedings
 - b. Originally, the NCCRC gave \$460,000 per year as a conservative estimate, but the City decreased it to \$300,000 and now \$100,000

- c. The year before the pandemic, there were about 700 tenants
- iii. Commissioner suggests doing away with “right to counsel” language
 - 1. Commissioner asks if an email to Council would be sufficient
 - 2. Not about scaling back their language, but scaling up their commitment
- iv. City said it would commit if the county committed, which it did not
 - 1. HRC can send a letter to the county as well, but this might not be useful
- v. Commissioner recommends making these funding issues public
- vi. Chair asks Mary if the Law School was planning to step up in the wake of the Merrick Garland statement
 - 1. Mary needs to confirm they are not doing anything besides LAJC already teaching a UVA Law School Housing Clinic
- vii. Mary had a conversation with Kristin Clarens who is having a difficult time generally placing cases
- viii. Mary asks OHR staff how to propose funding for the other kind of right to counsel
 - 1. City could create a pot of money to pay private lawyers at a reduced rate, but there would have to be some kind of system for ensuring the lawyers are competent in the relevant areas
 - 2. OHR staff talked to someone in Procurement about how one would go about setting up a legal representation fund for parties to a complaint
 - a. Questions to settle if it becomes more of a city program vs granted to a non-profit: Are contracted lawyers vendors with the city? Are people reimbursed for their cost or given money to find their own attorney?
 - 3. Think about flaws in the current system and ask for a dialogue to propose changes—reference the communities that have working systems
 - 4. Mary asked the NCCRC about experience with this kind of situation
 - a. They said generally, housing complainants would be represented by local fair housing entity—this does not happen here, but it does in other localities
 - b. OHR staff says the VA equivalent would be VA Fair Housing Office of DPOR, and the Attorney General’s Office provides legal counsel if the case goes through them at the state level
 - i. They are a Fair Housing Assistance Program (FHAP), and all FHAPs are required to provide counsel
 - ii. So City Attorney’s Office would be required to do the same unless contracted out
 - c. The Director is the fact-finder, the Commission upholds or dismisses the fact-finding, and then if upheld, the case goes directly to General District Court (or federal court if it is a FHAP)

- i. Talk to current CLIHC members to ask if any of them would be interested in applying to join HRC
 - b. Kathryn
 - i. Check in with DSA about monitoring of evictions situation
 - ii. Talk to Rory about timing of HRC business with housing situation
 - iii. Write up a messaging plan to work off of for the next HRC meeting
 - c. Mary
 - i. Talk to Nancy Carpenter about right to counsel
- 9. **ADJOURN**
 - a. Meeting adjourned at 7:29 pm

Pending HRC Approval

Attachment 3

ca#O-21-021

Purple is new content created by OHR staff

Purple with green highlighting shows a new section number.

Red is directly copied federal housing statute (red ~~striketrough~~ indicates removed language)

Red with green highlighting indicates subchapter references that may need changing

Green text within red text refers to additions made per recommendations by HUD

Yellow highlighting is newly added text not recommended by the HRC but inserted by Council

Blue highlighting is text that had grammar problems that needed fixing

AN ORDINANCE

AMENDING AND REENACTING CHAPTER 2 (ADMINISTRATION) OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990), AS AMENDED, ARTICLE XV (HUMAN RIGHTS) SEC. 2-431 (UNLAWFUL DISCRIMINATION PROHIBITED); SEC. 2-432 (HUMAN RIGHTS COMMISSION); SEC. 2-433 (ROLE OF THE HUMAN RIGHTS COMMISSION); SEC. 2-437 (DUTIES AND RESPONSIBILITIES- INVESTIGATION OF INDIVIDUAL COMPLAINTS AND ISSUANCE OF FINDINGS); AND SEC. 2-439.1 (ENFORCEMENT AUTHORITY-THE ROLE OF THE COMMISSION) TO UPDATE THE ORDINANCE TO REFLECT CHANGES TO THE VIRGINIA HUMAN RIGHTS ACT (VIRGINIA CODE TITLE 2.2, CHAPTER 39), THE VIRGINIA FAIR HOUSING LAW (VIRGINIA CODE TITLE 36, CHAPTER 5.1), and VIRGINIA CODE, TITLE 15.2, CHAPTER 9, §15.2-965, AS AMENDED.

WHEREAS, by recorded vote, the Human Rights Commission initiated certain amendments to the text of the City's Human Rights Ordinance, Sections 2.431; 2-434; 2-433; 2-437; and 2-439.1 ("Proposed Text Amendments"); and

WHEREAS, a public meeting was held to discuss and receive comments on the Proposed Text Amendments on June 18, August 20, and September 17, 2020 and the proposed amendments were presented to, discussed and approved at the October 15, 2020 public meeting of the Human Rights Commission for recommendation to Charlottesville City Council; and

WHEREAS, after consideration of the Human Rights Commission recommendations and other factors and considerations, this Council is of the opinion that that the Proposed Text Amendment has been designed to comply with recent changes to the Virginia Human Rights Act (Virginia Code Title 2.2, Chapter 39), the Virginia Fair Housing Law (Virginia code Title 36, Chapter 5.1), and Virginia Code, Title 15.2, Chapter 9, §15.2-965 of the Code of Virginia (1950), as amended, and this Council hereby finds and determines that: (i) the public necessity, convenience, and general welfare require the Proposed Text Amendment, and (ii) the Proposed Text Amendment is consistent with the Council's vision of the City as a leader in social justice; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that: Sections 2.431; 2-434; 2-433; 2-437; and 2-439.1 of the Code of the City of Charlottesville (1990), as amended, is hereby amended and reenacted as follows:

Article XV. Human Rights

Sec. 2-430.1. Short title.

This Article shall be known and referred to as the Charlottesville Human Rights Ordinance.

Sec. 2-430.2. Interference, coercion, intimidation, or retaliation prohibited.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this ordinance. ~~section 3603, 3604, 3605, or 3606 of this title.~~

Sec. 2-430.3 Definitions.

- (a) As used in herein, the term "gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth.
- (b) As used herein, the term "source of funds" means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.
- (c) As used herein, the term "unlawful discriminatory practice" includes conduct in violation of any comparable Virginia or federal statute or regulation governing unlawful discrimination.

Sec. 2-431.1. Unlawful employment discrimination prohibited.

It shall be unlawful and a violation of this ordinance for any person, partnership, corporation or other entity to engage in discrimination in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity status as a veteran, or disability.

Sec. 2-431.2. Unlawful housing discrimination prohibited.

It shall be unlawful and a violation of this article for any person, partnership, corporation or other entity

- (a) To refuse to sell or rent after the making of a bona fide offer, or to 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, or national origin~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.
- (b) To 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 therewith, because of ~~race, color, religion, sex, familial status, or national origin~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.
- (c) To 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, familial status, or national origin~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability, or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any person because of ~~race, color, religion, sex, familial status, or national origin~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular ~~race, color, religion, sex, handicap, familial status, or national origin~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.
- (f) Furthermore, it shall be unlawful and a violation of this article for any person, partnership, corporation or other entity
 - (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a ~~handicap~~ disability of—
 - (A) that buyer or renter,
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that buyer or renter.
 - (2) To 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 such dwelling, because of a ~~handicap~~ disability of—
 - (A) that person; or
 - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - (C) any person associated with that person.
 - (3) For purposes of this subsection, discrimination includes—
 - (A) a refusal to permit, at the expense of the ~~handicapped person~~ person with a disability, reasonable modifications of existing premises occupied or to be

- occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so 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.
- (B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
- (C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that—
- (i) the public use and common use portions of such dwellings are readily accessible to and usable by ~~handicapped persons~~; **people with disabilities**;
 - (ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by ~~handicapped persons in~~ **people with disabilities** requiring the use of wheelchairs; and
 - (iii) all premises within such dwellings contain the following features of adaptive design:
 - (I) an accessible route into and through the dwelling;
 - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (III) reinforcements in bathroom walls to allow later installation of grab bars; and
 - (IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as “ANSI A117.1”) suffices to satisfy the requirements of paragraph (3)(C)(iii).
- (5) As used in this subsection, the term “covered multifamily dwellings” means—
- (A) buildings consisting of 4 or more units if such buildings have one or more elevators; and
 - (B) ground floor units in other buildings consisting of 4 or more units.
- (6) Nothing in this **subchapter** ordinance shall be construed to invalidate or limit any ~~state or federal law or City ordinance of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective~~, that requires dwellings to be designed and constructed in a manner that affords ~~handicapped persons~~ **people with disabilities** greater access than is required by this subchapter.
- (7) Nothing in this **subsection** ordinance 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.

Commented [SE1]: You may want to confirm with your legal arm to determine whether you can create a law that retroactively applies to a past date, or whether this needs to be prospective in nature. I am not sure myself.

- (g) In general, it shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of ~~race, color, religion, sex, handicap, familial status, or national origin.~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.
- (1) As used in this section, the term “residential real estate-related transaction” means any of the following:
 - (A) The making or purchasing of loans or providing other financial assistance—
 - (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (ii) secured by residential real estate.
 - (B) The selling, brokering, or appraising of residential real property.
 - (2) Nothing in this subchapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than ~~race, color, religion, sex, handicap, familial status, or national origin.~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.
- (h) After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers’ organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of ~~race, color, religion, sex, handicap, familial status, or national origin.~~ race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.

Sec. 2-431.2. Unlawful public accommodation, credit, and private education prohibited.

It shall be unlawful and a violation of this article for any person, partnership, corporation or other entity to engage in discrimination in public accommodations, credit, and private education on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity status as a veteran, or disability.

Sec. 2-431. Unlawful discrimination prohibited.

~~It shall be unlawful and a violation of this article for any person, partnership, corporation or other entity to engage in discrimination in employment, public accommodations, credit, and private education on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity status as a veteran, or disability.~~

~~(a) It shall be unlawful and a violation of this article for any person, partnership, corporation or other entity to engage in discrimination in housing on the basis of race, color,~~

religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, status as a veteran, or disability.

~~(b) As used herein, the term "gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, without regard to the individual's designated sex at birth.~~

~~(c) As used herein, the term "source of funds" means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.~~

~~(d) As used herein, the term "unlawful discriminatory practice" includes conduct in violation of any comparable Virginia or federal statute or regulation governing unlawful discrimination.~~

Sec. 2-432. Human Rights Commission.

- (a) There is hereby created in the City of Charlottesville a Human Rights Commission, the members of which shall be appointed by the City Council. **Effective March 1, 2022, the appointed membership of the Commission shall consist of nine (9) members.** The Commission membership shall be broadly representative of the City's demographic composition, with consideration of racial, gender (including gender identity, transgender status, and sexual orientation), religious, ethnic, disabled, socio-economic, geographic neighborhood and age groups; with priority given to City residents, and to applicants with significant and demonstrable ties to the City. **At least two members will have professional expertise in employment or housing discrimination, have personal experience with employment or housing discrimination, or identify as a member of a group that experiences discrimination.** Of the members first appointed, at least three shall be appointed for terms of three years, at least three shall be appointed for terms of two years, and at least three shall be appointed for terms of one year. Thereafter members shall be appointed for terms of three years each. Any vacancy shall be filled by the City Council for the unexpired portion of a term. Following notice to the member, any member of the Commission may be removed for good cause by a majority vote of City Council.
- (b) The Commission shall elect from its members a chair, a vice-chair, and such other officers as the Commission may deem appropriate.
- (c) Members of the Commission shall serve without compensation, but funds may be appropriated in the City's annual budget for reasonable and necessary expenses to be incurred by Commission in the conduct of its prescribed functions.
- (d) All meetings of the Commission shall be advertised in advance and in the manner required by law, and shall be open to the public except for meetings lawfully closed pursuant to the Virginia Freedom of Information Act. The Commission may adopt bylaws and procedures to govern the conduct of its meetings; provided, however, that at the beginning and at the end of each of its public meetings the Commission will receive public comment in accordance with City Council's adopted "Rules for Public Participation".
- (e) The Commission may, in its discretion, delegate any of its duties or responsibilities hereunder to a panel of not less than three Commissioners.
- (f) There shall be a full-time Director of the Commission, who shall be appointed by the City

Manager with the advice and consent of the Commission and who shall serve full time in that capacity. A candidate proposed for appointment as the Director must demonstrate significant prior professional experience performing one or more of the activities or roles described in sections 2-433(a)-(b), 2-434, 2-435(a), 2-437 and 2-439.1 of this article. The Director will be responsible for and report to the Commission ~~in on the day-to-day~~ **day-to-day** operational conduct of the **Human Rights Commission.** ~~of the Commission's activities.~~ The Director shall report directly to the City Manager for administrative and fiscal matters. The City Manager shall delegate to the Director the authority to employ such additional staff as authorized and funded by the City Council, in order for the Commission to fulfill effectively its obligations under this Ordinance.

Commented [NT2]: Reminder: Check for continuity in cross-referenced sections following amendments.

- (g) The City Council shall establish policies and procedures for the performance by the Commission of the roles, duties and responsibilities set forth within this article (“operating procedures”). All City departments, boards and commissions shall cooperate with and provide assistance to the Commission, including the provision of information in response to reasonable requests from the Commission.
- (h) Legal counsel shall be provided to the Commission and its staff through the Office of the City Attorney. The City Council may authorize retention of outside counsel where deemed appropriate upon recommendation of the City Attorney.
- (i) The Commission shall make quarterly reports to the City Council concerning the operation of the Commission and the status of the Commission’s performance of the duties, responsibilities and roles set forth within this article. One of the required quarterly reports shall be an annual report. The schedule for submission of these reports, and the required contents of the reports, shall be as specified within the Commission’s operating procedures.**

Sec. 2-433. Role of the Human Rights Commission.

The role of the Human Rights Commission is to act as a strong advocate for justice and equal opportunity by providing citywide leadership and guidance in the area of civil rights. The Commission will:

- (a) Assist individuals who believe they are the victim of an act of unlawful discrimination within the City;
- (b) Collaborate with the public and private sectors for the purpose of providing awareness, education and guidance on methods to prevent and eliminate discrimination citywide;
- (c) Identify and review policies and practices of the City of Charlottesville and its boards and commissions and other public agencies within the City and advise those bodies on issues related to human rights issues;
- (d) Seek work share agreements with the Equal Employment Opportunity Commission (“FEPA”) and the Department of Housing and Urban Development (“HUD-FHAP”) to conduct investigations of employment and housing discrimination on their behalf, and enter into such agreement(s) subject to approval of City Council upon a finding that the agreement(s) would be in the best interest of the City.**
- (e) Make recommendations regarding the City’s annual legislative program, with an
- (f) emphasis on enabling legislation that may be needed to implement programs and policies that will address discrimination; and

- (g) Prepare recommendations to City Council as to policies and procedures the Commission believes are necessary for the performance of the roles, duties and responsibilities assigned to the Commission within this article, and for modifications of operating procedures approved by City Council.

Sec. 2-434. Duties and responsibilities – Community dialogue and engagement.

- (a) The Commission will serve as a forum for the discussion of human rights issues, and be responsible for conducting ongoing efforts to engage community members in an open, honest and creative dialogue regarding issues of equity and opportunity, including but not limited to issues considered by the City’s Dialogue on Race initiative.
- (b) The Commission will conduct or engage in educational and informational programs for the promotion of mutual understanding, reconciliation and respect between all classes of individuals protected by this ordinance and the larger Charlottesville community.

Sec. 2-435. Duties and responsibilities – Systemic issues.

- (a) The Commission will be responsible for identifying and reviewing policies, practices and systems of an institutional nature that:
 - (1) May be unlawful discriminatory practices; or,
 - (2) May not constitute unlawful discriminatory ~~be~~ practices but nevertheless ~~which~~ produce disparities that adversely ~~impact affect~~ individuals on the basis of a status such as their race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, age, marital status, criminal record, income or disability.
- (b) Any review undertaken pursuant to this section may be initiated at the request of any other public or private entity, or by the Commission on its own initiative.
- (c) The Commission may conduct its own research and review of existing studies and literature, collaborate with other research organizations, organize public focus groups and hold such hearings as may be necessary to identify policies, practices and systems as referenced in (a), above. For each such identified policy, practice or system, the goal of the Commission will be to formulate recommendations and to propose to City Council concrete, actionable reforms that will eliminate discriminatory practices or the adverse effects of lawful other practices. **On and after July 1, 2021, the Commission will conduct at least one such research project or review every two years. The Commission will report the status of its ongoing project(s) or review(s) to City Council within its quarterly and annual reports.**

Sec. 2-436. ~~Reserved~~. Office of Human Rights.

- (a) There is hereby created in the City of Charlottesville an Office of Human Rights.
- (b) The Director of the Commission will be responsible for, and report to the Commission on, the day-to-day operational conduct of the Office of Human Rights.

(c) The role of the Office of Human Rights is to:

- (1) Provide administrative support to the Human Rights Commission;
- (2) Receive, investigate, and issue findings on individual complaints of discrimination within the jurisdiction of the City of Charlottesville;
- (3) Conduct community outreach related to human rights. Such outreach may include:
 - (A) Providing information to the public regarding the services provided by the Office of Human Rights and the Human Rights Commission;
 - (B) Hosting or participating in educational events for the purpose of raising public awareness around human rights issues;
 - (C) Facilitating, leading, or participating in collaborative meetings and events with community partners for the purpose of addressing human rights issues.

Commented [NT3]: What is the OHR's role in navigation and advocacy regarding inquiries that do not involve at allegation of discrimination but may relate to a protected activity?

Sec. 2-437. Duties and responsibilities – Investigation of individual complaints of employment discrimination and issuance of findings.

- (a) The Director will develop and implement a central intake mechanism for receiving and processing individual complaints that allege an unlawful, discriminatory employment practice in the City.
- (b) For complaints alleging an unlawful discriminatory practice within the enforcement jurisdiction of the City, defined herein as within the corporate limits of the City and as authorized by state and federal statutes, the Director or other designated professional staff are authorized to undertake further action as detailed in Sec. 2-437.11a. For complaints alleging an unlawful discriminatory practice that falls outside the jurisdiction of the City, the Director or other designated professional staff will refer the complaint to the appropriate state or federal agency.
- (c) Upon determination that an alleged unlawful discriminatory practice falls within the enforcement jurisdiction of the City, the Director or other designated professional staff will conduct, as authorized by this ordinance, an initial fact-finding inquiry to determine if the Complainant presents a prima facie case. The complaint may be dismissed by the Director without further action if it fails to adequately allege a violation of this ordinance or is otherwise deficient on its face. Following the initial fact-finding inquiry, if the complaint is not dismissed, and the Complainant wishes to pursue further action, the Director will serve a copy on each respondent named therein. Said copy shall specify the allegation, citing the evidence that supports further action, and indicating the action to be taken. Further action, as authorized by this ordinance, may include mediation, conciliation, and formal investigation of the complaint, as deemed appropriate by the Director. Upon completion of a formal investigation, the Director shall render a written determination of whether there is probable cause to believe a violation of this ordinance has occurred, and the facts supporting such determination. The written determination shall promptly be served on the parties.
- (d) If the Director determines that further action is appropriate, the Director will propose an initial meeting between the parties for the purpose of exploring a resolution of the complaint through voluntary mediation or other informal means. Nothing herein shall be interpreted as requiring any party to participate in mediation or any other conciliatory efforts. Materials used and communications made during a mediation or informal conciliation shall be confidential and shall not be disclosed to the public by the Director, the Commission, or its staff unless disclosure is

Commented [NT4]: Perhaps change to "assessment of evidence" so as not to confuse this with a "finding of fact" or "filing of a charge."

Commented [NT5]: Potential revision:
Upon receipt of a complaint, the Director or other designated professional staff will conduct, as authorized by this ordinance, an initial assessment to determine if the complaint is jurisdictional and presents a prima facie case of discrimination.

Commented [NT6]: "assessment of evidence"

authorized in writing by all parties to the dispute.

- (e) If the mediation or conciliation is concluded to the satisfaction of both parties, the complaint will be considered resolved upon the parties' execution of a written conciliation or settlement agreement. Unless all parties agree otherwise, the execution of a written agreement is solely for the purpose of settling a disputed claim and does not constitute an admission by any party that the law has been violated. No further action on the initial complaint will be taken by the Commission or its staff once the agreement is executed.
- (f) If mediation or conciliation is not successful, and the Complainant wishes to pursue further action, the Director or designee may conduct a formal investigation for the purpose of rendering a written determination as to whether there is probable cause to believe a violation of this ordinance occurred, and the facts supporting such determination. If further investigation is not warranted, the Director may dismiss the complaint as not constituting a violation. After a written determination has been served on both parties, the Director may either close the case or proceed with the preparation of materials for consideration by the Commission, as provided in section 2-439.1(c).
- (g) In order to fulfill the requirements of this section, the City Manager is authorized to contract on behalf of the City with any objective, neutral third party qualified to assess allegations of discriminatory conduct as prohibited in section 2-431, for the purpose of receiving complaints, conducting investigations, rendering written determinations of whether there is probable cause to believe a violation of this ordinance has occurred, conducting mediations or conciliations of complaints and advising the Director of the Commission of the results of any investigation, mediation or conciliation of complaints.

sec 2-472 Duties and responsibilities – Investigation of individual complaints of housing discrimination and issuance of findings.

(a) Complaints and Answers

- (1) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a written complaint with the Secretary Office of Human Rights, alleging such discriminatory housing practice. The Secretary Director of the Human Rights Commission, on the Secretary's Director's own initiative, may also file such a complaint.
- (2) Such complaints shall be in writing and shall contain such information and be in such form as the Secretary Director requires.
- (3) The Secretary Director may also investigate housing practices to determine whether a complaint should be brought under this section.
- (4) Upon the filing of such a complaint -
 - (A) the Secretary Director shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this subchapter;
 - (B) the Secretary Director shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2) section 2-472.11, serve on the respondent a notice identifying the alleged discriminatory housing

Commented [SE7]: You may wish to create these as subsections similar to the Act, or else subsection (4) doesn't say anything.

practice and advising such respondent of the procedural rights and obligations of respondents under this subchapter, together with a copy of the original complaint;

- (C) each respondent may file, not later than 10 days after receipt of notice from the ~~Secretary~~ Director, an answer to such complaint; and
 - (D) the ~~Secretary~~ Director shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint ~~(or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action)~~, unless it is impracticable to do so.
- (5) If the ~~Secretary~~ Director is unable to complete the investigation within 100 days after the filing of the complaint ~~(or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action)~~, the ~~Secretary~~ Director shall notify the complainant and respondent in writing of the reasons for not doing so.
- (6) Complaints and answers shall be under oath or affirmation, and may be reasonably and fairly amended at any time.
- (7) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1), to such person, from the ~~Secretary~~ Director.
- (8) Such notice, in addition to meeting the requirements of paragraph (1), shall explain the basis for the ~~Secretary's~~ Director's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Investigative report and conciliation

- (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the ~~Secretary~~ Director, the ~~Secretary~~ Director shall, to the extent feasible, engage in conciliation with respect to such complaint.
- (2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the ~~Secretary~~ Director.
- (3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.
- (4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the ~~Secretary~~ Director determines that disclosure is not required to further the purposes of this subchapter.
- (5) At the end of each investigation under this section, the ~~Secretary~~ Director shall prepare a final investigative report containing—
 - (A) the names and dates of contacts with witnesses;
 - (B) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
 - (C) a summary description of other pertinent records;

- (D) a summary of witness statements; and
 - (E) answers to interrogatories.
- (6) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Failure to comply with conciliation agreement

- (1) Whenever the ~~Secretary~~ Director has reasonable cause to believe that a respondent has breached a conciliation agreement, the ~~Secretary~~ Director shall refer the matter to the ~~Attorney General~~ City Attorney with a recommendation that a civil action be filed under section 2-437.2.(h). and 2-437.2(j). of this ordinance ~~3614 of this title~~ for the enforcement of such agreement.

(d) Prohibitions and requirements with respect to disclosure of information

- (1) Nothing said or done in the course of conciliation under this subchapter may be made public or used as evidence in a subsequent proceeding under this subchapter without the written consent of the persons concerned.
- (2) Notwithstanding paragraph (1), the ~~Secretary~~ Director shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the ~~Secretary's~~ Director's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) Prompt judicial action

- (1) If the ~~Secretary~~ Director concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this subchapter, the ~~Secretary~~ Director may authorize a civil action through the City Attorney for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such an authorization, the ~~Attorney General~~ City Attorney shall promptly commence and maintain such an action and issue and seek enforceable subpoenas, as needed. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Federal Rules of Civil Procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section 2-437.2.(i) or sections 2-437.2.(h) and 2-437.2.(j) of this ordinance. ~~3612 of this title.~~
- (2) Whenever the ~~Secretary~~ Director has reason to believe that a basis may exist for the commencement of proceedings against any respondent under sections 2-437.2.(h) and 2-437.2.(j) of this ordinance ~~3614(a) and 3614(e) of this title~~ or for proceedings by any governmental licensing or supervisory authorities, the ~~Secretary~~ Director shall transmit the information upon which such belief is based to the ~~Attorney General~~ City Attorney, or to such authorities, as the case may be.

(f) Reasonable cause determination and effect

- (1) The ~~Secretary~~ Director shall, within 100 days after the filing of the complaint (or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action), determine based on the

Commented [SE8]: Per the "Criteria for Adequacy of Law" in the Regulation at 24 CFR § 115.204(b)(1)(ii), in addition to the authority to grant or seek prompt judicial action, the agency must also have the authority to "[i]ssue and seek enforceable subpoenas."

Commented [NT9R8]: Please let me know if the additional text in green subsection (e).(1) addresses this discrepancy.

facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the Secretary Director has approved a conciliation agreement with respect to the complaint. If the Secretary Director is unable to make the determination within 100 days after the filing of the complaint ~~(or, when the Secretary takes further action under subsection (f)(2) with respect to a complaint, within 100 days after the commencement of such further action)~~, the Secretary Director shall notify the complainant and respondent in writing of the reasons for not doing so.

- (2) If the Secretary Director determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary Director shall, except as provided in section 2-437.2.(c), immediately issue a charge on behalf of the aggrieved person, for further proceedings under sections 2-437.2.(h) and 2-437.2.(i) of this ordinance ~~3612 of this title~~. Such charge—
 - (A) shall consist of a short and plain statement of the facts upon which the Secretary Director has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (B) shall be based on the final investigative report; and
 - (C) need not be limited to the facts or grounds alleged in the complaint filed under section 2-437.2.(a) ~~subsection (a)~~.
- (3) If the Secretary Director determines that the matter involves the legality of any State or local zoning or other land use law or ordinance, the Secretary Director shall immediately refer the matter to the ~~Attorney General~~ City Attorney for appropriate action under sections 2-437.2.(j) of this ordinance ~~3614 of this title~~, instead of issuing such charge.
- (4) If the Secretary Director determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Secretary Director shall promptly dismiss the complaint. The Secretary Director shall make public disclosure of each such dismissal.

- (a) The Secretary Director may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

(g) Service of copies of charge

- (1) After the Secretary Director issues a charge under this section, the Secretary Director shall cause a copy thereof, together with information as to how to make an election under section 2-437.2.(h) of this ordinance ~~3612(a) of this title~~ and the effect of such an election, to be served—
 - (A) on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and
 - (B) on each aggrieved person on whose behalf the complaint was filed.

(h) Election of judicial determination

(1) When a charge is filed under section 2-437.2.(f) of this ordinance ~~3610 of this title~~, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under section 2-437.2.(j) ~~subsection (e)~~ in lieu of a public hearing by the Commission under ~~subsection (b)~~ section 2-437.2.(i). The election must be made not later than 20 days after the receipt by the electing person of service under section 2-437.2.(g) of this ordinance ~~3610(h) of this title~~ or, in the case of the Secretary Director, not later than 20 days after such service. The person making such election shall give notice of doing so to the Secretary Director and to all other complainants and respondents to whom the charge relates.

Commented [SE10]: Is it your position that you would not hold an administrative hearing/implement procedures under 42 USC § 3612(b) (*Administrative Law Judge Hearing in Absence of election*)? If you only plan on enforcing charges through civil actions (not administrative hearings) then you do not need the election process language included. Conciliation should be attempted regardless of proceeding to a “conciliation hearing” if you will. This makes it read like an affirmative election is required to proceed with a civil action. What happens to their case if they do not elect?

Commented [NT11R10]: Thank you so much for this catch, Erik. I think I misunderstood this section and completely overlooked 42 USC § 3612(b). Please note the changed language in 2-437.2.(h).(1), as well as the addition of 2-437.2(i) *Public administrative judicial hearing by the Commission in absence of election*.

(i) Public administrative judicial hearing by the Commission in absence of election

(1) If an election is not made under section 437.2.(h) with respect to a charge filed under section 2-437.2.(f), then the Director shall provide an opportunity for a public administrative judicial hearing by the Commission on the record with respect to a charge issued under section 2-437.2.(f) of this ordinance. The Director shall delegate the conduct of a hearing under this section to the Commission appointed under section 2-432.(a) of this ordinance. The Commission shall conduct the hearing at a place in the vicinity in which the discriminatory housing practice is alleged to have occurred or to be about to occur.

(2) Rights of Parties

(A) At a hearing under this section each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under section 2.437.2.(e) of this title. Any aggrieved person may intervene as a party in the proceeding. The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in a United States district court.

(3) Expedited discovery and hearing

(A) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.
(B) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.
(C) The Director shall issue rules to implement this subsection.

(4) Resolution of charge

(A) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(5) Effect of trial of civil action on administrative proceedings

(A) The Commission may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or State law, seeking relief with respect to that discriminatory housing practice.

- (6) Hearings, findings and conclusions, and order
- (A) The Commission shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the Commission is unable to commence the hearing within 120 days after the issuance of the charge, the Commission shall notify the Director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.
 - (B) The Commission shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the Commission is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the Commission shall notify the Director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.
 - (C) If the Commission finds that a respondent has engaged or is about to engage in a discriminatory housing practice, the Commission shall promptly issue and order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent –
 - (i) in an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
 - (ii) in an amount not exceeding \$25,000 if the respondent has been adjudged to have committed on other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and
 - (iii) in an amount not exceeding \$50,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in sections 2-437.2.(i).(6).(C).(i) and 2-437.2.(i).(6).(C).(ii) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.
 - (D) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this subchapter.
 - (E) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Director shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review) –

- (i) send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and
 - (ii) recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).
- (F) In the case of an order against a respondent against whom another order was issued within the preceding 5 years under this section, the Director shall send a copy of each such order to the City Attorney.
- (G) If the Commission finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, the Commission shall enter an order dismissing the charge. The Director shall make public disclosure of each such dismissal.
- (7) Review by Director; service of final order
- (A) The Director may review any finding, conclusion, or order issued under section 2-437.2.(i).(6). Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.
 - (B) The Director shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(j) Civil action for enforcement when a charge is filed or election is made for such civil action

- (1) If reasonable cause is found and a charge is filed under section 2-437.2.(f), or an election is made under section 2-437.2.(h) subsection (a), the Secretary Director shall authorize, and not later than 30 days after the authorization or election is made, the Attorney General City Attorney shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection. ~~Venue for such civil action shall be determined under chapter 87 of title 28.~~
- (2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.
- (3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under 42 U.S.C. § 3613. ~~section 3613 of this title.~~ Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under 42 U.S.C. § 3613 ~~section 3613 of this title~~ shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

Commented [SE12]: If reasonable cause is found and a charge is issued, it is on the agency to bring the case forward on behalf of the aggrieved person; they should not be required to affirmatively request that their case proceed to final disposition.

Commented [NT13R12]: Please let me know if the added text in green addresses this discrepancy.

(k) Civil action by private persons

- (1) Under 42 U.S.C. § 3613, an ~~An~~ aggrieved person may commence a civil action in an appropriate United States district court or State court not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this subchapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.
- (1) The computation of such 2-year period shall not include any time during which an administrative proceeding under this subchapter was pending with respect to a complaint or charge under this subchapter based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.
- (2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 2-437.2.(a) of this ordinance ~~3610(a) of this title~~ and without regard to the status of any such complaint, but if the ~~Director~~ ~~Secretary of a State or local agency~~ has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.
- (3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the ~~Director~~ ~~Secretary~~ if an administrative law judge has commenced a hearing on the record under this subchapter with respect to such charge.

(l) Relief which may be granted

- (1) In a civil action under ~~subsection (a)~~ section 2-437.2.(i) of this ordinance, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (d), may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate).
- (2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee and costs. The United States shall be liable for such fees and costs to the same extent as a private person.
- (3) Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the ~~Secretary~~ ~~Director~~ or civil action under this subchapter.

(m) Intervention by the City Attorney

- (1) Upon timely application, the City Attorney may intervene in such civil action, if the City Attorney certifies that the case is of general public importance. Upon such intervention the City Attorney may obtain such relief as would be available to the City Attorney under 42 U.S.C. § 3614 ~~section 3614(e) of this title~~ in a civil action to which such section applies.

Sec. 2-437.3 Duties and responsibilities – Investigation of individual complaints of public accommodation, credit, or private education discrimination and issuance of findings.

- (a) The Director will develop and implement a central intake mechanism for receiving and processing individual complaints that allege an unlawful, discriminatory public accommodation, credit, or private education practice in the City.
- (b) For complaints alleging an unlawful discriminatory practice within the enforcement jurisdiction of the City, defined herein as within the corporate limits of the City and as authorized by state and federal statutes, the Director or other designated professional staff are authorized to undertake further action as detailed in **Sec. 2-437.3.(c)**. For complaints alleging an unlawful discriminatory practice that falls outside the jurisdiction of the City, the Director or other designated professional staff will refer the complaint to the appropriate state or federal agency.
- (c) Upon determination that an alleged unlawful discriminatory practice falls within the enforcement jurisdiction of the City, the Director or other designated professional staff will conduct, as authorized by this ordinance, an initial fact-finding inquiry to determine if the Complainant presents a prima facie case. The complaint may be dismissed by the Director without further action if it fails to adequately allege a violation of this ordinance or is otherwise deficient on its face. Following the initial fact-finding inquiry, if the complaint is not dismissed, and the Complainant wishes to pursue further action, the Director will serve a copy on each respondent named therein. Said copy shall specify the allegation, citing the evidence that supports further action, and indicating the action to be taken. Further action, as authorized by this ordinance, may include mediation, conciliation, and formal investigation of the complaint, as deemed appropriate by the Director. Upon completion of a formal investigation, the Director shall render a written determination of whether there is probable cause to believe a violation of this ordinance has occurred, and the facts supporting such determination. The written determination shall promptly be served on the parties.
- (d) If the Director determines that further action is appropriate, the Director will propose an initial meeting between the parties for the purpose of exploring a resolution of the complaint through voluntary mediation or other informal means. Nothing herein shall be interpreted as requiring any party to participate in mediation or any other conciliatory efforts. Materials used and communications made during a mediation or informal conciliation shall be confidential and shall not be disclosed to the public by the Director, the Commission, or its staff unless disclosure is authorized in writing by all parties to the dispute.
- (e) If the mediation or conciliation is concluded to the satisfaction of both parties, the complaint will be considered resolved upon the parties' execution of a written conciliation or settlement agreement. Unless all parties agree otherwise, the execution of a written agreement is solely for the purpose of settling a disputed claim and does not constitute an admission by any party that the law has been violated. No further action on the initial complaint will be taken by the Commission or its staff once the agreement is executed.
- (f) If mediation or conciliation is not successful, and the Complainant wishes to pursue further action, the Director or designee may conduct a formal investigation for the purpose of rendering a written determination as to whether there is probable cause to believe a violation of this ordinance occurred, and the facts supporting such determination. If further investigation is not warranted, the Director may dismiss the complaint as not constituting a violation. After a written determination has been served on both parties, the Director may either close the case

Commented [NT14]: Perhaps change to “assessment of evidence” so as not to confuse this with a “finding of fact” or “filing of a charge.”

Commented [NT15]: Potential revision:

Upon receipt of a complaint, the Director or other designated professional staff will conduct, as authorized by this ordinance, an initial assessment to determine if the complaint is jurisdictional and presents a prima facie case of discrimination.

Commented [NT16]: “assessment of evidence”

or proceed with the preparation of materials for consideration by the Commission, as provided in section 2-439.1(c).

- (g) In order to fulfill the requirements of this section, the City Manager is authorized to contract on behalf of the City with any objective, neutral third party qualified to assess allegations of discriminatory conduct as prohibited in section 2-431, for the purpose of receiving complaints, conducting investigations, rendering written determinations of whether there is probable cause to believe a violation of this ordinance has occurred, conducting mediations or conciliations of complaints and advising the Director of the Commission of the results of any investigation, mediation or conciliation of complaints.

Sec. 2-438. Reserved.

Sec. 2-439.1. Enforcement authority – The role of the Commission regarding individual complaints of employment, public accommodation, credit, or private education discrimination.

- (a) If the Director determines that there is insufficient probable cause to believe a violation of this ordinance has occurred, the Director shall dismiss the complaint and advise the complainant in writing that such dismissal shall become final unless, within ten (10) business days of receipt of notice of the dismissal, the complainant files with the Commission a request for a review of the determination of the Director. On written petition of the complainant the Commission may review the Director's conclusion, and may either overrule or affirm the finding of no probable cause. The parties may submit such additional information as they desire for the Commission's consideration. If the Commission determines that probable cause exists, it shall direct the Director to continue the investigation or proceed with conciliation efforts.
- (b) If the Director determines that probable cause to believe a violation did occur and either party declines to participate in mediation or other informal means of resolving the complaint, or if such efforts are attempted but unsuccessful, the Director shall prepare a written summary of the evidence on which the determination of probable cause is based, and shall recommend appropriate remedies for the discriminatory actions in a report to the Commission. The Commission shall determine by majority vote whether to hold a public hearing on the complaint. The Commission shall base its determination on its judgment as to how enforcement of this ordinance would be best served. If the Commission determines not to hold a public hearing, it shall either dismiss the complaint or take such action as it deems appropriate and consistent with the purposes of this ordinance and the powers of the Commission hereunder.
- (c) If a hearing is to be held, the Commission shall promptly notify the parties of the time, date and location of the hearing and serve upon them a statement of the charges against the respondent, the Director's summary of the evidence and recommended remedies, and the issues to be considered at the hearing. The Commission will have the option to consider all of the allegations and issues set forth in the complaint or, in its discretion, may limit the scope of the hearing to one or more of the allegations or issues. The notice and statement shall be served no later than 14 days prior to the date of the hearing. Hearings of the Commission may be held before the entire Commission or before designated hearing panels, consisting of three or more members of the Commission, as the Commission in its discretion may determine. The Chair or a Commissioner designated by the Chair shall preside over the public hearing, which shall be open to the public.

- (d) Whenever the Commission has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, and the Commission, after a good faith effort to obtain the data and information necessary to determine whether a violation has occurred, has been unable to obtain such information, it may request the City Attorney to apply to the judge of the circuit court of the jurisdiction in which the respondent resides or is doing business for a subpoena *duces tecum* against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. For purposes of this section, "person" includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employer, employment agency, labor organization, joint labor-management committee, or an agent thereof.
- (e) In cases to be heard by the Commission the complainant and the responding parties shall be entitled:
- (1) To file written statements or arguments with the Commission prior to the hearing;
 - (2) To be represented by privately retained counsel of his or her choice;
 - (3) To present his or her case or defense by oral or documentary evidence, to be given under oath or by affirmation;
 - (4) To submit rebuttal evidence; and
 - (5) To conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the Commission as a matter of policy shall provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. The Commission shall not be bound by the strict rules of evidence prevailing in the courts of law or equity.
- (f) The Director shall be responsible for assuring the development of the evidentiary record before the Commission and may introduce evidence, examine or cross-examine witnesses, or make argument if they deem it advisable in order to fully apprise the Commission of the facts or the applicable law. The Commission shall keep a full record of the hearing, which record shall be public and open to inspection by any person unless otherwise provided by any applicable law or regulations. Any party may request that the Commission furnish such party a copy of the hearing record and shall reimburse the Commission for the cost of producing the copy. In matters where any party is represented by counsel, the office of the City Attorney shall provide an attorney as counsel to the Commission who will also assist the Director in preparing the case.
- (g) If, after the hearing, the Commission determines by a preponderance of the evidence that the respondent has committed or is committing the alleged violation(s) of this ordinance, the Commission shall state its findings and may issue recommendations, to be served promptly on the parties, which recommendations may include notice to the respondent to cease and desist from such violation(s) and to take such action as may be authorized by law to effectuate the purpose of this ordinance, including but not limited to the payment by respondent of compensatory damages to any person or persons found by the Commission to be so entitled by reason of the violation(s) of this ordinance, or the placement or restoration of any person in or to such status in which the Commission finds they would be but for respondent's violation(s) of this ordinance.
- (h) If, after receiving the evidence presented at the hearing, the Commission finds that the respondent

Commented [NT17]: This section may have been in conflict with substantial equivalence to federal fair housing law, so it is now set apart for protected activities other than housing.

Commented [NT18]: This section may have been in conflict with substantial equivalence to federal fair housing law, so it is now set apart for protected activities other than housing.

has not engaged in the alleged violation(s) of this ordinance, the Commission shall state its findings and shall dismiss the complaint. Prompt notice of such action shall be given to the parties.

- (i) Nothing herein shall be construed as authorizing the Commission to issue subpoenas, award damages or grant injunctive relief.

Sec. 2-439.2. Enforcement authority – Court enforcement regarding individual complaints of employment, public accommodation, credit, or private education discrimination.

- (a) If the Commission finds that a respondent has committed a violation of this ordinance
- (b) and determines that appropriate remedial measures have not been taken, the Commission, through the City Attorney, and subject to approval by the City Council, may file an appropriate action in any court of competent jurisdiction to prove, *de novo*, that the respondent violated this chapter; secure compliance with this chapter; and/or obtain appropriate relief available under any applicable federal or state statute or regulation including, but not limited to an award of injunctive relief, compensatory and / or punitive damages and a recovery of costs and attorney's fees for any person, including the City, injured as a result of a violation of this chapter.
- (c) If the City Council approves the institution of any proceeding in court, the proceeding shall be brought in the name of the City Council and the Human Rights Commission of the City of Charlottesville.

Commented [NT19]: This section may have been in conflict with substantial equivalence to federal fair housing law, so it is now set apart for protected activities other than housing.

Commented [NT20]: This section may have been in conflict with substantial equivalence to federal fair housing law, so it is now set apart for protected activities other than housing.

Sec. 2-440. Confidentiality.

It shall be unlawful for any Commissioner, officer, employee, contractor or staff member of the Commission to disclose or make public any complaints, investigative notes, or other correspondence and information furnished to the Commission or its staff in confidence with respect to a complaint, an investigation or conciliation process involving an alleged unlawful discriminatory practice. A violation of this section shall be a Class 3 misdemeanor.

Sec. 2-441. Annual Report.

The Commission shall make an annual comprehensive report to City Council that outlines its efforts during the preceding year in the areas of identifying and addressing systemic or institutional discrimination; processing individual complaints of unlawful discrimination; and facilitating a community dialogue regarding issues of human rights. The report shall also outline the Commission's work plan for the ensuing year, which shall be subject to approval or modification by City Council.

Sec. 2-442. Severability.

The provisions of the Article are severable; and if any provision, sentence, clause, section or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Article, or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Article would have

been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the chapter or any part thereof is inapplicable had been specifically exempted therefrom.

Sec. 2-443. Reserved.

Approved by Council
February 1, 2021



Kyna Thomas, CMC
Clerk of Council