

AN ORDINANCE OF THE COUNCIL OF THE CITY OF WHEELING
AMENDING AND REENACTING ARTICLE 169 OF THE CODIFIED
ORDINANCES OF THE CITY OF WHEELING, HUMAN RIGHTS
COMMISSION

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

Section 1. The Council of the City of Wheeling does hereby amend and readopt Article 175, entitled Human Rights Commission, of the Codified Ordinances of the City of Wheeling, as amended as follows:

ARTICLE 169

Human Rights Commission

- 169.01 Declaration of policy.
- 169.02 Definitions.
- 169.03 Unlawful discriminatory practices.
- 169.04 Commission established, composition and membership.
- 169.05 Commission organization and personnel.
- 169.06 Meetings.
- 169.07 Commission status and objectives.
- 169.08 Powers; functions; services.
- 169.09 Complaints/procedures; enforcement and judicial review.
- 169.10 Conflicts of law.

CROSS REFERENCES

Human Rights Act - see W. Va. Code Chapter 5-11-1 et seq.

169.01 DECLARATION OF POLICY.

(a) In order to build an inclusive community, the City will dedicate deliberate and continuous attention to the human relations and human rights of its residents and visitors.

(b) It is the public policy of the City to provide all of its residents and workers equal opportunity for employment, equal access to places of public accommodations and equal opportunity on the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment, public accommodations, housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, familial status, veteran status, sexual orientation or gender identity.

(c) The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, familial status, veteran status, sexual orientation, or gender identity is contrary to the principles of freedom and quality of opportunity and is destructive to a free and democratic society.

(d) This City policy is based on the recognition and vision that the diversity found in

our City brings forth richness in our community, a greater understanding of our world, a multitude of talent to benefit collective needs, and an opportunity for enhanced living and learning for all. Inherent in this policy is a commitment to encourage and endeavor to bring about equal opportunity, mutual understanding and respect for persons of all ages, abilities, ancestry, blindness, color, disabilities, ethnicities, familial status, veteran status, national origins, sex, races, religions, sexual orientations, gender identities and other backgrounds or orientations.

(Ord. 14905. Passed 12-20-16.)

169.02 DEFINITIONS.

When used in this article:

- (a) "Age" means 40 or above.
- (b) "Chair" means the chair of the Human Rights Commission of the City of Wheeling.
- (c) "Commission" means the Human Rights Commission of the City of Wheeling.

(d) "Discriminate" or "discrimination" means to exclude from or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, familial status, veteran status, sexual orientation or gender identity and includes "to separate" or "segregate". ." For the purposes of this chapter, discrimination because of race includes, but is not limited to, discrimination based on hair textures and protective hairstyles historically associated with a particular race.

(e) "Employee" shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

(f) "Employer" means any person employing 12 or more persons within the City and includes an agent of such person, and its agencies. Provided, that such term shall not be taken, understood or construed to include a private club, which, in fact, is not open to the public.

(g) "Employment agency" includes any person regularly undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

(h) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals;
or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years. Nothing in this definition restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons.

(i) A person shall be deemed to have a "disability" if he or she:

- (1) Has a mental or physical impairment which substantially limits one or more of such persons' major life activities; "major life activities" includes functions such as caring for one'
- (2) Has a record of such impairment; or
- (3) Is regarded as having such an impairment.

For the purposes of this article "disabled" does not include persons whose current use of or addiction to alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reasons of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

For purpose of this article, in the event of a conflict between the interpretation of these provisions concerning "disability" and the interpretation of a similar provision contained in the federal law commonly referenced as the Americans with Disabilities Act ("ADA"), the interpretation of the provisions of the ADA shall apply to this municipal Ordinance.

(j) "Housing accommodations" means any building or portion thereof which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room in a rooming house occupied by the owner as a place of residence and containing no more than three rented rooms, or rooms to be rented.

(k) "Inclusive City" and "Inclusive Community" as used in this Ordinance shall mean the same thing, e.g., a City that helps people thrive by: supporting hospitality; welcoming diversity; promoting civility; promoting safe, affordable dwellings; enabling participation in community, services and local government; supporting fairness in access to opportunities and services; reducing violence; supporting social justice; encouraging awareness and understanding of opportunities/limitations; making residents aware of the West Virginia Human Rights Commission and the City of Wheeling's Human Rights Commission; and working for a more sustainable community for present and future citizens.

(l) "Labor organization" includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(m) "Person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of person.

(n) "Owner" shall include the owner, lessee, sublessee, assignee, manager, agents or other person having the right to sell, rent or lease any housing accommodation or real property within the City or any agent of any of these.

(o) "Place of public accommodations" means any establishment or person, as defined herein, including the City and any of its affiliated boards and commissions, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but does not include any accommodations which are classified as private clubs pursuant to

the applicable regulations of the State of West Virginia Alcohol Beverage Control Commission, or places or events that are by their nature private.

~~(p)~~ (p) “Protective hairstyles” include, but are not limited to, hairstyles such as braids, locks, and twists.

(q) “Purchaser” includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

~~(r)~~ (r) “Real estate broker” includes any person, firm or corporation who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser, or assists or desists in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate, or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in land. In the sale of lots, the term “real estate broker” also includes any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt to agree to negotiate the sale or exchange of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

~~(s)~~ (s) “Real estate salesman” includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell real estate, or any parts thereof, in lots or other parcels.

~~(t)~~ (t) “Real property” includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

~~(u)~~ (u) “Rooming house” means a house or building where there is one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to such persons as he chooses to receive.

~~(v)~~ (v) “Sexual Orientation” means actual or perceived heterosexuality, homosexuality, or bisexuality.

~~(w)~~ (w) “Gender identity” means actual or perceived appearance, or behavior of an individual, with or without regard to the individual’s assigned sex at birth.

~~(x)~~ (x) “Unlawful discriminatory practices” includes only those practices specified in

Section 169.03.

(~~x~~y) “Veteran status” means a person who has served in the active military naval or air service, and who was discharged or released under conditions other than dishonorable. (Ord. 14905. Passed 12-20-16.)

169.03 UNLAWFUL DISCRIMINATORY PRACTICES.

(a) It shall be unlawful discriminatory practice, unless based upon a bona fide occupational qualification:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment on the basis of race, religion, color, national origin, ancestry, sex, age, blindness, disability, veteran status, sexual orientation, or gender identity. Provided, that it shall not be an unlawful discriminatory practice of an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subsection.

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership to:

A. Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity of any applicant for employment or membership, except for such forms which shall be kept separate from the application blanks for the administration of any bona-fide affirmative action plan, that is in accordance with state and federal laws and regulations, or for the purpose of complying with any state or federal statute, or rule or regulation issued by any agency of the state or federal government, or for the purpose of making reports required by agencies of the state or federal government;

B. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity; or

C. Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity.

(3) For any labor organization because of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly related to employment.

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

A. Select individuals for an apprentice training program on any basis other than their qualifications as determined by objective criteria which permit review;

B. Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

C. Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs; or

D. Print or circulate or cause to be printed or circulated any statement, advertisement or publication; or to use any form of application of such programs; or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification.

(5) For any employment agency to fail or refuse to classify properly, refer for employment, or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity.

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

A. Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation, or gender identity, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations; or

B. Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, disability, sex, blindness, age, veteran status, sexual orientation or gender identity or that the patronage or custom threat of any individual belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex, age, veteran status, sexual orientation, or gender identity or who is blind or disabled is unwelcome, objectionable, not acceptable, undesired or not solicited.

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

A. Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss, or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section.

B. Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the Commission or any of its members or representatives in the performance of duty under this article; or

C. Engage in any form of reprisal or otherwise discriminate against any person who has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article.

Notwithstanding anything to the contrary set forth within this Ordinance, nothing in this

Ordinance shall be construed to violate the rights of freedom of speech or religion guaranteed by the First Amendment to the United States Constitution or Article III, Section 7 and 15 of the West Virginia Constitution. The recognition of sexual orientation and gender identity as classifications subject to complaints of discrimination in this Ordinance shall not pertain to a religious organization, association, educational institution or society employing individuals whose primary duties consist of teaching or spreading doctrine or belief, religious governance, supervision of a religious order, supervision of persons teaching or spreading religious doctrine or belief, or supervision or participation in religious ritual or worship. Nothing in this Ordinance shall prevent a religious organization, association, educational institution or society from restricting membership or access to any of its religious services or activities to those who are members of the same religion. (Ord. 14905. Passed 12-20-16.)

169.04 COMMISSION ESTABLISHED, COMPOSITION AND MEMBERSHIP.

(a) The Human Rights Commission shall consist of nine members to be appointed by the Mayor with the approval of City Council. They shall be residents of and reside in the City of Wheeling. The Commission may appoint, with the approval of City Council, ex-officio members who shall have the privilege of participation without the right to vote. The members serve voluntarily and without compensation.

(b) Commissioners shall serve for three year terms beginning with the first meeting after the beginning of the municipal fiscal year, except that appointment to fill vacancies shall be for the unexpired term thereof. Members may be eligible for reappointment and may continue to serve during interim periods when there has yet to be a reappointment or a new Commissioner appointed.

(Ord. 14905. Passed 12-20-16.)

169.05 COMMISSION ORGANIZATION AND PERSONNEL.

(a) Officers: The officers of the Human Rights Commission shall be a Chairperson and Vice Chairperson and such officers shall assign the designated Commissioner to oversee and direct the Complaint process described herein. The Chairperson shall serve as the liaison to the City Administration.

(b) Appropriation of Funds: City Council may appropriate any funds that it deems necessary to carry out any of the proposals set forth by the Human Rights Commission. The Commission, with the approval of Council, may apply for State and Federal financial aid in grants or other forms of financial assistance through the City Administration to assist in carrying out any approved plans or projects. The City Manager may select a Secretary for the Commission who shall serve at the will and pleasure of the City Manager and whose duties and salary, if any, shall be set by the City Manager.

(Ord. 14905. Passed 12-20-16.)

169.06 MEETINGS.

The Human Rights Commission shall meet as often as is deemed necessary by its members, upon call of the Chairperson or Vice-Chairperson in the absence of the Chairperson.

(Ord. 14905. Passed 12-20-16.)

169.07 COMMISSION STATUS AND OBJECTIVES.

(a) The Commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the City; and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness, disability, veteran status, sexual orientation or gender identity and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, age, blindness, disability, veteran status, sexual orientation or gender identity. The Commission shall promptly evaluate allegations of a written complaint which falls within the Commission's jurisdiction and within ten (10) days of receipt decide whether or not to retain such complaint within the City Commission or forward such to the State of West Virginia Human Rights Commission for action. Reasonable extensions of time may be made by the Commission itself or given by the Commission upon written request by either party. Any complaint involving the City of Wheeling or any of its instrumentalities shall be sent for processing to the State of West Virginia Human Rights Commission.

(b) In addition, the purpose of the Commission shall be to:

(1) Work to make Wheeling an inclusive City.

(2) Collaborate with other partners as appropriate to encourage leadership in helping attain inclusivity in the City;

(3) Assess needs and identify barriers towards becoming a more inclusive community. Establish goals and objectives for sustaining welcoming environments, enhancing global awareness, and promoting optimum opportunities for supporting safe housing and thriving people.

(4) Support as well as plan, participate in, publicize, implement, and evaluate programs, services and activities which promote appreciation for all peoples and the personal worth of every individual; and

(5) Enlist the cooperation of civil, community, corporate, educational, ethnic, health care, labor, racial, religious, social justice or other identifiable groups of the City in programs and services devoted to the advancement of tolerance, communication and understanding, and equal protection of the laws of all groups and people.

(Ord. 14905. Passed 12-20-16.)

169.08 POWERS; FUNCTIONS; SERVICES.

The Commission has the right and duty to communicate with City Council by presenting to the City Manager and the City Solicitor any issues that may present legal ramifications pursuant to this Article. The Office of the City Solicitor serves as the Commission's legal counsel. The Commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state, county, and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this City.

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and people.

(c) To hold and conduct public meetings relating to fostering awareness of the many types of discrimination. These public meetings shall be of a non-adjudicatory nature and shall not constitute investigations or adjudication of individual complaints regarding unlawful discrimination under the West Virginia Human Rights Act 5-11-1 et seq., or this Article.

(d) To have the ability to refer any individual or group complaint regarding alleged acts of unlawful discrimination to the West Virginia Human Rights Commission for investigation and adjudication upon receipt of a written complaint or after conciliation and conference should such efforts fail or, in the alternative, shall the conciliation process fail and the Commission believes that discrimination has occurred, it may provide a cease and desist order as discussed later in the Article at Section 169.09.

(e) To study problems and needs related to inclusivity in the City and make specific recommendation to the City Manager and to City Council and other partners as pertinent.

(f) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to Council on or before December 1 next thereafter.

(g) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objectives, functions and services contemplated by the provisions of this Article, including, if necessary, the promulgation of rules and regulations, to be approved by the City Solicitor, implementing the powers and authority hereby vested in the Commission.

(h) To study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, disability, veteran status, sexual orientation and/or gender identity; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of the City and to participate with other agencies and groups regarding programs of formal and informal education. The Commission may itself voluntarily make the studies and perform the acts authorized by this subsection. It may, by voluntary conferences with parties in interest, endeavor to eliminate discrimination in all stated fields and to foster goodwill and cooperation among all elements of the population of the City.

(i) To accept contributions from any person to assist in the effectuation of the purposes of this section and to see and enlist the cooperation of private, charitable, religious, labor and civic and benevolent organizations for the purpose of this section.

(j) To issue such publications and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination; however, the associated costs of such require prior approval by the City Manager and/or City Council.

(k) Advise, consult with, and inform the City Manager, or his designee on any matter pertaining to inclusivity in the City.

(l) Support program initiatives to promote residents' awareness and knowledge of both opportunities to increase inclusivity and current barriers which limit community inclusiveness and long-term sustainability.

(m) Participate in community activities in the City which increases public awareness of issues; promotes education and understanding, provides, enables or enhances services; articulates planned collaboration; and promotes public participation.

(n) Use media and the municipal marketing and internet facilities available within the City Administration to frame and convey information about issues, public programs, and service opportunities.

(Ord. 14905. Passed 12-20-16.)

169.09 COMPLAINTS/PROCEDURES; ENFORCEMENT AND JUDICIAL REVIEW.

(a) The Commission has the ability to inform within a ten (10) day period any individual claiming to be aggrieved by an alleged unlawful discriminatory practice under West Virginia Human Rights Act 5-11-9 that the Commission will not accept formal complaints of illegal practices but will forward the allegations to the State of West Virginia. Thereafter, any individual claiming to be so aggrieved shall be referred to the West Virginia Human Rights Commission for investigation and adjudication of the complaint.

(b) For purposes of conference and conciliation concerning discriminatory practices, investigations, hearings, procedures and orders, should the Commission wish to retain the complaint, the Commission shall follow the procedures contained within West Virginia Code §5-11-10, incorporated and modified herein as follows:

(1) Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the Commission a verified complaint which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission. The Commission upon its own initiative through the Chairperson or Vice-Chairperson shall appoint a Commissioner to oversee and direct the complaint process and shall, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threatened to hinder compliance with the provisions of this article, shall file with the Commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be held, made or taken by the Commission against

such employer. Any complaint filed pursuant to this article must be filed within three hundred sixty-five days after the alleged act of discrimination.

(c) After the filing of a written, verified complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission and the assigned Commissioner designated by the Commission to oversee and direct the complaint process shall, within twenty (20) days, complete a prompt investigation in connection therewith and make a written determination.

(d) If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the Commission, by and through the designated Commissioner, shall, within ten (10) days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten (10) days after such service, file with the Commission a written request for a meeting with the Commission to show probable cause for substantiating the allegations of the complaint. The meeting shall be held within ten (10) days of receipt of the request. The designated Commissioner shall be responsible for all notices and arrangements to be made for such meetings. If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the Commission, by and through the designated Commissioner, shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion. The members of the Commission shall, within ten (10) days after such investigation or meeting, not disclose what has transpired in the course of such endeavors: Provided, that the Commission may publish the facts in the case of any complaint which has been dismissed and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved to the extent allowed by law.

(e) Except as provided in this Article, all of the pertinent provisions of West Virginia Code Article 29A-5 shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of such Article 29A-5 were set forth in extensor in this section.

(f) The following alternative remedies are available, which may not be all inclusive, in case of failure to eliminate through conciliation and conference such discriminatory practice or in advance thereof, if in the judgment of the Commission circumstances so warrant, the following alternative remedies are available, which may or may not be all inclusive, the Commission may:

(1) Cause the complaint file to be immediately sent to the State of West Virginia Human Rights Commission to be processed in accord with West Virginia Code §5-11-10. The deadline for response by the Commission to verified complaints as contained in this section is necessary so that prompt evaluation can be made as to whether the matter will be retained by the City Commission for purposes of conciliation and if such process fails, the matter can be sent to the West Virginia State Human Rights Commission for further action in a timely manner. Deadlines for responses to verified complaints may only be extended with good cause shown and cannot be extended for any period other than an additional ten (10) days. Parties may only request one (1) extension of any applicable deadline. Deadline extensions are inapplicable to the mandatory three hundred and sixty-five (365) day filing requirement wherein the act of alleged discrimination occurred;

(2) If after such attempt at conciliation, mediation and persuasion process has concluded and consideration of all of the information comprising the record in the case, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, and there remains a failure to eliminate the discrimination, the Commission may issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action as the Commission deems appropriate. Such order shall be accompanied by findings of fact and conclusions drawn by the Commission citing appropriate sections of this article.

(g) In the event any person fails to obey a lawful cease and desist order of the Commission, the Commission may seek an order of a court of competent jurisdiction for its enforcement in a proceeding as provided in this section. Such proceeding shall be initiated by the filing of a petition in such court, together with the entire record of its proceedings before the Commission. Notice of the filing of such petition, together with a copy thereof, shall be served upon the respondent in the manner provided by law for the service of summons in civil actions. The court may grant such temporary relief or restraining order as it deems just and proper and shall make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. All such proceedings shall be heard and determined by the court.

(h) Nothing in this section shall be construed to prohibit the filing of a private cause of action at any time. Judicial review of a final decision of the Commission shall be by a certiorari as set forth in West Virginia Code §53-3-1 through 53-3-6, or in such other manner as may be allowed under the laws of the State.

(Ord. 14905. Passed 12-20-16.)

169.10 CONFLICTS OF LAW.

In the event of a conflict between the interpretation of a provision of West Virginia Article §5-11 et seq. and the interpretation of a similar provision contained in any part of this municipal ordinance, the interpretation of the provision in West Virginia Code shall apply to this municipal ordinance. Until such time as the legislation of the State provides equal or broader protections for the classifications of veteran status, sexual orientation or gender identity, the provisions contained herein control such application of this Ordinance to such classifications.

(Ord. 14905. Passed 12-20-16.)