

ORDINANCE NO. 21, 1998
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPEALING AND REENACTING ARTICLE II OF CHAPTER 13
OF THE CITY CODE CONCERNING DISCRIMINATION

WHEREAS, over the past three years, the City's Human Relations Commission has been studying and gathering information concerning the scope and effectiveness of the provisions set forth in Article II of Chapter 13 of the Code of the City of Fort Collins, dealing with human relations (the "Human Rights Code"); and

WHEREAS, following the presentation of suggested changes from the Human Relations Commission, the City Manager formed a 13 member Human Rights Ordinance Task Force (the "Task Force") to further study the issues surrounding the need for changes to the Human Rights Code and to seek further broad-based citizen comment and input; and

WHEREAS, the Task Force regularly met over a five month period, conducted three publicly advertised open forums where citizen comment and input was encouraged and received, and vigorously discussed, debated, and considered the scope and effectiveness of the Human Rights Code and the need for changes to the Code; and

WHEREAS, during the open forums conducted by the Task Force, many citizens came forward to express their views, experiences, thoughts, and beliefs concerning a wide array of issues related to the Human Rights Code; and

WHEREAS, based upon the comments and input provided by the Human Relations Commission, the Task Force, the many citizens who participated in the Task Force forums, the many citizens who have provided comment and input during the proceedings before this body in consideration of this ordinance, and the comments and input from City staff, it is apparent that the Human Rights Code should be revised, in both its substantive and procedural provisions, so as to clarify its meaning, to better encourage conciliation while still ensuring enforcement, and to better protect the dignity, worth, and rights of all human beings;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes the following findings of fact: (a) that the City has a compelling interest in eradicating and preventing discrimination based on race, color, religion, national origin, gender, marital status, age, disability, familial status, and public assistance status, and in ensuring equal opportunity in employment, housing, and public accommodations; (b) that this compelling interest in adopting the provisions set forth in Section 2 of this ordinance outweighs any burden placed upon the rights of the persons regulated by said provisions; (c) that the provisions set forth in Section 2 of this ordinance represent the least restrictive means to achieving the City's objectives; and (d) that nothing in such provisions is intended to establish or require affirmative action, quotas, or preferences of any kind.

Section 2. That Article II of Chapter 13 of the Code of the City of Fort Collins is hereby repealed and reenacted as follows:

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CHAPTER 13

HUMAN RIGHTS

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ARTICLE I. IN GENERAL

Secs. 13-1 – 13-14. Reserved.

ARTICLE II. DISCRIMINATION

Sec. 13-15. Purpose

The City of Fort Collins values the dignity and worth of all human beings and is committed to promoting justice, equity and inclusivity by respecting cultural and individual diversity and fostering mutual understanding among all people regardless of race, color, religion, national origin, gender, marital status, age, disability, familial status, and public assistance status. It is the intent of the City that all people have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing and public accommodations be removed. The City has a compelling interest in eradicating and preventing discrimination based on race, color, religion, national origin, gender, marital status, age, disability, familial status, and public assistance status, and in ensuring equal opportunity in employment, housing and public accommodations. This compelling interest in adopting these code provisions outweighs any burden placed upon the rights of the persons regulated by said provisions. These code provisions represent the least restrictive means to achieving the City's objectives. Nothing in this chapter is intended or shall be interpreted to establish or require affirmative action, quotas or preferences of any kind.

Sec. 13-16. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Age shall mean the chronological age of any individual of at least forty (40) years.

City Manager shall mean the chief administrative official of the city, including any person appointed or designated by the City Manager to carry out any or all of the duties, obligations, rights and powers appointed to the City Manager under this Article.

Complainant shall mean the person filing a formal charge or accusation of violation of this Article.

Disability shall mean a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. The term excludes the following: current use of alcohol or drugs or other disabilities that prevent a person from acquiring, renting, or maintaining property, that would constitute a direct threat to the property or safety of others, or that would prevent performance of job responsibilities; or conditions excluded from the federal definition of disability pursuant to the Americans With Disabilities Act, 42 U.S.C. §12211. Except as provided above, *physical or mental impairment* shall mean:

- (a) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Discriminate, discriminate on the basis of, and for the purpose of discrimination on the basis of shall mean under the given circumstances, a person intentionally makes a limitation, differentiation, or specification as to another because of a prohibited basis as set forth in this article.

Employer shall mean any person employing within the City of Fort Collins fifteen or more persons for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

Employment shall mean any character of service rendered or to be rendered for wages, salary, commission or other form of remuneration, and to use or engage any character of service rendered or to be rendered for wages, salary, commission or other form of remuneration.

Employment agency shall mean any person undertaking, with or without compensation, to procure employees or opportunities to work for any person or holding itself out as equipped to do so.

Familial status shall mean the relationship of one or more individuals under 18 years of age who reside with a parent, another person with care and legal custody of that individual, a person who has been given care and custody of that individual by a state or local governmental agency that is responsible for the welfare of children, or the designee of that parent or other person with legal custody of any individual under 18 years of age by written consent of the parent or designated custodian. The protections afforded by this chapter against discrimination on the basis of familial status shall also apply to any individual who is pregnant, or who is in the process of securing legal custody of any individual under 18 years of age by a state or local governmental agency responsible for the welfare of children.

Gender shall mean male or female. Discrimination on the basis of gender shall include unequal treatment on the basis of pregnancy or childbirth.

Harassment shall mean unwelcome physical or verbal conduct concerning race, color, religion, national origin, marital status, age, gender, or disability which unreasonably interferes with the employee's job performance or creates an intimidating, hostile or offensive working environment.

Hearing Officer shall mean an impartial attorney licensed to practice law in the State of Colorado appointed by the City Manager.

Labor organization shall mean any organization which exists for the purpose in whole or in part of collective bargaining, or of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

Person shall mean the City of Fort Collins or any individual, group, association, corporation, joint apprenticeship, committee, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trustee or unincorporated organization or other legal or commercial entity, excluding only agencies, school districts, colleges, universities, and political subdivisions of the State of Colorado and agencies of the United States of America.

Place of public accommodations shall mean any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind.

Public assistance status shall mean the actual or perceived fact that a person is receiving or has received local, state, or federal government assistance in any form, including, but not limited to money, food, or housing.

Real estate transaction shall mean the sale, exchange, rental or lease of any real property or mobile home and also includes offering or listing of any real property or mobile home for sale, exchange, rental or lease.

Religious organization or institution shall mean any organization or institution affiliated with a church, synagogue, congregation, parish, brotherhood, religious corporation or any religious society engaging in the works of education, benevolence, charity or missions.

Respondent shall mean the person being formally charged with a violation of this Article.

Sexual harassment shall mean unwelcome physical or verbal conduct of a sexual nature when:

- (a) submission to such conduct is explicitly or implicitly a term or condition of employment,
- (b) submission to or rejection of such conduct is used as the basis for an employment decision, or
- (b) such conduct unreasonably interferes with the employee's job performance or creates an intimidating, hostile or offensive working environment.

Sec. 13-17. Discriminatory employment practices prohibited.

(a) Except where based on a bona fide occupational qualification, it shall be a discriminatory employment practice and a violation of this Section for:

- (1) Any employer to discriminate against any person on the basis of race, color, religion, national origin, gender, marital status, age, or disability, with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment;
- (2) Any employment agency to discriminate against any person on the basis of race, color, religion, national origin, gender, marital status, age, or disability, relating to employment or prospective employment;
- (3) Any labor organization to discriminate against any person on the basis of race, color, religion, national origin, gender, marital status, age, or disability, with respect to membership, prospective employment, employment, or training;
- (4) Any person to use a threat communicated either by physical, oral or written means of harm or injury to another person, reputation or property to coerce such a person to not accept or discontinue employment on the basis of race, color, religion, national origin, gender, marital status, age, or disability;

- (5) Any person seeking employment to publish or cause to be published any advertisement for employment with specification or limitation based upon race, color, religion, national origin, gender, marital status, age, or disability;
 - (6) Any employer to discriminate against any person by engaging in harassment or sexual harassment.
 - (7) Any employer, employment agency or labor organization to discriminate against an individual on the basis of the race, color, religion, national origin, gender, marital status, age, or disability of any other person with whom the individual associates or to whom the individual is related.
- (b) Except where based on a bona fide occupational qualification, it shall be a discriminatory employment practice for any employer, employment agency or labor organization prior to employment or admission to membership to:
- (1) Elicit any information for the purpose of discrimination on the basis of race, color, religion, national origin, gender, marital status, age, or disability against any applicant for employment or membership;
 - (2) Make or keep a record for the purpose of discrimination on the basis of race, color, religion, national origin, gender, marital status, age, or disability against any applicant for employment or membership;
 - (3) Use any form of application for employment or personnel or membership blank seeking to elicit information for the purpose of discrimination on the basis of race, color, religion, national origin, gender, marital status, age, or disability;
 - (4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation or specification for the purpose of discrimination on the basis of race, color, religion, national origin, gender, marital status, age, or disability;
 - (5) Establish, announce or follow a policy of denying or limiting through a quota system or otherwise employment or membership opportunities of any group for the purpose of discrimination on the basis of race, color, religion, national origin, gender, marital status, age, or disability;
 - (6) Utilize in the recruitment or hiring of individuals any employment agency, placement service, training school or center, labor organization or any other employee referring service when such person knows that such entity intends to discriminate on the basis of race, color, religion, national origin, gender, marital status, age, or disability;
 - (7) Utilize in the recruitment, hiring, upgrading or promotion of any person any test which discriminates on the basis of race, color, religion, national origin, gender, marital status, age, or disability.
- (c) The provisions of this Section shall not apply to prohibit:
- (1) A religious organization or institution from restricting employment opportunities and advertising such restrictions so as to give preference to members of its own religion or denomination or to make such selection as is reasonably calculated by such organization or institution to promote the religious principles for which it is established or maintained.
 - (2) Different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority, merit, or benefit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate on the basis of race, color, religion, national origin, gender, marital status, age, or disability.

- (3) With respect to marital status, discrimination in fringe benefits, insurance coverage or any other term, condition or privilege of employment where the employee seeks coverage for an individual on the basis that the individual is his or her spousal equivalent.
- (4) Discrimination with respect to a disability, if the disabled person's employment would pose a direct threat to the health or safety of such person or others; if there is no reasonable accommodation that the employer can make with regard to the disability that would allow the person to perform the essential functions of the job; or if the provision of an accommodation necessary to allow the person to perform the essential functions of the job would impose an undue hardship upon the employer. The terms "direct threat", "reasonable accommodation", "essential functions", and "undue hardship" shall be defined as set forth in the Americans With Disabilities Act, 42 U.S.C. §12101 et seq., and the regulations adopted pursuant thereto.
- (5) With respect to discrimination based on age, the compelled retirement of any employee who is sixty-five (65) years of age or older and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate, nonforfeitable, annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee and if such plan equals, in the aggregate, at least forty-four thousand dollars (\$44,000).
- (6) A quota system established by court order as a remedial measure.
- (7) Programs which provide opportunities for persons who have been the traditional targets of discrimination.
- (8) The use of a form or the making of a record of inquiry for the purpose of required governmental reporting.
- (9) A person from giving or being required to give the person's name.
- (10) An employer from discriminating with respect to marital status under circumstances where (I) one spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse; (ii) one spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or (iii) one spouse has access to the employer's confidential information, including payroll and personnel records.

Sec. 13-18. Discriminatory housing practices prohibited.

- (a) It shall be a discriminatory housing practice and a violation of this Section for any person to discriminate on the basis of race, color, religion, national origin, gender, marital status, disability, familial status, or public assistance status:
 - (1) By refusing to negotiate for and/or engage in a real estate transaction with another person;
 - (2) By providing unequal terms, conditions, privileges and services to another person in regard to real estate ownership, rental or leasing;
 - (3) With respect to the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
 - (4) By refusing to receive from or failing to transmit to another person a bona fide offer to engage in a real estate transaction;
 - (5) By representing to another person that any real property is not available for inspection or for a real estate transaction when in fact it is available;

- (6) By failing, in the ordinary course of business, to bring a property listing to another person's attention or by refusing to permit him to inspect real property under reasonable conditions.
 - (7) By publishing or advertising, directly or indirectly, an intent to make a limitation or specification in a real estate transaction;
 - (8) By using a form of application for a real estate transaction, or by making a record of inquiry in connection with a real estate transaction, for the purpose of making a limitation or specification.
 - (9) By offering, soliciting, accepting, using or retaining a listing of real property, including mobile homes, when the person knows that the owner or person in control of said property intends to discriminate against another in a real estate transaction, or in the furnishing of facilities or services in connection therewith.
 - (10) By inducing or attempting to induce for profit 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, national origin, gender, marital status, disability, familial status, or public assistance status.
 - (11) By using a threat communicated either by physical, oral or written means of harm or injury to another person, reputation or property to coerce such person to not buy, rent or lease, or to discontinue ownership, rental or leasing real estate.
- (b) A person or a representative of such person to whom application is made for financial assistance in connection with a real estate transaction, or for the construction, rehabilitation, repair, maintenance or improvement of real property, shall not:
- (1) Discriminate against the applicant on the basis of race, color, religion, national origin, gender, marital status, disability, familial status, or public assistance status;
 - (2) Use a form of application for financial assistance or make or keep a record of inquiry in connection with applications for financial assistance, for the purpose of discrimination on the basis of race, color, religion, national origin, gender, marital status, disability, familial status, or public assistance status. It shall not be a discriminatory practice to have programs which provide opportunities for persons who have been the traditional targets of discrimination or to use a form or make a record of inquiry as above described for the purpose of required governmental reporting. This subsection shall not be construed so as to prohibit a person giving or being required to give the person's name.
- (c) No person shall discriminate against an individual on the basis of the race, color, religion, national origin, gender, marital status, disability, familial status, or public assistance status of any other person with whom the individual associates or to whom the individual is related.
- (d) The following exceptions shall apply to the provisions of this Section:
- (1) This Section shall not apply to multiple-unit dwellings of not more than four (4) dwelling units where at least one (1) of the units is owner-occupied, nor to the renting of rooms in an individual dwelling unit occupied by the lessor as his or her residence.
 - (2) A religious organization or institution may restrict its facilities or housing which are operated in connection with its religious activities and may advertise such restrictions so as to give preference to members of its own religion or denomination or to make such selection as is reasonably calculated by such organization or institution to promote the religious principles for which it is established or maintained.
 - (3) The prohibition against discrimination on the basis of public assistance status shall not forbid:

- (I) Inquiry into and verification of source and amount of income.
 - (ii) Inquiry into, evaluation of, and decisions based on the amount, stability or creditworthiness of any income or source of income.
 - (iii) A decision not to contract with a governmental agency under 42 U.S.C. section 1437(a) (Section 8).
- (4) The prohibition against discrimination on the basis of marital status shall not forbid an inquiry regarding marital status if such inquiry is for the purpose of ascertaining a creditor's rights and remedies applicable to a particular extension of credit and not to discriminate in a determination of creditworthiness.
- (5) The prohibition against discrimination on the basis of gender shall not apply if the real estate involved is designed, constructed, and/or used in such fashion that the application of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of the opposite gender.
- (6) The prohibition against discrimination on the basis of gender and familial status in this Section shall not apply to shelters for battered or abused persons, or homes for women or girls who are pregnant or recently gave birth.
- (7) The prohibition against discrimination on the basis of familial status, disability, and public assistance status shall not apply to public or private non-profit organizations which provide affordable housing to benefit segments of the low income population based on criteria which include familial status, disability, or public assistance status. For the purposes of this subsection, *low income population* shall mean persons or families that earn 80% or less of the median family income, adjusted for size, as established by the U.S. Department of Housing and Urban Development.
- (8) Nothing in this Section shall limit the applicability of any local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
- (9) Nothing in this Section shall prohibit group homes, self-care elderly homes, special care homes or other facilities whose use is restricted to the elderly or to individuals with disabilities.
- (10) Nothing in this Section shall prohibit programs which provide opportunities for persons who have been the traditional targets of discrimination; the use a form or the making of a record of inquiry for the purpose of required governmental reporting; or a person from giving or being required to give the person's name.
- (11) Nothing in this Section shall require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of persons under eighteen (18) years of age residing in the dwelling.

Sec. 13-19. Discriminatory public accommodation practices prohibited.

- (a) It shall be a discriminatory public accommodation practice for any person to discriminate against another person on the basis of race, color, religion, national origin, gender, marital status, disability, or public assistance status:
- (1) By denying or limiting access to a place of public accommodation or by providing unequal terms, conditions or privileges to a place of public accommodation;
 - (2) By using a threat communicated either by physical, oral or written means of harm or injury to another person, reputation or property to coerce such person to not utilize a place of public accommodation;

(3) By advertising or causing to be advertised a place of public accommodation as being restricted on the basis of race, color, religion, national origin, gender, marital status, disability, or public assistance status.

(b) The following exceptions shall apply to the provisions of this Section:

(1) The provisions of this Section shall not apply to prohibit a religious organization or institution from restricting the use of its facilities and advertising such restrictions, thereby discriminating against certain persons so as to give preference to members of its own religion or denomination or to make such selection as is reasonably calculated by such organization or institution to promote the religious principles for which it is established or maintained.

(2) Notwithstanding any other provisions of this Section, it shall not be a discriminatory practice for a person to restrict admission to a place of public accommodation to individuals of one gender if such restriction has a bona fide relationship to the goods, services, facilities, privileges, advantages or accommodations of such place of public accommodation.

(3) The prohibition against discrimination on the basis of gender in this Section shall not apply to shelters for battered or abused persons, or homes for women or girls who are pregnant or recently gave birth.

(4) The prohibition against discrimination on the basis of disability and public assistance status shall not apply to public or private non-profit organizations which provide public accommodation to benefit segments of the low income population based on criteria which include disability or public assistance status. For the purposes of this subsection, *low income population* shall mean persons or families that earn 80% or less of the median family income, adjusted for size, as established by the U.S. Department of Housing and Urban Development.

(5) Nothing in this Section shall limit the applicability of any local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(6) Nothing in this Section shall prohibit group homes, self-care elderly homes, special care homes or other facilities whose use is restricted to the elderly or to individuals with disabilities.

Sec. 13-20. Interference with operation of regulations prohibited.

(a) No person shall:

(1) Use a threat communicated either by physical, oral or written means of harm or injury to another person, reputation or property or discriminate against any person or provide unequal terms, conditions or privileges because that person has entered into a conciliation agreement under this Article or because such other person has opposed a discriminatory practice or because such person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceedings or hearing before anybody charged by law with the duty to hear complaints relating to problems of discrimination;

(2) Use a threat communicated by physical, oral or written means of harm or injury to another person, reputation or property to coerce such person to engage in a discriminatory practice or other violation of this Article;

(3) Willfully obstruct, hinder or interfere with the performance or the proper exercise of a duty, obligation, right or power by the City Manager, the Municipal Court or any other official or body with duties, obligations, rights and powers under this Article.

(b) A complaint for a violation of this Section shall be processed in accordance with §§ 13-21 through 13-27.

Sec. 13-21. Appointment of enforcing official.

In the event that a complaint is filed against the City or a City employee or official, the powers and duties assigned to the City Manager in §§ 13-22 and 13-23 shall be assigned by the City Manager to a Hearing Officer. This Hearing Officer shall not be the same Hearing Officer who conducts the hearing described in Section 13-23.

Sec. 13-22. Complaint.

(a) Any person claiming to be aggrieved by a violation of this Article may, within ninety (90) days of the alleged violation, or thirty (30) days after any complaint concerning the same matter has been dismissed by another agency without a final judgment on the merits, whichever shall last occur, file a written complaint under oath with the City Manager. The complaint shall contain the name of the alleged violator, or set forth facts sufficient to identify such person, and include an outline of the material facts upon which the complaint is based and the date of the alleged violation. In addition, the complaint shall state, if and as applicable, that any acts or conduct of the complainant were for the purpose of accomplishing the real estate transaction, employment objective or public accommodation use in question, and not for the purpose of harassment or entrapment of the person against whom the complaint is made.

(b) The complaint must state:

- (1) Whether or not a complaint concerning this same matter has been filed with another agency;
- (2) Whether any complaint concerning this same matter that has been filed with another agency has been dismissed without a final judgment on the merits.

(c) Upon receiving a complaint which conforms to the requirements of this Section, the City Manager may proceed with a local investigation pursuant to this Article. In the alternative, the City Manager may request that the complaint be investigated, conciliated and fully determined by the State of Colorado in accordance with the provisions of Title 24, Article 34, Parts 3 through 7, C.R.S. If the City Manager's request is accepted by the state or if a complaint concerning the same subject matter has been previously filed by the complainant with the Colorado Civil Rights Commission or another public agency charged with human rights investigation and enforcement, the City Manager shall hold the city's investigation in abeyance pending further action by the commission or other agency. If such other agency makes a final judgment on the merits or determines, after investigation, that it is unable to conclude that a violation has occurred, the City Manager shall dismiss the complaint filed with the city. If such other agency dismisses the complaint without a final judgment on the merits or without investigation, or waives jurisdiction, the City Manager shall proceed with an investigation pursuant to the provisions of § 13-23. In any event, the City Manager shall furnish a copy of the complaint to the respondent within ten (10) days after the complaint is filed with the city.

(d) Prior to or during the course of the investigation, the City Manager may conduct an early resolution conference with the complainant and the respondent and attempt to resolve the complaint through an early resolution agreement. If an early resolution agreement is reached, it will be signed by the complainant and the respondent. The agreement shall identify the City as a third party beneficiary thereof and the City, the complainant and the respondent shall have the right to seek specific performance in the event of a breach of the agreement. It will not be necessary for the agreement to contain a declaration or finding that a violation has in fact occurred. The agreement may provide for dismissal of the complaint without prejudice. The complainant and respondent shall be furnished a copy of the agreement. The terms of an early resolution agreement, information relating to any complaint, and the complaint's investigation and disposition shall not be disclosed or made public by the City or any officer or employee, thereof without the consent of the complainant and the respondent, except as required by law.

Sec. 13-23. Investigation by City Manager; hearing.

(a) If the City Manager does not deem it practicable to attempt an early resolution settlement or if such settlement attempt is unsuccessful, the City Manager shall conduct an investigation to determine whether the factual allegations of the complaint constitute probable cause to believe that there has been a violation of this Article. The

City Manager shall consult with the City Attorney before making a determination of probable cause. The City Manager shall attempt to make a determination of probable cause within sixty (60) days from the date of filing of the complaint, unless the complaint is being held in abeyance pursuant to §13-22(c). If the City Manager is unable to make the probable cause determination within such time, the City Manager shall notify the complainant and the respondent of the reasons for the delay and shall update this notice not less than every sixty (60) days thereafter until such determination is made. Both the complainant and the respondent shall be provided with prompt and, to the extent reasonably possible, simultaneous notice as to the City Manager's findings with respect to probable cause.

(b) If at any time the City Manager determines that probable cause does not exist, he or she shall dismiss the complaint. The respondent may, within thirty (30) days of the mailing of the notice, seek an order for reasonable costs and attorney fees from the complainant by making a written request that the City Manager assign a Hearing Officer to conduct a show cause hearing. If the Hearing Officer finds that the complainant clearly knew or reasonably should have known that his or her complaint was substantially frivolous, substantially groundless, or substantially vexatious, the Hearing Officer may order the complainant to pay the respondent's reasonable costs and attorney fees not exceeding five hundred dollars (\$500.00). The Complainant or the respondent may seek judicial review of the decision of the Hearing Officer in the Larimer County District Court in accordance with the Colorado Rules of Civil Procedure, Rule 106(A)(4). Such review must be sought not later than thirty (30) days after the date of the decision of the Hearing Officer. The timely and proper filing for such a review shall stay the imposition of any order of the Hearing Officer until the review is concluded by the District Court.

(c) If the City Manager determines that there is probable cause to believe that there has been a violation of this Article, the City Manager shall endeavor to eliminate the alleged violation by conference or conciliation. Notwithstanding a finding that probable cause exists, the City Manager may continue to work toward conciliation agreements whereunder the alleged violation is eliminated and the complaining person is made whole to the extent possible. If such an agreement is reached, it will be signed by the complainant and the respondent. The agreement shall identify the City as a third party beneficiary thereof and the City, the complainant and the respondent shall have the right to seek specific performance in the event of a breach of the agreement. It will not be necessary for the agreement to contain a declaration or finding that a violation has in fact occurred. The agreement may provide for the dismissal of the complaint without prejudice. The complainant and respondent shall be furnished a copy of the agreement. The terms of an agreement reached following a finding of probable cause may be made public, but no other information relating to any complaint, its investigation and disposition will be disclosed or made public by the city or any officer, employee, board or commission thereof without the consent of the complainant and the respondent, except as required by law.

(d) If the City Manager has been unable to obtain a conciliation agreement between the parties within thirty (30) days after the City Manager's finding of probable cause, the City Manager shall review all available information to determine whether the intent and purpose of this Article would be served by requesting a hearing before a Hearing Officer on the merits of the complaint. In determining whether or not to bring the complaint to hearing, the City Manager shall also consider the desire of the complainant, the sufficiency of the evidence of discrimination, the nature and seriousness of the alleged discrimination, the appropriateness of the remedies available, the magnitude of the harm to the complainant, the motivation of the complainant in bringing the allegation, and the willingness of the parties to engage in good faith conciliation. If the City Manager determines that the complaint should be further pursued, the matter shall thereafter be set for hearing. If the City Manager determines that the complaint should not be further pursued, the City Manager shall provide a written explanation to the complainant and the respondent and the matter shall be dismissed.

(e) Upon the written request for a hearing by the City Manager pursuant to subsection (d), above, the Hearing Officer shall conduct a hearing on the allegations in the complaint. Such hearing shall be open to the public. The case in support of the complaint shall be presented by the City Attorney on behalf of the City. Upon request, the City Manager shall provide a copy of the investigatory file, including any witness statements and investigation notes and reports, to the respondent not less than ten (10) days prior to the hearing. The Hearing Officer may require the parties to endorse witnesses and provide additional discovery prior to the hearing. The provision of discovery shall not serve as a waiver of the confidentiality in such documents for purposes other than the prosecution of the complaint. If the Hearing Officer does not find by clear and convincing evidence that the respondent has violated a provision of this Article, the complaint against the respondent shall be dismissed. If the Hearing Officer finds by

clear and convincing evidence that the respondent has violated a provision of this Article, he or she may grant any of the remedies set forth in Section 13-24. The City or the respondent may seek judicial review of the decision of the Hearing Officer in the Larimer County District Court in accordance with the Colorado Rules of Civil Procedure, Rule 106(A)(4). Such review must be sought not later than thirty (30) days after the date of the decision of the Hearing Officer. The timely and proper filing for such a review shall stay the imposition of any remedies ordered by the Hearing Officer until the review is concluded by the District Court.

(f) The Hearing Officer shall have the power to sequester witnesses, administer oaths, and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of hearing. Such subpoenas shall be served in the same manner as subpoenas issued by a district court of the state. No person shall fail to comply with any subpoena issued by the Hearing Officer in the proper conduct of the hearing.

(g) Neither the complaint nor information received in the investigation shall be made public by the City or any officer, employee, board or commission, except to the extent that such information is presented during a hearing. All notes and information created or received in the course of the City Manager's investigation shall be considered confidential. The City Manager or City Attorney may, in his or her sole discretion, provide to the complaining party, respondent, Hearing Officer, United States Equal Employment Opportunity Commission, Colorado Civil Rights Division, prosecutor and the Municipal Court a copy of the complaint, any and all documents, and the names and substance of any information obtained in interviews without waiving the City's claim to confidentiality of such documents or information.

Sec. 13-24. Enforcement.

(a) Upon a finding that a respondent has violated a provision of this Article, the Hearing Officer may issue any of the following orders as he or she deems appropriate to remedy the violations:

- (1) Requiring the respondent to cease and desist from the discriminatory practice;
- (2) Providing for the sale, exchange, lease, rental, assignment, or sublease of housing to a particular person; or take other appropriate equitable remedial action;
- (3) Requiring an employer to: reinstate an employee; pay back pay for discriminatory termination of employment, layoff, or denial of promotion opportunity; make an offer of employment in case of discriminatory refusal of employment; make an offer of promotion in the case of discriminatory denial of promotion opportunity; or take other appropriate equitable remedial action;
- (4) Requiring that a respondent make available a facility of public accommodation in the case of discriminatory denial of the use of such facility;
- (5) Requiring that a respondent found to have violated this Article report compliance with the order or orders issued pursuant to this Section;
- (6) Requiring that a respondent found to have violated any provisions of this Article make, keep, and make available to the Hearing Officer such reasonable records as are relevant to determine whether such person is complying with the Hearing Officer's orders.

(b) It shall be unlawful for any person to fail to comply with the order of a Hearing Officer. In the event that a person does not comply with the order of a Hearing Officer, the City Manager may request that the City Attorney file a criminal complaint against the respondent in Municipal Court for failure to comply with the order of the Hearing Officer. The City Attorney shall make a determination as to whether criminal prosecution of the complaint should be filed and prosecuted. Such criminal complaint shall not be filed sooner than thirty (30) days from the date of the Hearing Officer's decision or, if such decision has been appealed, upon conclusion of the appeal, whichever last occurs. If the City Attorney determines that the complaint should be filed, the complainant may be subpoenaed to appear and testify at the trial of the matter. In determining whether or not to bring criminal charges, the City Attorney shall consider the sufficiency of the evidence, the seriousness of the allegation, the magnitude of the harm

to the complainant, the motivation of the complainant in bringing the allegation, and the willingness of the parties to engage in good faith conciliation. Upon conviction for failure to comply with the order of the Hearing Officer, the respondent shall be subject to the penalties provided in Section 1-15 of this Code, except that imprisonment shall not be imposed upon any person for a violation of this subsection unless such conviction establishes a second or subsequent violation of this subsection based upon a separate Hearing Officer order within a three (3) year period. Each day that a person fails to comply with the order of a Hearing Officer after the Hearing Officer's order becomes final shall constitute a separate offense.

(c) Following a finding of probable cause, the City Manager may, as an alternative to the remedies provided above, request that the City Attorney file a criminal complaint in municipal court, seeking the imposition of the criminal penalties provided in Section 1-15, for violations of Sections 13-19, Discriminatory public accommodation practices prohibited, and 13-20, Interference with operation of regulations prohibited, of this Article.

Sec. 13-25. No private right of action.

Except for the right to seek judicial review as specified in subsections (b) and (e) of Section 13-23, and the right to seek specific performance in the event of a breach of a conciliation agreement as specified in subsection (d) of Section 13-22 and subsection (c) of Section 13-23, the provisions of this Article are not intended, nor shall they be construed, to create a private right of action based upon any violation of a provision of this Article.

Sec. 13-26. Selection of Hearing Officers.

The City Manager shall select a pool of two or more Hearing Officers to whom hearings shall be assigned by the City Manager as he or she deems appropriate. The City Manager shall, to the extent reasonably practical, attempt to select persons to serve as Hearing Officers who are experienced and competent in the fields of administrative law and human rights law. The City Manager may remove a person from the pool of Hearing Officers at any time without cause.

Sec. 13-27. Calculation of time.

In computing any period of time prescribed by this section, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a city designated holiday, in which event the period of time runs until the end of the next day which is not a Saturday, a Sunday, or a city designated holiday.

Sec. 13-28. Authority to adopt rules.

The City Manager is authorized to adopt rules to implement the provisions of this Article.

Section 3. That subsection (2) of Section 2-263 of the Code of the City of Fort Collins is hereby deleted and the subsequent subsections of said Section are hereby consecutively renumbered.