

City of Murray Human Rights Commission
Resolution regarding *Human Rights Ordinance*

- WHEREAS,** In 1966, the *Kentucky Civil Rights Act* was adopted and Kentucky became a national leader by being the first state in the South to have enforcement powers over civil rights violations and spurring Dr. Martin Luther King, Jr. to comment that the Act was, “the strongest and most comprehensive civil rights bill passed by a Southern state,” and;
- WHEREAS,** The Act authorizes municipal governments to adopt local ordinances prohibiting discrimination, and;
- WHEREAS,** The City of Murray adopted *Ordinance 516* in 1970, amended by *Ordinance 669* in 1978, *Ordinance 1390* in 2005, and *Ordinance 1615* in 2013, establishing the City of Murray Human Rights Commission (Commission) to promote and secure mutual understanding and respect among groups within the City, and;
- WHEREAS,** On June 2, 2008, Governor Steven L. Beshear adopted Executive Order 2008-473 that states a broad and inclusive policy of nondiscrimination in state government employment, reaching beyond the scope of the 1966 legislation, and;
- WHEREAS,** On June 19, 2008, the Kentucky Commission on Human Rights called for the *Kentucky Civil Rights Act* to be updated in the areas of employment, housing, and public accommodations recognizing fundamental freedoms essential to Kentuckians’ human dignity omitted from the 1966 Act, and;
- WHEREAS,** In accordance with City of Murray *Ordinance 32.10 (C)* that charges the Commission with recommending to the Mayor and the City Council such legislation as necessary relative to human rights, the Commission began an effort prior to 2012 to review the City’s current *Ordinance* and propose appropriate revisions to better reflect the City’s diverse population, and;
- WHEREAS,** Acts of Discrimination in any form stand in opposition to the City of Murray’s “Friendliest Small Town in America” designation.

NOW, THEREFORE BE IT RESOLVED,

The Commission recommends to the Mayor and City Council that the City Attorney be directed to prepare an ordinance following recommended language from the Commission.

BE IT FURTHER RESOLVED,

A copy of this Resolution will be spread upon the Minute Book of this Commission; and dated in Murray, Kentucky this the 10th day of November, in the year Two Thousand and Fourteen.

On Behalf of the Commission,



Jody Cofer Randall
Chair

Human Rights Ordinance
Draft review for the Human Rights Commission
11/10/14

SECTION I: PURPOSE.

The City desires to implement a policy to protect all individuals within the City from discrimination in certain contexts in housing, employment and public accommodations on the basis of race, color, religion, national origin, sex, age, forty (40) and over, familial status, disability, gender identity and sexual orientation. Certain practices are prohibited in an effort to protect an individual's personal dignity and to preserve the general welfare of the citizenry.

SECTION II: DEFINITIONS.

For the purpose of this chapter, the definitions used in this ordinance shall be the definitions as adopted by the Commonwealth of Kentucky as found in KRS 344.010 and KRS 344.030: The following additional definitions shall be used where a difference occurs between these and KRS 344.010 and KRS 344.030.

“City” shall mean the City of Murray.

“Dwelling” any building, structure or portion thereof which is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure or portion thereof.

“Family” one or more persons sharing residency whose income and resources are available to meet the family's needs and who are either related by blood (immediate family members only), marriage, operation of law or adoption or having evidenced a stable family relationship. A family shall also be deemed to include domestic servants employed by the family and foster or boarded children whose room and board is paid by a recognized child care agency. (As defined in the Code of Murray Ordinances, Chapter 156.004)

“Gender Identity” the gender-related identity appearance, or mannerisms or other gender-related characteristics of a person with or without regard to the person's designated sex at birth.

“Hearing Officer” an individual appointed by the Mayor of the City of Murray to conduct investigation and/or administration hearing proceedings pursuant to Kentucky Law. The Hearing Officer shall be certified by the Kentucky Attorney General's Office to serve as a Hearing Officer in compliance with the requirements set forth in KRS 13B.

“Human Rights Officer” An individual appointed by the Mayor of the City whose duty shall be to accept, review and/or mediate complaints or disputes which involve race, color, religion, national origin, sex, age,

forty (40) and over, familial status, disability, gender identity and sexual orientation that are not referred to the Kentucky Commission on Human Rights for disposition.

“Local Commission” means the Murray Human Rights Commission.

“Local Commissioner” means a member of the Murray Human Rights Commission.

“Place of Public Accommodation, Resort or Amusement” means as stated in KRS 344.130.

“Sexual Orientation” an individual’s actual or imputed heterosexuality, homosexuality or bisexuality.

SECTION III: UNLAWFUL PRACTICE.

It is hereby unlawful for any person to discriminate in any way prohibited in KRS 344.040, 344.045, 344.050, 344.060, 344.070, 344.080, 344.090 (employment), KRS 344.120 (Public Accommodations) 344.140, 344.145, 344.280, 344.290, 344.360 (Housing Practices), 344.367, KRS 344.367, KRS 344.370 (Financial Practices), RS 344.380 (Block Busting), or KRS 344.400, based upon race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type.

A. As to claims for discrimination under this Article based upon race, color, religion, national origin, sex, age (over 40), familial status, or disability, the exemptions provided in KRS 344.040(2), 344.090, 344.100, 344.130, 344.145(2), 344.145(2), 344.360(14), 344.362, AND 344.365, as amended, shall apply.

B. The prohibition of discrimination in this Article based upon gender identity and sexual orientation shall not apply:

1. To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or a member of the family of the owner resides in one of the housing accommodations;

2. To the rental of a portion of a housing accommodation by the occupant of the housing accommodation, or by the owner of the housing accommodation if the owner or a member of the family of the owner resides therein;

3. To a religious institution, or to an organization operated for charitable or educational purposes, which is operated or supervised or controlled by a religious corporation, association society, to the extent that the religious corporation, association, or society limits, or gives preferences in sale, lease, rental, assignment, or sublease of real property to individuals of the same religious corporation, association, or society to promote the religious principles for which it is established or maintained.

4. To the private sale by a private individual homeowner who disposes of a property without the aid of any real estate operator, broker or salesman, and without advertising or public display;

5. To a real estate operator to require the operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

6. To any single-family house sold or rented by an owner; provided that the private individual owner does not own more than three single-family houses at any one time. In the case of sale of any single-family house by a private individual owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption, granted by this section shall apply only with respect to one sale within any 24-month period. The sale or rental of any single-family house shall be accepted from the application of this chapter only if the house is sold or rented.

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson, or of the facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any broker, agent, salesperson or person; and

b. Without the publication, posting or mailing, after notice of any advertisement or written notice of any advertisement, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other professional assistance as necessary to perfect or transfer the title.

7. To restrooms, shower rooms, bath houses and similar facilities which are in their nature distinctly private;

8. To YMCA, YWCA and similar type dormitory lodging facilities;

9. To hospitals, nursing homes, penal or similar facilities, with respect to any requirement that men and women not be in the same room.

10. Nothing herein shall be construed to prevent an employer from;

- a. Enforcing a written employee dress policy; or
- b. Designating appropriate restroom and shower facilities.

11. Employment Exceptions. Notwithstanding any other provisions of this Article, it shall not be an unlawful practice for;

a. An employer to hire and employ employees; or an employment agency to classify or refer for employment an individual; or for a labor organization to classify its membership or to classify or refer for employment an individual; or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in any such program, on the basis of religion or national origin in those certain instances where

religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

b. A religious organization, corporation, association, or society to employ an individual on the basis of religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

c. A school, college, university, or other educational institution to hire and employ individuals of a particular religion, if the school, college, university or other education institution is in whole or substantial part owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion, and the choice of employees is determined by such organization to promote the religious principles for which it is established or maintained.

d. An employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or employees who work in different locations, if the difference is not the result of an intention to discriminate because of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type, nor is it an unlawful practice of an employer to give and to act upon the results of any professionally developed competency or ability test provided that the test, its administration or action based upon the test results is not designed, intended or used to discriminate because of race, color, religion, national origin, sex, age (over 40), gender identity, sexual orientation, familial status or physical disability of any type.

SECTION IV: GENERAL EXCEPTIONS

The provisions of this Article regarding sexual orientation or gender identity shall not apply to a religious institution, association, society or entity or to an organization operated for charitable or educational purposes, which is owned, operated or controlled by a religious institution, association, society or entity, except that when such an institution or organization receives a majority of its annual funding from any federal, state, local or other governmental body or agency, or any combination thereof, it shall not be entitled to this exemption.

The City is prohibited from substantially burdening a person's freedom of religion by the provisions of KRS 446.350. Accordingly, where a person, by action or inaction, violates the provisions of this Chapter of the City's Code of Ordinances due to a sincerely held religious belief, the individual or entity alleging the violation must prove by clear and convincing evidence that the City has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest to establish the existence of the violation. A "burden" shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access facilities.

SECTION V: ADMINISTRATION.

The responsibility for administering this chapter shall be borne by the Mayor, or other individual designated by the Mayor as the Human Rights Officer. The Human Rights Officer shall be appointed by the Mayor through Executive Order. He or she shall attend training, if any available, to fulfill such duties as required for the appointment, which shall be paid by the City. The Human Rights Officer shall not be a City employee, or an employee of a city agency, City or County public official, or member of the City of Murray Human Rights Commission.

The Human Rights Officer shall regularly report current claims and submit an annual report to the Human Rights Commission.

SECTION VI: ENFORCEMENT.

(A) Any person who claims to have been injured by a discriminatory practice made unlawful by this chapter hereafter “person aggrieved,” may file a complaint statement with the City Clerk, who shall forward such statement to the Human Rights Officer. Such statement shall be in writing, signed by the person aggrieved and shall contain the following information:

- (a) The name and address of the complainant;
- (b) The name and address (if known) of the alleged violator, or provide facts sufficient to identify such person;
- (c) An outline of the material facts upon which the complaint is based;
- (d) The alleged violation;
- (e) That any conduct of the complainant was for the purpose of obtaining the housing, employment or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made; and
- (f) That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without final judgment on the merits.

The failure to provide and file such notice with the City Clerk within one (1) year after the alleged violation shall result in the immediate dismissal of the complaint filed herein.

(B) Upon receipt of a complaint statement, the Human Rights Officer shall review the complaint statement and determine the following;

1. If the complaint statement is to allegations of discrimination based upon race, color, religion, national origin, sex, age forty (40) and over, or familial status, the Human Rights Officer shall submit the complaint to the Kentucky Commission on Human Rights for further processing, investigation and/or administrative proceedings in accordance with the Kentucky Civil Rights Act, KRS Chapter 344, et seq.
2. If the complaint statement only contains allegations of discrimination on the basis of gender identity or sexual orientation, then the Human Rights Officer shall endeavor to fully resolve the

dispute through informal procedures such as conciliation or mediation. Nothing said or done in the course of informal endeavors may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of all parties concerned.

If conciliation or Agreement is not achieved between the parties and the Human Rights Officer, the party aggrieved may, within thirty (30) days after written notification from the Human Rights office that conciliation was unsuccessful, request a hearing in accordance with the Kentucky Civil Rights Act and KRS 13B, in writing to the City Clerk. The City Clerk shall set a date, time, and location for a hearing and notify the complainant and respondent in writing at least twenty (20) days in advance of that hearing date. A Hearing Officer shall be appointed by the Mayor to conduct an administrative hearing and to regulate the course of the proceedings in a manner that will promote the orderly and prompt conduct of the hearing. The Hearing Officer shall be certified by the Attorney General's Office to serve as a Hearing Officer in accordance with the requirements set forth in KRS 13B. Within ninety (90) days after the conclusion of the hearing, the Hearing Officer shall issue a recommended written order that shall include findings of fact, conclusions of law, and a disposition of the hearing. A copy of the orders shall be sent to each party and the City Clerk.

If the Hearing Officer finds the violation has occurred, he/she may recommend the following penalty:

Any person or entity found to have violated this chapter shall be subject to civil penalties of not less than \$100.00 but not greater than \$500.00, plus all costs incurred by the City of Murray for the Hearing, including, but not limited to, Hearing Officer fees, etc.

3. If the complaint statement contains allegations of discrimination based upon race, color, religion, national origin, sex, age forty (40) and over, familial status or disability, AND also contains allegations of discrimination on the basis of gender identity or sexual orientation, then the Human Rights Officer shall contact the complaining party to determine the following:
 - (a) Does the complaining party wish to keep the complaint with the Human Rights Officer and follow the guidelines and penalties as established herein; OR
 - (b) Does the complaining party wish to separate the issues and create two (2) complaints; one which shall be submitted to the Kentucky Commission on Human Rights and the second complain remaining local for further conciliation or mediation.

Upon approval by the Murray Human Rights Commission, the Hearing Officer shall mail a copy of the Order to the Complainant and Respondent, postage pre-paid. The Respondent shall have thirty (30) days to pay any penalty issued in the Order. If the Respondent does not pay the penalty within the time given, the Murray Human Rights Commission shall inform the City who shall take all action deemed appropriate to collect any and all penalties, to include an action in the

appropriate court to enforce the penalties and/or to place a lien against the Respondents' real or personal property in the office of the Calloway County Court Clerk's office.

The City Clerk shall inform the parties of the right to appeal the decision of the Hearing Officer to the Calloway Circuit Court within thirty (30) days of the entry of the order. The prevailing party may recover from the non-prevailing party court cost and a reasonable attorney's fee.

SECTION VII: CITY OF MURRAY COMMISSION ON HUMAN RIGHTS.

The Commission shall be composed of eight members. The members shall be appointed by the Mayor and approved by the City Council, who shall select persons who are nearly as possible representative of the several social, economic, religious, cultural, ethnic, sexual, and racial groups which comprise the population of the city. In addition, each member shall be a resident of the city.

Members of the Commission shall serve for a term of three (3) years each. Of the first members appointed, two (2) shall be appointed for one year, three (3) shall be appointed for two years, and three (3) shall be appointed for three years; after the first appointments, all appointments shall be for a term of three years. Members may be eligible for reappointment for additional terms. In the event of resignation, incapacity, failure to attend three consecutive meetings or death of any member, that member's successor shall fill the unexpired term. Before making new appointments, the Mayor shall request recommendations from the Commission.

Members shall, be compensated twenty-five dollars (\$25.00) per meeting attended and subject to the approval of the Council and within the limits imposed by the budget; they shall be allowed their necessary expenses attendant on their duties.

The Mayor shall designate one of the members of the Commission who shall serve as chairperson at the pleasure of the Mayor.

The services of all other departments of the city shall be made available to the Commission on its request for such services.

The Mayor is authorized to allocate adequate office space and to provide the necessary facilities in the city hall for the Commission if the office space and facilities are available.

SECTION VIII: DUTIES OF THE COMMISSION ON HUMAN RIGHTS.

The City of Murray Commission on Human Rights is authorized to:

1. The Commission shall endeavor to promote and secure mutual understanding and respect among all economic, social, religious, age, ethnic, sexual, and racial groups in the city, and shall act as conciliator in controversies involving intergroup and interracial relations.

2. The Commission shall cooperate with federal, state, and other city agencies in an effort to develop harmonious intergroup and interracial relations and shall endeavor to enlist the support of civic, religious, labor, industrial, and commercial groups and civic leaders dedicated to the improvement of intergroup and interracial relations and the elimination of discriminatory practices.
3. The Commission shall make studies, and have such studies made as will enable the Commission to carry out the purposes of this subchapter.
4. The Commission shall recommend to the Mayor and to the Council such legislation as may be necessary to accomplish the purposes of this subchapter.
5. The Commission shall submit an annual report on March of each year to the Mayor and to the City Council.
6. The Commission, on behalf of the city, may accept grants and donations from foundations and others for the purpose of carrying out its functions.
7. The Commission shall prepare a proposed annual budget for the ensuing fiscal year, and shall submit such budget to the Mayor and the Council for their approval.
8. All budgetary expenditures shall be authorized by the Chairperson which shall elect one of its members as treasurer. The treasurer shall approve operational expenditures, and he shall make an annual financial report to the Commission and Mayor.
9. Enter into cooperative working agreements with the Kentucky Commission on Human Rights in order to achieve the purposes of that act; and with any federal or state agency in order to achieve the purposes of this chapter.
10. The Commission shall have the power to adopt rules to govern its proceedings within the guidelines of federal, state and local laws. The meetings of the Commission shall be open to the public except as otherwise provided by law.
11. The Commission shall meet as often as it deems necessary.

SECTION IX: PENALTY.

Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, in obedience to the subpoena or lawful order of the Kentucky Commission on Human Rights, Human Rights Officer, or Hearing Officer, shall be fined no more than \$500. Any person who, with intent thereby to mislead the Kentucky Commission on Human Rights, Human Rights Officer, or Hearing Officer, shall make or cause to be made any false entry or statement of fact in any report, account, record or other document submitted to the Kentucky Commission on Human Rights, Human Rights Officer, or Hearing Officer pursuant to

his or her subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in the reports, accounts, records or other documents or shall willfully mutilate, alter or by any other means falsify any documentary evidence, shall be fined not more than \$500.

SECTION X:

If any section, sentence, clause, or portion of this Ordinance is for any reason declared illegal, unconstitutional, or otherwise invalid, such declaration shall not affect the remaining portions thereof.