

ORDINANCE 2015-06

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA, REGARDING HUMAN RELATIONS AND DISCRIMINATION

WHEREAS, it is the policy of the Town of Whitestown (“Town” or “Whitestown”) to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion or religious beliefs, color, sex, sexual orientation, disability, national origin, ancestry, or veteran status, since such segregation is an impediment to equal opportunity; and

WHEREAS, the practice of denying these rights to properly qualified persons by reasons of race, religion or religious beliefs, color, sex, sexual orientation, disability, national origin, ancestry, or veteran status of such persons is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives to the public policy of Whitestown and shall be considered as discriminatory practices; and

WHEREAS, the promotion of equal opportunity without regard to race, religion or religious beliefs, color, sex, sexual orientation, disability, national origin, ancestry, or veteran status through reasonable methods is in the public interest of Whitestown and the community; and

WHEREAS, it is also in the public interest to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, lending institutions, and other persons or entities from unfounded charges of discrimination; and

WHEREAS, it is contrary to the public interest for any person, for profit, to induce or attempt to induce any person to sell any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, belief, color, sex, sexual orientation, disability, national origin, ancestry, or veteran status; and

WHEREAS, in an attempt to better meet the purpose of eradicating prejudice and the practice of invidious discrimination, the Whitestown Town Council has determined that it is in the public interest of Whitestown and appropriate to establish a Human Relations Commission with the authority and responsibilities set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Whitestown, Indiana, as follows:

Section 1. Human Relations Commission.

a. Establishment and Membership.

(1) To assist in the elimination of discrimination in Whitestown, there is hereby created a Commission to be known as the Whitestown Human Relations Commission.

(2) The Commission shall consist of five (5) members ("Commissioners"), not more than three (3) of whom may be members of the same political party. The members shall be appointed by the Town Council President with the approval of the Town Council.

(3) Initial terms shall be staggered such that two (2) Commissioners shall be appointed for an initial term of three (3) years, two (2) Commissioners shall be appointed for an initial term of two (2) years, and one (1) Commissioner shall be appointed for an initial term of one (1) year, and until a successor has been appointed and qualified.

(4) All subsequent terms shall be for a period of three (3) years and until a successor has been appointed and qualified.

(5) All members of the Commission shall be residents of Whitestown, or a property owner within Whitestown and who also resides within Boone County. Appointments should be made in a manner that promotes that the Commission membership is broadly representative of the community in regard to race, religion or religious beliefs, national origin, gender or sexual orientation, background, and/or abilities.

(6) Members of the Commission serve at the pleasure of the Town Council, and may be removed for any reason that the Town Council considers appropriate in its discretion.

b. Officers.

(1) The Commissioners shall elect one of its members to serve as Chairman, and may also elect such other officers from its membership as the Commission deems appropriate.

(2) The Town Council shall appoint an Executive Director for the Commission, which may but is not required to be an employee of the Town in other capacities. The Commission may appoint the Executive Director or higher designee to serve as Secretary to the Commission. In such an event, the Executive Director/Commission Secretary shall not be required to meet the qualifications for membership on the Commission, and shall not be compensated for the services as Commission Secretary other than the salary established for the position of Executive Director by the Town Council.

c. Powers and Duties.

(1) The Commission shall have only those powers which are conferred herein and which are permitted to be exercised by a Human Relations Commission under the applicable provisions of Indiana law, including the power to:

(A) Investigate and conciliate complaints of prejudice or discriminatory practices;

(B) Subpoena and compel the attendance of witnesses or production of pertinent documents and records;

(C) Administer oaths and examine witnesses;

- (D) Make findings and recommendations;
- (E) Institute actions for appropriate legal or equitable relief in a circuit or superior court;
- (F) Refer to the appropriate governmental entity those complaints which cannot be conciliated by the Commission;
- (G) Employ other staff personnel as approved by the Town Council;
- (H) Adopt rules and regulations to conduct its business and its meetings; and
- (I) Conduct programs and activities to carry out the purposes of the Whitestown Human Relations Commission provided for in this Ordinance within the Whitestown community.

(2) The Commission shall hold regular meetings, and other meeting as called by the elected Chairman or three (3) Commissioners.

(3) The Commission shall endeavor to keep itself fully informed concerning the studies and findings of private organizations with respect to the practices falling within the Commission's purpose.

(4) The Commission shall render an annual report of its activities to the Town Council, and shall render such other additional reports as the Town Council may from time to time request. The reports should describe the investigations and conciliation proceedings it has conducted, the outcome of such proceedings, the progress made and any other work performed, and achievement toward the elimination of discrimination.

d. Responsibilities.

(1) The Commission is charged to study the relationship between persons of various races, sexes, creeds, abilities and nationalities within the Town and to advise and assist the various Town departments in matters involving relationships between such groups to the end that prejudice, intolerance, bigotry, and discrimination will be eliminated in Whitestown;

(2) The Commission is charged to identify and recommend ways to eliminate discrimination based upon race, religion or religious beliefs, color, sex, sexual orientation, disability, national origin, ancestry, or veteran status in education, employment, public accommodations and housing;

(3) The Commission is charged to study, investigate and recommend action in regard to any condition having an adverse effect upon relations between persons of various races, genders, creeds, abilities and nationalities;

(4) The Commission is charged to institute and conduct educational and other programs intended to promote the equal rights and opportunities of all persons;

(5) The Commission is charged to solicit the cooperation of the various racial, ethnic, disability, rights, and religious groups within the community in order to improve the quality of communications and understanding within the community; and

(6) The Commission is charged to stimulate private and governmental departments and agencies to develop and foster meaningful programs in support of the objectives and purposes of the Whitestown Human Relations Commission.

Section 2. Discriminatory Practices.

(a) Discriminatory practices are prohibited and declared to be unlawful.

(b) “Discriminatory practices” for purposes of this Ordinance means:

(1) The exclusion of a person from equal opportunities because of race, religion or religious beliefs, color, sex, sexual orientation, disability, national origin, ancestry, or status as a veteran.

(2) A system that excludes persons from equal opportunities because of race, religion or religious beliefs, color, sex, sexual orientation, disability, national origin, ancestry, or status as a veteran, or

(3) The promotion of racial segregation or separation in any manner, including but not limited to the inducing of or attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, belief, color, sex, sexual orientation, disability, national origin, ancestry, or status as a veteran.

(c) It is not a discriminatory practice under this Ordinance:

(1) to maintain separate restrooms or dressing rooms for men and women;
or

(2) for any employer to hire employees or for an employment agent to classify or refer to employment of any individual on a basis that is a bona fide occupational requirement reasonably necessary for the normal operation or purposes of that particular business or enterprise.

(d) Nothing in this Ordinance shall be interpreted to require any person to grant preferential treatment to any individual or any group because of the race, color, religion or religious beliefs, disability, sex, sexual orientation, national origin, ancestry, or veteran status of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion or religious beliefs, disability, age, sexual orientation, sex, sexual orientation, national origin, ancestry, or veteran status employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion or religious beliefs,

disability, age, sexual orientation, sex, national origin, ancestry, or veteran status in the Town, or in any contiguous area, or in the available work force.

Section 3. Jurisdiction.

(a) Section 2 of this Ordinance shall apply within the territorial limits of Whitestown, with respect to any discriminatory practice occurring with such territory limits and which relates to:

- (1) Acquisition of real estate;
- (2) Employment;
- (3) Education; or
- (4) Public accommodations.

(b) This Ordinance shall not apply to persons, entities, or activities over which Whitestown does not have jurisdiction or which is otherwise exempt or protected under applicable state or federal law.

(c) This Ordinance shall not apply to any not for profit corporation or association organized exclusively for fraternal or religious purposes, or to any school, education, charitable, or religious institution owned or controlled by, or affiliated with, a church or religious institution, nor any exclusively social club, corporation, or association that is not organized for profit and is not in fact open to the general public.

(d) This Ordinance shall not apply to the rental of rooms in a boarding house or rooming house or single family residential unit; provided, however, that the owner of the building unit actually maintains and occupies a unit or room in the building as his or her residence and, at the time of the rental, the owner intends to continue to so occupy the room therein for an indefinite period subsequent to the rental.

Section 4. Complaints of Discriminatory Practices.

a. Complaint Procedure.

(1) A complaint charging that any person has committed a discriminatory practice prohibited by this Ordinance may be filed with the Commission at its office by:

- (a) Any person claiming to be aggrieved by a discriminatory practice, or
- (b) The Director or a Commissioner who believes that a discriminatory practice has occurred.

(2) The complaint shall be accepted as filed if:

- (a) It is verified under oath and notarized;

(b) It states the full names and addresses of the complainant and of the person aggrieved by the alleged discriminatory practice;

(c) It states the full name and address of the respondent;

(d) It states the alleged discriminatory practice;

(e) It states the acts or omissions of the respondent alleged to constitute the discriminatory practice with reasonable particularity of the facts and circumstances sufficient to sustain the charge;

(f) It states the date of the alleged discriminatory practice; and

(g) It includes a statement listing all other known actions, whether private, civil, or criminal, instituted before any other corporation, person, body, administrative agency, commission, department, or court, whether State or Federal, based upon the same grievance alleged in the complaint, with a statement as to the known status or disposition of the other action.

(3) The complaint may be amended by the complainant at any time prior to the notice of the hearing, and may be withdrawn at any time. Notice of any amendment or withdrawal shall be given to the respondent.

(4) The complaint must be filed within ninety (90) days after the date of the alleged discriminatory practice.

(5) Any person that may file a complaint with the United States Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, or the Indiana Civil Rights Commission concerning any of the matters alleged in such complaint shall seek relief from such agency and may not file a complaint under this Ordinance. The Executive Director or Commission may refer any complaint to the Indiana Civil Rights Commission for proceedings in accordance with the State Civil Rights Act (IC 22-9-1-1 et seq.).

(6) Upon notice that a complaint is subject to an action before the Indiana Civil Rights Commission or in any federal or state court or agency, the Executive Director and Commission shall immediately cease investigation of the complaint and may not conduct hearings, or issue findings or orders, concerning the complaint.

(7) A complaint may not be filed arising from employment unless such employee has first utilized all internal complaint procedures, remedial measures, and investigatory procedures available through the employer's written policies and procedures or collective bargaining agreement.

(8) The Director shall cause a copy of the complaint to be mailed by certified or registered mail to the respondent at his last known residential address or the place of business within ten (10) days from the date of filing of the complaint. Respondent may file a written response to the complaint at any time prior to the commencement of the hearing.

(9) All action taken, and information relative to a specific complaint obtained by the Commission from the time of the filing of a complaint until the issuance of notice or hearing, shall be confidential, and shall not be made public, except as otherwise required by law.

(10) It is unlawful for any person to willfully file a complaint alleging a violation of this Ordinance with knowledge that the complaint is false in any material respect. A violation of this subsection constitutes the false reporting of a crime.

b. Investigation Procedure.

Within thirty (30) days after receipt of a complete complaint, the Director shall initiate an investigation of the alleged discriminatory practice charged in the complaint. The investigation may be made by staff members or consultants of the Commission and may include but shall not be limited to informal conferences or discussions with any party allegedly involved in or familiar with the alleged discriminatory practice or practices. The staff members or consultants who conduct an investigation shall not communicate their opinion or recommendation to the Commissioners who may ultimately hear the complaint.

If, following submission of the final investigative report, the Director determines in his/her discretion that there is no probable cause to believe that a violation of this Ordinance has occurred, the complaint shall be dismissed and the complainant and respondent notified of the dismissal.

If, following submission of the final investigative report, the Director determines in his/her discretion that there is probable cause to believe that the allegations made in the complaint are true and if true would constitute a discriminatory practice under this Ordinance, a finding of probable cause may be issued and the complainant and respondent shall be notified of such finding. In the event that a probable cause finding is issued, the parties shall be given the opportunity to conciliate as set forth below.

c. Conciliation Procedure.

(1) After the Director has determined that the complaint should be heard, then the Chairman shall instruct the Director or his staff to endeavor to eliminate the alleged discriminatory practice or practices by conference, conciliation, and persuasion. Any agreement resulting from this conference, conciliation, or persuasion shall be written. In the event an agreement is entered into, all further proceedings relative to the alleged discriminatory practice as to any respondent who entered into such an agreement shall immediately terminate and be dismissed.

(2) The terms of any agreement shall be made a part of the records of the Commission. However, if parties to the agreement request that the agreement be confidential, the agreement shall be confidential to the extent permitted by applicable law. The Commission may institute legal proceedings to enforce the agreement as provided in this Ordinance.

(3) A Commissioner may be assigned to assist and participate as needed in any efforts by the Director, staff, or parties to conciliate. Any Commissioner or staff member who participates in the conciliation process shall not communicate their opinions, discussions, or

recommendations to the Commissioners who ultimately hear the complaint if an agreement is not reached. Any Commissioner assigned to or participating in the conciliation process shall not participate in the hearing or order relating to the complaint.

(4) Nothing said or done during endeavors at conciliation shall be used as evidence in any subsequent proceedings. Nothing stated in any conciliation or affirmative action agreement shall be interpreted as an admission by any provisions of this Ordinance.

d. Hearings, Findings, and Decisions.

(1) In the event the Executive Director finds that a complaint should be heard and the conciliation procedures do not result in a resolution to the complaint, an adversary public hearing of the issues raised in the complaint shall be held. The Chairman or a Vice-Chairman from the Commission shall preside over the hearing.

(2) The Chairman shall cause to be served upon the respondent and the complainant, by certified mail or registered mail, written notice of the time, date, and place of the hearing as required by IC 5-3-1-1 et seq.

(3) The parties may appear at the hearing in person and by counsel. Testimony at the hearing shall be made under oath and recorded. The hearing shall be conducted in a manner fairly calculated to provide a full hearing of the evidence and to allow the Commission to reach a decision.

(4) The burden of proof shall be on complainant to prove his case by clear and convincing evidence.

(5) The complainant and the respondent shall be parties to the proceedings held pursuant to this subsection. Any person who is indispensable to a complete determination or settlement of matters raised in the complaint may be joined as a party upon motion of any party.

(6) The parties shall be permitted to call such witnesses, and to offer such evidence and exhibits as are relevant and material to the issues raised in the complaint.

(7) Parties desiring a transcript of the hearing shall be furnished such a copy at their own expense.

e. Orders of the Commission.

(1) Findings and orders of the Commission shall be by majority vote of all appointed Commissioners.

(2) If, from clear and convincing evidence, the Commission finds that the respondent has violated the provisions of this Ordinance, the Commission shall issue its findings and orders in writing and cause a copy to be served on the parties by certified or registered mail. Orders of the Commission entered pursuant to this subsection may include any or all of the following provisions, and the authority to order and require the following actions is hereby granted to the Commission:

(a) That the respondent cease and desist from any discriminatory practice.

(b) That the respondent pay actual damages, not to exceed \$1,000 and as permitted by applicable law; provided that to award damages the Commission must find by clear and convincing evidence an intent by the respondent to cause harm to the complainant through the discriminatory practice.

(3) If the Commission does not find clear and convincing evidence that the respondent has violated the provisions of this Ordinance, it shall state its findings and serve written copy thereof upon the parties and dismiss the complaint. An order of the Commission entered pursuant to this subsection may include, and the authority to order and require the following is hereby granted to the Commission: That the complainant pay actual damages, not to exceed \$1,000 and as permitted by applicable law; provided that to award damages the Commission must find by clear and convincing evidence an intent by the complainant to cause harm to the respondent through the filing of the complaint.

f. Judicial Review.

Judicial review of any order entered by the Commission shall be available as provided by law.

g. Other Remedies.

Nothing in this Ordinance shall affect any person's right to pursue any and all rights and defenses available in any other local, state, or federal forum.

Section 5. Conflicts and Severability.

(a) It is the intent of the Town to comply with applicable laws relating to the acts and practices herein, and this Ordinance shall be construed in all respects to be consistent with such applicable laws. The substantive and procedural requirements of all applicable state or federal laws shall control in the event of conflicts, which are unintended by the Town Council.

(b) If any section, clause, provision, or portion of this Ordinance is adjudicated unconstitutional or invalid by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

[Signature page follows]

Introduced on April 14, 2015, and adopted by the Town Council of the Town of Whitestown, Indiana, on this _____ day of _____, 2015.

THE TOWN COUNCIL OF THE
TOWN OF WHITESTOWN, INDIANA

YAY/NAY

Eric Miller, President

Julie Whitman, Vice President

Dawn Semmler, Member

Susan Austin, Member

Kevin Russell, Member

ATTEST:

Amanda Andrews, Clerk-Treasurer
Town of Whitestown, Indiana