

ARLINGTON COUNTY CODE

Chapter 31

HUMAN RIGHTS

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§ 31-1. Statement of Policy.

Arlington County is a community richly diverse and valued for the heterogeneity of its residents. It is in the public interest of the County to assure that each citizen is treated fairly, provided equal protection of the law and equal opportunity to participate in the benefits, rights and privileges of community life. Discrimination deprives the citizenry of the bare essentials of life and is detrimental to the public welfare, safety and health of the community. This chapter is an expression of the commitment and support at the local level to continue working towards the improvement of the quality of life in the County. This chapter is established to ensure the protection and enforcement of human and civil rights for all people living or working in Arlington County by the elimination of and provision of remedies for discriminatory practices. The provisions of this chapter shall be construed liberally for the accomplishment of the policies herein.

(Ord. No. 89-3, 7-1-89)

§ 31-2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Arlington County workforce” means employees of Arlington County government.

“Bona fide occupational qualification” means a bona fide occupational qualification as defined and interpreted under the Civil Rights Act of 1964, 42 United States Code § 2000e et seq., or other applicable federal statute.

“Commercial real estate” means any land or improvements, or both, or interest in such land or improvements, that is offered for sale or lease and that can be used for business, trade, or professional purposes under existing law or by changes in law contemplated under the offering, and which is not a dwelling. The fact that some adaptation of land or improvements, or both, must be made after the sale or lease is completed or that licenses

or approvals are necessary to put it into use shall not mean that the land or improvements cannot be used for business, trade, or professional purposes, so long as those adaptations, licenses, and approvals are within the range that persons engaged in a business, trade, or profession are able to foresee in buying or leasing such property.

“Commission” means the Arlington Human Rights Commission, as established herein.

“Complainant” means any person who files a complaint with the Commission, alleging that a violation of this chapter has been committed against such person.

“Complaint” means any written allegation sufficient to indicate that a named respondent has committed a violation of this chapter.

“County” means the County of Arlington, Virginia.

“County Attorney” means the Arlington County Attorney or other legal representative appointed by the County Board to serve as legal counsel for the Commission.

“County Board” means the County Board of Arlington County, Virginia.

“Director” means the executive director of the Arlington County Human Rights Commission.

“Discrimination based on sex” includes but shall not be limited to, sexual harassment, discrimination because of or on the basis of pregnancy, childbirth or related medical conditions, and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes, including fringe benefit programs, as other persons not affected by pregnancy but similar in their ability or inability to work, and nothing in this chapter shall be interpreted to permit otherwise. This chapter shall not require an employer to pay for the health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion; provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

“ Dwelling ” means any building, structure, or portion thereof, that is occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one (1) or more persons or families, and any vacant land that is offered for sale or lease for the construction of such building or structure and includes any interest in a dwelling as so defined.

“Educational institution” means any nursery, kindergarten, elementary or secondary school, academy, college, university, extension course or nursing, secretarial, business, vocational, technical, trade or professional school, or joint apprenticeship program. The term "educational institution" shall not include public schools, colleges or universities.

“Employer” means any person who, within the County, employs for wages, salaries or on commission four (4) or more persons who are not related to the employer (if an individual) or to any partner or majority shareholder of the employer (if a partnership or a corporation) and who are not employed in domestic service in the employer's personal residence. Employer shall not mean the United States, federal agencies, political subdivisions of the United States, United States instrumentalities, the United States Postal Service, or similar organizations or entities, the Commonwealth of Virginia or its agencies, instrumentalities, or political subdivisions.

“Employment agency” means all persons who, with or without compensation, undertake to solicit in the County for potential employees or refer persons for potential employment in the County.

“Executive Director” means the person appointed by the County Manager to the position of Executive Director of the Human Rights Commission, or the Executive Director's designee.

“Familial status” means one (1) or more individuals who have not attained the age of eighteen (18) years

being domiciled with (i) a parent or another person having legal custody of such individual or individuals, or (ii) the designee of such parent or another person having custody, with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

"Family" means a group living together as a unit and includes an individual.

"Handicap" means any condition or characteristic that renders a person a handicapped person.

"Handicapped person" means any person who:

- (1) Has a physical or mental impairment which substantially limits one (1) or more major life activities or has a record of such impairment, and which is unrelated to a person's ability to perform the duties of a particular job or position or is unrelated to the individual's qualification for employment or promotion or is unrelated to a person's ability to utilize or benefit from a service or program provided by an educational institution or place of public accommodation, or is unrelated to a person's ability to acquire, rent, or maintain property; or
- (2) Is regarded as having such a physical or mental impairment.

"Housing" means the same thing as dwelling.

"Labor organization" means any association organized for mutual benefit and operating as a labor union, association, committee or organization for the purpose of collective bargaining and other lawful functions of labor unions, or any employee representation committee, any of whose members are employed in the County whether or not having a duly authorized charter as a local labor union from either a state or national labor organization, and whether or not registered with the State Department of Labor.

"Lending institution" means any bank, insurance company, savings and loan association, credit union, finance company or any other person regularly engaged in the business of lending money, guaranteeing loans, or furnishing consumer credit or other credit-related services; any person who regularly extends, renews or continues credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit; or any person who regularly arranges for the extension, renewal or continuation of credit.

"Major life activities" means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing hearing, speaking, breathing, learning or working.

"Marital status" means the status of being married, divorced, single or widowed. The term "marital status" also includes any person whose marriage has been dissolved through annulment, and any person seeking a divorce or an annulment.

"Mental impairment" means:

- (1) A disability attributable to mental retardation, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or
- (2) An organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual.

For the purposes of this chapter, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease or defect that has been successfully asserted by an individual as a defense to any criminal charge.

“Notice of investigation” means any formal statement issued by the Commission, on a form to be prepared by the commission, alleging that any person has committed a violation of this chapter and initiating an investigation of such alleged violation.

“Party” means any complainant or respondent.

“Person” means any individual or individuals, partnership, association, organization, company, corporation, joint-stock company, labor union, mutual company, trustee in bankruptcy, receiver or other fiduciary, or the agent, legal representative or employee thereof. For purposes of § 31-3.A, the term person shall include any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee or lending institution.

“Person in the business of selling or renting dwellings” means any person who, within the preceding twelve (12) months, has participated as principal, real estate broker, real estate sales person or agent in three (3) or more transactions involving the sale, lease or rental of housing or who owns any dwelling designed or intended for occupancy by or occupied by five (5) or more families.

“Physical impairment” means any physical condition, anatomic loss, or cosmetic disfigurement which is caused by bodily injury, birth defect, or illness. "Physical impairment" does not include active alcoholism or current drug use.

“Public accommodation” means and includes every business, professional or commercial enterprise, hospital or nursing home, place of lodging, refreshment, entertainment, sports, recreation or transportation facility located in the County, whether licensed or not, public or private, or transportation facility located in the County, whether licensed or not, public or private, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available in any manner to the public. "Public accommodation" does not include a bona fide private club or other establishment not in fact open to the public.

“Qualified handicapped person” means:

- (1) With respect to employment, a handicapped person who, with reasonable accommodation as set out in Virginia Code § 51.5-41 or its successor, can perform the essential functions of the job in question.
- (1) With respect to other goods, public accommodations, housing or services, means any handicapped person who meets the essential nondiscriminatory eligibility requirements for the receipt of such goods or services.

“Real estate broker” means a person doing business in the County of Arlington who is the holder of a real estate broker's license issued pursuant to applicable laws of the Commonwealth of Virginia.

“Real estate sales person” means a person doing business in the County of Arlington who is the holder of a real estate license issued pursuant to applicable laws of the Commonwealth of Virginia.

“Real estate transaction” means any sale, exchange, rental, lease, assignment, sublease, or other transfer of housing.

“Religious organization” means any bona fide organization, association or society organized or operated for exclusively religious, purposes or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, unless membership in such organization, association or society is restricted on account of race, color, national origin or sex.

“To rent” means to lease, to sublease, to let or otherwise in any way to grant for a consideration the right to occupy premises not owned by the occupant.

“Respondent” means any person alleged in any complaint filed with the Commission, or any notice of

investigation issued by the Commission, to have violated this chapter.

“Restrictive covenant” means any specification purporting to restrict or affect the holding, occupancy, ownership, rental, lease or transfer of any interest in land or housing on the basis of race, color, religion, sex, national origin or handicap.

“Sexual orientation” means a tendency to either heterosexuality, bisexuality or homosexuality; having a history of such a tendency or being identified as having such a tendency. Heterosexuality means sexual desire for others of the opposite sex from one's own sex. Bisexuality means sexual desire for others of both the male and female sex. Homosexuality means sexual desire for others of one's own sex.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 91-25, 6-22-91; Ord. No. 92-51, 11-14-92; Ord. No 12-02, 2-11-12)

§ 31-3. Prohibited Acts.

A. *Housing:*

1. Except as otherwise provided, it shall be an unlawful housing practice:
 - a. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny, a dwelling to any person because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
 - b. To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
 - c. To make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin, or an intention to make any such preference, limitation or discrimination.
 - d. To represent to any person because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
 - e. To interfere with, interrupt or terminate any person's ownership, rental, possession or occupancy of a dwelling because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
 - f. To include in the terms or conditions of any sale, rental or other transfer of a dwelling any provision that purports to forbid or discourages, or attempts to discourage, the ownership, rental, possession, occupancy or use of such dwelling by persons because of their race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
 - g. To engage in economic reprisal or otherwise retaliate or to cause or coerce or attempt to cause or coerce another person to engage in economic reprisal or otherwise retaliate against any person because such person has opposed an unlawful housing practice or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter.

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- b. Any person who delivers a deed, mortgage, deed of trust or other instrument affecting title to any interest in land to the grantee of such interest shall attach to said instrument a statement advising the grantee of the provisions of paragraph a of this subsection.
- c. After July 1, 1974, the Clerk of the Arlington County Circuit Court shall:
 - (1) Not comply with any request to copy any deed, mortgage, deed of trust or other instrument affecting title to or any interest in land, or declaration of covenants filed or recorded in the Clerk's office, unless the clerk imprints on or affixes to such copy a clear and conspicuous statement that any provision therein which purports to restrict or affect, on the basis of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin, the holding, occupancy or transfer of any interest in land is invalid and unenforceable.
 - (2) Post in a conspicuous location in the Clerk's office a notice that contains the following language, printed in black on a light-colored background, in not less than fourteen (14) point type:

"It is a violation of the Human Rights Ordinance of the County of Arlington, Virginia, for any person to include any provision in a deed, mortgage, deed of trust, or other instrument affecting title to or any interest in land which purports to restrict or affect on the basis of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin, the holding, occupancy, or transfer of any interest in land, and any such provisions are invalid and unenforceable."

This language shall also be imprinted or affixed to every liber volume in the custody of the Clerk of the Court.
- d. Nothing in § 31-3.A.1, other than subsection c, shall apply to:
 - (1) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as his residence.
 - (2) A religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, in connection with the sale or rental to, or occupancy by, persons of the same religion of dwellings which it owns or operates for other than a commercial purpose, unless membership in such religion is restricted on account of race, color, sex, elderliness, handicap, familial status or national origin.
 - (3) A private club not in fact open to the public which, as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose in connection with the rental to or occupancy of such lodgings by its members.
 - (4) Any educational institution, religious or correctional institution which requires that persons of both sexes not occupy any single dwelling or room therein which it owns or operates.

- e. Nothing in this chapter shall be construed to affect those provisions of the zoning or housing standards ordinances which limit the number of unrelated individuals who may occupy a dwelling unit. Nothing in this chapter shall be construed to impose stricter requirements on any person than are set out in Code of Virginia § 51.5-45, or its successor, or to impose stricter requirements than are set out in applicable building codes.
- B. *Employment:*
- 1. It shall be unlawful for any employer, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age:
 - a. To refuse to hire an individual for employment.
 - b. To discharge or otherwise discipline an employee.
 - c. To deny an employee any opportunity with respect to hiring, promotion, tenure, apprenticeship, compensation, terms, upgrading, training programs, or other conditions, benefits or privileges of employment.
 - d. To prevent an individual from taking a competitive examination or otherwise deny any benefits pertaining to the grading or processing of applications with respect to any aspect of employment.
 - 2. It shall be unlawful for any employment agency, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age:
 - a. To refuse or fail to accept, register, properly classify, refer for employment or otherwise discriminate against any person, unless such discrimination is justified by a bona fide occupational qualification,
 - b. To comply with any request by an employer for a referral of applicants if the request indicates, directly or indirectly, that the employer desires any illegal discriminatory limitation of applicants.
 - 3. It shall be unlawful for a labor organization, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age:
 - a. To deny full and equal rights to membership to an applicant for membership.
 - b. To deny a member or an applicant an opportunity with respect to hiring, seniority, tenure, referral, apprenticeship, compensation, terms, upgrading, training programs, or other conditions or privileges of membership or employment.
 - c. To expel a member from membership.
 - 4. It shall be unlawful for any employer, labor organization, employment agency, or joint labor management committee controlling apprenticeship or other training programs to circulate or publish any notice or advertisement related to employment or membership in a labor organization which indicates, directly or indirectly, any preference, limitation, specifications or discrimination based upon race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age.
 - 5. It shall be unlawful for any member of a joint labor-industry apprenticeship committee or board to discriminate on the basis of race, color, religion, sex, sexual orientation, marital status, national

origin, handicap or age.

6. It is not an unlawful act for an employer to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such individual.
7. With respect to actions on the basis of handicap, this section applies only to otherwise qualified handicapped persons.
8. With respect to actions on the basis of age, this section applies only to persons at least forty (40) years of age.
9. For violations of § 31-3.B of this chapter on the basis of race, color, religion, sex, marital status or national origin, a court may award such relief as a court could award under Section 706(g) of the Civil Rights Act of 1964, as amended. For violations of § 31-3.B on the basis of age, a court may award such relief as a court could award under § 7(b) of the federal Age Discrimination in Employment Act, except that liquidated damages and attorney's fees shall not be allowed. For violations of § 31-3.B of this chapter on the basis of handicap, a court may award such relief as a court could award under applicable State law. For violations of § 31-3.B of this chapter on the basis of sexual orientation, a court may award such relief as if sexual orientation was a protected category under the Civil Rights Act of 1964, as amended.

C. *Public accommodations:*

1. It shall be unlawful for any person or public accommodation to discriminate against any person, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, age or handicap, with respect to the access, use, benefit or enjoyment of goods, services, facilities, privileges or any other advantages of any public accommodation, or to make or publish any statement evidencing an intent to do so.
2. Nothing herein shall be construed to limit, restrict, or expand the rights of handicapped persons as established by applicable state or federal law.
3. Nothing in this section shall be construed to override, restrict or limit any laws relating to the dispensing of alcoholic beverages.
4. Nothing in this section shall be construed to make unlawful any program, service or benefit of any type, established and intended for the benefit of elderly or handicapped persons or minors.

D. *Credit:* It shall be unlawful for any lending institution, on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age (provided that the person has the capacity to contract) or handicap, to:

1. Discriminate against any person in the furnishing or arranging of credit or other credit-related services, including but not limited to the lending of money, guaranteeing of loans or accepting of mortgages.
2. Deny or terminate credit or credit-related services or to affect adversely a person's credit rating or standing.
3. Nothing herein shall be construed to make illegal any action which is permitted in the Virginia Equal Credit Opportunity Act, or its successor, or to otherwise restrict the rights of any person

under the Virginia Equal Credit Opportunity Act or its successor.

E. *Education:*

1. It shall be an unlawful act for any educational institution or its agents, employees or officers, on the basis of race, national origin, sex, sexual orientation or color:
 - a. To discriminate against any person with respect to the terms, conditions, accommodations, advantages, facilities, benefits, privileges or services of that institution.
 - b. To require, or cause to be required, that a photograph of any applicant for admission to an educational institution, or information regarding the race, national origin or color of such applicants, be submitted with any form of application for admission, unless such information is sought solely for the purpose of:
 - (1) Implementing a bona fide affirmative action program designed to include enrollment of qualified members of minority racial, national origin or color groups; or
 - (2) Obtaining grants or other funds from a public or private institution or agency.
 - c. To comply with any request by a potential employer that indicates, directly or indirectly, that the employer desires any unlawful discriminatory limitation in its efforts to recruit students on the educational institution's premises or in the employer's use of placement facilities for referral of students for employment or in such employer's participation in any job-training or work-study program operated by or in conjunction with the educational institution.
2. It shall be an unlawful act under this chapter for any educational institution to discriminate against otherwise qualified handicapped persons in a manner which would constitute a violation of any state or federal law.
3. Nothing contained in this chapter shall be construed to prohibit any single-sex educational institution from restricting admission to persons of a single sex.
4. Discrimination on the basis of sex in contact sports programs shall not fall within the purview of this chapter. For purposes of this chapter, contact sports shall include sports such as boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

F. *Commercial real estate:* It shall be unlawful for any person, on the basis of race, color, sex, sexual orientation, age (provided that the person has the capacity to contract), marital status, religion, handicap or national origin, to:

1. Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny commercial real estate to any person.
2. Discriminate against any person in the terms, conditions, or privileges of sale or rental of commercial real estate, or in the provision of services or facilities in connection therewith.
3. Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of commercial real estate that indicates any preference, limitation, or discrimination.
4. Represent to any person that any commercial real estate is not available for inspection, sale, or

rental when such commercial real estate is, in fact, so available.

5. Interfere with, interrupt, or terminate any person's ownership, rental, possession, or occupancy of commercial real estate.
 6. Include in the terms or conditions of any sale, rental, or other transfer of commercial real estate any provision that purports to forbid or discourages, or attempts to discourage, the ownership, rental, possession, occupancy, or use of such commercial real estate.
 7. Discriminate in lending money, guaranteeing loans, accepting mortgages, or otherwise making available money for the purchase, acquisition, construction, alteration, repair or maintenance of any commercial real estate, or to discriminate in the fixing of the rates, terms, or conditions of any such financing or in the extension of service in connection therewith.
- G. *Retaliation:* It shall be unlawful for any person:
1. To directly or indirectly cause or coerce, or attempt to cause or coerce, any person to do any act declared to be an unlawful act under this chapter.
 2. To directly or indirectly engage in economic reprisal or intimidation to do, threaten to do, or attempt to do harm to any person or property or to otherwise retaliate against any person because such person has opposed any practice based on a good faith belief that it is unlawful under this chapter, or has complied with or encouraged others to comply with the terms of this chapter, or has had a complaint filed in his or her behalf, or has filed a complaint or has testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter or exercised or attempted to exercise any right conferred herein.
 3. To directly or indirectly cause or coerce, or attempt to cause or coerce, another person to engage in economic reprisal or intimidation, or to harm or threaten harm to any person, or to retaliate against or to interfere with any person because the person has opposed any practice made unlawful by this chapter, or has complied or encouraged others to comply with any provision in this chapter, or has filed a complaint or has testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter, or has exercised or attempted to exercise any right conferred in this chapter.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-17-89; Ord. No. 91-25, 6-22-91; Ord. No. 92-51, 11-14-92)

§ 31-4. Human Rights Commission Created; Composition; Terms; Chairman; Compensation.

There is hereby created the Arlington Human Rights Commission, hereinafter referred to as the Commission.

A. The Commission shall consist of twelve (12) members, all of whom shall reside in the County of Arlington. The members shall be appointed by the County Board and shall be broadly representative of the community, to the extent practicable, with respect to race, sex, sexual orientation, color, ethnicity, age, disabilities and marital status and with respect to areas of expertise pertinent to the areas of coverage of this chapter gained through education and/or paid, volunteer or life experience.

B. Of the members first appointed, three (3) shall be appointed for terms of one (1) year, three (3) shall be appointed for terms of two (2) years, and three (3) shall be appointed for terms of three (3) years. Thereafter, members shall be appointed for terms of three (3) years each. Any vacancy shall be filled by the County Board for the unexpired portion of a term. The County Board may, in its discretion, remove members during such members' terms for good cause.

C. The County Board shall designate one (1) member to act as chairman and shall give consideration each year to continuation of its previous designation of the chairman of the Commission. Five (5) members of the

Commission shall constitute a quorum for the transaction of business. Decisions of the Commission shall be made by a majority of the members present and voting.

D. The Members of the Commission shall establish a standing committee to provide advice to the County Board on equal employment opportunity issues in the Arlington County workforce.

1. Composition of the standing committee.
 - a. The standing committee shall be comprised of five (5), seven (7), nine (9) or eleven (11) members – a number to be determined by the Human Rights Commission at the beginning of each calendar year.
 - b. One of the members of the standing committee must be the Vice Chairman of the Commission.
 - c. The majority of the members of the standing committee must be members of the Human Rights Commission.
 - d. The balance of standing committee membership must be selected from the Arlington County workforce.
2. The County Manager shall make all Arlington County workforce appointments to the standing committee; such members are not required to be County residents and shall represent the general interests of the Arlington County workforce.
3. In order for the standing committee to transact business, a quorum of the membership must be present. A quorum is defined as a majority of the members of the standing committee, so long as the majority of the quorum is constituted by Human Rights Commission members.

E. The County Board shall designate one (1) member of the Commission to act as Vice Chairman whose responsibility it is to lead the standing committee on equal employment opportunity issues in the Arlington County workforce.

F. Members of the Commission and any standing committee shall serve without compensation, but funds may be provided by the County Board in the annual budget for reasonable and necessary expenses incurred by the Commission.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92; Ord. No. 12-02, 2-11-12)

§ 31-5. Human Rights Director.

The County Manager shall appoint an Executive Director of the Commission and such staff as may be authorized.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89)

§ 31-6. Functions and Powers of the Commission.

In addition to other powers and duties as set out in this chapter, the Commission shall have the following functions and powers:

- A. To meet and function at times it deems appropriate;
- B. To adopt rules and regulations, subject to the approval of the County Board, needed to carry out its functions and purposes, including but not limited to rules governing hearings and meetings of the Commission;
- C. To receive complaints from any person alleging violations of this chapter and investigate or cause

to be investigated such complaints;

- D. To conciliate and attempt to resolve individual complaints of violations of this chapter;
- E. To request that any party produce for examination any books, records, papers, or other tangible and relevant evidence, or that any party answer written or oral questions relating to any complaint under investigation by the Commission;
- F. In the event conciliation fails, conduct hearings or take other appropriate action concerning violations of this chapter;
- G. To request the attendance of witnesses at public hearings and to take testimony at hearings under oath or affirmation;
- H. To make findings and recommendations upon complaints alleging violations of this chapter;
- I. To seek, with the approval of the County Board, through appropriate enforcement authorities, prevention of or relief from violations of this chapter;
- J. To refer, to the appropriate state or federal agency, complaints of discrimination which are within the jurisdiction of the state or federal agency;
- K. To accept public grants or private gifts, bequests, or other payments as appropriate and subject to the approval of the County Board;
- L. To gather, discuss and disseminate information about discrimination and human rights problems affecting community life in Arlington County;
- M. On its own motion, to authorize investigations by the Executive Director of possible violations of this chapter and to attempt, through conciliation or similar means, to bring to an end any violations of this chapter which may be thought to exist as a result of such investigations, and to seek, with the prior approval of the County Board, through appropriate enforcement authorities, prevention of or relief from violations of this chapter which may be thought to exist as a result of such investigations;
- N. To enter into workshare or other agreements with appropriate federal or state agencies, subject to the approval of the County Board;
- O. To make studies to effectuate the purposes and policies of this chapter when requested by the County Board; and
- P. To make, at least annually, a written report of its activities to the County Board under the provisions of this chapter along with its recommendations concerning measures to be taken to further the purposes of this chapter.
- Q. The primary responsibilities of the Commission's standing committee, executed with Human Rights Commission concurrence, on equal employment opportunity issues shall include, but not be limited to the following:
 - 1. Advise the County Board on equal employment opportunity issues in the Arlington County workforce;
 - 2. Review the implementation and progress of equal employment under the provisions of the Equal Employment Opportunity Policy, Affirmative Action Plan and relevant statutes and legislation;
 - 3. Stimulate community interest and participation in the implementation of equal employment

opportunity objectives;

4. Conduct joint annual reviews, in consultation with appropriate advisory bodies and staff, on the status of equal employment opportunity within County employment;
5. Maintain liaison with other interested advisory commissions for the review of items of special interest to equal employment objectives;
6. Propose recommendations to the County Board to promote and enhance equal employment opportunity in County employment;
7. Submit an annual report to the County Board within sixty (60) days after the closing of each fiscal year outlining the activities of the standing committee;
8. The standing committee shall meet at least two (2) times a year but not more than four (4) times a year on dates to be determined by the standing committee.

R. The creation of this standing committee does not expand the Commission's authority to employment issues in the Arlington County workforce as Arlington County is not an employer under the definition of this Chapter.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 91-7, 3-16-91; Ord. No. 12-02, 2-11-12)

§ 31-7. Enforcement Proceedings Initiated by the Filing of a Complaint.

A. *Complaints.* A complaint may be filed with the Commission by any person alleging that a violation of this chapter has been committed against such person. In order for a complaint to become formal, the complaint must be filed on a form supplied by the Commission and sworn to or affirmed, except that a written complaint not initially made on a form supplied by the Commission and sworn to or affirmed must be so formalized within seven (7) days of receipt by the Commission. The Executive Director shall promptly serve a copy of the formal complaint upon each respondent named therein. The complaint shall state the name and address of the complainant and the person or persons against whom the complaint is made, and shall also state the facts upon which the complaint is based, including the date the violation was allegedly committed and such other information as the Commission may require. A complaint may be withdrawn at any time by the complainant. Such withdrawal shall terminate all action by the Commission with respect to that complaint.

Failure of a complainant to formalize his or her complaint within the time allowed shall result in automatic dismissal of the complaint unless, for good cause shown, the Commission grants an extension of time for this purpose.

B. *Investigation and determinations by the Executive Director:*

1. Upon the filing of a complaint as set forth in subsection A of this section, the Executive Director shall make such investigation as the Director deems appropriate to ascertain the facts, provided that the complaint may be dismissed by the Executive Director without investigation if it fails to allege adequately a violation of this chapter or is otherwise facially deficient. Except as set forth in § 31-7.B.4 below, upon completion of the investigation the Executive Director shall render a determination in writing as to whether there are reasonable grounds to believe a violation of this chapter has occurred, and the facts supporting such determination. Reasonable grounds to believe means that the Director believes, after investigation, that it is more likely than not that a violation of this chapter has occurred. This determination shall promptly be served on the parties.
2. If the Executive Director determines that there are reasonable grounds to believe a violation has occurred, or at any other time prior to a formal Commission hearing, the Director may attempt to conciliate and resolve the complaint. The Director may attempt to conciliate the matter by methods of conference and persuasion with all interested parties and such representatives as the

parties may choose to assist them. Conciliation conferences shall be informal, and nothing said or done during such conferences shall be made public or otherwise used as evidence by the Commission, its members or any of its staff, or the parties unless the parties agree thereto in writing. Nothing said in such conferences shall be deemed to be an admission of any sort. The Executive Director may attempt conciliation by any means deemed appropriate. Conciliation shall not be attempted if the Executive Director determines that it would be futile or if enforcement of the chapter would best be served by referring the matter directly to the Commission for a determination as to whether to hold a public hearing.

- a. If conciliation is attempted and the Executive Director determines that it is successful, the terms of the conciliation agreed to by the parties may be reduced to writing and incorporated into a conciliation agreement to be signed by the parties, which agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated. It shall be a violation of this chapter to violate or fail to adhere to any provision contained in any conciliation agreement, and the Commission shall have the right to pursue appropriate legal remedies to enforce any such agreement after consulting with and receiving a recommendation from the County Attorney and receiving authorization from the County Board.
 - b. If conciliation is attempted and the Executive Director determines that it is unsuccessful, he or she shall promptly refer the matter to the Commission for a determination as to whether to hold a public hearing.
3. If the Executive Director determines that the complaint lacks reasonable grounds to believe a violation of this chapter has occurred, the Director shall dismiss the complaint and advise the complainant in writing that such dismissal shall become final unless, within ten (10) business days of receipt of notice of the dismissal, the complainant files with the Commission a request for a review of the determination of the Executive Director. Upon request for such a review, the Commission shall afford the complainant an opportunity to appear before the Commission in person or by representative or by letter, as the complainant may desire, so that the complainant may show that the Director's determination was an abuse of discretion. The Commission may, in its discretion, request a response from the respondent. After such review, the Commission may, in its discretion, dismiss such complaint if it finds that the Executive Director's determination was not an abuse of discretion. If the Commission determines that the complaint should not be dismissed, it shall direct the Executive Director to continue the investigation or proceed with conciliation efforts, or the Commission may determine to hold a public hearing on the allegations in the complaint. For purposes of this paragraph only, the term Commission may mean, at the discretion of the Chairman, a panel of three (3) or more members of the Commission designated by the Chairman.
4. If the Executive Director determines, after investigation, that the available evidence does not permit a determination as to whether there are reasonable grounds to believe a violation of this chapter has occurred, he or she shall:
- a. Send a written notice to this effect to be served on the parties and include in such notice a statement of the reasons for such determination; and
 - b. Refer the matter to the Commission for a determination as to whether to hold a public hearing.
- C. *Determinations by the Commission as to whether to hold a public hearing:*
1. The Commission shall determine whether to hold a public hearing in all matters referred to it by the Executive Director in the following circumstances:

- a. When there is a determination by the Executive Director that there are reasonable grounds to believe that a violation of this chapter has occurred, and:
 - (1) There is a determination by the Director that conciliation should not be attempted; or
 - (2) There is a determination by the Director that conciliation has been attempted and has been unsuccessful.
 - b. When there is a determination by the Executive Director that there are not reasonable grounds to believe that a violation of this chapter has occurred, but:
 - (1) The complainant has filed a proper request for review of such determination; and
 - (2) The Commission has concluded, upon reviewing such determination, that the complaint should not be dismissed and that the complaint should not be referred to the Executive Director for further investigation or conciliation.
 - c. When there is a determination by the Executive Director that the available evidence does not permit a determination as to whether there are reasonable grounds to believe that a violation of this chapter has occurred.
2. The Commission shall base its determination as to whether to hold a public hearing in any of the matters described in subsection C.1 above in its sole discretionary judgment as to how enforcement of this chapter would be best served, and other considerations deemed relevant, such as the time and expense to the parties if a hearing is held and the seriousness of the alleged violation.
 3. If the Commission determines not to hold a public hearing, it shall either dismiss the complaint or take such action as it deems appropriate and consistent with the purposes of this chapter and the powers of the Commission hereunder.
- D. *Hearings held by the commission:*
1. If the Commission determines to hold a public hearing, it may consider all of the allegations and issues set forth in the complaint or, in its discretion, it may limit the scope of the hearing to one (1) or more of the allegations or issues set forth in the complaint. If a hearing is to be held, the Commission shall notify the parties of the time, date and location of the hearing and serve upon them a statement of the charges against the respondent and the issues to be considered at the hearing. Such notice and statement shall be served at least fourteen (14) calendar days before the date of the hearing. The parties shall have the right to file written statements or arguments with the Commission before the hearing. The Commission may request the parties to file written statements or arguments before or after the hearing. The hearing shall be open to the public. The Commission may adopt rules for the conduct of hearings before it, including but not limited to rules pertaining to the admission of documents or other evidence. Oral or documentary evidence may be received, but the Commission may exclude irrelevant, immaterial, incompetent, or repetitious evidence. The Commission may also, in its discretion, exclude documents or other evidence for good cause. The Commission shall not be bound by the strict rules of evidence prevailing in the courts of law or equity.
 2. The Commission may, upon proper motion, order the exclusion of witnesses while testimony is being given at any such hearing.
 3. At any public hearing held by the Commission, each party shall be entitled:

- a. To be represented by privately retained counsel of his or her choice;
 - b. To present his or her case or defense by oral or documentary evidence, to be given under oath or by affirmation;
 - c. To submit rebuttal evidence; and
 - d. To conduct such cross-examination as may be permitted by the Commission for a full and true disclosure of the relevant facts.
4. The Executive Director shall be responsible for assuring the development of the evidentiary record before the Commission and may introduce evidence, examine or cross-examine witnesses, or make argument if the Director deems it advisable in order to fully apprise the Commission of the facts or the applicable law.
 5. The Commission shall keep a full record of the hearing, which record shall be open for inspection and copying pursuant to the applicable provisions of the Virginia Freedom of Information Act.
- E. *Decisions by the Commission:*
1. The burden of persuasion is upon the complainant to prove by a preponderance of the evidence that the respondent has committed or is committing violation(s) of this chapter.
 2. If, after the hearing, the Commission determines by a preponderance of the evidence that the respondent has committed or is committing the alleged violation(s) of this chapter, the Commission shall state its findings and may issue recommendations, to be served promptly on the parties, requesting the respondent to cease and desist from such violation(s) and to take such action as may be indicated to effectuate the purpose of this chapter, including but not limited to the payment by respondent of compensatory damages to any person or persons found by the Commission to be so entitled by reason of respondent's violation(s) of this chapter, or the placement or restoration of any person in or to such status in which the Commission finds he or she would be but for respondent's violation(s) of this chapter.
 3. If, after receiving the evidence presented at the hearing, the Commission finds that the respondent has not engaged in the alleged violation(s) of this chapter, the Commission shall state its findings and shall dismiss the complaint. Prompt notice of such action shall be given to the parties.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 91-25, 6-22-91)

§ 31-8. Enforcement by the Court.

A. If the Commission finds that a respondent has committed a violation of this chapter and determines that appropriate remedial measures have not been taken, the Commission, after consulting with and receiving a recommendation from the County Attorney and receiving authorization from the County Board, may bring an appropriate action in any court of competent jurisdiction to: prove, de novo, that the person violated this chapter; secure compliance with this chapter; and/or obtain appropriate redress or relief for any person injured as a result of a violation of this chapter.

B. Whenever the Commission has probable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, and the Commission, after a good faith effort to obtain, voluntarily, the data and information necessary to determine whether a violation has occurred, has been unable to obtain such information, it may request the County Attorney, with the approval of the County Board, to apply to the judge of the Circuit Court of the jurisdiction in which the respondent resides or is doing business for a subpoena duces tecum against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be

subject to punishment for contempt by the court issuing the subpoena. For purposes of this section "person" includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employment agency, labor organization, joint labor-management committee, or an agent thereof, or other "person" as defined by this chapter.

C. If, at any time after a complaint has been filed, or after initiation of any investigation on the Commission's own initiative, the Commission determines that a court order requiring a party to refrain from any conduct is necessary to prevent irreparable harm to any person, the Commission, after consulting with and receiving a recommendation from the County Attorney and receiving authorization from the County Board, may bring appropriate action to prevent such irreparable harm, including but not limited to petitioning a court of competent jurisdiction for a temporary restraining order or preliminary injunction.

(Ord. No. 89-3, 7-1-89)

§ 31-9. Exemptions.

A. *Exemption on religious organizations.* It is not a violation of this chapter for a religious organization to:

1. Limit admission to or give preference in its accommodations, facilities or services to persons of the same religion or denomination, or to make a selection of applicants or individuals that is reasonably calculated to promote the religious principles for which it is established or maintained.
2. Reserved.

B. *Nothing contained in this chapter shall be construed to:*

1. Bar bona fide housing for the elderly or handicapped persons from limiting admission or giving preference to persons of a given age or persons with handicapping conditions;
2. Bar a person from maintaining an establishment which provides sleeping accommodations exclusively to persons of the same sex;
3. Make it an unlawful act to require that a person have legal capacity to enter into an irrevocable contract; or
4. Require any person or group of persons selling, renting or leasing property to exercise a higher degree of care for a person with a handicap than for a person without a handicap.

C. *Employment practices:*

1. Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice to:
 - a. Restrict employment to persons of a particular religion, sex, sexual orientation, national origin or age, where such religion, sex, sexual orientation, national origin or age is a bona fide occupational qualification;
 - b. Take actions on the basis of a handicap, pursuant to law or regulation governing any employment or training program which is designed to benefit handicapped persons;
 - c. Advertise and offer employment only to handicapped persons when other employment compatible with their ability would not be available to handicapped persons because of their handicaps; or
 - d. To engage in affirmative action programs permitted by state or federal law.

2. Nothing in this chapter shall prohibit an employer from refusing to hire or promote, from disciplining, transferring or discharging or taking any other personnel action pertaining to an applicant or an employee who, because of his disability, is unable adequately to perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this section shall subject an employer to any legal liability resulting from the refusal to employ or promote or from the discharge, transfer, discipline of, or the taking of any other personnel action pertaining to a person with a disability who, because of his disability, is unable adequately to perform his duties or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-10. Enforcement by County Agencies.

A. *Public contractors.* Upon publication or receipt of the findings and recommendations of the Commission declaring the respondent to be in violation of this chapter, and with the approval of the County Board, the purchasing agent of Arlington County may deem the respondent ineligible for award of a public contract until the County Board is satisfied that the respondent will comply with those recommendations of the Commission which the County Board feels are proper and appropriate.

B. *County financial assistance.* Upon publication or receipt of a copy of the findings and recommendations of the Commission declaring the respondent to be in violation of this chapter, the County Board may take appropriate action to terminate or refuse to grant or continue any public financial assistance to a program or activity of respondent until the County Board is satisfied that the respondent will comply with those recommendations of the Commission which the County Board feels are proper and appropriate.

C. Any respondent adversely affected by the provisions of this section shall retain all rights of appeal provided for by the applicable rules, regulations or laws of Arlington County.
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-11. Inspections, Records and Notices.

A. Every person subject to this chapter shall post such notices, make and keep such records relevant to the determination of whether discriminatory acts have been or are being committed, preserve such records for such periods, and make such reports therefrom as the Commission shall prescribe in order to assure the enforcement of this chapter.

B. The Commission, or any designated representative of the Commission, may request access at any reasonable time to premises, records and documents relevant to a complaint or notice of investigations and may request the opportunity to examine, photograph and copy evidence upon presenting written authorization of the Chairman of the Commission or the Executive Director, duly executed by the Chairman or Executive Director in accordance with the Commission's rules or procedures.

C. When a complaint or notice of investigation has been filed against a person under this chapter, the respondent shall preserve all records relevant to the allegations until final disposition of the complaint or notice of investigation.
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-12. Savings Provisions and Nonabatement of Matters.

A. The provisions of this chapter, so far as they are the same as those of chapters repealed by this chapter, are intended as a continuation of such chapters and not as new enactments.

B. The provisions of this chapter shall take effect on July 1, 1989. Any amendments to this chapter shall apply to all matters pending before the Commission on the effective date of the amendment, unless a contrary

intention is clearly expressed.

C. Nothing contained in this chapter shall be construed to conflict with any applicable state or federal law, rule or regulation; and insofar as this chapter does so conflict, it shall be superseded thereby. (Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-13. Nonexclusive Remedy.

Any person who is aggrieved by any act prohibited herein may bring an appropriate action in a court of competent jurisdiction to seek damages, redress of injury, or injunctive relief arising out of any act prohibited herein as provided for by applicable law. Nothing herein shall prevent any person from exercising any right or seeking any remedy to which he or she might otherwise be entitled, nor shall any person be required to pursue any remedy set forth herein as a condition of seeking relief from any court or other agency, except as is otherwise provided by applicable state or federal laws.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-14. Notices; Service.

All notices required under the provisions of this chapter shall be served either in person or by mailing to the last-known address appearing in the Commission's records. Counsel of record shall be entitled to a copy of any notices served upon his or her client which shall be mailed to him or her at his or her last-known address as it appears in the records of the Commission. It is the duty of the parties to advise the Commission of any changes in address.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-15. Time Limitations.

A. A complaint filed under the provision of this chapter shall be dismissed by the Executive Director if the alleged violation of this chapter ended more than one hundred eighty (180) days before the date of filing of the complaint.

B. Any complaint filed under the provisions of this chapter shall be deemed dismissed after the passage of one (1) year from the date of the filing of the complaint, unless:

1. A conciliation agreement between the parties has been reached;
2. The Commission, after a public hearing, has issued findings and recommendations;
3. The Commission has previously dismissed the complaint; or
4. The Commission, having determined before or after the expiration of this one (1) year period that there was good cause for extending this time limitation, has, by majority vote, so extended it, provided that in no event may the Commission extend any case beyond a date that is two (2) years from the date of the filing of the complaint, and provided further that, in computing the time under the provisions of this section, there shall be excluded those days which elapse between the filing and final conclusion of any legal proceedings pertaining to the validity of, or seeking to enforce or prohibit the enforcement of, any of the provisions of this chapter.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-16. Severability.

The provisions of this chapter are severable, and if any provision, word, sentence, clause, section or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, words, sentences, clauses, sections or parts of this chapter, or their application to other persons or circumstances. It is

hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid or unconstitutional provision, word, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the chapter or any part thereof is inapplicable had been specifically exempted therefrom.
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)