

Louisville-Jefferson County Metro Government

CHAPTER 92: DISCRIMINATORY PRACTICES; FAIR HOUSING

Section

General Provisions

- 92.01 Declaration of policy
- 92.02 Definitions
- 92.03 Unlawful practices in connection with housing
- 92.04 Housing exceptions
- 92.05 Unlawful practices in connection with public accommodations
- 92.06 Unlawful practices in connection with employment
- 92.07 Employment exceptions
- 92.08 Human Relations Commission - Enforcement
- 92.09 Complaint procedure
- 92.10 Conduct of Human Relations Commission - Enforcement hearing
- 92.11 Consequence of default
- 92.12 Finding of fact; conclusions of law
- 92.13 Appeal of Hearing Officer decision
- 92.14 Appeals
- 92.15 Penalty
- 92.16 Obstruction and retaliation
- 92.17 Computation of time
- 92.18 Filing and serving papers
- 92.19 Affirmative marketing plan required for county funds
- 92.20 Analysis of population by race; goals and timetables for appropriate representation
- 92.21 Programs and activities required to submit plan; exceptions
- 92.22 Submission of monthly reports by housing developments required
- 92.23 Administration by Affirmative Action Officer
- 92.24 Severability
- 92.25 Conflict

Bias-Related Crimes

- 92.40 Policy
- 92.41 Prohibition of discriminatory interference with another person or property of another person
- 92.42 Complaints to Human Relations Commission; procedure; conciliation agreements; enforcement
- 92.43 Notice and hearing; procedure
- 92.44 Findings of Commission; order; nature of affirmative action
- 92.45 Judicial review: scope; procedure; order for enforcement

92.46 Investigations; powers; confidential nature of
92.47 Subpoenas; issue; enforcement
92.48 Commission or court not to take jurisdiction over claim for unlawful act while same claim pending before other body; final determination exclusive

92.98 Severability

92.99 Penalty

GENERAL PROVISIONS

§ 92.01 DECLARATION OF POLICY.

It is the policy of the Metro Government to safeguard all individuals within Jefferson County from discrimination in certain contexts because of race, color, religion, national origin, familial status, age, disability, sex, gender identity, or sexual orientation. Certain practices must be prohibited within the areas of employment, housing, public accommodation, resort or amusement as necessary to protect individuals's personal dignity and insure freedom from humiliation; to make available to Jefferson County all full productive capacities; to secure Jefferson County against strife and unrest which would menace its democratic institutions; and to preserve the public safety, health and general welfare.

(1994 Jeff. Code, § 92.01) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.01) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATIVE CLOSURES. Complaint closures other than on the merits, such as failure to locate, failure to cooperate and withdrawals.

APPEAL PANEL. A panel of not less than three Commissioners appointed by the Chair of the Human Relations Commission - Enforcement to hear appeals from decisions of the Hearing Officer.

CANVASSING. Includes door to door solicitation by the use of circular advertisements or any other means where the canvasser or his employer has not been requested by the owner to obtain a listing of any housing accommodation or to confer with the owner regarding a transaction involving a housing accommodation.

COMMISSION. The Louisville/Jefferson County Human Relations Commission as authorized by appointments, resolutions and ordinances of the Mayor and Metro Council.

COMMISSIONER. A member of the Louisville/Jefferson County Human Relations Commission.

DISABILITY. A physical or mental impairment which substantially limits one or more major life activities, a record of such impairment, or a condition which is regarded as causing such impairment. Current illegal use of drugs or chemicals shall

not be considered a disability hereunder. Life activities shall be considered to include, but not necessarily limited to, communication, ambulation, socialization, self-care, education, vocational training, employment, transportation and adapting to housing.

DISCRIMINATION. Any direct or indirect act or practice of exclusion, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons, or the aiding, abetting, inciting, coercing, or compelling thereof made unlawful under this chapter.

EMPLOYEE. Any individual employed by an employer, but not including an individual employed by his or her parents, spouse or child, or an individual employed to render services as a nurse, domestic or personal companion in the home of the employer.

EMPLOYER. Any person who has two or more employees in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such person.

EMPLOYMENT AGENCY. Any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any agent of such a person.

EXECUTIVE DIRECTOR. The Executive Director of the Human Relations Commission - Enforcement.

FAMILIAL STATUS. One or more individuals who have not attained the age of 18 years and are being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

FINANCIAL INSTITUTIONS. Any person engaged in the business of lending money or guaranteeing losses.

GENDER IDENTITY. Manifesting an identity not traditionally associated with one's biological maleness or femaleness.

HEARING OFFICER. The Hearing Officer employed by the Human Relations Commission - Enforcement to hear complaints under applicable anti-discrimination laws.

HOUSING ACCOMMODATION.

(1) Any parcel or parcels of real property or lands, or any interest therein, whether contiguous or noncontiguous located in Jefferson County, used for the building of one or more housing or rooming units or for mobile homes or mobile home parks owned by or otherwise subject to the control of one or more persons; or

(2) Any real property, including vacant land intended for sale or lease, or any interest therein, located in Jefferson County; or

(3) Any single-family dwelling or multi-family dwelling, or any portion thereof, including a housing unit or a rooming unit, or any interest therein, located in Jefferson County, which is used or occupied, or intended, arranged, assigned, or designated to be used or occupied, as the home, homesite, residence, or sleeping place of one or more persons.

HOUSING UNIT. A single room, suite of rooms, or apartment, containing cooking and kitchen facilities, occupied or intended for occupancy as living quarters, by a person, a family, or a group of persons living together.

LABOR ORGANIZATION. Any labor organization and an agent of such an organization, including an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint or system board, or joint council so engaged, which is subordinate to a national or international labor organization.

OWNER. Includes a lessee, sublessee, co-tenant, assignee, managing agent, or other person having the right of ownership or possession, or the right to sell, rent, or lease any housing accommodation.

PERSON. Includes an individual and any group of one or more natural persons, such as, but not limited to, labor unions, joint apprenticeship committees, partnerships, associations, corporations, unincorporated organizations, mutual companies, joint-stock companies, trusts, legal representatives, trustees in bankruptcy, receivers, or any individuals acting in a financial or representative capacity, either appointed by a court or otherwise, the Metro Government or any of its agencies, and any other legal, governmental or commercial entity as well as a natural person or persons. **PERSONS**, when applied to any of the foregoing, includes members, representatives, officers and directors.

PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT. Any place, store or other establishment, either licensed or unlicensed, which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds; except that a private club is not a place of public accommodation, resort or amusement if its policies are determined by its members and its facilities or services are available only to its members and their bona fide guests; and **PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT** does not include a rooming or boarding house containing not more than one room for rent or hire and which is within a building occupied by the proprietor as his or her residence.

PURCHASER. Includes any occupant, prospective tenant, assignee, prospective assignee, buyer, or any other person seeking the right of ownership or possession, or any agent of any of these.

REAL ESTATE BROKER or REAL ESTATE SALESPERSON. An individual, whether licensed or not, who for a fee, commission, salary, or other valuable consideration or who with the intention or expectation of receiving or collecting consideration, lists, sells, purchases, exchanges, rents, or leases any housing accommodation, including options thereupon, or who negotiates rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds oneself out as engaged in such activities; or who negotiates or attempts to negotiate a loan secured by a mortgage or other encumbrance on transfer of any housing accommodation or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby a person undertakes to promote the sale, purchase, exchange, rental, or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

REAL PROPERTY. Includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditments, corporeal and incorporeal.

ROOMING UNIT. Any room or group of rooms forming a single, habitable unit used for living or sleeping, but which does not contain cooking and kitchen facilities.

SEXUAL ORIENTATION. An individual's actual or imputed heterosexuality, homosexuality or bisexuality.

(1994 Jeff. Code, § 92.02) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.02) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.03 UNLAWFUL PRACTICES IN CONNECTION WITH HOUSING.

In connection with any of the transactions set forth herein which affect any sale, purchase, exchange, rental, or lease of any housing accommodation, it shall be a prohibited, unlawful practice for a person, owner, financial institution, real estate broker, or real estate salesperson, or any representative of the above to:

(A) Refuse to sell, purchase, exchange, rent or lease, lend or deny brokerage service or otherwise deny to or withhold any housing accommodation from a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(B) Discriminate against a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation in terms, conditions, or privileges of the appraisal, purchasing of loans, financial assistance, sale, purchase, exchange, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith; or

(C) Refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent or lease any housing accommodation from or to a person because of race, color,

religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(D) Refuse to negotiate for the sale, purchase, exchange, rental or lease of any housing accommodation to any person because of race, color, religion, national origin, familial status, disability, handicap, sex, gender identity, or sexual orientation; or

(E) Represent to a person that any housing accommodation is not available for inspection, sale, purchase, exchange, rental, or lease when in fact it is available, or to refuse to permit a person to inspect any housing accommodation because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(F) Make, print, circulate, post, mail or cause to be printed, circulated, posted, or mailed any notice, statement, or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, exchange, rental, lease, or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, exchange, rental, lease or financing of any housing accommodation which indicates directly or indirectly, any discrimination or any intent to discriminate as to race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(G) Offer, solicit, accept, or use a listing of any housing accommodation for sale, purchase, exchange, rental, or lease with the understanding that any person may be subjected to discrimination in connection with such sale, purchase, exchange, rental, or lease, or in the furnishing of facilities or services in connection therewith because of his/her race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(H) Induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, exchange, rental, or lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of persons of any particular race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation in the area to be affected by such sale, purchase, exchange, rental, or lease will or may result in:

- (1) Lowering of property values in the area;
- (2) An increase in criminal or antisocial behavior in the area; or
- (3) A decline in the quality of the schools in the area; or

(I) Make any misrepresentations concerning the listing for sale, purchase, exchange, rental, or lease or the anticipated listing for any of the above, or the sale, purchase, exchange, rental or lease of any housing accommodation in any area in Jefferson County for the purpose of inducing or attempting to induce any such listing or any of the above transactions; or

(J) Place a sign purporting to offer for sale, purchase, exchange, rental, or lease any housing accommodation that is not, in fact, so offered; or

(K) Advertise for sale, purchase, exchange, rental or lease any housing accommodation which is nonexistent, or which is not actually being offered for any of the above; or

(L) Engage in, hire to be done, or to conspire with others to commit threats or acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play on fear with the purpose of either discouraging or inducing or attempting to induce the sale, occupancy, purchase, exchange, rental, or lease, or the listing for any of the above, of any housing accommodation; or

(M) Do any of the unlawful practices prohibited by this subchapter by canvassing; or

(N) Otherwise deny to or withhold any housing accommodation from a person because of race, color, religion, national origin, familial status, disability, sex, gender identity, or sexual orientation; or

(O) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter, of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with that buyer or renter; or to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection with such dwelling, because of a disability of that person, of a person residing in or intending to reside in that dwelling after it is sold, rented or made available, or of any person associated with that person:

(1) For purposes of this subsection, ***DISCRIMINATION*** includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford the person full enjoyment of the premises, except that in the case of rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a housing accommodation; or

(c) In connection with the design and construction of covered multi-family housing accommodations for first occupancy after the effective date of passage of this chapter, a failure to design and construct those housing accommodations in a manner ensuring that they have at least one entrance on an accessible route unless impractical to do so because of the terrain or unusual characteristics of the site. Housing accommodations with a building entrance on an accessible route shall comply with the following requirements:

1. The public use and common use portions of the housing accommodations shall be readily accessible to and usable by disabled persons;
2. All the doors designed to allow passage into and within all premises within the housing accommodations shall be sufficiently wide to allow passage by disabled persons on wheelchairs; and
3. All premises within the housing accommodations shall contain the following features of adaptive design:
 - a. An accessible route into and through the housing accommodations;
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - c. Reinforcements in bathroom walls to allow later installation of grab bars; and
 - d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space; and

(d) Compliance with the appropriate requirements of Chapter 11 of the Kentucky Building Code, Requirement for Accommodations in New Construction, as amended from time to time, suffices to satisfy the requirements of subsection (1)(c)2. or 3. of this section.

(2) As used in subsection (1) of this section, the term ***COVERED MULTIFAMILY HOUSING ACCOMMODATION*** means:

(a) Buildings consisting of four (4) or more units if such buildings have one or more elevators; and

(b) Ground floor units in other buildings consisting of two or more units.

(3) Nothing in this section requires that a housing accommodation be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(P) Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against that person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, familial status, age, disability, sex, gender identity, or sexual orientation; or

(Q) Coerce, intimidate, harass, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter or Title VIII of the Civil Rights Act of 1968. (1994 Jeff. Code, § 92.03) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.03) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.04 HOUSING EXCEPTIONS.

(A) The provisions of this chapter, which prohibit discriminatory housing practices, other than the prohibition of discriminatory advertising, shall not apply:

(1) To the rental or lease of any housing accommodations in a building which contains not more than two families living independently of each other, if the owner or a member of his or her family resides in one of the housing accommodations;

(2) To the rental of one room or one rooming unit in a housing accommodation by an owner if he or she or a member of his or her family resides therein;

(3) To 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, which limits the sale, lease, rental, occupancy, assignment, or sublease of housing accommodation which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preference to those persons, unless membership in the religion is restricted on account of race, color, or national origin. Nor shall anything in this chapter prohibit 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, from limiting the rental or occupancy of the lodging to its members or from giving preference to its members.

(4) To a private individual homeowner disposing of his or her property through private sale without the aid of any real estate operator, broker, or salesperson and without advertising or public display except that attorneys, escrow agents, abstractors, title companies, and other professional assistance may be utilized as necessary to perfect or transfer the title.

(B) Nothing in this chapter shall require a real estate operator to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(C) Nothing in this section shall limit the applicability of any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a housing accommodation. No provision in the chapter regarding familial status shall apply with respect to "housing for older persons," as defined in the Federal Fair Housing Act, 42 U.S.C. 3607.

(D) Nothing in this section prohibits conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802) or KRS Chapter 218A.

(1994 Jeff. Code, § 92.04) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.04) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.05 UNLAWFUL PRACTICES IN CONNECTION WITH PUBLIC ACCOMMODATIONS.

(A) Except as otherwise provided herein, it is an unlawful practice for a person to deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement as defined in § 92.02, on the ground of race, color, religion, national origin, disability, sexual orientation or gender identity.

(B) It is an unlawful practice for a person, directly or indirectly, to publish, circulate, issue, display, or mail, or cause to be published, circulated, issued, displayed, or mailed, a written, printed, oral or visual communication, notice, or advertisement, which indicates that the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation, resort or amusement, will be refused, withheld, or denied an individual on account of his race, color, religion, national origin, disability, sexual orientation or gender identity, or that patronage of, or presence at, a place of public accommodation, resort or amusement, of an individual, on account of his race, color, religion, national origin, disability, sexual orientation or gender identity is objectionable, unwelcome, unacceptable, or undesirable.

(C) It shall be an unlawful practice to deny an individual, because of sex, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a restaurant, hotel, motel, or any facility supported directly or indirectly by government funds.

(1) The provisions of this subsection shall not apply to:

(a) Restrooms, shower rooms, bath houses and similar facilities which are in their nature distinctly private;

(b) YMCA, YWCA and similar type dormitory lodging facilities;

(c) The exemptions contained in the definitions of "Place of Public Accommodations, Resort or Amusement" set forth in § 92.02;

(d) Hospitals, nursing homes, penal or similar facilities, to require that men and women be in the same room.

(1994 Jeff. Code, § 92.06) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.05) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.06 UNLAWFUL PRACTICES IN CONNECTION WITH EMPLOYMENT.

(A) It is a prohibited, unlawful practice for an employer:

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit, segregate, or classify his or her employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race,

color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(B) It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his or her race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation, or to classify or refer for employment an individual on the basis of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation.

(C) It is an unlawful practice for a labor organization:

(1) To exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership because of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(2) To limit segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any which would deprive or tend to deprive an individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect one's status as an employee or as an applicant for employment because of such individual's race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) It is an unlawful practice for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation, in admission to or employment in, any program established to provide such apprenticeship, training, or retraining.

(E) It is an unlawful practice for any employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or classification or referral for employment by such a labor organization or classification or limitation, specification, or discrimination based on race, color, religion, national origin, age 40 and over, disability, sex, gender identity, or sexual orientation, except that such a notice or advertisement may indicate a preference, limitation, or specification, based on religion, national origin, age 40 and over, disability or sex when religion, national origin, age 40 and over, disability or sex is a bona fide occupational qualification for employment.

(F) Nothing herein shall be construed to prevent an employer from:

- (1) Enforcing a written employee dress policy; or
- (2) Designating appropriate restroom and shower facilities.

(1994 Jeff. Code, § 92.06) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.06) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.07 EMPLOYMENT EXCEPTIONS.

(A) Notwithstanding any other provisions of this chapter, it shall not be an unlawful practice for:

(1) 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 his religion or national origin in those certain instances where religion or nation origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;

(2) A religious corporation, association, or society to employ an individual on the basis of his or her religion to perform work connected with the carrying on by such corporation, association, or society of its religious activity;

(3) A school, college, university, or other educational institution to hire and employ individuals of a particular religion, if the school, college, university, or other educational 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 calculated by such organization to promote the religious principles for which it is established or maintained;

(4) An employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if the differences are not the result of an intention to discriminate because of race, color, national origin, sex, age 40 and over, disability, gender identity, or sexual orientation nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, national origin, sex, age 40 and over, disability, gender identity, or sexual orientation.

(B) The provisions of § 92.06 in regard to sexual orientation or gender identity shall not apply to a religious institution, or to an organization operated for charitable or educational purposes, which is operated, supervised, or controlled by a religious corporation, association or society.

(1994 Jeff. Code, § 92.07) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.07) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.08 HUMAN RELATIONS COMMISSION - ENFORCEMENT.

(A) The administration and enforcement of this chapter shall be the responsibility of the Louisville/Jefferson County Human Relations Commission - Enforcement, and it shall have full operating responsibility for carrying out the provisions of this chapter.

(B) In addition to any powers or duties heretofore conferred on the Human Relations Commission - Enforcement, it shall have the power and duty to:

- (1) Meet and exercise its powers at any place within Jefferson County;
- (2) Employ attorneys, hearing examiners, clerks, and other employees and agents, and to appoint and empower committees and divisions to assist in effecting the purposes and provisions of this chapter;
- (3) Accept gifts or bequests, grants, or other payments, public or private, to help finance its activities;
- (4) Receive, initiate, investigate, seek to conciliate, hold hearings on, and pass on complaints alleging violations of this chapter. By itself or through the Executive Director of the Human Relations Commission - Enforcement ("Executive Director"), the Human Relations Commission - Enforcement may hold public or private hearings, administer oaths, and take the testimony of any person under oath relating to any matter under investigation or in question. If a person against whom a complaint of discriminatory practice is made is notified as hereinafter provided to attend any hearing, public or private, before the Human Relations Commission - Enforcement or the Executive Director, as the case may be, the Human Relations Commission - Enforcement or the Executive Director may proceed to make a determination in such person's absence;
- (5) Compel the attendance of witnesses and the production of evidence before it by subpoena issued by the Jefferson Circuit Court;
- (6) Issue remedial orders, after notice and hearing, requiring cessation of violations of this chapter;
- (7) Publish or cause to be published conciliation agreements or enforcement agreements. All other records and information shall be confidential except as reasonably necessary to conduct an investigation and proceeding;
- (8) Issue such affirmative orders as in the judgment of the Human Relations Commission - Enforcement will carry out the purposes of this chapter. Affirmative action ordered may include, but is not limited to, the remedies enumerated in KRS 344.230(3); and
 - (a) All other remedies detailed in KRS Chapter 344 and Title VIII of the Federal Civil Rights Act of 1968 as amended;

(b) Apply to the Jefferson Circuit Court for such temporary or permanent relief as it deems necessary; where such relief is granted, notice of the relief shall be promptly filed in the office of the County Clerk of Jefferson County, Kentucky.

(9) Subject to approval of the Metro Government, adopt, promulgate, amend, and rescind rules and regulations to effectuate the purposes and provisions of this chapter, including regulations requiring the posting of notices prepared or approved by the Human Relations Commission - Enforcement; and

(10) Receive, initiate as hereinafter provided, investigate, hear or determine charges, and remediate violations of unlawful practices prohibited by this chapter; and

(a) Enter into cooperative working agreements with the United States Equal Employment Opportunity Commission (EEOC) created by Section 705 of the Federal Civil Rights Act of 1964 (78 Stat. 241) in order to achieve the purpose of that Act; and with any federal or state agency in order to achieve the purposes of this chapter.

(b) In its discretion, or upon request of the Kentucky Commission of Human Rights (the "State Commission"), refer a matter under its jurisdiction to the State Commission for initial action or review.

(c) Refer to the State Commission for resolution a dispute over jurisdiction or other matter with another local commission.

(d) Provide a copy of its annual report to the State Commission.

(11) Institute proceedings in Jefferson Circuit Court for enforcement of the orders of the Human Relations Commission - Enforcement or its Executive Director, including appeal;

(12) Exercise all other applicable powers as provided in the Kentucky Civil Rights Act.

(1994 Jeff. Code, § 92.08) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.08) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.09 COMPLAINT PROCEDURE.

(A) Any person or persons claiming to be aggrieved by an unlawful practice that is prohibited by this chapter may file a written complaint in accordance with the rules and regulations of the Human Relations Commission - Enforcement. The complaint must be filed within 180 days after the alleged unlawful practice occurred. Any member of the Human Relations Commission - Enforcement who has reason to believe an unlawful practice has occurred may file a complaint. Any person or persons claiming to be aggrieved by an act in violation of this chapter may file an action in Jefferson Circuit Court and obtain civil remedies as provided in KRS Chapter 344 and Title VIII of the Federal Civil Rights Act of 1968 as amended and any other federal civil rights statute that grants state courts concurrent jurisdiction.

(B) Complaints filed with the Human Relations Commission - Enforcement by individuals should:

(1) Be executed and filed at the Human Relations Commission - Enforcement office; members of the Human Relations Commission - Enforcement staff will assist the complainant to prepare the complaint;

(2) Be verified by each complainant;

(3) Contain the name and address of each complainant;

(4) Contain the names and addresses of the respondent(s) who committed the unlawful practice prohibited by this chapter;

(5) Give fair notice of the facts relied upon to show the unlawful practice or practices;

(6) State clearly and concisely the alleged violation; and

(7) State the date of the violation.

(C) On receipt of a complaint, or acceptance of a complaint referred by the Kentucky Human Rights Commission, the EEOC or HUD, the Human Relations Commission - Enforcement shall serve the complaint and a written resume setting forth the rights of the parties and the procedures to be followed by the Human Relations Commission - Enforcement in the investigation and adjudication of the complaint on the person or persons charged with a violation of this chapter (hereinafter referred to as the respondent, whether one or more persons), and mail a copy to the complainant.

(D) On receipt of a complaint, the respondent shall, within 30 days, file with the Human Relations Commission - Enforcement an answer, under oath or affirmation, to the allegations in the complaint. The staff of the Human Relations Commission - Enforcement shall attempt to resolve the complaint and conduct a preliminary investigation of the complaint and shall within 100 days after service of the complaint on the respondent, unless there has been a settlement, render a final investigative written report detailing documentary and witness evidence to the Executive Director.

(E) The Executive Director, within 30 days after receipt from the staff of the Human Relations Commission - Enforcement of the report of the preliminary investigation, shall determine whether there is reasonable cause to believe that an unlawful practice has been committed.

(1) If the Executive Director determines that there is no such reasonable cause, the complaint shall be dismissed.

(2) If the Executive Director determines that there is such reasonable cause, the Human Relations Commission - Enforcement shall make an effort to eliminate the unlawful practice by conference and conciliation. All conciliation and/or enforcement agreements and administrative closures shall be approved by the Executive Director of the Commission.

(3) If reasonable cause concerning allegations of an unlawful practice in connection with housing is found, the complainant and respondent shall be advised in writing that either party may elect to have their claims asserted in the complaint decided in a civil action. Notice of this election must be made to the Human

Relations Commission - Enforcement and all other parties not later than the 20th day after receipt of the right of election. Upon receipt of such notice, the Human Relations Commission - Enforcement shall authorize, within 30 days thereafter, filing and maintaining an action on behalf of the complainant in Jefferson Circuit Court which may award all relief available under this chapter.

(4) Within 45 days after the Human Relations Commission - Enforcement has determined that reasonable cause exists, unless an order has been issued dismissing the complaint or stating the terms of a conciliation agreement, a hearing shall be set and necessary and reasonable discovery pursuant to KRS Chapter 344.

(F) Any endeavors or negotiations for conciliation shall not be received in evidence and shall be held in confidence by the Human Relations Commission - Enforcement and its staff.

(G) The determination of the Executive Director may be reconsidered on petition of any aggrieved party, except that an application to reconsider must be filed within 20 days of service of the adjudicative order on the aggrieved party. Dismissal after reconsideration is a final order by the Human Relations Commission - Enforcement.

(H) In connection with an investigation of a complaint filed under this chapter, the Human Relations Commission - Enforcement, or its designated representatives, may at any reasonable time request access to the premises, records and documents relevant to the complaint and shall have the right to examine, photograph, and copy evidence. If a person fails to permit access, examination, photographing, or copying of records or documents relative to the complaint, the Human Relations Commission - Enforcement may apply to the Jefferson County Circuit Court for an order requiring compliance.

(I) All hearings held under and pursuant to this chapter shall be open to the public.

(J) At any time after a complaint has been filed, the Human Relations Commission - Enforcement may file an action in the Jefferson Circuit Court seeking appropriate temporary relief against the respondent, pending the final determination of proceedings under this section.

(K) At any time after a complaint has been filed, the Human Relations Commission - Enforcement may file an action in the Jefferson Circuit Court seeking such appropriate relief against any person as it may deem necessary to prevent any change of position between the complaint(s) and the respondent(s) or to prevent the questions presented to the Human Relations Commission - Enforcement from becoming moot.

(L) If the Human Relations Commission - Enforcement determines that any respondent has committed an unlawful act prohibited by this chapter and the respondent refuses to comply with or obey the order issued by the Human Relations Commission - Enforcement, the Human Relations Commission - Enforcement may file an action in the Jefferson Circuit Court seeking enforcement of the order.

(M) The Human Relations Commission - Enforcement may file suit in the Jefferson Circuit Court seeking enforcement of any of its orders issued pursuant to this chapter.

(1994 Jeff. Code, § 92.09) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.09) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.10 CONDUCT OF HUMAN RELATIONS COMMISSION - ENFORCEMENT HEARING.

(A) In the event a complaint is not resolved under § 92.09, a written notice, signed by the Director of the Human Relations Commission - Enforcement or authorized representative, together with a copy of the complaint, shall require the respondent to answer the charges of such complaint at a hearing before a Hearing Officer. The Executive Director shall not be eligible to serve as the Hearing Officer. The hearing shall be held no less than 60 days after service of the notice on the respondent and complainant.

(B) At the hearing, the case in support of the averments of the complaint may be presented by counsel designated by the Human Relations Commission - Enforcement. The order of proof shall be that set forth in the Kentucky Rules of Civil Procedure. The Hearing Officer may hear summations by counsel. While strict rules of evidence governing trials at law or in equity need not be applied, the Hearing Officer will abide by the general principles of evidence to the end that a rational investigation after the truth may be had.

(C) The Hearing Officer may grant continuances to either side for good cause shown. The introduction of issues not raised by pleadings is good cause for continuation of the hearing as to such issue.

(1994 Jeff. Code, § 92.10) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.10) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.11 CONSEQUENCE OF DEFAULT.

(A) **DEFAULT** as used herein is defined as:

(1) The failure of a respondent to appear at a hearing shall be ruled as a default.
(2) Any act, counsel, deliberate omission, communication, signal, or the like, direct or indirect, made or done by a respondent or any of his or her agents or attorneys on his or her behalf, which:

(a) Induces or helps to induce a person other than the respondent to refrain from testifying before the Human Relations Commission - Enforcement, to refrain from discussing a matter with the Human Relations Commission - Enforcement staff, to frustrate adjustments, or to misrepresent any fact to the Human Relations Commission - Enforcement; or

(b) Frustrates or attempts to frustrate adjustments, or cause the misrepresentation of a fact to the Human Relations Commission - Enforcement.

(B) Whenever the Hearing Officer decides by clear and convincing evidence that a default has occurred, he or she shall serve upon the respondent so charged an order of default against him or her. The making of such an order entitles the Hearing Officer forthwith to make findings of fact sustaining the averments of the complaint without resort to testimony.

(1994 Jeff. Code, § 92.11) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.11) (Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.12 FINDING OF FACT; CONCLUSIONS OF LAW.

(A) Finding of fact and conclusions of law shall be made after all hearings have ended in a matter before the Hearing Officer and they shall be in the style prescribed in Rule 52.01, Kentucky Rules of Civil Procedure. Finding of fact made as a consequence to a default need merely recite the averments of the complaint are true because of the default. Conclusions of law must accompany findings of fact made upon a default.

(B) Based upon the findings of fact and conclusions of law, the Hearing Officer shall, as to each respondent, either dismiss the complaint on the merits or order the respondent to cease and desist from the prohibited discriminatory practice or practices and take such affirmative action as detailed in KRS Chapter 344, Title VIII of the Federal Civil Rights Act as amended, as the Hearing Officer deems necessary to remedy the violation and to prevent its continuation or recurrence. All Hearing Officer orders made under this rule shall be served upon each claimant and respondent affected by the order.

(1994 Jeff. Code, § 92.12) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.12) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.13 APPEAL OF HEARING OFFICER DECISION.

(A) An appeal from a determination of the Hearing Officer to the Appeal Panel can be made only by filing with the Human Relations Commission - Enforcement, a notice of appeal. The service of such filing shall be made within 30 days after the service of the Hearing Officer order. The notice of appeal shall specify the Hearing Officer errors and the relief sought by the appeal. A brief may be filed within 30 days of the notice of appeal. A reply brief may be filed within 30 days of service of the appellant's brief.

(B) The Appeal Panel shall either affirm, modify, reverse or remand after a review of the transcript, briefs, and the findings and orders of the Hearing Officer. The Human Relations Commission - Enforcement shall serve a copy of its final order upon

each affected respondent and individual complainant. The Appeal Panel has the discretion to request oral argument.

(C) The Human Relations Commission - Enforcement shall complete its internal process within 365 days unless impractical to do so. The Human Relations Commission - Enforcement shall endeavor to meet all deadlines. The respondent and complainant shall be notified of any necessary extensions sought or granted by the Chair of the Human Relations Commission - Enforcement.

(D) The Human Relations Commission - Enforcement may make such investigations and hold such hearings as it sees fit to determine whether a respondent, who has been ordered to cease and desist from an unlawful practice or practices, has complied with the order.

(1994 Jeff. Code, § 92.13) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.13) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 129-2003, approved 7-18-2003; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.14 APPEALS.

Any respondent or complainant aggrieved by a final order of the Commission, or any complainant aggrieved by the final order of dismissal of his or her complaint by the Commission, may obtain a review of such order in the Jefferson Circuit Court by filing with the Clerk of the Court, within 30 days after service on him or her of the order, a written petition in duplicate praying that such order be modified or set aside, and by serving a duplicate copy of the petition on the Commission. The Commission shall then cause to be filed in the Court a certified transcript of the record in the proceedings before it, including the pleadings, testimony and order.

(1994 Jeff. Code, § 92.14) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.14) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.15 PENALTY.

(A) In addition to any remedial order, if the Commission finds that any person has committed an unlawful practice with regard to housing, as defined in this chapter, it may subject such person to a fine not greater than civil penalties established by the Federal Fair Housing Act in Section 812. The Commission may, if such person refuses to pay the fine, file an action in the Jefferson Circuit Court for the collection thereof.

(B) If a real estate broker, a real estate salesman, or an employee thereof has failed to comply with any order issued by the Commission, or has been found to have committed an unlawful housing discrimination practice in violation of this chapter, the Commission shall so notify in writing the Real Estate Commission of the Commonwealth of Kentucky.

(1994 Jeff. Code, § 92.15) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.15) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.16 OBSTRUCTION AND RETALIATION.

It shall be a prohibited, lawful practice for any person:

(A) To retaliate in any manner against a person because he or she has opposed a practice declared unlawful by this chapter or because he or she has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, hearing, or conference before the Commission under this chapter; or

(B) To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by this chapter or to obstruct or prevent any person from complying with the provisions of this chapter; or

(C) To obstruct or prevent a person from complying with the provisions of this chapter, or any order of the Commission issued thereunder; or

(D) To resist, prevent, impede, or interfere with the Human Relations Commission or any of its members or representatives in the lawful performance of its or their duty under this chapter. Complaints filed with the Commission under this section shall be processed in conformity with §§ 92.09 et seq.

(1994 Jeff. Code, § 92.16) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.16) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.17 COMPUTATION OF TIME.

In computing time or periods of time of less than ten days, under this chapter, Saturdays, Sundays and legal holidays shall be excluded.

(1994 Jeff. Code, § 92.17) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.17) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.18 FILING AND SERVING PAPERS.

All papers required to be filed with the Commission may be mailed to the Commission for filing. All papers required to be served by the Commission shall be mailed to the person by certified mail, return receipt requested. Service or filing by mail is complete upon receipt by the addressee or five days after mailing, whichever first occurs.

(1994 Jeff. Code, § 92.18) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.18) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.19 AFFIRMATIVE MARKETING PLAN REQUIRED FOR COUNTY FUNDS.

No person, firm, corporation, association or agency of Jefferson County that provides housing opportunities for citizens of Jefferson County with the direct or indirect assistance of Metro Government funds, shall be approved by the Metro

Government or recommended for approval by any Metro Government entity without submission of an approved housing affirmative marketing plan.

(1994 Jeff. Code, § 92.19) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.19) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.20 ANALYSIS OF POPULATION BY RACE; GOALS AND TIMETABLES FOR APPROPRIATE REPRESENTATION.

An approved housing affirmative marketing plan must be in writing and include an analysis of the eligible population by race which is likely to apply for the housing proposed because of neighborhood custom, price or past patterns of discrimination, development of a documentable outreach program to market the housing to the segment of the population by race least likely to apply and the establishment of goals and timetables to which the entity's good faith efforts will be directed to ensure appropriate representation by race.

(1994 Jeff. Code, § 92.20) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.20) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.21 PROGRAMS AND ACTIVITIES REQUIRED TO SUBMIT PLAN; EXCEPTIONS.

Programs and activities required to submit an approved housing affirmative marketing plan before final approval include, but are not limited to, CDBG activities, low interest mortgage bond programs, public housing/Section 8 programs, UDAG applicant, IRB housing application, and sale of Metro Government owned property specifically for the purpose of providing housing. Program proposals which involve fewer than ten housing unit or lots are excluded from having an approved plan except that all advertising shall include the fair housing logo or wording.

(1994 Jeff. Code, § 92.21) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.21) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.22 SUBMISSION OF MONTHLY REPORTS BY HOUSING DEVELOPMENTS REQUIRED.

Housing developments receiving direct or indirect assistance of Metro Government funds or personnel and which are required to have approved affirmative action plans shall be required to submit monthly reports during the initial rent-up stage for not less than two months nor more than six months. Such reports shall include but are not limited to, a list of the media used to advertise availability, copies of advertising text, number of applicants by race, number of occupants by race and number of remaining available units.

(1994 Jeff. Code, § 92.22) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.22) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.23 ADMINISTRATION BY AFFIRMATIVE ACTION OFFICER.

The Affirmative Action Officer for the Metro Government shall receive written reports on all affected projects and will approve, modify and reject proposals submitted through departmental offices.

(1994 Jeff. Code, § 92.23) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.23) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.24 SEVERABILITY.

If any section, subsection, sentence or clause of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this chapter.

(1994 Jeff. Code, § 92.24) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.24) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.25 CONFLICT.

If any section, subsection, sentence or clause of this chapter is found to be in conflict with a provision of any zoning, building, health, fire or safety code of Jefferson County or the Commonwealth of Kentucky, the provision which establishes the higher standard for the promotion and protection of the public health and safety shall prevail.

(1994 Jeff. Code, § 92.25) (Jeff. Ord. 36-1999, adopted and effective 10-12-1999) (1999 Lou. Code, § 98.25) (Lou. Ord. No. 0088-2001, 2, approved 8-16-2001; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

BIAS-RELATED CRIMES

§ 92.40 POLICY.

It is hereby declared to be the policy of the Metro Government for the preservation of the peace, protection, comfort, health, safety, and welfare of persons in Jefferson County to protect all persons from tortious acts of interference with their person and/or their property motivated by hate or bias directed at classes of persons which historically have been victimized by such acts, as specifically set forth in Section (b)(1) of the federal Hate Crimes Statistics Act (Public Law 101-275) and, in addition, classes of persons identifiable by gender and/or disability or health related condition. Persons victimized by such acts in Jefferson County must have adequate remedies for redress of their grievances. The Metro Government recognizes that such acts are often punishable as crimes. Criminal statutes undoubtedly have had a desirable effect in diminishing the number of these acts of discrimination, intimidation and terror in punishing the perpetrators of such acts. However, the Metro Government finds that many such acts are not reported as crimes because victims are frightened and feel they have little to gain by reporting them. The Metro Government further finds that its experience in providing civil redress for civil rights violations in the areas of public

accommodations and housing, through the Louisville/Jefferson County Human Relations Commission, provides a promising model for diminishing acts of discrimination, intimidation and terror and for affording civil remedies for victims of such acts.

(1999 Lou. Code, § 98.48) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.41 PROHIBITION OF DISCRIMINATORY INTERFERENCE WITH ANOTHER PERSON OR PROPERTY OF ANOTHER PERSON.

(A) No person shall discriminate against another person by intentionally interfering with another person or the property of another person with the motive to intimidate or interfere with or oppress the other person because the other person is a member of one or more classes or persons referenced in paragraph (b)(1) of the federal Hate Crimes Statistics Act (Public Law 101-275) and/or, in addition, classes of persons identifiable by gender and/or disability or health related condition.

(B) A person intentionally interferes with another person by committing a tortious battery, assault, imprisonment or infliction of mental distress. A person intentionally interferes with the property of another person by trespassing on the other's land or by tortuously and deliberately damaging, defacing or destroying the real or personal property of the other person.

(C) A person is shown to have acted intentionally when his or her conduct is such that a reasonable person in his or her position would believe that the particular wrongful result of his or her conduct which did in fact occur was substantially certain to follow from said conduct.

(D) A person is shown to have acted with the motive of intimidating, interfering or oppressing another person because the other person is a member of one or more of the classes of persons referenced in paragraph (b)(1) of the federal Hate Crimes Statistics Act (Public Law 101-275) and/or, in addition, classes of person identifiable by gender and/or disability or health related condition when it is shown by a preponderance of evidence that a material factor in the Commission of the act was the person's underlying purpose to cause such intimidation, interference or oppression of the other person and/or of others in the same protected class as the other person.

(E) Except for the list of protected classes set forth in paragraph (b)(1) thereof, no section of the federal Hate Crimes Statistics Act is incorporated herein.

(1999 Lou. Code, § 98.49) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.42 COMPLAINTS TO HUMAN RELATIONS COMMISSION; PROCEDURE; CONCILIATION AGREEMENTS; ENFORCEMENT.

(A) An individual claiming to be aggrieved by an act prohibited by § 92.41 above (hereinafter, an "unlawful act") may file with the Louisville/Jefferson County Human Relations Commission (hereafter, the "Commission") a written sworn complaint setting forth the facts upon which the complaint is based, and setting forth facts

sufficient to enable the Commission to identify and serve notice to the person charged (hereafter the "Respondent"). The Commission staff shall promptly investigate the allegations set forth in the complaint and shall within ten days furnish the Respondent with a copy of the complaint. The complaint must be filed within 180 days after the alleged act upon which the complaint is based is alleged to have occurred.

(B) The Commission shall determine within 60 days after the complaint has been filed, unless impracticable to do so, whether there is probable cause to believe that an act prohibited by § 92.41 has been committed against the Complainant. If it is determined that there is no probable cause to believe that the Respondent has committed an unlawful act against the Complainant, the Commission shall issue an order dismissing the complaint and shall furnish a copy of the order to the Complainant, the Respondent, and such other public officers and persons as the Commission deems proper.

(C) The Complainant within ten days after receiving a copy of the order dismissing the complaint may file with the Commission an application for reconsideration of the order. Upon such application, the Commission shall make a new determination within ten days whether there is probable cause to believe that the Respondent has committed an unlawful act under § 92.41 against the Complainant. If it is determined that there is no probable cause to believe the Respondent has committed an unlawful act as described in the complaint, the Commission shall issue an order dismissing the complaint and shall furnish a copy of the order to the Complainant, the Respondent, and such other public officers and persons as the Commission deems proper.

(D) If the staff determines, after investigation, or if the Commission determines after the review provided for in subsection (C) above that there is probable cause to believe that the Respondent has committed an unlawful act, the Commission staff shall endeavor to provide proper redress for the Complainant by conference, conciliation and persuasion with the Respondent. The terms of a conciliation agreement reached with a Respondent may require the Respondent to refrain from committing similar unlawful acts in the future and make such further provisions as may be agreed upon between the Commission or its staff and the Respondent. If a conciliation agreement is entered into, the Commission shall issue and serve on the Complainant an order stating its terms. A copy of the order shall be delivered to the Respondent, and such other public officers and persons as the Commission deems proper. Except for the terms of the conciliation agreement, neither the Commission nor any officer or employee thereof shall make public, without the written consent of the Complainant and the Respondent, information concerning efforts in a particular case to reach an agreement with the Respondent by conference, conciliation, or persuasion, whether or not there is a determination of probable cause or a conciliation agreement.

(E) At the expiration of one year from the date of a conciliation agreement, and at other times in its reasonable discretion, the Commission staff may investigate whether

the terms of the agreement have been and are being complied with by the Respondent. Upon finding that the terms of the agreement are not being complied with by the Respondent, the Commission shall take such action as it deems appropriate to assure compliance.

(F) At any time after a complaint is filed, the Commission may file an action in the Jefferson Circuit Court seeking appropriate temporary relief against the Respondent, pending final determination of proceedings under this subchapter, including an order or decree restraining him from doing or procuring any act tending to render ineffectual any order the Commission may enter with respect to the complaint.

(G) Insofar as they are not inconsistent or in conflict with the procedure and practice provided by this chapter, the Kentucky Rules of Civil Procedure will apply to proceedings under this subchapter.

(1999 Lou. Code, § 98.50) (Lou. Ord. No. 281-1991, approved, 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.43 NOTICE AND HEARING; PROCEDURE.

(A) Within 90 days after a complaint is filed, unless the Commission has issued an order dismissing the complaint or stating the terms of a conciliation agreement or within 30 days after an application for review is filed under KRS 344.200(3), the Commission shall serve on the Respondent by certified mail a written notice, together with a copy of the complaint as it may have been amended, requiring the Respondent to answer the allegations of the complaint at a hearing before a hearing officer appointed by the Commission at a time and place specified in the notice. A copy of the notice shall be furnished to the Complainant, and such other public officers and persons as the Commission deems proper. The hearing officer shall be a person qualified to be a District Court Judge and shall be appointed by the Commission for a term not to exceed one year. The hearing officer shall rule on all questions of law and fact and after the hearing shall issue written findings of fact and conclusions of law.

(B) A member of the Commission who files the complaint or endeavors to eliminate the repetition of the alleged unlawful act by conference, conciliation or persuasion, shall not participate in the hearing or in the subsequent deliberation of the Commission.

(C) The Respondent shall file an answer with the Commission by certified mail not less than 20 days before the hearing date. The Commission or the Complainant may amend a complaint and the Respondent may amend an answer at any time prior to the issuance of an order based on the complaint, but no order shall be issued unless the Respondent has had the opportunity of a hearing on the complaint or amendment on which the order is based.

(D) The case in support of the Complainant shall be presented before the hearing officer by one of the attorneys of the Jefferson County Attorney's Office. Efforts at conference, conciliation, and persuasion shall not be received in evidence.

(E) A Respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at the hearing, may examine and cross-examine witnesses and the Complainant, and may offer evidence. The Complainant, and, in the discretion of the hearing officer, any person may intervene, examine and cross-examine witnesses, and present evidence.

(F) If the Respondent fails to answer the complaint, the Commission may enter his or her default. Unless the default is set aside for good cause shown, the hearing may proceed on the evidence in support of the complaint.

(G) Testimony taken at the hearing shall be under oath and transcribed. (1999 Lou. Code, § 98.51) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.44 FINDINGS OF COMMISSION; ORDER; NATURE OF AFFIRMATIVE ACTION.

(A) If the hearing officer determines that the Respondent has not engaged in an unlawful act, he or she shall state his or her findings of fact and conclusions of law and shall tender to the Commission an order dismissing the complaint. A copy of the order shall be delivered to the Complainant, the Respondent, and such other public officers and persons as the Commission deems proper.

(B) If the hearing officer determines that the Respondent has engaged in an unlawful act, he/she shall state his/her findings of fact and conclusions of law and shall tender to the Commission an order requiring the Respondent to cease and desist from the Commission of unlawful acts and to take such affirmative action as in the judgment of the Commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the Respondent, the Complainant, and to such other public officers and persons as the Commission deems proper.

(C) Affirmative action ordered under this section may include but is not limited to:

(1) Payment to the Complainant of damages for injury caused by an unlawful act including compensation for humiliation and embarrassment.

(2) Payment to the Complainant of property damages caused by an unlawful act.

(3) The Commission may publish or cause to be published the names of persons who have been determined to have engaged in an unlawful act.

(4) Within 20 days after receipt of the order tendered to the Commission by the hearing officer pursuant to subsections (A) or (B) of this § 92.44, the Commission shall either approve the hearing officer's order and issue the order as an order of the Commission or disapprove the order and send to the hearing officer a written statement of the reasons for its disapproval and its instruction that a new hearing be held in light of the Commission's expressed reasons for disapproval. The failure of the Commission to act within the 20-day period prescribed hereby shall constitute approval of the hearing officer's tendered order and said order the expiration of said period shall be an order of the Commission.

(1999 Lou. Code, § 98.52) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.45 JUDICIAL REVIEW: SCOPE; PROCEDURE; ORDER FOR ENFORCEMENT.

(A) A Complainant, Respondent, or intervenor aggrieved by an order of the Commission, including an order dismissing a complaint, may obtain judicial review, and the Commission may obtain an order of the court for enforcement of its order, in a proceeding brought as provided by KRS 344.240.

(B) The proceeding for review or enforcement is initiated by filing a complaint in the Jefferson Circuit Court. Copies of the complaint shall be served upon all parties of record. Within 30 days after the service of the complaint upon the Commission or its filing by the Commission, or within such further time as the court may allow, the Commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. The findings of fact of the Commission shall be conclusive unless clearly erroneous in view of the probative and substantial evidence on the whole record. The court shall have the power to grant such temporary relief or restraining order as it deems just, and to enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the Commission, or remanding the case to the Commission for further proceedings.

(C) If the Commission has failed to schedule a hearing in accordance with § 92.43 or has failed to issue an order within 180 days after the complaint is filed, the Complainant, Respondent, or an intervenor may petition the circuit court in a county in which the alleged unlawful act set forth in the complaint is alleged to have occurred or in which the petitioner resides or has his principal place of business for an order directing the Commission to take such action.

(D) The Court shall not consider any matter not considered by, nor any objection not raised before, the Commission, unless the failure of a party to present such matter to or raise such objection before the Commission is excused because of good cause shown. A party may move the court to remand the case to the Commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided he shows good cause for the failure to adduce such evidence before the Commission.

(E) The jurisdiction of the circuit court shall be exclusive and its final judgment or decree shall be subject to review by the Court of Appeals as provided by the Rules of Civil Procedure. The Commission's copy of the testimony shall be available to all parties for examination without cost during business hours of the Commission.

(F) A proceeding under this section must be initiated within 30 days after a copy of the order of the Commission is received. If no proceeding is so initiated, the

Commission may obtain a decree of the court for enforcement of its order upon showing that a copy of the petition for enforcement was served on the Respondent. (1999 Lou. Code, § 98.53) (Lou. Ord. No. 281-1991, approved, 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.46 INVESTIGATIONS; POWERS; CONFIDENTIAL NATURE OF.

(A) In connection with an investigation of a complaint filed under this chapter, the Commission or its designated representative at any reasonable time may request access to premises, records, and documents relevant to the complaint and the right to examine, photograph and copy evidence.

(B) It is unlawful for a Commissioner or employee of the Commission to make public with respect to a particular person without his consent information required by the Commission pursuant to its authority under this section except as reasonably necessary to the conduct of a proceeding under this chapter.

(C) If a person fails to permit access, examination, photographing or copying or fails to make, keep, or preserve records or make reports in accordance with this section, the circuit court of the County in which such person is found, resides, or has his principal place of business, upon application of the Commission, may issue an order requiring compliance.

(1999 Lou. Code, § 98.54) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.47 SUBPOENAS; ISSUE; ENFORCEMENT.

(A) Upon written application to the Commission a party to a proceeding is entitled as of right to the issue of subpoenas in the name of the Commission requiring attendance and the giving of testimony and the production of documents. A subpoena so issued shall show on its face the name and address of the party at whose request the subpoena was issued. On petition of the individual to whom the subpoena is directed and notice to the requesting party, the Commission may vacate or modify the subpoena.

(B) Depositions of witnesses may be taken as prescribed by the Rules of Civil Procedure as provided by KRS 344.320(2).

(C) As provided by KRS 344.320(3), if a person fails to comply with a subpoena, the Jefferson Circuit Court, upon application of the Commission or the party requesting the subpoena, may issue an order requiring compliance. In any proceeding brought under this section, the court may modify or set aside the subpoena.

(1999 Lou. Code, § 98.55) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.48 COMMISSION OR COURT NOT TO TAKE JURISDICTION OVER CLAIM FOR UNLAWFUL ACT WHILE SAME CLAIM PENDING BEFORE OTHER BODY; FINAL DETERMINATION EXCLUSIVE.

As provided by KRS 344.270, the Commission shall not take jurisdiction over any claim of an unlawful act under this chapter while a claim of the same person seeking

relief for the same unlawful act under KRS 344.450 is pending. As provided by KRS 344.370, a state court shall not take jurisdiction over any claim of an unlawful act under this chapter while a claim of same person seeking relief for the same unlawful act is pending before the Commission. As provided by KRS 341.270 a final determination by a state court or the Commission of a claim alleging an unlawful act under this subchapter shall exclude any other action or proceeding brought by the same person based on the same unlawful act.

(1999 Lou. Code, § 98.48) (Lou. Ord. No. 281-1991, approved 11-13-1991; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

(1994 Jeff. Code, § 10.07) (Jeff. Ord. 36-1994, adopted and effective 12-20-1994; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)

§ 92.99 PENALTY.

(A) If the Commission finds that any person has committed an unlawful practice as defined in this chapter it may subject such person to a fine not greater than civil penalties established by the Federal Fair Housing Act in Section 812. The Commission may, if such person refuses to pay the fine, file an action in the Circuit Court for the collection thereof.

(B) If a real estate broker, a real estate salesman, or an employee thereof has failed to comply with any order issued by the Commission, or has been found to have committed an unlawful practice in violation of this chapter, the Commission shall so notify in writing the Real Estate Commission of the Commonwealth of Kentucky.

(C) Should the Commission determine at anytime that a complaint filed with it alleging a violation of this chapter was filed in bad faith, the Commission shall forthwith issue an order requiring the complainant(s) to pay to the respondent the amount of the reasonable expenses caused the respondent by the filing of the complaint, including reasonable attorney's fees, and such order may be enforced in the same manner as any other order issued by the Commission pursuant to the provisions of those sections.

(1999 Lou. Code, § 98.99) (Lou. Ord. No. 252-1967, approved 12-26-1967; Lou. Ord. No. 116-1968, approved 5-17-1968; Lou. Am. Ord. No. 349-1991, approved 1-3-1992; Lou. Metro Am. Ord. No. 193-2004, approved 12-10-2004)