

To: Dublin City Council

From: Jennifer Readler, Law Director  
Jesse Shamp

Date: October 11, 2021

Re: Consideration of a Non-Discrimination Ordinance

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### **BACKGROUND AND QUESTION PRESENTED**

Multiple Central Ohio municipalities have enacted local non-discrimination ordinances, and municipalities in other areas of the State have considered them as well. Columbus has a local non-discrimination ordinance dating back to 1994, while Bexley adopted its own in 2015. In May 2019, Worthington adopted a non-discrimination ordinance and Westerville did the same in November 2019. Hilliard debated similar legislation beginning in September 2020 and approved an ordinance in June 2021. Upper Arlington amended its existing city code in July 2021 to expand the definition of protected classes and adopt a complaint procedure providing for an administrative hearing.

Advocates for such ordinances have argued that, in addition to altruistic benefits, they provide economic benefits by signaling to companies with diverse workforces that the community will welcome their prospective employees. Advocates also claim that state and federal laws and regulations do not provide adequate protection for certain classes of people. These ordinances must be carefully drafted to address legitimate exceptions and procedural rights.

Historically, Dublin has actively worked to combat racism and inequality. City Council passed Resolution 86-15, rejecting discrimination of any kind and urging the Ohio General Assembly to consider legislation to ensure equal opportunity and respect for all people. Additionally, the City Manager signed Administrative Order 2.66, specifically prohibiting discrimination within the work environment of the City of Dublin. In 2017, Dublin City Council built upon this strong foundation by passing Resolution 37-17 to combat intolerance, negative stereotyping and discrimination based on religion, belief or ethnicity. City Council then passed Resolution 37-20, condemning racism, declaring that Black Lives do matter, and pledging to combat injustice and inequity.

This memorandum addresses the applicable legal issues for the City of Dublin as it considers whether to enact a non-discrimination ordinance. It also addresses the classes protected in the draft legislation as well as the process and penalties in the draft.

## **COMMUNITY TASK FORCE – DIVERSITY, EQUITY AND INCLUSION FRAMEWORK AND RECOMMENDATIONS**

On August 16, 2021, the Community Task Force presented its Diversity, Equity and Inclusion (DEI) Framework and Recommendations to City Council. As part of those Recommendations, the Task Force urged Council to adopt a comprehensive non-discrimination ordinance that prohibits housing, public accommodations and employment discrimination on the basis of sexual orientation, gender identity or gender expression, in addition to the classes already protected by state and federal law—race, sex, color, religion, ancestry, national origin, age, disability, familial status, marital status, and military status.

### **SUMMARY CONCLUSION**

The City has home-rule authority to adopt a local non-discrimination ordinance including statuses that are not protected by state or federal statute. The City also has authority to establish an administrative remedy for complaints. The administrative remedy has benefits over criminal prosecution in mayor’s court or municipal court, but improvements over existing models are advisable to create an efficient process that would be defensible on administrative appeal.

### **LAW AND ANALYSIS**

Local non-discrimination ordinances must comply with the powers afforded to municipalities by the Ohio Constitution, as well as generally applicable limitations on governmental action within the Ohio and U.S. Constitutions. The constitutional provisions typically implicated include rights to due process, in relation to local procedures implemented to enforce the ordinance; the right to free exercise of religion, which has been cited by individuals who argue that their religious beliefs prohibit accommodation to individuals expressing LGBTQ+ identities in certain contexts; the right to free speech, which has been cited by individuals who argue that such ordinances chill speech that may be at-odds with the ordinances’ requirements (such as in religious hiring or membership policies); and the right of expressive association, cited to argue that such ordinances require association with protected individuals.

#### **A. Home Rule Considerations**

Under the Home Rule Amendment, Ohio Constitution Article XVIII, Section 3, the City of Dublin has powers of local self-government and to enact local measures under its police powers to protect the general health, safety, and welfare as are not in conflict with general laws of the State. A “general law” must “(1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.” *City of Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus. A conflict exists only if the local law forbids what a statute permits, or vice versa, such that the local ordinance and the general State law issue contrary directives. *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 29.

Local non-discrimination ordinances typically have two components: (1) a rule of conduct; and (2) a procedure addressing violations of that rule of conduct. The first component is a police-power

regulation that cannot conflict with general laws of the State. The conflict question is answered through the test articulated in *Canton*. The second component is an exercise of the power of local self-government, and so no conflict analysis is necessary.

Ohio law prohibits discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry. R.C. §4112.02. In the housing context, Ohio law also prohibits discrimination on the basis of familial status. *Id.* Ohio law does not include non-discrimination provisions relative to statuses such as sexual orientation, or gender identity or expression. Ohio's lack of statutory protections for these statuses does not create a conflict with ordinances that include such protections, because the lack of protections does not affirmatively allow discriminatory conduct based on these statuses. In the absence of contrary directives, municipalities are free to legislate a rule of conduct prohibiting discrimination on the bases of sexual orientation and gender identity or expression within their municipal borders.

The local non-discrimination ordinances that have been adopted typically include an administrative remedy, rather than a criminal remedy that would be prosecuted through Mayor's Court or Municipal Court. Ohio municipalities have home-rule authority to establish pre-suit administrative remedies and procedures. *Walker v. City of Toledo*, 143 Ohio St.3d 420, 2014-Ohio-5461, 39 N.E.3d 474, ¶ 29. The apparent rationale for the administrative approach municipalities have taken is that the Ohio Civil Rights Commission has jurisdiction over claims relating to discrimination based upon protected statuses in the Revised Code, and that municipalities do not have authority to create private civil causes of action in the state court system.

The choice not to have a criminal remedy for the act of discrimination itself is a policy choice. One rationale for this choice is the procedural safeguards that attach when a person has been accused of a criminal act, which include the requirement of proof beyond a reasonable doubt, confrontation of accusers, and the presumption of innocence. By making the remedy for violating the non-discrimination ordinance non-criminal, a person who fails to answer a complaint may be found in violation by default, for example, whereas a person who fails to answer a criminal charge is subject to bench warrant or sanctions to their driver's license, but the merits of the charge remain unresolved indefinitely.

In summary, the City has authority under the Home Rule Amendment to establish an ordinance prohibiting discriminatory conduct on bases including sexual orientation, gender identity or expression and to create an administrative remedy for violations of that rule of conduct.

#### B. Existing Federal and State Protections.

The federal Civil Rights Act and the Federal Fair Housing Act expressly prohibit discrimination on the basis of race, color, national origin, religion, sex, familial status, and disability. However, federal case law at both the Supreme Court and Sixth Circuit have interpreted that language to include more expansive definitions.

In *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020), the Supreme Court held that the prohibition on discrimination based on "sex" extended to sexual orientation and gender identity, at least in the employment context. This interpretation means that while federal employment laws

still do not include “sexual orientation” and “gender identity” as protected classes, they are nonetheless protected under the umbrella of discrimination on the basis of sex.

In a 2004 case before the Sixth Circuit Court of Appeals, which includes Ohio, the court held that Title VII of the Civil Rights Act prohibited discrimination based on gender identity. *Smith v. City of Salem, Ohio*, 378 F.3d 566 (6th Cir. 2004). More recently, the Sixth Circuit found an employer’s decision to fire a transitioning, transgender employee was gender discrimination under Title VII and therefore unlawful. *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018).

As discussed, Ohio law prohibits discrimination based on race, color, religion, sex, military status, national origin, disability, age, and ancestry. It does not prohibit discrimination based on sexual orientation, gender identity, or gender expression and there has not been any state court case law analogous to the federal cases which read the definition of “sex” to also include those categories.

C. Other Constitutional Considerations: Due Process, Free Exercise, Free Speech, Expressive Association.

In April 2019, the Lyceum, a Catholic college preparatory school in South Euclid, near Cleveland, sued the City of South Euclid in the U.S. District Court for the Northern District of Ohio due to the LGBTQ+ provisions in South Euclid’s non-discrimination ordinance.

The local non-discrimination ordinances that have passed in Central Ohio provide basic procedural due process for those that are subjects of discrimination complaints: notice of the accusation, and a meaningful opportunity to be heard before a neutral decision maker. Non-discrimination ordinances must also provide sufficient definition of their expectations to avoid being “void for vagueness”; the void-for-vagueness doctrine “bars enforcement of ‘a statute which either forbids or requires the doing of an act in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application.’” *U.S. v. Lanier*, 520 U.S. 259, 266 (1997), quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926).

The Lyceum premised one of its counts against South Euclid on the void-for-vagueness doctrine, claiming that the city’s ordinance did not clearly define gender identity or expression.<sup>1</sup> The City of Worthington delayed its vote on its proposed ordinance following the Lyceum’s suit and had the opportunity to amend the ordinance to reduce the risk of a suit on similar grounds. Worthington’s ordinance provides further definition to the term “gender identity or expression” based upon a Connecticut state law and language recommended in other jurisdictions by the ACLU. The draft ordinance you will review uses very similar language because it meets the bar set by this previous court action.

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<sup>1</sup> The Lyceum also alleged that the ordinance’s prohibition against public accommodations advertising that a person’s presence is “objectionable, unwelcome, unacceptable, or undesirable” to the proprietor due to a protected status of the person was void for vagueness. The Lyceum argued it would have had to guess as to what statements might indicate that a person’s presence is “objectionable, unwelcome, unacceptable, or undesirable.” Worthington’s May 2019 revisions did not address the analogous provision in its ordinance, likely because this void-for-vagueness claim goes beyond what current law would consider unlawfully vague—the void-for-vagueness doctrine requires only fair warning, not surgical precision in defining all conceivable conduct that the legislature wishes to prohibit.

Objections raised on grounds of free exercise of religion, expressive association, and freedom of speech can raise further potential grounds for litigation. Courts generally attempt to draw a line between *conduct*, which the government may regulate, and *speech*, which the government may not regulate (except in extremely narrow circumstances). Neutral, generally applicable laws may incidentally burden religious exercise. *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878–880 (1990). Exemptions to generally applicable laws based on sincerely held religious beliefs are permissible, and may be desirable, but are not required. *Id.* at 890. For example, “while religious and philosophical objections [may be protected in some contexts], it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law.” *Masterpiece Cakeshop, Ltd. V. Colorado Civil Rights Com’n*, 138 S.Ct. 1719, 1727 (2018). The Worthington, Bexley, Westerville, and Columbus non-discrimination ordinances include exemptions for religious organizations, but the circumstances in which religious exemptions apply differ.

Accordingly, the City may establish generally applicable prohibitions of discrimination on the basis of a person’s sexual orientation or gender identity or expression. Legal protections of these statuses have received challenges on the basis of religion, but the risks of such challenges can be minimized through pragmatic actions. Worthington’s ordinance, for example, includes a religious exemption allowing religious institutions to favor their adherents in the offering of employment, housing, and in the offering of goods, services, and accommodations *so long as* those goods, services, and accommodations are not being offered for commercial purposes or being supported by public funds. The exceptions in Worthington’s ordinance address claims such as the Lyceum’s—which alleged that South Euclid’s ordinance could require it to house and offer educational services to students, or hire teachers, who differ with Catholic doctrine on sexuality—while still requiring commercial ventures to apply with the generally applicable ordinance.

D. Categories of Protection and Protected Classes Set Forth in Legislation Adopted by Other Central Ohio Communities.

Each of the Central Ohio cities that has adopted non-discrimination legislation has focused attention on three main areas: employment, housing, and public accommodations. Each city has slightly different language and exceptions to the prohibitions designed to limit exposure to legal challenges while at the same time effecting meaningful change.

This table provides a quick reference guide for Central Ohio cities, the classes protected in each community and the enforcement mechanism provided.

City	Protected Classes	Enforcement Mechanism
Columbus	Race, age, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status, source of income, and military status.	The Community Relations Commission investigates all claims and refers complaints to the City Attorney with a “Probable Cause” determination.

Bexley	Race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status, source of income, or military status.	<p>Race, sex, color, religion, ancestry, national origin, age, disability referred to OCRC; City can review upon request after determination of OCRC.</p> <p>Sexual orientation, gender expression or identity referred to voluntary mediation and then, if unsuccessful, investigated and prosecuted by the City Prosecutor in front of the City Magistrate.</p>
Hilliard	Race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status, marital status, and military status.	<p>Race, sex, color, religion, ancestry, national origin, age, disability referred to OCRC; City can review upon request after determination of OCRC.</p> <p>Sexual orientation, gender expression or identity referred to voluntary mediation and then, if unsuccessful, investigated and prosecuted by the Law Director.</p>
Westerville	Race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity or gender expression, or source of income.	City contracts with Columbus Community Relations Commission to conduct investigation and make a referral to the City Law Director. Hearing officer conducts a hearing and issues final determination, which may be appealed via ORC Chapter 2506.
Worthington	Race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, marital status, familial status, genetic information, military status, or source of income.	<p>Race, sex, color, religion, ancestry, national origin, age, disability referred to OCRC; City can review upon request after determination of OCRC.</p> <p>Sexual orientation, gender expression or identity referred to voluntary mediation and</p>

		then, if unsuccessful, investigated and prosecuted by the Law Director in front of a hearing officer.
Reynoldsburg	Race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity or expression, or natural hair types and natural styles commonly associated with race.	Race, sex, ethnicity, national origin, religion, age, disability, military status referred to OCRC.  Law Director conducts initial investigation of all other matters to determine whether probable cause exists to appoint a Hearing Officer.
Upper Arlington	Race, color, religion, sex, military or veteran status, national origin, age, ancestry, familial status, disability, sexual orientation, gender identity, or gender expression, or any class of people designated as a protected class by state or federal law.	File complaint with Clerk of Council; City offers to set up mediation or, if refused, appoints a hearing officer for an administrative hearing where civil damages can be assessed

**DRAFT LEGISLATION FOR COUNCIL REVIEW**

**A. Protected Classes and Categories of Protection.**

The draft legislation for Council’s consideration enacts Chapter 140 of the Dublin Codified Ordinances. It designates race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, and gender expression as protected classes. As discussed above, all of these are already protected classes under state and federal law except for sexual orientation, gender identity, and gender expression. The legislation provides protections for these classes in three areas: employment practices, housing accommodations, and public accommodations. It also includes certain exemptions and exceptions under each category.

Some municipalities have enacted legislation that requires any complaint related to classes protected under state or federal law to be brought before those bodies prior to local involvement. This is a policy consideration for City Council to determine.

**B. Procedure for Complaints.**

The legislation requires complainants to file a complaint with the City Clerk of Council and to include certain information in the complaint (e.g., the conduct at issue, location of the conduct, and the name of opposing parties). Once received and time-stamped, the Clerk provides copies of the complaint to the City Manager and Law Director. The legislation requires the City to appoint

an independent, outside counsel to investigate the charges and determine if probable cause exists for a hearing, or if the case should be dismissed subject to Council agreement.

If the outside counsel determines that probable cause exists after an investigation, the City hires a Hearing Officer to conduct an administrative hearing. The Hearing Officer has the authority to issue subpoenas and direct discovery between the parties. After the hearing, the Hearing Officer issues a written decision to the Law Director and the parties that includes all relevant facts and the conclusions of law. The Hearing Officer can issue cease and desist orders to the respondent, order a dismissal of all charges, or can impose up to a \$1000 civil fine for a first offense, and up to a \$5000 fine for offenders with multiple offenses within a certain period. A decision of the Hearing Officer can be appealed to the Franklin County Court of Common Pleas under Ohio Rev. Code 2506.

The draft legislation permits the Hearing Officer to assess the costs of the outside counsel but not the costs of the Hearing Officer, any attorney fees, or any other damages.

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**ADOPTING CHAPTER 140 UNDER TITLE XIII OF THE CITY OF DUBLIN  
CODIFIED ORDINANCES TO PROHIBIT DISCRIMINATION OF CERTAIN  
PROTECTED CLASSES.**

**WHEREAS**, federal and state law expressly prohibit discriminatory practices in housing, employment, and public accommodations based on race, sex, color, religion, ancestry, national origin, age, disability, familial status, marital status, or military status; and

**WHEREAS**, federal courts have interpreted the prohibition on discrimination on the basis of sex to include discrimination based on sexual orientation and gender identity, but Ohio state courts have not yet done the same; and

**WHEREAS**, numerous municipalities in Central Ohio have adopted ordinances prohibiting discrimination in housing, employment, and public accommodations based on those classes already protected by state and federal law and additional, unprotected classes including sexual orientation, gender identity, gender expression, and pregnancy; and

**WHEREAS**, the City of Dublin does not currently have an ordinance prohibiting discrimination in employment and public accommodations; and

**WHEREAS**, City Council desires to enact Chapter 140 under Title XIII of the City of Dublin Codified Ordinances to prohibit unlawful discriminatory practices within the City; and

**WHEREAS**, City Council desires to eliminate discrimination in Dublin based on race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression; and

**WHEREAS**, City Council believes that adopting Chapter 140, as depicted on Exhibit A, attached hereto and incorporated herein, promotes the general health, safety, and welfare of the City and its residents.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, Delaware, Franklin, and Union Counties, State of Ohio, \_\_\_\_\_ of the elected members concurring:

**Section 1.** That Chapter 140 of Title XIII of the Codified Ordinances of the City of Dublin, Ohio, as set forth in the attached Exhibit A, is hereby adopted.

**Section 2.** This Ordinance shall take effect on the earliest date provided by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor – Presiding Officer

ATTEST:

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Clerk of Council

Exhibit A

**Chapter 140 – Unlawful Discrimination Prohibited**

**140.01 Definitions**

For the purposes of this chapter, the following terms, phrases, and words shall have the meanings given to them herein.

"Age" means at least 40 years old, except as otherwise provided in this Chapter.

"Aggrieved individual" means an individual who claims to have been injured by an unlawful discriminatory act or practice described in this Chapter.

"Burial lot" means any lot for the burial of deceased individuals within any public burial ground or cemetery, including, but not limited to, cemeteries owned and operated by companies or associations incorporated for cemetery purposes.

"Common use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of the building or their guests, and includes, but is not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.

"Complainant" means an aggrieved individual who, pursuant to the provisions of this section, files a written complaint alleging an unlawful discriminatory act or practice with the Clerk of Council.

"Controlled substance" has the same meaning as in Ohio Rev. Code 3719.01.

"Covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

"Disability" or "disabled" means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment. "Disability" does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.

"Disabled tenant" means a tenant or prospective tenant who is an individual with a disability.

"Discriminate" means to differentiate and to treat differently people based on any protected class as defined herein.

"Discriminatory restrictive covenant" means any specification in a deed, land contract, or lease limiting the transfer, rental, lease, or other use of any housing accommodations because of race, color, religion, sex, national origin, age, familial status, disability, pregnancy,

sexual orientation, gender identity, or gender expression, as a condition of affiliation or approval.

"Dwelling unit" means a single unit of residence for a family of one or more individuals.

"Employee" means an individual employed by any employer but does not include any individual employed in the domestic service of any person.

"Employer" includes any person who regularly employs for compensation four or more individuals, excluding the employer's parents, spouse, and children, including any person acting directly or indirectly in the interest of an employer, but does not include the United States or any State or political subdivision of a State, except for the City of Dublin, its departments, boards, commissions, and authorities.

"Employment agency" means any person who regularly endeavors, with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.

"Familial status" means demonstrating any of the following characteristics, where "family" also includes an individual:

- A. One or more individuals who are under 18 years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;
- B. Any individual who is pregnant or in the process of securing legal custody of any individual who is under 18 years of age.

"Gender expression" means the external appearance of one's gender, usually expressed through behavior or appearance which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

"Gender identity " means an individual's sense of having, or being perceived as having, a gender that may or may not be those traditionally associated with the individual's assigned sex at birth.

"Hearing Officer" means the person appointed by the City Manager or the City Manager's designee to conduct a mediation and/or administrative hearing based on a complaint filed with the City alleging a discriminatory act or practice.

"Housing accommodations" means any buildings or structure or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as a home residence, dwelling, dwelling unit, or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and any vacant land offered for sale or lease. It also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesman, or agent, or by any other person pursuant to authorization of the owner, by the owner, or by such person's legal representative. "Housing accommodations" does not include any housing accommodations owned or operated by a religious organization when they are owned or

operated for other than a commercial purpose and offered to individuals of the same religion.

"Labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or for other mutual aid or protection in relation to employment.

"Law Director" means the City of Dublin Law Director.

"Person" means one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, and trustees in bankruptcy, receivers, and other organized groups of persons. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, lending institution, and the City of Dublin and all authorities, agencies, boards, and commissions thereof.

"Physical or mental impairment" includes any of the following:

- (A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine.
- (B) Any mental or psychological disorder, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, sickle cell, human immunodeficiency virus infection, intellectual disabilities, emotional illness, drug addiction, and alcoholism.
- (C) "Physical or mental impairment" does not include any of the following:
  - 1. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;
  - 2. Compulsive gambling, kleptomania, or pyromania; or
  - 3. Psychoactive substance use disorders resulting from current illegal use of controlled substances.

"Place of public accommodation" means any restaurant, bar, hotel, motel, bank or other financial services institution, barbershop, public transportation by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodations, advantages, facilities, or privileges available to the public, provided it shall not apply to accommodations of a public education system, or an agency of government other than the City.

"Protected class" means a classification of individuals based on one or more of the following characteristics: race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression.

"Public use areas" means interior or exterior rooms or spaces of a privately owned building that are made available to the public.

"Religious organization" means a not-for-profit church or integrated auxiliary of a church, as those terms are used by the United States Internal Revenue Service and includes any school that incorporates substantial religious teachings or religious practices of that church in that school. Religious organization does not include any hospital or medical facility that offers medical services to the public.

"Respondent" means the person who is alleged to have committed unlawful discriminatory acts or practices and who is identified in a written complaint filed by a complainant.

"Senior citizen" means an individual at least 60 years old.

"Sex" means the biological sex of either male or female assigned at the birth of an individual.

"Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

"Unlawful discriminatory practice" means any act prohibited by Chapter 140 of the Dublin Codified Ordinances.

#### **140.02 Unlawful Discriminatory Employment Practices**

(A) It shall be an unlawful discriminatory practice, except where based upon applicable federal regulations:

(1) For any employer, because of an individual being in a protected class to fire without cause, to refuse to hire, or otherwise to discriminate against that individual with respect to hiring, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

(2) For any employment agency to establish, announce, or follow a policy of denying or limiting the membership opportunities of any individual or group of individuals because of their inclusion in a protected class, or to comply with a request from an employer if the request directly or indirectly indicates that the employer fails to comply with the divisions of this chapter.

(3) For any labor organization to limit or restrict its membership because of an individual being in a protected class or to discriminate against or limit the employment opportunities of any individual as an employee because of that individual being in a protected class.

(4) For any employer, employment agency, or labor organization to publish or circulate, or to cause to be published or circulated, any notice or advertisement relating to employment or membership which indicates any preference, limitation, specifications, or discrimination based upon a protected class.

(5) For any employment agency to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against any individual because of their membership in a protected class.

(6) For any employer, employment agency, or labor organization to use in the recruitment or hiring of individuals, any employment agency, placement service, labor organization, training school or center, or any other employee-referring source, proven to discriminate against individuals because of an individual's protected class.

(7) For any labor organization to discriminate against any individual or limit that individual's employment opportunities, or otherwise adversely affect that individual's status as an employee, or that individual's wages, hours, or employment conditions, because of their membership in a protected class.

(8) For an employment agency to comply with, accommodate, or otherwise assist with locating an employee related to a request from an employer if the request indicates, directly or indirectly, that the employer fails, or may fail, to comply with this chapter.

(9) For any labor organization to limit or classify its membership on the basis of any protected class.

(10) Except where based on a bona fide occupational qualification certified in advance by an agency of the state or federal government or a political subdivision, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to either:

(a) Elicit or attempt to elicit any information concerning the protected class status of an applicant for employment or membership;

(b) Use any form of application for employment or personnel or membership seeking to elicit information regarding an individual's protected class status. However, an employer, employment agency, or labor organization holding a contract with the government of the United States may be required to follow federal law as a condition of the contract.

(11) For any employer, employment agency or labor organization to discriminate against any individual because that individual has opposed any practice forbidden by this chapter, or because that individual has made a complaint or assisted in any manner in any investigation or proceeding under Section 140.05 of the Dublin Codified Ordinances.

(12) For any employer to discriminate against an individual with a disability by:

(a) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(b) Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such

employer to make reasonable accommodations to the physical or mental impairments of the employee or applicant;

(c) Failing to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual who is an applicant or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

(d) Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, on the basis of such disabled individual's use of a service animal, provided nothing in this section shall be construed to require any employer, as a reasonable accommodation, to provide a service animal to a disabled individual.

(13) For any employer to discriminate against a woman because of pregnancy, childbirth, or related medical conditions for any employment-related purposes, including receipt of benefits under fringe benefit programs, or to fail to treat a woman with pregnancy related conditions the same as other individuals not so affected but similar in their ability or inability to work.

(14) It shall be an unlawful employment practice for a covered entity to:

(a) Not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(b) Require a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept, if such accommodation is unnecessary to enable the applicant or employee to perform their job;

(c) Deny employment opportunities to a job applicant or employee, if such denial is based on the need of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;

(d) Require an employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee; or

(e) Take adverse action in terms, conditions, or privileges of employment against an employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

(15) For any employer to discriminate against an employee or potential employee because of age in offering any job opening or in the discharge of an employee without just cause who is physically able to perform the duties and otherwise meets the established requirements of the

job and laws pertaining to the relationship between employer and employee.

(B) With regard to age, it shall not be an unlawful discriminatory practice and it shall not constitute a violation of this chapter for any employer, employment agency, joint labor-management committee controlling apprenticeship training programs, or labor organization to:

(1) Establish bona fide employment qualifications reasonably related to the particular business or occupation that may include standards for skill, aptitude, physical capability, intelligence, education, maturation, and experience;

(2) Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, including, but not limited to, a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this section. However, 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 individual's age except as provided for in the "Age Discrimination in Employment Act Amendment of 1978," 29 U.S.C.A. 623, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 29 U.S.C.A. 623, as amended, or as later amended;

(3) Retire an employee who has attained sixty-five years of age who, for the two-year period immediately before retirement, was employed in a bona fide executive or a high policymaking position, if the employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans of the employer, which equals, in the aggregate, at least forty-four thousand dollars, in accordance with the conditions of the "Age Discrimination in Employment Act Amendment of 1978," 29 U.S.C.A. 631, as amended by the "Age Discrimination in Employment Act Amendments of 1986," 29 U.S.C.A. 631, as amended, or as later amended;

(4) Observe the terms of any bona fide apprenticeship program if the program is registered with the Ohio apprenticeship council pursuant to Ohio Rev. Code 4139.01 to 4139.06 and is approved by the federal committee on apprenticeship of the United States Department of Labor.

(C) Nothing in this chapter shall be construed to prohibit any of the following:

(1) The designation of uniform age the attainment of which is necessary for public employees to receive pension or other retirement benefits pursuant to Ohio Rev. Code Chapters 145, 742, 3307, 3309, or 5505;

(2) The establishment of maximum age requirements for original appointment to a police department or fire department pursuant to Ohio Rev. Code 124.41 and 124.42;

(3) Any establishment of a maximum age not in conflict with federal law that may be established by a municipal charter, municipal ordinance, or resolution of a board of township trustees for original appointment as a police officer or firefighter;

(4) Any establishment of a mandatory retirement provision not in conflict with federal law, a municipal charter, municipal ordinance, or resolution of a board of township trustees

pertaining to police officers and firefighters.

(D) Nothing in this section shall be construed to require an individual with a disability to be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the individual with a disability, other employees, the general public, or the facilities in which the work is to be performed, or to require the employment or training of an individual with a disability in a job that requires the individual with a disability routinely to undertake any task, the performance of which is substantially and inherently impaired by the individual's disability.

(E) Nothing in this chapter shall prohibit an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee from:

(1) Adopting or administering reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual no longer is engaging in the illegal use of any controlled substance. For purposes of this chapter, a test to determine the illegal use of any controlled substance does not include a medical examination;

(2) Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by employees;

(3) Requiring that employees not be under the influence of alcohol or not be engaged in the illegal use of any controlled substance at the workplace;

(4) Requiring that employees behave in conformance with the requirements established under "The Drug-Free Workplace Act of 1988," 41 U.S.C.A. 701, as amended;

(5) Holding an employee who engages in the illegal use of any controlled substance or who is an alcoholic to the same qualification standards for employment or job performance, and the same behavior, to which the employer, employment agency, personnel placement service, labor organization, or joint labor-management committee holds other employees, even if any unsatisfactory performance or behavior is related to an employee's illegal use of a controlled substance or alcoholism;

(6) Exercising other authority recognized in the "Americans with Disabilities Act of 1990," 42 U.S.C.A. 12101, as amended. including, but not limited to, requiring employees to comply with any applicable federal standards.

(F) For any person, whether or not an employer, employment agency or labor organization, to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice, or to obstruct or prevent any person from enforcing or complying with the provisions of this section, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from enforcing or complying with the provisions of this section.

(G) This section does not apply to a religious corporation, association, educational

institution, or society with respect to the employment of an individual of a particular religion to perform work connected to the aims or purposes for which it is established or maintained.

### **140.03 Unlawful Discriminatory Housing Practices**

(A) Subject to Ohio Rev. Code 4112.024 it shall be an unlawful discriminatory housing practice for any person to do any of the following:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of an individual's membership in a protected class.

(2) Represent to any individual that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, and the representation of unavailability is based on the individual seeking accommodation being a member of a protected class.

(3) Discriminate against any individual in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any individual in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of that individual being in a protected class, or because the neighborhood in which the housing accommodations are located is composed of one or more protected classes, provided that the person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects or incident to the person's principal business and not only as a party of the purchase price of an owner-occupied residence the person is selling nor merely causally or occasionally renting to a relative or friend;

(4) Discriminate against any individual in the terms or conditions of selling, transferring, assigning, renting, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because the individual is in a protected class, or because of the composition, in terms of protected class, of the neighborhood in which the housing accommodations are located;

(5) Discriminate against any individual in the terms or conditions of any loan of money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of the individual being a member of a protected class, or because of the composition, in terms of protected class, of the neighborhood in which the housing accommodations are located;

(6) Refuse to consider without prejudice the combined income of both lawfully-married spouses for the purpose of extending mortgage credit to a married couple or either member of a married couple;

(7) Except as otherwise provided in this section, make any inquiry, elicit any information, or use any form of application containing questions or entries concerning an individual's protected

class status in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations. Any person may make inquiries, and make and keep records, concerning an individual's status as a member of a protected class for the purpose of monitoring compliance with this chapter.

(8) Include in any deed, land contract, transfer, rental, or lease of housing accommodations any discriminatory restrictive covenant, or honor or exercise, or attempt to honor or exercise, any discriminatory restrictive covenant;

(9) Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the protected class composition of the neighborhood in which the housing accommodations are located, or induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of individuals of any protected class in the neighborhood will or may have results including, but not limited to, the following:

(a) The lowering of property values;

(b) A change in the composition, in terms of a protected class, of the neighborhood;

(c) An increase in criminal or antisocial behavior in the neighborhood;

(d) A decline in the quality of the schools serving the neighborhood.

(10) Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any neighborhood has undergone or might undergo a change in composition with respect to a protected class;

(11) Deny any individual access to or membership or participation in any multiple-listing service, real estate broker's organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any individual in the terms or conditions of that access, membership, or participation, because of the individual being in a protected class;

(12) Discriminate in any manner against any individual because that individual has opposed any unlawful practice defined in this chapter, or because that individual has made a charge, testified, assisted, or participated in any manner, in any investigation, proceeding, or hearing under the provisions of this chapter;

(13) Refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any individual because of that individual being in a protected class, or because of any prospective owner or user of the lot being in a protected class;

(14) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of the protected class status of any of the following:

(a) The buyer or renter;

(b) An individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the individual described in this section.

(15) Discriminate in the terms, conditions or privileges of the sale or rental of housing accommodations to any individual or in the provision of services or facilities to any individual in connection with the housing accommodations because of the protected class of any of the following:

(a) That individual;

(b) An individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;

(c) Any individual associated with the individual described in this section.

(16) Except as otherwise provided in this section, make an inquiry of an applicant to determine the protected class of the applicant for the sale or resale of housing accommodations, an individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with such individuals. The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of the applicant's protected class:

(a) An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) An inquiry to determine whether an applicant is qualified for housing accommodations available only to individuals with disabilities or individuals with a particular type of disability;

(c) An inquiry to determine whether an applicant is qualified for a priority available to individuals with disabilities or individuals with a particular type of disability;

(d) An inquiry to determine whether an applicant currently uses a controlled substance in violation of Ohio Rev. Code 2925.11 or a substantively comparable municipal ordinance;

(e) An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.

(17) Refuse to permit, at the expense of an individual with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the individual with a disability, if the modifications may be necessary to afford the individual with a disability full enjoyment of the housing accommodations. This division does not preclude a landlord of housing accommodations that are rented or to be rented to a disabled

tenant from conditioning permission for a proposed modification upon the disabled tenant's doing one or more of the following:

(a) Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a workerlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;

(b) Agreeing to restore at the end of the tenancy the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if it is reasonable for the landlord to condition permission for the proposed modification upon the agreement;

(c) Paying into an interest bearing escrow account that is in the landlord's name, over a reasonable period of time, a reasonable amount of money not to exceed the projected costs at the end of the tenancy for the restoration of the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if the landlord finds the account reasonably necessary to ensure the availability of funds for the restoration work. The interest earned in connection with an escrow account described in this division shall accrue to the benefit of the disabled tenant who makes payments into the account.

(18) Condition permission for a proposed modification of a dwelling unit upon a disabled tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas.

(20) Fail to comply with the standards and rules adopted under Ohio Rev. Code 3781.111(A).

(21) Discriminate against any individual in the selling, brokering, or appraising of real property because of the individual being in a protected class.

(22) Fail to design and construct covered multifamily dwellings for first occupancy in accordance with the following conditions:

(a) The dwellings shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(b) With respect to dwellings that have a building entrance on an accessible route, all of the following apply:

(i) The public use areas and common use areas of the dwellings shall be readily accessible to and usable by an individual with a disability.

(ii) All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by an individual with a disability who is in a wheelchair.

(iii) All premises within covered multifamily dwelling units shall contain an accessible route into and through the dwelling; all light switches, electrical outlets, thermostats, and other environmental controls within such units shall be in accessible locations; the bathroom walls within such units shall contain reinforcements to allow later installation of grab bars; and the kitchens and bathrooms within such units shall be designed and constructed in a manner that enables an individual in a wheelchair to maneuver about such rooms.

(23) For any person to discriminate in any manner against any individual because that individual has opposed any unlawful discriminatory practice defined in this section or because that individual has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter or Ohio Rev. Code 4112.01 to 4112.07.

(24) For any person to knowingly aid or abet the doing of any act declared by this section to be an unlawful discriminatory practice, to knowingly obstruct or prevent any person from complying with this chapter or any order issued under it, or to knowingly attempt directly or indirectly to commit any act declared by this section to be an unlawful discriminatory practice.

(B) Nothing in this chapter limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(C) Nothing in this chapter shall bar any bona fide private or fraternal organization that incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(D) Nothing in this chapter prohibits owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(E) Nothing in this chapter requires that housing accommodations 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.

(F) Nothing in this chapter pertaining to unlawful discriminatory practices shall be construed to apply to "housing for older persons" as defined and provided in 42 U.S.C. 3607(b)(2), as amended.

(G) Nothing in this chapter shall be construed to require any person selling or renting property to modify the property in any way or to exercise a higher degree of care for an individual with a disability, to relieve any individual with a disability of any obligation generally imposed on all individuals regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.

#### **140.04 Unlawful Discriminatory Practices in Public Accommodations**

(A) No owner, operator, or manager of a place of public accommodation shall deny to any individual or permit any employee to deny to any individual, except for reasons applicable to all individuals regardless of them being in a protected class, the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.

(B) No owner, operator, or manager of a place of public accommodation shall deny to any individual with a disability the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of such individual's use of a service animal, provided:

(1) The disabled individual using the service animal may be prohibited from having the service animal present in the place of public accommodation if:

(a) The animal is out of control, as provided by 28 CFR 35.136(d), and the animal's handler does not take effective action to control it; or

(b) The animal is not housebroken.

(2) If it is not readily apparent what service a service animal provides, the owner, operator, manager, or an employee of a place of public accommodation may make the following two inquiries:

(a) Whether the service animal is required because of the disabled individual's disability, provided an inquiry may not be made as to:

(i) The disabled individual's disability; or

(ii) The disabled individual's medical condition or requirements.

(b) What work or tasks has the animal been trained to perform, provided an inquiry may not be made as to any special identification or training documentation for the animal, and the animal shall not be required to demonstrate its training or abilities.

(3) The owner, operator, manager, or employees of a place of public accommodation are not required to provide care or food for the service animal.

(C) No person shall aid, abet, or participate in the doing of any act declared to be an unlawful discriminatory practice under this section.

(D) Unless otherwise prohibited by law, nothing in this section shall be construed to prohibit any person from offering senior citizen price discounts or other privileges exclusively for the benefit of senior citizens.

(E) Nothing in this section shall prohibit a religious or denominational institution, organization, society, or association or any nonprofit charitable or education organization that is operated, supervised, or controlled by or in connection with a religious organization from limiting its offerings of goods, services, facilities, and accommodations to persons of the same religion, or from giving preference to such persons, provided that such offerings mentioned above are not, in fact, offered for commercial purposes or supported by public funds.

(F) Nothing in this section shall be construed to require the modification of existing facilities or the construction of new or additional facilities.

### **140.05 Complaint Procedure**

#### **(A) Filing a Complaint**

(1) An individual may file with the Dublin Clerk of Council a notarized, sworn statement in writing which alleges facts and circumstances, including relevant locations, dates, times, and individuals, of an unlawful discriminatory act(s) or practice(s), that said acts occurred within the City of Dublin corporate limits, that the discriminatory act or practice was directed at the complainant, and which identifies the person who committed the alleged unlawful discriminatory act or practice.

(2) At the same time the complaint is filed, the complainant shall provide in writing complainant's mailing address, telephone number, and email address to the Clerk of Council.

(3) The complaint shall be rejected by the Clerk of Council if any of the following apply:

(a) The complaint is presented more than 180 days after the most recent unlawful discriminatory act or practice alleged in the complaint;

(b) The incident did not occur within the City of Dublin;

(c) A collective bargaining agreement to which the City is a party requires the investigation to be conducted pursuant to that agreement's terms;

(d) The complaint fails to include all of the information required by (A)(1) of this section or fails to provide contact information as required by (A)(2) of this section.

(4) The Clerk of Council shall date stamp the complaint immediately upon receipt and provide a copy to the Law Director and the City Manager.

(5) The Clerk of Council shall retain the original date stamped complaint and shall open and maintain a file on the matter during the pendency of any actions related to the complaint and for as long as required by the City's Records Retention Schedule.

#### **(B) Investigation of Complaint**

(1) Upon receipt of the copy of the complaint, the Law Director, in consultation with the City Manager, shall hire outside counsel to perform an independent review and investigation of the complaint and the situation and acts outlined therein.

(2) Outside counsel shall perform all necessary fact-finding including interviews of the complainant, witnesses, and respondent as well as any additional necessary steps to determine if probable cause for the complaint exists.

(3) Upon completion of the investigation, outside counsel shall provide a written determination to the Law Director about whether or not probable cause exists for the complaint.

(4) Upon receipt of outside counsel's determination, the Law Director, in consultation with the City Manager, can either dismiss the complaint or forward the complaint to an independent hearing officer. The Law Director retains the authority to forward the complaint to a hearing officer even if outside counsel determines there is not probable cause for the complaint.

#### (C) Role and Duties of Hearing Officer

(1) If a Hearing Officer is appointed, the Hearing Officer shall have the authority to:

(a) Schedule and oversee a mediation between the complainant and respondent;

(b) Conduct an administrative hearing;

(c) Provide to all the parties, witnesses, and Law Director timely notice of the hearing date, time, and location;

(d) Set, change as necessary, and timely communicate to the parties such reasonable procedural rules as the Hearing Officer deems appropriate;

(e) Issue subpoenas and direct the exchange of discovery.

(2) At the conclusion of the administrative hearing the Hearing Officer shall issue to the parties and the Law Director a final written decision to include findings of fact and conclusions of law:

(a) If the Hearing Officer finds the respondent either did engage or continues to engage in unlawful discriminatory acts or practices under this chapter, and the Hearing Officer deems it appropriate, the Hearing Officer's final written decision may include the issuance to the respondent of orders to cease and desist and imposition of such other sanctions as provided by this chapter; or

(b) If the Hearing Officer deems it appropriate, the Hearing Officer's final written decision may include the issuance of a Notice of Dismissal.

(3) If the final decision of the Hearing Officer includes the issuance to the respondent of orders to cease and desist the unlawful discriminatory acts or practices, such orders to cease and desist shall specify a time period for the respondent's compliance.

(4) The final decision of the Hearing Officer may include the imposition upon the respondent of reasonable costs of the outside counsel. The costs of the Hearing Officer shall not be assessed against the respondent. Attorney fees shall not be assessed against the respondent. Damages and other expenses incurred by the complainant shall not be assessed against the respondent.

(5) The final decision of the Hearing Officer may include the imposition upon the respondent of a civil penalty payable to the City as follows:

(a) For a first-time offense, a civil penalty not to exceed \$1,000;

(b) If the respondent has been found by the Hearing Officer to have committed one violation of this chapter during the five-year period immediately preceding the date upon which the complaint was filed with the Clerk of Council, a civil penalty not to exceed \$2,500;

(c) If the respondent has been found by the Hearing Officer to have committed two or more violations of this chapter during the five-year period immediately preceding the date upon which the complaint was filed with the Clerk of Council, a civil penalty not to exceed \$5,000.

(6) The final decision of the Hearing Officer may not include any orders for reinstatement of employment, refund of monies paid, or other mitigation of damages, or any other orders for corrections or sanctions, except as provided in this section.

(7) The final decision of the Hearing Officer shall be in writing and served by ordinary mail on the respondent and complainant. The documents shall be deemed received and properly served upon the respondent five days following the mailing thereof. Copies of the final decision shall also be sent to the Law Director and Clerk of Council.

(8) The decision of the Hearing Officer may be appealed pursuant to the provisions of Ohio Rev. Code 2506.

(D) City of Dublin as Respondent.

(1) If the Hearing Officer finds a violation occurred, and the respondent is the City of Dublin or one of its boards, commissions, departments, divisions, officials, or employees, the Hearing Officer shall issue to the Dublin Clerk of Council a notice of violation, without any orders and without specifying any sanction and the Hearing Officer shall take no further action.

(2) If the Hearing Officer issues a notice of violation to the Dublin Clerk of Council, at a reasonable time following receipt of the notice of violation, the Dublin City Council shall, at an open public meeting of City Council, take such actions and impose such remedies as City Council deems appropriate, including delegating such authority to the City Manager.

#### **140.06 Failure to Comply with Dublin Subpoena.**

No person shall fail to comply with a subpoena issued by the Hearing Officer. Whoever violates this section is guilty of failure to comply with a Dublin subpoena, a misdemeanor of the fourth degree.

**140.07 Failure to Comply with Order of Hearing Officer.**

No person shall fail to comply with any portion of an order issued by the Hearing Officer within thirty days following service of the order or such period as the order provides, whichever is greater. Whoever violates this section is guilty of failure to comply with an order of the Hearing Officer, a misdemeanor of the first degree.

**140.08 Failure to Pay Financial Sanctions Imposed by the Hearing Officer.**

If a civil penalty, costs or both are imposed by the Hearing Officer on the respondent, and any portion remains unpaid thirty days following service of the order or following the expiration of the time period designated by the Hearing Officer, the City may institute civil enforcement proceedings against the respondent.

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