

AGENDA REQUEST FORM

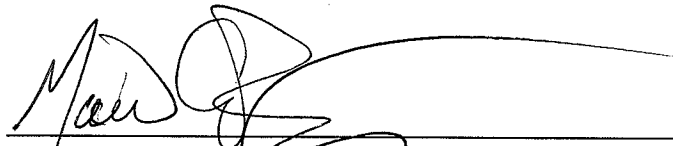
FOR: COUNCIL MEETING OF November 18, 2014

FROM:
CITY COUNCIL MEMBER Matthew Petty

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

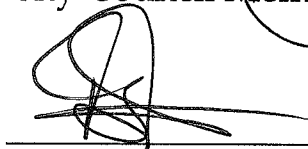
A RESOLUTION TO EXPRESS THE CITY COUNCIL'S INTENT TO AMEND CHAPTER 119 CIVIL RIGHTS ADMINISTRATION OF THE FAYETTEVILLE CODE AFTER ITS PASSAGE BY FAYETTEVILLE VOTERS

APPROVED FOR AGENDA:



City Council Member Matthew Petty

11/13/2014
Date



Assistant City Attorney Blake Pennington
(as to form)

11/13/14
Date

From: matt@matthewpetty.org on behalf of [Matthew Petty - Fayetteville Ward 2](#)
To: [Williams, Kit](#); [Pennington, Blake](#)
Subject: Walk on resolution
Date: Thursday, November 13, 2014 7:48:24 AM
Attachments: [DRAFTResolutionresocioeconomicbackground.docx](#)

Kit and Blake,

I would like to walk-on the attached resolution today at Agenda Session. The exhibits should be:

- Exhibit A: memo from Sep 4. *Re: Legal interpretation of Civil Rights Administration Ordinance.*
- Exhibit B: memo explaining that the inclusion of 'physical characteristic' is a scrivener's error (don't have the memo, can't check the date).

Thank you,
MP
479 595 8703

RESOLUTION NO. _____

A RESOLUTION TO EXPRESS THE CITY COUNCIL'S INTENT TO AMEND CHAPTER 119 CIVIL RIGHTS ADMINISTRATION OF THE FAYETTEVILLE CODE AFTER ITS PASSAGE BY FAYETTEVILLE VOTERS

WHEREAS, members of the Mayor's Advisory Committee expressed concerns regarding the lack of a definition of "socioeconomic background" in the ordinance and the presence of one reference to "physical characteristic" within the Ordinance; and

WHEREAS, amending any law for clarity is a proper legislative action; and

WHEREAS, the Fayetteville City Attorney has formally interpreted "socioeconomic background" in a memo dated September 4, 2014, attached as Exhibit A; and

WHEREAS, the failure to remove one reference to "physical characteristic" in the final copy of the Civil Rights Ordinance was a scrivener's error as shown in the City Attorney's memo dated September 5, 2014, attached as Exhibit B;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expresses its intent to amend Chapter 119 Civil Rights Administration of the Fayetteville Code in order to define "socioeconomic background" in a manner consistent with Exhibit A; and

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby expresses its intent to remove the last reference to the term "physical characteristic" from Chapter 119 of the Fayetteville City Code, for the reasons set forth in Exhibit B.

PASSED and APPROVED this 18th day of November, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
City Council
Mayor's Council

CC: Don Marr, Chief of Staff
Casey Jones, City Prosecutor

FROM: Kit Williams, City Attorney

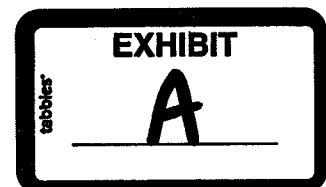
DATE: September 4, 2014

RE: Legal interpretation of Civil Rights Administration Ordinance

The recently passed Civil Rights Administration Ordinance will be enacted into the Fayetteville Code when it becomes effective about September 20, 2014. There are provisions and terms within this ordinance that are not precisely defined or the legal interpretation of which have raised questions by concerned parties. The Fayetteville City Code charges the Fayetteville City Attorney with the responsibility to interpret Code Chapters such as the Civil Rights Administration Chapter.

"10.02 Interpretation

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this Code as those governing the interpretation of state law. Except as noted in the Unified Development Code, the Fayetteville Code shall be interpreted by the City Attorney." (emphasis added).



The purpose of this memo is to fulfill my duty to interpret terms or provisions within the Civil Rights Administration Chapter that need clarification.

The Arkansas Supreme Court has provided clear guidance for the interpretation of City ordinances. While City ordinances are presumed to be constitutional and legal, *Craft v. City of Fort Smith*, 335 Ark. 417, 984 S.W.2d 22, 26 (1998), the Arkansas Supreme Court has repeatedly held ambiguities in City ordinances shall be interpreted or construed against the City and in favor of the property owner, business owner, or person who could be accused of violating the ordinance. *Id.*, *Trice v. City of Pine Bluff*, 279 Ark. 125, 649 S.W.2d 179, 181 (1983). I shall endeavor to follow these Supreme Court mandated rules of ordinance interpretation in this memo which shall constitute the City Attorney's official interpretation of this Civil Rights Administration Code Chapter.

1. "Socioeconomic background"

This term was used, but not defined, in the draft Civil Rights ordinance from the Human Rights Campaign which was presented to Alderman Petty who delivered it to my office. I was somewhat unsure what the Human Rights Campaign officials meant by this term and had similar concerns to some expressed to the City Council and personally to me. Alderman Petty provided the Human Rights Campaign's response on the attached email which says:

"A landlord legitimately needs to know if a potential tenant has the ability to pay rent. The landlord can use various measures of judging that, including requesting a credit check or pay stub. This ordinance does not change that. What this ordinance says is that you can't use measures that conflate the legitimate question (does this renter have the ability to pay) with discriminatory (irrelevant and prejudicial) questions, such as "Is the renter Caucasian/a woman/a single mom?" Her race, gender, and marital/familial status are irrelevant to the legitimate question of "can she pay?" In the same way, socioeconomic background (note: not status; background

implies history) is also irrelevant...Asking the legitimate question of "can this person pay" and asking for proof of ability to pay is still allowed under this ordinance.

As you can see in the email, "socioeconomic background" was never intended to equate to "socioeconomic status" which could entail the person's current creditworthiness, credit history and credit "score". I publicly stated this in reply to a question from Marshall Ney prior to the City Council's vote to pass the ordinance. **Therefore, no financial institution, landlord, business offering credit, or other such business or person would be in violation of the Civil Rights Administration Chapter for using a credit check, requesting a pay stub or otherwise asking for proof of ability to pay and relying upon such economic evidence to determine whether or not to loan money, extend credit, or agree to rent to an individual.**

What discrimination based upon "socioeconomic background" would prohibit is discrimination against a person who grew up "on the wrong side of the tracks" or in public housing even though that person now has a steady job and a good credit history. What all anti-discrimination acts should do is require that persons be treated as the person he or she actually is right now rather than through the lens of some bias based upon race, religion, ethnic origin, or other disliked characteristic. Someone might have grown up in a single parent's apartment filled with late notices, but if that person now has a solid job and credit history, he or she should not be denied a loan, store credit, or rental housing based upon their long ago socioeconomic condition (which the ordinance refers to as "socioeconomic background").

I asked the Human Rights Campaign attorney for any further guidance they might want to provide me and finally received a 60 page Memorandum from the Poverty and Race Research Action Council entitled: "Keeping the Promise and Preserving and Enhancing Housing Mobility in the Section 8 Housing Choice Voucher Program." That document spoke about "source of income". The HRC's own three page memo entitled "Non-Discrimination on the Basis of 'Socioeconomic Background' stated:

“Without those protections, landlords and those who list property for sale could discriminate against people who receive welfare, other public funds, or funds from a court order.”

This “source of funds” language is nowhere found in the Civil Rights Administration ordinance and cannot reasonably be construed to be within the meaning of “socioeconomic background.” Thus, no matter how laudable such a concept of preventing discrimination based upon “source of funds” might be, it is not applicable to the Civil Rights Administration ordinance nor should it be considered by the Civil Rights Administrator or City Prosecutor in administering or enforcing the Civil Rights Administration Chapter of the Fayetteville Code.

2. § 119.03 (D) Employment References

An attorney representing business owners was concerned that § 119.03 (D) seemed to require an employer to give a departing employee a job reference. Attorneys and Human Resource professionals realize that furnishing a job reference can sometimes be problematic and might have some liability issues. Some businesses therefore are reluctant to give such a reference or simply have a policy not to give job references. § 119.03 (D) does not prohibit such a policy.

(D) must be read in conjunction with the introductory clause of § 119.03 which states that the listed acts are improper if done “for a discriminatory reason.” So if a business or employer has a policy not to provide job references to avoid potential liability (if someone does not like the reference they receive or if the new employer claims a good job reference misled him into hiring an unsatisfactory employee), then the employer can maintain its “no job reference” policy without violating § 119.03 (D). A job reference may or may not be given as long as that decision and any job reference given is not done “for a discriminatory reason.”

What would not be allowed is for an employer to give most employees favorable letters of recommendation, but for a discriminatory reason (dislike of gay or lesbian employee), the employer refused to give that employee a job reference "that would deprive an individual of employment opportunities."

The key requirement in § 119.03 **Prohibited Acts of Discrimination - Employment** is that for all of these described actions, none would violate the Civil Rights Administration Chapter unless the action was done "for a discriminatory reason." If the employer does not act with a discriminatory intention, there is no violation of the Civil Rights Administration ordinance.

3. Assisted Living Facilities and Nursing Homes

I believe that Assisted Living Facilities are licensed by the State of Arkansas and operate pursuant to State regulations. I have consistently opined that State law is dominant over and controls the administration of any City ordinance. Under § 119.07 **General Exceptions (H)**, the Civil Rights Administration's age regulations expressly do not apply if contrary to any state law or regulation.

I have been informed that comprehensive state regulations are applicable to the admissions and occupancies of Assisted Living Facilities and this is probably true for Nursing Homes and other similar facilities. If so, those facilities would not be in violation of the Civil Rights Administration Chapter's age regulations for abiding by state regulations because § 119.07 (H) states those state regulations "are not improper age discrimination under this chapter." This exception from such age regulations in Chapter 119 **Civil Rights Administration** would also apply to other such state or federally regulated housing or businesses.

4. Sincerely held religious belief

The Civil Rights Administration Chapter has a specific provision to honor, respect, and protect our Free Exercise of Religion Right.

§ 119.07 General Exceptions

“(G) If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.”

The current context for this issue presented by some would be the forced attendance at a gay or lesbian wedding by a photographer or musician who for their sincerely held religious beliefs object to such marriage. It is very likely that objections to attending or performing at such wedding ceremony by such person would be excepted or exempted from the discrimination provisions of the Civil Rights Administration Chapter. However, I cannot imagine that such a situation would actually ever occur as I cannot believe that any couple would want a person who objects to their wedding to sing at or photograph their wedding. Nor would they wish to support such person's business with their patronage. Certainly, no minister could be required to officiate at a wedding that would be contrary to the minister's sincerely held religious beliefs.

Businesses that sometimes serve weddings, but are more detached or work from a distance like florists or bakers, could also assert their “discrimination is...necessary” because of their religion. Again, I doubt if the couple to be married would choose to use such a business or ever wish to support such business with their patronage, so this “issue” would probably never arise. If this issue did occur, these business who supply but do not attend or participate in such wedding would not have the strong case to authorize their discrimination as photographers or musicians.

CONCLUSION

I do not presume to usurp a Judge's power and authority to definitively interpret Chapter 119 **Civil Rights Administration**. My interpretation should control how this Fayetteville Code Chapter will be administered by the Civil Rights Administrator and enforced by the City Prosecutor. I also will listen and consider concerns and suggestions from attorneys and others such as the Mayor's Committee to further refine or clarify these interpretations if necessary or to examine other provisions of the Civil Rights Administration Ordinance that might need interpretive clarification to avoid unanticipated consequences. However, **the Civil Rights Administration Chapter passed by the City Council is always controlling, and no interpretation can change its clear wording.** Only the Fayetteville City Council can amend or change any provision of this ordinance. My basic Official Opinion interpreting this Code Chapter is as follows:

1. **"Socioeconomic background"** means a person's long ago socioeconomic roots as opposed to current socioeconomic status. Business may obtain and use credit checks and credit history of applicants for loans, credit, or housing without violating the Civil Rights Administration Chapter.
2. **Job references** for employees are not required nor would any reference or refusal to provide a reference violate the Civil Rights Administration Chapter unless done "for a discriminatory reason."
3. **Assisted Living and Similar Facilities** whose admissions and housing are regulated by the State will not be violation of potentially conflicting age discrimination regulations of the Civil Rights Administration Chapter.
4. **Ministers** and others intimately associated with a religious ceremony would be exempted from having to participate in, attend or conduct such religious ceremony if such ceremony, such as gay wedding, would violate their sincerely held religious beliefs.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: Mayor Jordan
City Council
Sondra Smith, City Clerk/Treasurer

FROM: Kit Williams, City Attorney

DATE: September 5, 2014

RE: Scrivener's Error Civil Rights Administration Ordinance

Because I was concerned that "physical characteristic" was too vague and uncertain a term for the Civil Rights Administration Ordinance, I requested that Alderman Petty agree to its removal from the Human Rights Campaign's draft ordinance. After discussing this on a conference call with the Human Rights Campaign's attorneys, we agreed to remove "physical characteristic" from the ordinance.

We did remove this definition from § 119.02 Definitions and also from the definition of "Discriminate, Discrimination or Discriminatory." Unfortunately, we did not realize "physical characteristic" was also in § 119.04 (I). This oversight is what is termed a scrivener's error or clerical error which *Black's Law Dictionary* defines as "An error resulting from a minor mistake or inadvertence, esp. in writing or copying something...." We have uniformly corrected such past scrivener's errors in ordinances to ensure the City Council's intent is made clear. There is no need for a formal amendment to be passed by the City Council to clear up or fix a scrivener's error.

I am glad attorney Mark Martin discovered this mistake before the ordinance was actually enacted into the Fayetteville City Code. I have prepared and provided to City Clerk Sondra Smith a corrected Chapter 119 with "physical characteristic" removed everywhere including § 119.04 (I).

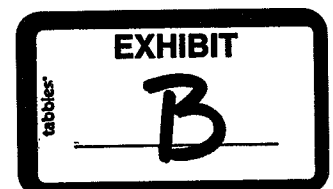


EXHIBIT A

CHAPTER 119: CIVIL RIGHTS ADMINISTRATION

119.01 Purpose

The purpose of this chapter is to protect and safeguard the right and opportunity of all persons to be free from discrimination based on real or perceived race, ethnicity, national origin, age, gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability and veteran status. This chapter's purpose is also to promote the public health and welfare of all persons who live or work in the City of Fayetteville and to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

119.02 Definitions

- (A) "Business Establishment" means any entity, however organized, which furnishes goods, services or accommodations to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist only of requirements under which a substantial portion of the residents of the city could qualify.
- (B) "Civil Rights Administrator" means the person designated by the Mayor to receive, investigate and conciliate complaints brought under this chapter.
- (C) "Disability" or "Disabled" means, with respect to an individual, a physical or mental impairment, a record of such an impairment, or being perceived or regarded as having such impairment. For purposes of this chapter, discrimination on the basis of disability means that no covered entity shall discriminate against a qualified individual with a disability because of that individual's disability. The term "qualified individual with a disability" shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment positions that the individual holds or desires.
- (D) "Discriminate, Discrimination or Discriminatory" means any act, policy or practice that has the effect of subjecting any person to differential treatment as a result of that person's real or perceived race, ethnicity, national origin, age (if 18 years of age or older), gender, gender identity, gender expression, familial status, marital status, socioeconomic background, religion, sexual orientation, disability or veteran status.
- (E) "Employee" means any individual employed by a covered employer.
- (F) "Employer" means any person, business or organization which regularly employs five (5) or more individuals, not including the employer's parents, spouse or children. For purposes of this chapter an employer "regularly" employs five (5) individuals when the employer employs five (5) or more individuals for each working day in any twenty (20) or more calendar weeks in the current or previous calendar year. For purposes of this chapter an "employer" is also any person or entity acting on behalf of an employer, directly or indirectly, or any employment agency.
- (G) "Familial status" means an individual's status as parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.
- (H) "Gender" means actual or perceived sex.
- (I) "Gender Identity" means a person's gender-related identity, whether or not that identity is or is perceived to be different from that traditionally associated with the sex assigned to that individual at birth.
- (J) "Gender Expression" means a person's gender-related appearance and behavior whether or not that gender expression is or is perceived to be different from that traditionally associated with the person's assigned sex at birth.
- (K) "Marital status" means an individual's status as single, married, domestically partnered, divorced or widowed.
- (L) "Place of public accommodation" means inns, taverns, hotels, motels, restaurants, wholesale outlets, retail outlets, banks, savings and loan associations, other financial institutions, credit information bureaus, insurance companies, dispensaries, clinics, hospitals, theaters, recreational parks and facilities, trailer camps, garages, public halls, and all other establishments within the City which offer goods, services, accommodations and entertainment to the public. A place of public accommodation does not include any institution, club or other place of accommodation, which by its nature is distinctly private.

(M) "Sexual orientation" means actual or perceived heterosexuality, homosexuality or bisexuality.

(N) "Veteran status" means an individual's status as one who served in the active military, naval or air service, and who was discharged or released under conditions other than dishonorable.

119.03 Prohibited Acts of Discrimination - Employment

With regard to employment, it shall be unlawful for any employer or labor organization to engage in any of the following acts wholly or partially for a discriminatory reason:

- (A) To fail to hire, refuse to hire or discharge an individual;
- (B) To discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion. Nothing in this section shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;
- (C) To limit, segregate or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee;
- (D) To fail or refuse to refer for employment any individual in such a manner that would deprive an individual of employment opportunities, that would limit an individual's employment opportunities or that would otherwise adversely affect an individual's status as a prospective employee or as an applicant for employment;
- (E) To discriminate against an individual in admission to, or employment in, any program established to provide apprenticeship or other job training, including on-the-job training programs;
- (F) To print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment. This subsection shall not be construed so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability;
- (G) To discriminate in referring an individual for employment whether the referral is by an employment agency, labor organization or any other person.

119.04 Prohibited Acts of Discrimination - Housing and Real Estate Transactions

With regard to housing and real estate transactions, which include both sales and leases, it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason:

- (A) To discriminate by impeding, delaying, discouraging or otherwise limiting or restricting any transaction in real estate;
- (B) To discriminate by imposing different terms on a real estate transaction;
- (C) To represent falsely that an interest in real estate is not available for transaction;
- (D) To include in the terms or conditions of a real estate transaction any discriminatory clause, condition or restriction;
- (E) To discriminate in performing, or refusing to perform, any act necessary to determine an individual's financial ability to engage in a real estate transaction;
- (F) For a property manager to discriminate by refusing to provide equal treatment of, or services to, occupants of any real estate which he or she manages;
- (G) To make, print or publish, or cause to be made, printed or published, any discriminatory notice, statement or advertisement with respect to a real estate transaction or proposed real estate transaction, or financing relating thereto. This subsection shall not be construed to prohibit advertising directed to physically disabled persons or persons over the age of fifty-five (55) for the purpose of calling to their attention the existence or absence of housing accommodations or services for the physically disabled or elderly;
- (H) To discriminate in any financial transaction involving real estate on account of the location of the real estate, be it residential or non-residential ("red-lining");
- (I) For a real estate operator, a real estate broker, a real estate salesperson, a financial institution, an employee of any of these or any other person, for the purposes of inducing a real estate transaction from which such person may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to the race, ethnicity, national origin, age, gender, gender identity, gender expression, familial status, marital

status, socioeconomic background, religion, sexual orientation, disability or veteran status of the owners or occupants in the block, neighborhood or area in which the real property is located or to represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior or a decline in the quality of schools in the block, neighborhood or area in which the real property is located ("block-busting");

- (J) Notwithstanding the provisions of subsections (A) through (I), it shall not be an unlawful discriminatory practice for an owner to limit occupancy on the basis of a person's low-income, age over fifty-five (55) years or disability status in accordance with federal or state law;
- (K) Notwithstanding the provisions of subsections (A) through (I), it shall not be an unlawful discriminatory practice for an owner, lessor or renter to refuse to rent, lease or sublease a portion of a single family dwelling unit to a person as a tenant, roomer or boarder where it is anticipated that the owner, lessor or renter will be occupying any portion of the single-family dwelling or to refuse to rent, lease or sublease where it is anticipated that the owner, lessor or renter will be sharing either a kitchen or a bathroom with the tenant, roomer or boarder.
- (L) Notwithstanding any other provision of this chapter, it is not an unlawful discriminatory practice to apply or enforce the definition of "family" for zoning purposes pursuant to § 151.01 of the Unified Development Code.

119.05 Prohibited Acts of Discrimination - Business Establishments or Public Accommodations

It shall be unlawful for a business establishment or place of public accommodation for a discriminatory reason to deny, directly or indirectly, any person the full enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment or place of public accommodation, unless required by state or federal law.

119.06 City Services, Facilities, Transactions and Contracts

- (A) The City of Fayetteville and all of its employees are bound by the provisions of this chapter to the same extent as private individuals and businesses.
- (B) All contractors doing business with the City of Fayetteville shall comply with this ordinance.

119.07 General Exceptions

- (A) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that the practice is not intentionally devised to contravene the prohibitions of this chapter and there exists no less discriminatory means of satisfying a business purpose.
- (B) This chapter shall not apply to any federal, state or county government office or official, or any public educational institution within the City.
- (C) Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by a protected group.
- (D) It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide seniority system or a bona fide employee benefit system such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this chapter.
- (E) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan as required by state or federal law, or by court order.
- (F) Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification or a bona fide physical requirement. Nothing contained in this chapter shall be deemed to prohibit a religious or denominational institution from selecting or rejecting applicants and employees for non-secular positions on the basis of the applicant's or employee's conformance with the institution's religious or denominational principles. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification or a permissible bona fide physical requirement, that party shall have the burden of proving:
 - (1) That the discrimination is in fact a necessary result of such a bona fide condition; and
 - (2) That there exists no less discriminatory means of satisfying the bona fide requirement.
- (G) If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide religious or denominational preference, that party shall have the burden of proving that the discrimination is in fact a necessary result of such a bona fide condition.

- (H) Any age restrictions required by state or federal law or regulations, including for the sale or delivery of alcoholic beverages, are not improper age discrimination under this chapter.
- (I) Nothing in this Chapter shall be construed to require any religious or denominational institution or association to open its tax exempt property or place of worship to any individual or group for any ceremony or meeting, except for any activity or service that is supported in whole or part by public funds.
- (J) Designating a facility as a gender-segregated space shall not be a violation of this chapter. Nothing in this chapter shall be construed as allowing any person to enter any gender-segregated space for any unlawful purpose.

119.08 Posting of Notices

Every employer or entity subject to this chapter shall post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated, a notice, the language and form of which has been prepared by the City of Fayetteville, setting forth excerpts from or summaries of the pertinent provisions of this chapter and information pertinent to the enforcement of rights hereunder. The notice shall be in both English and Spanish. If over ten percent of an employer's employees speak, as their native language, a language other than English or Spanish, notices at that employer's place of business shall be posted in that language. At the request of the employer or entity, notices required by this section shall be provided by the City. Notices shall be posted within ten days after receipt from the City.

119.09 Retaliation Prohibited

- (A) It is an unlawful discriminatory practice to coerce, threaten, retaliate against, interfere with or discriminate against a person because that person has opposed any practice made unlawful by this chapter, has made a non-frivolous charge or complaint, or has testified truthfully, assisted or participated in an investigation, proceeding or hearing pursuant to this chapter.
- (B) It is an unlawful discriminatory practice to require, request or suggest that a person or entity retaliate against, interfere with, intimidate or discriminate against a person because that person has opposed any practice made unlawful by this chapter, has made a non-frivolous charge or has testified truthfully, assisted or participated in an investigation, proceeding or hearing authorized

under this chapter.

- (C) It is an unlawful discriminatory practice to cause or coerce, or attempt to cause or coerce, directly or indirectly, any person in order to prevent that person from complying with the provisions of this chapter.

119.10 Preservation of Business Records

Where a complaint of discrimination has been filed against a person under this ordinance, such person shall preserve all records relevant to the complaint until a final disposition of the complaint.

119.11 Administration and Enforcement

- (A) The Mayor shall designate the Civil Rights Administrator, who shall administer this chapter and be responsible for receiving, investigating and conciliating complaints filed under this chapter. To be considered and administered by the Civil Rights Administrator, complaints must be received in the Civil Rights Administrator's office no more than six months after the alleged discriminatory action or, in the case of ongoing alleged discriminatory actions, no more than six months after the most recent incident of alleged discrimination. The Civil Rights Administrator shall prepare an easy to use complaint form and make the form easily accessible to the public.
- (B) The Civil Rights Administrator should first attempt to eliminate the unlawful practice or practices through conciliation or mediation. In conciliating a complaint, the administrator should try to achieve a just resolution and obtain assurances that the respondent will satisfactorily remedy any violation of the complainant's rights and take action to ensure the elimination of both present and future unlawful practices in compliance with this chapter. If the Civil Rights Administrator determines that the complainant is not acting in good faith, the conciliation or mediation may be terminated and the complaint may be immediately dismissed. If the respondent is not participating in good faith, the complaint may be immediately referred to the City Prosecutor's office.
- (C) After any attempted conciliation or mediation, the Civil Rights Administrator will refer any unresolved complaint and complainant as needed to the City Prosecutor's Office for appropriate further action, including prosecution.
- (D) The filing of a complaint under this chapter does not preclude any other state or federal remedies that may be available to a complainant.