



## ORDINANCE NO. 28439

1 AN ORDINANCE relating to the City's Human Rights Commission; amending  
2 Chapter 1.29 of the Tacoma Municipal Code and accompanying rules to  
3 make necessary updates, streamline human rights complaint processing,  
4 and more closely align the City's practices with state and federal human  
5 rights partners.

6 WHEREAS Chapter 1.29 of the Tacoma Municipal Code ("TMC")  
7 establishes the City's Human Rights Commission ("Commission"), outlines the  
8 Commission's duties and powers, and describes staff responsibilities in support  
9 of the Commission, and

10 WHEREAS the Office of Equity and Human Rights recommends proposed  
11 amendments to TMC 1.29 and the Administrative Rules Governing the Human  
12 Rights Commission to make necessary updates, streamline human rights  
13 complaint processing, and more closely align the City's practices with state and  
14 federal human rights partners, and

15 WHEREAS TMC 1.29 currently designates the Neighborhood and  
16 Community Services Department to provide staff support for the Commission,  
17 and

18 WHEREAS, in 2015, staff support for the Human Rights Commission  
19 shifted to the Office of Equity and Human Rights, and the TMC should be  
20 updated to reflect this change, and

21 WHEREAS, as written, TMC 1.29.160.B requires the Commission to  
22 authorize, and the City Attorney's Office to commence, a civil action not later  
23 than 30 days after a respondent in a fair housing complaint elects to have claims  
24 adjudicated by the Pierce County Superior Court , and the proposed amendment  
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1 grants the City Attorney's Office additional flexibility regarding the time to  
2 commence a civil action in superior court after such an election, which is  
3 consistent with the practice of and more closely matches the state's  
4 corresponding provision, RCW 49.60.340, and

5 WHEREAS TMC 1.29.020.A.8 authorizes the Commission to adopt and  
6 promulgate administrative rules and guidelines which govern its operation and, in  
7 accordance with TMC 1.29.020, the Administrative Rules Governing the Human  
8 Rights Commission set forth the practices and procedures of the Commission,  
9 and  
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11 WHEREAS the proposed amendments to the Administrative Rules include  
12 similar updates as set forth above, which make clear that staff support for the  
13 Commission is provided by the Office of Equity and Human Rights, and

14 WHEREAS the proposed amendment to Administrative Rule 8.01  
15 removes language requiring that human rights complaints filed with the  
16 Commission be sworn to before a notary public and notarized before the case  
17 may be accepted for processing, and  
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19 WHEREAS this change removes an unnecessary barrier to case  
20 processing and is consistent with the practice of state and federal human rights  
21 partners, none of which require notarization of an administrative complaint prior  
22 to processing; Now, Therefore,  
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24 BE IT ORDAINED BY THE CITY OF TACOMA:

25 Section 1. That Chapter 1.29 of the Tacoma Municipal Code is hereby  
26 amended as set forth in the attached Exhibit "A."



Section 2. That the Administrative Rules Governing the Human Rights

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Commission are hereby amended as set forth in the attached Exhibit "B."

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney

# EXHIBIT "A"

## Chapter 1.29

### HUMAN RIGHTS COMMISSION

Sections:

- 1.29.010 Findings.
- 1.29.020 Creation of a Human Rights Commission.
- 1.29.030 Commission Responsibilities of ~~Neighborhood and Community Services Department~~[the Office of Equity and Human Rights](#).
- 1.29.040 Definitions.
- 1.29.050 Unlawful discriminatory employment practices.
- 1.29.060 Additional unlawful discriminatory practices.
- 1.29.070 Liberal construction.
- 1.29.080 Severability.
- 1.29.090 Savings clause.
- 1.29.100 Unlawful discriminatory housing practices.
- 1.29.110 Discrimination in residential real estate-related transactions.
- 1.29.120 Prohibition against discrimination because of disability.
- 1.29.130 Housing for older persons.
- 1.29.140 Interference, coercion or intimidation.
- 1.29.150 Adjustment and settlement of complaints.
- 1.29.160 Election for civil action in lieu of hearing for housing cases.
- 1.29.170 Enforcement of fair housing provisions by private persons.

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#### **1.29.020 Creation of a Human Rights Commission.**

There is hereby established a commission, to be known as the Human Rights Commission of the City of Tacoma (hereinafter referred to as the "Commission"), consisting of 15 members representative of the general public, such as students; employer groups; the housing industry; and labor, religious, racial, ethnic, disabled, and women's groups in the City, to be nominated and appointed in accordance with City Council rules and procedures.

A. Duties and Powers of the Commission. The Commission shall have the duty and power to:

1. Initiate complaints charging unlawful practices as set forth in this chapter; provided, that no such action shall be taken with respect to any complaint within the exclusive jurisdiction of any state or federal agency. Each Commissioner shall have the power to initiate a complaint, whether or not such Commissioner is aggrieved, subject to approval by the Commission.
2. Review and act upon case closures as recommended by ~~the department~~[the Office of Equity and Human Rights](#) -staff, petitions for reconsideration, and/or conciliation agreements.
3. Study, investigate, mediate, and hold public meetings on communitywide problems arising in the City of Tacoma which may result in intergroup tensions or discrimination, including race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, honorably discharged veteran or military status, or disability, and make such technical studies as are appropriate to effectuate the purpose and policies of this chapter.
4. Consult with and maintain contact with other public agencies, civil rights organizations, representatives of employers, labor unions, property owners, associations, realtor associations, religious denominations and institutions, professional associations, national origin groups, community organizations concerned with interracial, interreligious and intercultural understanding, social welfare organizations, and any other such organizations and institutions as directed by the City Council or as the Commission shall deem advisable to further the objectives of this chapter.
5. Cooperate with and make written recommendations to the Mayor, City Council, City Manager, and City department heads toward the development and implementation of programs and practices for the purpose of furthering the objectives of this chapter.
6. Form committees and subcommittees and appoint persons, in addition to members of the Commission, to such committees and subcommittees in order to assist the Commission in effectuating the purposes of this chapter.
7. Perform such other functions and duties as may be directed by the City Council or prescribed or authorized by any resolution or ordinance of the City.

In prescribing the above duties and functions of the Commission, it is not the intent of the City Council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to any department, board, or committee of the City or the responsibilities of the City Manager. Upon request, the Commission shall cooperate with and render assistance and make recommendations to all public officials, departments, and public or private organizations or citizens.

8. The Commission is specifically authorized to adopt and promulgate interpretive rules, regulations, and guidelines to properly implement and administer the provisions hereof. Rules, regulations, and guidelines thus adopted shall be approved by resolution of the City Council of the City of Tacoma prior to their becoming effective.

9. The Commission is specifically authorized to make rules and regulations governing its organization and procedures which are not inconsistent with this chapter or any other chapter or section of the Tacoma Municipal Code.

B. Terms of Office of Commissioners. The term of office of all members of the Commission shall be three years, except for the student member whose term of office shall be for a period no longer than two years or until no longer a student or until attainment of age 24, whichever occurs first; provided, that any individual appointed to fill a vacancy other than a student member shall be appointed only for the unexpired term of the member whom he or she succeeds. Each member of the Commission shall serve only until the expiration of his or her individual term of office. Failure to maintain his or her status as a student shall act as a forfeiture of the student member's Commission position. Any member of the Commission may be removed by the Mayor and City Council for misconduct or malfeasance in office after being given a written statement outlining such behavior and an opportunity to be heard thereon.

C. Termination of Commissioners for Absence. The appointment of any member of the Commission who has been absent from three consecutive regular or special meetings of the Commission without approval of said Commission shall automatically terminate. The City Clerk shall notify any member whose appointment has automatically ended and report to the appointing authority that a vacancy exists on said Commission and that an appointment should be made for the unexpired term. The Commission shall have the power and authority to excuse any member from attendance at any regular business meeting or study session for good cause. The Commission shall also have the power and authority to create and execute a more rigid standard of attendance should a majority of Commission members deem such standard necessary for the effective functioning of the Commission.

D. Commission Officers. The Commission shall elect one of its members as Chairperson and one of its members as Vice-Chairperson, each of whom shall hold office for a period of two years or until his or her successor is duly elected, unless his or her term as a member of the Commission expires sooner.

E. Commission Meetings and Procedures. The Commission shall establish a regular time and place of meeting and shall hold at least one regular meeting each month. Special study sessions may be called by the Chairperson or by a simple majority of the Commission members. Personal notice of all special study sessions shall be given to all Commission members by mail or by telephone at least 24 hours prior to the start of such study session.

1. Quorum of the Commission. A simple majority of those Commission members duly appointed and acting in office at any given time shall constitute a quorum of the Commission at that time. An affirmative vote of at least a majority of those Commissioners present at any given meeting is required to take any official action at such meeting; provided, that a majority vote of the entire Commission shall be required for a finding or decision of the Commission.

2. Commission Public Meetings. All regular, special, and business meetings of the Commission shall be held in strict accordance with and pursuant to any and all applicable state laws as the same now exist, or as hereafter amended, with respect to open and public meetings.

### **1.29.030 Commission Responsibilities of ~~Neighborhood and Community Services Department~~the Office of Equity and Human Rights.**

A. In accordance with all appropriate local, state, and federal laws, and within the legal geographic boundaries of the City of Tacoma, the ~~Department~~Office of Equity and Human Rights staff shall:

1. Receive and conduct impartial investigations of complaints that have been filed by individuals who believe they have been discriminated against due to their race, religion, color, national origin or ancestry, sex, gender identity, sexual orientation, age, marital status, familial status, honorably discharged veteran or military status, or disability; and seek the satisfactory adjustment of such complaints; provided, that no such action shall be taken with respect to any complaint within the exclusive jurisdiction of any state or federal agency.

2. Conduct fact-finding conferences through the City Attorney, subpoenaing witnesses and such books, papers, records, files, etc., as are deemed necessary during an investigation, and requiring and compelling the attendance and testimony of such witnesses and the production of such books, papers, records, files, etc., for examination and reproduction; making findings of fact; publishing such findings as appropriate; and doing all things necessary and proper for the enforcement of this chapter.

3. Notify all appropriate parties to the charge of the decisions rendered as a result of the [Department's staff's](#) investigation.
4. Make recommended findings to the Commission based upon its finding of fact as discovered through investigation. If it is discovered that an unlawful violation has occurred and efforts to conciliate the matter fail, it may be necessary to forward the case to the City's Hearing Examiner for a public hearing.
5. Prepare and disseminate educational and informational material relating to prejudice and discrimination and ways and means of eliminating such prejudice and discrimination.
6. Cooperate with and provide information, guidance, and technical assistance to other public agencies and to private persons, organizations, and institutions engaged in activities and programs intended to eliminate prejudice and discrimination.
7. Consult with, and maintain contact with, other public agencies, civil rights organizations, representatives of employers, labor unions, property owners, associations, realtor associations, religious denominations and institutions, professional associations, national origin groups, community organizations concerned with interracial, interreligious and intercultural understanding, social welfare organizations, and any other such organizations and institutions as directed by the City Council or as the Commission shall deem advisable to further the objectives of this chapter.

B. The Director shall send all notices to Commission members; keep and maintain all minutes, documents, and other papers of the Commission; comply with all assignments the Commission may make in the conduct of its business; and perform such other specific tasks and assignments concerning human rights as may be requested by the City Manager. Unless specifically provided otherwise, all duties and powers assigned to the Director may be delegated by the Director.

C. Subpoena power. Subpoenas issued under this section shall be prepared and signed under the direction of the City Attorney's Office. No person shall be excused from attending fact-finding conferences and testifying or from producing records, correspondence, documents, or other evidence in obedience to the subpoena on the ground that the testimony or evidence required may tend to incriminate or to subject such person to a penalty or forfeiture. However, no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which testimony is compelled after such person has claimed a privilege against self-incrimination, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons compelled to testify.

In case of contumacy or refusal to obey a subpoena issued to any person, the [Department Office of Equity and Human Rights](#) may, through the City Attorney's Office, petition the Superior Court to issue to such person a subpoena requiring such person to appear before the Commission, its member, agent, or staff, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Failure to obey a subpoena of the Superior Court may be punished by the Court as a contempt thereof.

#### **1.29.040 Definitions.**

As used in this chapter:

"Age" refers to the number of years since one's birth and only individuals over the age of 40 are considered as a protected class.

"Bona fide occupational qualification (BFOQ)" refers to an exception when discrimination is legal where it is reasonably necessary to the normal operation of the employer's business (e.g., a Methodist church would not be discriminating if it refused to hire a Lutheran minister).

"Business necessity" refers to a policy or practice of screening potential employees on a criterion necessary for the safe and efficient operation of the business. Such a policy or practice is legal if it can be demonstrated to be job-related, to be effective in predicting employee performance, and if there is no acceptable alternative which would have less adverse impact on the class protected by law.

"Charging party" shall include any individual alleging on his or her own behalf to have been personally aggrieved by an unlawful discriminatory practice. Additionally, the Commission may initiate a charge alleging that an unlawful discriminatory act has been committed against a class of persons.

"Commission" means the Human Rights Commission of the City of Tacoma, Washington, herein created.

"Conciliation" means a written settlement generally providing full relief for the charging party after a determination of reasonable cause has been accepted. Such agreement requires the signatures of the respondent and a Commission representative. The charging party shall be signatory to such an agreement.

~~"Department" means the Neighborhood and Community Services Department of the City of Tacoma.~~

"Director" means the Director of the ~~Neighborhood and Community Services Department~~[Office of Equity and Human Rights](#).

“Disability” means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(a) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(b) For purposes of the definition of “disability”, "impairment" includes, but is not limited to:

(i) 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; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect. A limitation is not substantial if it has only a trivial effect.

“Dwelling” means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

“Educational institution” includes any private school or training center, except those affiliated with a nonprofit religious institution, which may give preference to members of that religious group in selecting its students.

“Employee” shall mean any person acting in the employ of an employer as herein defined, but such term shall not include any individual employed by his or her parent, spouse, or child.

“Employer” shall have the same meaning as set forth in the current Revised Code of Washington Section 49.60.040(3) and as hereafter amended.

“Employment agency” includes any person undertaking, with or without compensation, to recruit, procure, refer, or place employees for an employer.

“Familial status” means one or more individuals (who have not attained the age of 18 years) being domiciled with:

1. A parent or another person having legal custody of such individual or individuals; or

2. The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

“Financial institution” includes any person or organization which participates in any open-end or closed-end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to: banks, savings and loan associations, or other financial lending institutions of whatever nature; stockbrokers; merchant or mercantile establishments; or owners of real property who, as part of their ordinary business, permit or provide that payment for purchases of property or service therefrom may be deferred.

“Gender identity” shall mean the status or perception of being transsexual, intersexed, transvestite, or transgendered. As used in this definition, the term “intersexed” refers to individuals who are born with some combination of both male and female genitalia.

“Honorably discharged veteran or military status” means a person who is:

A veteran, as defined in RCW 41.04.007 or

An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

“Labor organization” includes any organization which exists, in whole or in part, for the purpose of dealing with employers concerning grievances or the terms and conditions of employment, or for other mutual interests or protection in connection with any employment.

“Marital status” means the state of being unmarried, married, divorced, separated, or widowed.

“National origin” refers to one's real or perceived ancestry, heritage, background, or customs that indicate an individual or the individual's forbears came from a particular country.

“Negotiated settlement” means a signed agreement between the charging party and the respondent in a particular case prior to a finding on the merits of the charge. The Commission may also be signatory to such an agreement.

“No reasonable cause” means that a determination has been made that there was insufficient evidence produced by the staff's investigation to support a reasonable conclusion that unlawful discrimination has occurred or is occurring. Such determination completes the administrative process unless the charging party petitions the commission for reconsideration in writing and provides new evidence not previously considered in the course of the investigation.

“Owner” means any person, including managing agents, having the right of ownership or possession, or the right to sell, rent, lease, or sublease any real property.

“Person” includes one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any agency or instrumentality of the City.

“People with disabilities” means the presence of any physical, sensory, or mental impairment which substantially limits one or more major life activities (e.g., self-care, ambulation, communication, transportation, education, socialization, and employment) but does not prevent the proper performance of the particular worker's job duties.

“Public accommodation” includes any establishment which caters or offers its services, facilities, or goods to the general public.

“Real estate transaction” includes the sale, exchange, purchase, rental, lease, or sublease of real property.

“Real property” includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, or any interest in such real property as defined herein; provided, however, that nothing herein contained shall be construed to include or apply to any columbarium, mausoleum, or cemetery operated or maintained by a nonprofit religious or sectarian institution.

“Reasonable cause” means that a determination has been made that the evidence produced by the staff's investigation is sufficient to support a reasonable conclusion that unlawful discrimination has occurred or is occurring. Such determination allows for the continuance of the administrative process including, but not limited to, attempts at conciliation.

“Respondent” includes any person or entity against whom a complaint or charge of unlawful practice is filed with the Commission.

“Sexual orientation” shall mean actual or perceived homosexuality, bisexuality, or heterosexuality.

“Student,” for purposes of appointment to the Tacoma Human Rights Commission, shall mean an individual who is at least 15 years of age and under 24 years of age at the time of his or her appointment and who is an enrolled student at the high school or college level.

[“Staff” shall mean the staff of the Office of Equity and Human Rights.](#)

### **1.29.150 Adjustment and settlement of complaints.**

Any complaint filed alleging an unlawful discriminatory housing practice shall be so filed within one year after the alleged act of discrimination. All other complaints filed alleging discriminatory acts prohibited by Chapter 1.29 shall be filed within six months after the alleged act.

Upon the filing with the Commission of a verified written complaint alleging that an unlawful discriminatory act has occurred or is occurring, the Commission's staff shall conduct a prompt investigation thereof along with conciliation efforts which shall



begin with the filing of a complaint. If, upon the completion of such investigation, it is determined that insufficient evidence exists to support a reasonable cause finding that an unlawful discriminatory act has occurred or is occurring, such determination shall be filed in writing with the Commission and the complaint shall be dismissed. If a determination of reasonable cause is found and conciliation efforts have failed, an administrative hearing proceeding as provided in Chapter 1.29 shall commence.

In any housing discrimination case in which it is determined that an unlawful discriminatory act has been committed, the case will be decided by the City of Tacoma Hearing Examiner if attempts at conciliation should fail. However, in housing discrimination cases, a charging party (including the Commission, if the Commission filed the complaint), a respondent, or an aggrieved person on whose behalf the complaint is filed may elect, in lieu of an administrative proceeding, to have the claims asserted in the charge decided in a civil action pursuant to Section 1.29.160.

In any case in which it is determined that an unlawful discriminatory act has been committed by the City of Tacoma or any department or agency thereof, the Director shall transmit such findings to the City Manager or the Director of Public Utilities, as appropriate, who shall, within 30 days, take such action as is deemed necessary in order to comply with the purposes of this chapter. The ~~Neighborhood and Community Services Department~~[Office of Equity and Human Rights](#) shall advise the charging party of his or her legal rights to include his or her recourse if the City/Department of Public Utilities does not conciliate the matter.

\* \* \*

### **1.29.160 Election for civil action in lieu of hearing for housing cases.**

A. Any charging party on whose behalf the reasonable cause finding was made, a respondent, or an aggrieved person may, with respect to unlawful discriminatory housing practices pursuant to Sections 1.29.100 through 1.29.150 hereof, elect to have the claims on which reasonable cause was found decided in a civil action in Pierce County Superior Court in lieu of an administrative hearing under Section 1.29.150. This election must be made not later than 20 days after the service of the reasonable cause finding. The person making such election shall give notice of doing so to the Commission and to all other charging parties and respondents to whom the charge relates. Any reasonable cause finding issued by the Commission pursuant to the procedures contained in this chapter shall become final 20 days after service of the reasonable cause finding, unless a written notice of election is received by the Commission within the 20-day period.

B. If an election is made under subsection A of this section, the Commission shall authorize, ~~not later than 30 days after the election is made,~~ and the City Attorney shall commence, a civil action on behalf of the aggrieved person in the Pierce County Superior Court, ~~not later than 30 days after the election is made,~~ seeking relief under Chapter 1.29.

C. Any aggrieved person with respect to the issues to be determined in a civil action under this section may intervene as of right in that civil action.

D. In a civil action under this section, if the court finds that an unlawful discriminatory housing practice has occurred or is about to occur, the court may grant any relief that a court could grant with respect to such an unlawful discriminatory housing practice in a civil action under state law and as provided by the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.) If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

E. In any administrative proceeding under this section where the respondent is the prevailing party, a charging party who intervenes by filing a notice of independent appearance may be liable for reasonable attorneys' fees and costs only to the extent that the intervening participation in the administrative proceeding was frivolous or vexatious, or was for the purpose of harassment.

F. In any administrative proceeding brought under Section 1.29.150 or any court proceeding arising therefrom, or any civil action under this section, the administrative law judge or the court in its discretion may allow the prevailing party, other than the Commission, reasonable attorneys' fees and costs.

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## EXHIBIT “B”

### ADMINISTRATIVE RULES AND REGULATIONS GOVERNING THE HUMAN RIGHTS COMMISSION

#### SECTION 1 - General

**1.01 Effective Date.** These regulations, effective the 31st day of August, 1993, were filed in the office of the City Clerk, City of Tacoma, Washington on that date.

**1.02 Scope of Regulations.** These rules shall govern all practices and procedures before the Commission. These rules supplement the City's law against discrimination, Chapter 1.29 of the Official Code of the City of Tacoma, and amendments thereto. These rules should always be read in conjunction with Chapter 1.29 because the City Code is not repeated herein, except where necessary for clarity.

#### SECTION 2 - Meetings

**2.01 Business Meetings.** The Commission will hold regular business meetings once each month at a time and place to be designated by the Commission.

#### SECTION 3 - Public Access to Records

**3.01 Records Available-General.** All public records, including photographs, recordings, and other materials, as well as written documents which are or have been prepared, owned, used or retained by the Tacoma Human Rights Commission, shall be available for public inspection and copying during normal office hours.

**3.02 Records Available-Exceptions.** The following records are exempt from public access:

- (a) Personal information in files maintained concerning the Commission members or staff to the extent that such disclosure would violate the right to privacy of such Commission or staff member.
- (b) The file, except for the complaint, compiled during the investigation of such complaint prior to final Commission action, or in the case of files referred to the City Attorney for appropriate legal action, prior to such referral.
- (c) Preliminary drafts, notes, recommendations, and inter- and intra-agency memoranda in which opinions are expressed or policies

formulated or recommended, except that a specific record shall not be exempt when publicly cited by the Commission in connection with any Commission action.

- (d) Records which are relevant to a controversy in which the Commission is a party, but which records would not be available to another party under the rules of pretrial discovery for causes pending in Superior Court.
- (e) Any other record which is not required to be available for public inspection under applicable state statutes, and which record would, if disclosed, violate personal privacy or impair a vital government interest.

**3.03 Records Available-Conditions Overriding Exceptions.** Despite the fact that a particular record comes within the scope of an exception from public access as described above, such record shall nonetheless be available for public inspection and copying if one or more of the following conditions are met:

- (a) Disclosure of such record would not violate personal privacy or impair a vital governmental interest.
- (b) Disclosure of such record would violate personal privacy or impairment may be avoided by deleting certain information from the record.
- (c) Disclosure of such record may be made in the form of statistical information which is not descriptive of any readily identifiable person or persons.

**3.04 Copying.** Any record which may be inspected pursuant to the provisions of this section may also be copied. The copying party shall be charged ten cents for each page copied. Copying facilities may be denied when their use for the purposes of this subsection would unreasonably interrupt others uses of such facilities. However, the unavailability of Commission copying facilities shall be given great weight in determining whether the removal of the record to be copied from the ~~Commission's office~~[Office of Equity and Human Rights](#) is necessary pursuant to Subsection 3.05 of these Rules and Regulations.

**3.05 Protection of Records.** No record shall be permitted to be removed from the office of the

Commission by any person other than a member of the Commission's staff. Exception to this prohibition shall be granted only if such removal is necessary and protection of the records removed is reasonably assured. Prior to such removal, a receipt itemizing the contents of the record and indicating the address and telephone number of the location to which the record is being removed shall be signed by the person removing such record and approved in writing by the person responsible for the custody of such records.

**3.06 Procedures.** Inquiries concerning materials contained in the personnel or investigative files of the Commission's membership or staff shall be referred to the ~~Executive~~ Director or to that person to whom the ~~Executive~~ Director has delegated such responsibility. Should a determination to withhold the requested information be made, such determination shall be forwarded in writing to the party making the request. Such determination shall clearly indicate the section of these Rules and Regulations pursuant to which the requested information is being withheld and an explanation of how the section bus cited applies to the information in question. Such determination shall be subject only to judicial review.

## **SECTION 4 - Service of Papers**

**4.01 Means of Service.** Service of papers may be made personally or by first class, registered or certified mail, telegraph, or by leaving a copy of the papers to be served at the principal office or place of business of the person to be served.

**4.02 Who Serves.** The Commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Every other paper shall be caused to be served by the party filing it.

**4.03 Upon Whom Served.** All papers served by the Commission, or by a party to a proceeding before the commission, shall be served at the time of filing upon all counsel of record and upon all parties not represented by counselor upon such agent as is designated by them or by law.

**4.04 Service on Commission.** Papers required to be filed with the Commission shall be deemed to be filed upon actual receipt of such papers at the office of the Commission.

**4.05 Service by Mail.** If service is made by mail, such service shall be deemed complete upon the third day following the day upon which the papers to be served are placed in the mail unless earlier receipt

is shown. Should the third day after mailing fall on a weekend or legal holiday, service shall be deemed complete on the first day other than a weekend or legal holiday following the third day.

## **SECTION 5 - Form of Papers**

**5.01** Except for papers filed with the City Hearing Examiner and any other papers whose form is specified by law, papers may be submitted in any commonly used form that is legible. The Commission requests, but does not require, that all papers filed with the Commission be typewritten on white paper of letter or legal size.

## **SECTION 6 - Interpretation and Usage**

**6.01 Interpretation.** These rules shall be interpreted liberally in order to promote justice and to facilitate the decision of cases on the merits.

**6.02 Usage.** In these Rules and Regulations, unless the context indicates otherwise, the following words are used in the senses here expressed:

- (a) "Shall" expresses a command.
- (b) "May" expresses permission.
- (c) "Will" expresses the future occurrence of an event.
- (d) "Must" expresses a requirement that has to be met only if a person chooses to do something, which that person is free to do or not to do.

## **SECTION 7 - Election of Remedies**

**7.01 Limitation on Administrative Process.** Nothing in these rules and regulations or Chapter 1.29 of the Official Code of the City of Tacoma shall prevent a person from pursuing any civil or criminal remedy based on an alleged violation of his or her civil rights. However, a person's election to pursue such a remedy shall preclude him/her from pursuing those administrative remedies created by Chapter 1.29.

**7.02 Commission Independence From Charging Party.** Nothing in these Rules and Regulations or Chapter 1.29 of the Official Code of the City of Tacoma shall prevent the Commission from proceeding with its investigation of a charge of discrimination where there is reasonable cause to believe that discrimination will persist despite the fact that the charging party no longer desires to pursue relief through the administrative process set forth in Chapter 1.29.

**7.03 Duplicative Administrative Process.** The Commission may, upon its own motion and at any time, dismiss a charge filed with the Commission if such charge has also been filed with the Washington State Human Rights Commission, the Federal Equal Employment Opportunity Commission, the Federal Department of Housing and Urban Development, or any other state or federal agency empowered to investigate and resolve alleged unlawful discriminatory practices.

## **SECTION 8 - Form of Complaints**

**8.01 Signature and Verification.** Any person claiming to be aggrieved by an alleged unfair practice may, personally or by his or her attorney, make, sign, and file with the Office of Equity and Human Rights a complaint in writing under oath or by declaration. A complaint shall be in writing, signed by the charging party and sworn to before a notary public or other person authorized by law to administer oaths. Notary service for this purpose is provided without charge by the Commission.

**8.02 Contents.** A complaint shall contain the following:

- (a) The name and address, and telephone number, if any, of the person making the complaint.
- (b) The name and address, and telephone number, if any, of the person against whom the complaint is made.
- (c) A specific charge of an unlawful practice as set forth in Chapter 1.29.
- (d) A clear and concise statement of the facts which constitute the alleged unlawful practice.
- (e) The date of the alleged unlawful practice and, if the alleged practice is of a continuing nature, the dates between which such continuing acts of discrimination are alleged to have occurred.

**8.03 Forms.** Printed complaint forms are available at the Commission office.

**8.04 Time for Filing.** A complaint must be filed within six months after the date of occurrence of the alleged unlawful practice. All complaints alleging housing discrimination must be filed within one year after the occurrence of the alleged unlawful practice. If the alleged practice is of a continuing nature, the date of the occurrence of the practice shall be deemed to be any date subsequent to the commencement of the practice up to and including the date when the practice ceased.

**8.05 Computation of Time.** The six-month period, or one-year period for housing cases, for the filing of a complaint expires at 5:00 p.m. on the day before the corresponding day of the sixth month following the alleged event. If this day falls on a weekend or legal holiday, the time for filing will expire at 5:00 p.m. on the day following such weekend or legal holiday.

**8.06 Technical Defects.** A complaint shall not be considered defective because it lacks any technical requirement, including the oath, provided that such technical requirement is later met or if no person is legally harmed.

## **SECTION 9 - Commission Complaints**

**9.01 Who May Initiate.** Complaints may be issued by the Commissioners, individually or collectively, subject to approval by the Commission.

**9.02 Form of Complaint.** A Commissioner may initiate a complaint by personally signing a document stating that the Commission has reason to believe that the person against whom such complaint is alleged has been or is engaged in an unlawful practice as set forth by Chapter 1.29 and identifying the nature of the alleged practice. Such complaint shall be presented for approval to the Commission at the Commission's next regularly scheduled business meeting.

**9.03 Basis for Complaint.** A Commission complaint may be issued whenever the Commission has reason to believe that any person has or is engaged in an unlawful practice. The basis of belief or such a complaint is different from the basis for finding of "reasonable cause." The finding of whether reasonable cause exists is based on the Commission's investigation and ascertainment of facts. The basis of belief for the purpose of initiating a Commission complaint is information, from any source, sufficient to justify an investigation and finding of whether there is reasonable cause for believing that an unlawful practice has been or is being committed.

## **SECTION 10 - Relationship of Commission to Charging Party**

**10.01 Commission's Role and Objectives.** In investigating cases, the Commission seeks to ascertain the facts in order to make an impartial finding of "reasonable cause" or not. The Commission has no bias in favor of either charging parties or respondents. If reasonable cause is found, the objective of the Commission is to obtain the

remedy which will best eliminate the unlawful practice and prevent its recurrence. The judgment as to what will eliminate an unlawful practice for purposes of reaching an agreement prior to a hearing before the City Hearing Examiner is made initially by the ~~Executive~~ Director, subject to the ultimate approval of the Commissioners. The judgment as to what will eliminate an unlawful practice and best effectuate the purposes of Chapter 1.29 subsequent to the presentation of a case at public hearing is made by the City Hearing Examiner.

**10.02 Independence From Charging Party.** If the Commission were obliged to dispose of every contention between a charging party and a respondent, the Commission's resources would be diverted from the Commission's objective of eliminating unjust discriminatory practices. Thus, Chapter 1.29 preserves both the civil and criminal remedies of a person who has filed a complaint under Chapter 1.29.

## **SECTION 11 - Amendment of Complaint Prior to Public Hearing**

**11.01 Scope of Section.** This section governs amendment of complaints prior to the time of public hearing. Amendment of a complaint for the purpose of public hearing is governed by Chapter 1.08 of the Washington Administrative Code (Uniform Procedural Rules).

**11.02 General Rule.** A complaint may be fairly and reasonably amended as a matter of right at any time. Such amendment may be accomplished by rewriting and superseding the entire text of the complaint or by filing a supplemental paper containing only the amendment. A complaint may be amended by the charging party, the Commissioners, the ~~Executive~~ Director, or by any member of the ~~Commission's~~ Office of Equity and Human Right's staff who is authorized by the ~~Executive~~ Director to amend complaints.

**11.03 Amendment Not Necessary for Finding.** An investigation pursuant to the terms of Chapter 1.29 will cover the respondent's treatment of all persons who may have been affected by the unlawful practice alleged in a complaint, and a reasonable cause finding will apply to all persons affected by such practice. This shall apply even though the charging party is not a person so affected. No amendment of the complaint is necessary for such a finding. If an unlawful practice not alleged in the complaint is discovered during the course of a Commission investigation, a finding may be made to that effect and the case may proceed on that basis

without the necessity of amending the complaint, provided that the respondent has been given notice of and an opportunity to reply to such issue.

**11.04 Identification of Respondents.** Amendment of a complaint is not necessary to correct the identification of respondents in the findings of fact, provided that the newly designated respondents have, are given, or reasonably should have had knowledge of the complaint. The findings of fact may correct the names or identification of respondents by substituting correct names, by adding names of persons as respondents, or by deleting names of persons as respondents.

## **SECTION 12 - Withdrawal of Complaint**

**12.01 Form of Withdrawal.** A request for withdrawal of a complaint must be in writing and signed by the charging party. This request must also set forth the reason(s) why such withdrawal is requested. Forms for requesting withdrawal may be obtained at the office of the Commission.

## **SECTION 13 - Investigation of Complaints**

**13.01 Assignment for Investigation.** All complaints shall be investigated by the staff person or persons assigned by the ~~Executive~~ Director to perform such investigation. The ~~Executive~~ Director shall have full power to assign and reassign cases for investigation by particular staff persons.

**13.02 Notice to Charging Party.** In all cases in which housing discrimination is alleged, the charging party shall be served notice acknowledging the filing of the complaint and informing the charging party of the time limits and choice of forums provided under the law.

**13.03 Notice to Respondent.** Within a reasonable time after a complaint is filed (ten (10) days in cases alleging housing discrimination), the staff shall furnish a copy of such complaint to the respondent and shall afford the respondent an opportunity to reply in writing.

**13.04 Housing Investigation Time Limits.** The investigation of complaints alleging housing discrimination shall begin before the end of the 3rd day after receipt of the complaint. The investigation of said complaints shall be completed within 100 days after the receipt of the complaint. If it is determined that it is impractical to complete the investigation within 100 days, the charging party and respondent shall be notified in writing of the reasons for not doing so. Final disposition of the



complaint shall be made within one year of the date of receipt of the complaint; if it is impractical to do so, the charging party and respondent will be notified in writing of the reasons for not doing so.

**13.05 Preliminary Evaluation.** If the allegations contained in the complaint show no basis for Commission action, even if true, the staff may, without further investigation, enter a finding of no reasonable cause, of no jurisdiction, or any other appropriate finding.

**13.06 Scope of Investigation.** The investigation of a complaint will ordinarily be directed at ascertaining all facts relevant to the alleged unlawful practice set forth therein. However, if, in the course of an investigation, evidence of an unrelated discriminatory practice is produced, such evidence shall be reported to the investigator's supervisor for evaluation as to whether the Commission should initiate an amendment or a separate complaint covering such practice, or, if sufficient facts have already been produced, the investigator may prepare findings on the newly discovered discriminatory practice after notifying the respondent of the existence of such practice and allowing the respondent the opportunity to respond in writing. The investigation of a complaint may also include ascertaining whether or not a discriminatory act is part of a pattern or practice of discrimination.

## **SECTION 14 - Prompt Judicial Action**

**14.01 General Rule.** If at any time following the filing of a housing discrimination complaint, the Department concludes that prompt judicial action is necessary to carry out the purposes of this section, the Department may authorize the City Attorney to commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. The commencement of a civil action by the City Attorney, under this section, will not affect the initiation or continuation of proceedings under this part or administrative proceedings.

## **SECTION 15 - Protective Orders to Seal Produced Documents**

**15.01 Who May Request.** Any person who is asked or subpoenaed to produce records or documents may request a protective order to have a particular record or document or particular part thereof kept confidential for official use only without public access.

**15.02 Form of Request.** Requests for protective orders shall be in writing and addressed to the

~~Executive~~ Director, who shall determine whether or not such order is to be granted. Requests shall also set forth the requester's reason why a protective order should be issued for the document(s) in question.

**15.03 Grounds for Issuance.** A protective order may be granted only upon a finding that the document(s) in question or part(s) thereof are exempt from public disclosure pursuant to the terms of Section 3, "Public Access to Records," of these Rules and Regulations, AND if the requester has demonstrated a legitimate need for the confidentiality requested.

**15.04 Form of Order.** A protective order shall be in writing and shall bear the caption of the case, date of entry of the order, and the signature of the ~~Executive~~ Director. The text of the order shall contain a description in general terms of each document covered by the order, a statement of specific exemption from the disclosure provisions contained in Section 3 of these Rules and Regulations, and a brief explanation of how the exemption applies to that which is being withheld.

**15.05 Filing of Order.** A protective order shall be affixed to a sealed envelope containing the protected materials, which may be kept in the case file or at another place at the discretion of the investigator assigned to the case, provided that a copy of the protective order and a note as to the location of the protected materials is placed in the case file.

**15.06 Use of Protected Documents.** Nothing shall prevent the use of a protected document in an administrative hearing or court case, including admission of the document into the public record of such hearing or case. Nothing herein is intended to prevent a court from ordering production of a protected document.

## **SECTION 16 - Findings**

**16.01 Form of Finding.** The findings document shall contain findings of fact and a conclusion as to whether or not there is reasonable cause to believe that an unlawful practice has been or is being committed.

**16.02 Form of Finding in Housing Discrimination Cases.** The findings document in cases alleging housing discrimination shall contain the following:

- (a) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses that request anonymity. The Department, however, may be

required to disclose the names of such witnesses in the course of an administrative hearing or a civil action;

- (b) A summary and the dates of correspondence and other contacts with the charging party and the respondent.
- (c) A summary description of other pertinent records;
- (d) A summary of witness statements;
- (e) Answers to interrogatories;
- (f) A final investigative report may be amended at any time, if additional evidence is discovered;
- (g) Notwithstanding the prohibitions and requirements with respect to disclosure of information, the Department will make information derived from an investigation, including the final investigative report, available to the charging party and the respondent. Following the completion of investigation, the Department shall notify the charging party and the respondent that the final investigation report is complete and will be provided upon request.

**16.03 Jurisdictional Dispositions.** When the facts found show that the case is not within the jurisdiction of the Commission, the conclusion shall be "no jurisdiction" rather than "reasonable cause" or "no reasonable cause."

**16.04 Jurisdiction Declined.** In extraordinary circumstances where the Commission technically has jurisdiction but is unable to properly exercise such jurisdiction because of overriding reasons of law or policy, the ultimate conclusion may be "jurisdiction declined." An example of such an extraordinary circumstance would be a complaint against the Commission itself.

**16.05 Action by Commissioners.** Findings of no reasonable cause shall be reported to the Commissioners at a regularly scheduled business meeting, and such findings shall thereafter stand as the action of the Commission unless the Commissioners vote to set aside a particular finding subsequent to a petition for reconsideration. Findings of reasonable cause shall not be reported to the Commissioners, but, upon approval by the [Executive](#) Director, shall be used by the staff for the purpose of endeavoring to eliminate the unlawful practice in question by conference, conciliation, and persuasion. Proposed finding of "no jurisdiction" or "jurisdiction declined" shall be reported to the Commissioners and shall become Commission action when approved by a vote of the

Commissioners.

**16.06 Effect of Finding.** A finding of "reasonable cause" is the basis for staff efforts to eliminate such unlawful discriminatory acts by conference, conciliation, and persuasion. A finding of "no reasonable cause" is not an adjudication of whether or not an unlawful discriminatory act has been or is being committed, but is only a determination that evidence sufficient to support a finding of reasonable cause has not been produced during the investigation of a charge.

## **SECTION 17 - Termination of Case Without Findings**

**17.01 Withdrawal.** No finding or further processing of a complaint are necessary when the charging party has requested withdrawal of such complaint and such request has been [approved by reported to](#) the Commission.

**17.02 Settlement.** Whenever the charging party and the respondent have entered into an agreement dispositive of the issues between them, the terms of such agreement shall be reported to the Commission and the Commission shall accept or reject said agreement. If accepted, no finding or further processing of the complaint will be necessary. If rejected, further processing will be necessary.

**17.03 Administrative Closure.** A case may be administratively closed by the [Executive](#) Director whenever a complaint has been resolved informally, has been adjudicated in another forum, has become moot, cannot be investigated because the charging party or the respondent cannot be found, or when other circumstances justify administrative closure. Administrative closure is an official termination of procession of a complaint prior to completion of the entire procedure set forth in these Rules and Regulations. A case that has been administratively closed may be administratively reopened by the Commission pursuant to Section 18.06 below.

## **SECTION 18 - Reconsideration of No Reasonable Cause Finding**

**18.01 Petition for Reconsideration.** A charging party whose case has resulted in a finding of no reasonable cause may have such finding reconsidered by the Commission if the charging party presents to the Commission a petition for reconsideration in writing, setting forth new evidence not previously considered by the [Commission's Office of Equity and Human Right's](#) staff in the course of its investigation. Such petition

shall be filed not later than fifteen (15) days after receipt by the charging party that the Commission has accepted a determination of no reasonable cause in the case in question.

**18.02 Hearing on Petition.** Reconsideration of findings of no reasonable cause is not an adversary proceeding. The only issues before the commission are whether the staff's investigation was adequate and whether the finding of no reasonable cause follows from the facts. The Commission will not itself make a finding of no reasonable cause. The Commission may either continue to accept the original finding of no reasonable cause or may refer the complaint back to the staff for further investigation.

**18.03 Appearance Before the Commission.** It is strongly suggested that the parties to the case in question and/or their representatives be present when the Commission considers a petition filed pursuant to the terms of this section in order to respond to any questions which the members of the Commission may have regarding such petition. However, if the charging party or his/her representative is not present when the Commission considers the petition, or if the members of the Commission have no questions concerning the petition, the petition may be ruled upon on the basis of the written materials then in the possession of the Commission.

**18.04 Scheduling of Hearing and Notice to Respondent.** Petitions for reconsideration which are timely filed pursuant to the terms of this section shall be scheduled for hearing at the next regularly scheduled Commission meeting. Notice of such hearing shall be given to the concerned parties in writing ten (10) days prior to the date of hearing unless such notice is waived. A copy of the charging party's petition for reconsideration shall be provided to the respondent together with the notice of hearing as described above.

**18.05 Limitation on Reconsiderations.** No more than one petition for reconsideration may be filed by the charging party concerning any given finding.

**18.06 Other Reconsiderations.** Nothing in this section shall prevent the Commission from reconsidering its disposition of a complaint without findings of fact or on jurisdictional grounds, either on petition or on its own motion, when it would serve the ends of justice to do so. The procedure set forth in this section may be used to request reconsideration of the disposition of a complaint without findings of fact or on jurisdictional grounds.

## SECTION 19 - Conciliation

**19.01 General Provisions.** Whenever the ~~Commission's Executive~~ Director approves a staff finding of reasonable cause, such staff person shall be directed to attempt to eliminate the discriminatory practice in question through conference, conciliation, and persuasion. Elimination of a discriminatory practice includes elimination of the effects of the practice, as well as assurance of the discontinuance of such practice. Each conciliation agreement shall be made public unless the charging party and respondent otherwise agree and the Department determines that disclosure is not required to further the purposes of Chapter 1.29 of the City of Tacoma Law Against Discrimination, as amended.

**19.02 Conciliation Negotiations.** The staff shall make all reasonable efforts to eliminate the discriminatory practice through agreement with the respondent.

**19.03 Conciliation Agreement.** An agreement reached between the Commission's staff and a respondent which provides appropriate relief for the charging party shall be reduced to writing, signed by the respondent and the ~~Commission's Executive~~ Director, and presented to the Commission for approval. The charging party may also be signatory to such conciliation. A conciliation agreement is not binding on the Commission until the Commissioners vote to accept its terms. Upon acceptance of the terms of a conciliation agreement by the Commission, the case in question shall be considered closed, and no further processing of such case shall be necessary. If the terms of a conciliation agreement are not accepted by the Commission, the case in question shall be referred back to the staff for further efforts at conciliation.

**NOTE:** Complaints alleging discrimination in housing require that both ~~parties~~, charging party and respondent, be signatories to a conciliation agreement, approved by the Human Rights Commission.

**19.04 Reconsideration.** A petition for reconsideration of the terms of a conciliation agreement shall be in writing and shall state the reasons why the charging party is dissatisfied with the agreement. Such petition shall be processed in the same manner as a petition for reconsideration of a finding of no reasonable cause, using the procedure set forth in Section 18 of these Rules and Regulations. If reconsideration is granted by the Commission, the agreement in question shall be set aside and the case shall be referred back to the staff,



together with a list of the specific terms which the Commission wishes to be included in the conciliation agreement, for new endeavors to eliminate the unlawful discriminatory practice by conference, conciliation, and persuasion.

**19.05 Monitoring of a Conciliation Agreement.**

The Department may, from time to time, review compliance with the terms of any conciliation agreement. Whenever the Department has reasonable cause to believe that a charging party or respondent has breached a conciliation agreement, the Department will take appropriate action.

**19.06 Breach of a Conciliation Agreement.** If a conciliation agreement for the elimination of an unlawful discriminatory practice is breached, the Executive Director may take appropriate action to assure that the purposes of Chapter 1.29 are best effectuated. Such action may include, but is not limited to, the following:

- (a) **Specific Performance.** An action may be filed in court seeking specific performance of the terms of the conciliation agreement.
- (b) **Setting Aside.** An agreement may be set aside in whole or in part and the case be assigned to staff for renewed conference, conciliation, and persuasion.
- (c) **Public Hearing.** An accusation, as defined in Section 19 of these Rules and Regulations, may be presented to the Commission requesting that the case be scheduled for public hearing before the City Hearing Examiner.

*NOTE:* Nothing in this subsection shall preclude the charging party in such case from pursuing his or her remedies for breach of the involved conciliation through the courts. However, should the charging party elect to proceed through the courts, the Executive Director may discontinue further action on the charging party's case in order to avoid duplicative processing.

**SECTION 20 - Conciliation Failure**

**20.01 Conciliation Failure-General.** Whenever staff has been unable to eliminate an unlawful discriminatory practice through conference, conciliation, and persuasion, such failure shall be reported to the Commission together with the finding of reasonable cause in the case. The Executive Director shall also prepare an accusation in the form described below and shall transmit such accusation to the City Hearing Examiner, together with a request that a time and place be established for a public hearing.

**NOTE:** Based on the discovery of new and relevant evidence, the Executive Director may, at any time following conciliation failure, reopen the case to investigate new and relevant evidence. Based on results of investigation, the original determination may be revised.

**20.02 Form of Accusation.** An accusation shall be in writing and signed by the Executive Director and/or the Chairperson of the Commission, and shall contain the following:

- (a) A caption for identifying the parties to the case as set forth in the original complaint, with such additions or deletions of respondent parties as is necessary to conform the caption to the body of the accusation;
- (b) A statement that the Commission's staff has investigated the allegations in the original complaint and has entered a finding of fact that there is reasonable cause to believe that the respondent has committed or is committing one or more unlawful practices;
- (c) A statement that the staff has endeavored to eliminate such practice by conference, conciliation, and persuasion and that a finding has been made that no agreement can be reached;
- (d) A statement identifying the unlawful discriminatory practice which the staff has found reasonable cause to believe has been or is being committed;
- (e) A statement of the facts upon which the staff has based its determination; and
- (f) A statement for release to the involved parties setting out the terms of the order which the Executive Director believes would be appropriate for the Hearing Examiner to enter if the matters alleged in accusation are proven to be true.

**20.03 Conciliation Failure Officer of the City.**

Upon acceptance by the Commission of a finding of reasonable cause to believe that an agency, board or officer of the City of Tacoma has been or is engaged in an unlawful discriminatory practice and that a conciliation agreement eliminating such practice cannot be reached through conference, conciliation, and persuasion, the Commission shall transmit its findings to the City Manager or the Director of Public Utilities, as appropriate, who shall take such action as is necessary in order to comply with the purposes of Chapter 1.29 of the City Code. Such actions shall be taken by the City

Manager or the Director of Public Utilities within thirty days of receipt of the findings of the Commission.

## **SECTION 21 - Public Hearing**

**21.01 City Hearing Examiner.** Upon receipt of a signed accusation and request for public hearing as described in Section 19, above, the City Hearing Examiner shall schedule and conduct a public hearing on the issues presented in the accusation and render findings of fact, conclusions of law, and orders, as appropriate, subsequent to such hearing.

**21.02 Procedure Before the Hearing Examiner.** Procedures governing the conduct of cases before the Hearing Examiner are set forth in Chapter 34.04 of the Revised Code of Washington (Administrative Procedure Act) and at Chapter 1.08 of the Washington Administrative Code (Uniform Procedural Rules). Questions concerning practice before the Hearing Examiner should be directed to the office of the City Hearing Examiner, Tacoma Municipal Building, 747 Market Street, Room 720, Tacoma, Washington 98402-3768.

## **SECTION 22 - Orders by the Hearing Examiner**

**22.01 Nature and Purpose of Order.** A Hearing Examiner's order is one means of carrying out the public purpose of the law against discrimination, and the Hearing Examiner shall be guided by this public purpose in framing such orders. The Hearing Examiner is not required to observe conventional common law or equity principles in fashioning an order. The guiding principle for the Hearing Examiner is whether a particular remedy will effectuate the purposes of Chapter 1.29 of the City Code. The Hearing Examiner's task is not the determination of private rights. An order requiring a respondent to pay money to a person as back pay, or to compensate for some other loss, is not a private award of damages, but is a public reparation order. Only the Commission may enforce the order, and the beneficiary has no property right in the relief mandated until it is actually received from the Respondent.

**22.02 Objective of Orders.** An order should generally both eliminate the effects of an unlawful discriminatory practice and prevent the recurrence of such practice. The effects of an unlawful discriminatory practice are usually best eliminated by restoring the victims of such practice as nearly as possible to the position which they would have held had the unlawful act or omission not occurred.

However, the objective of the law is to eliminate and prevent discrimination, not merely to provide remedies for victims of discrimination. Thus, it is also appropriate to eliminate the effects of the unlawful discriminatory practice on persons other than the charging party and to consider the deterrent effect of an order on persons other than the respondent.

**22.03 Cease and Desist Orders.** In every case where the Hearing Examiner finds that a respondent has engaged or is engaging in an unlawful discriminatory practice, the Hearing Examiner shall order the respondent to cease and desist from such practice.

**22.04 Specific Housing Orders.** The following are examples of orders which the Hearing Examiner may deem appropriate in order to best effectuate Chapter 1.29 of the City Code in relation to discriminatory housing practices. These examples are neither exhaustive nor exclusive:

- (a) An order to provide monetary relief in the form of damages, including damages caused by humiliation or embarrassment, and attorney fees;
- (b) An order to provide other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief;
- (c) An order to provide injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons;
- (d) Any order mandating the elimination of discriminatory housing practices;
- (e) Any order which will effectuate the prevention of future discriminatory housing practices;
- (f) An order to provide remedial affirmative activities to overcome discriminatory housing practices;
- (g) An order mandating reporting requirements;
- (h) An order requiring monitoring and enforcement activities;
- (i) An order providing injunctive or such other equitable relief as may be appropriate. No such order may affect any contract, sale, encumbrance or lease consummated before the issuance of the initial decision that involved a bona fide purchaser, encumbrancer

or tenant without actual knowledge of the charge;

- (j) To vindicate the public interest, the Hearing Examiner may assess a civil penalty against the respondent. The amount of the civil penalty may not exceed:
  - (1) \$10,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice in any administrative hearing or civil action permitted under Chapter 1.29 of the City of Tacoma Law Against Discrimination, as amended.
  - (2) \$25,000, if the respondent has been adjudged to have committed one other discriminatory housing practice in any administrative hearing or civil action permitted under Chapter 1.29 of the City of Tacoma Law Against Discrimination, as amended.
  - (3) \$50,000, if the respondent has been adjudged to have committed two or more prior discriminatory housing practices in any administrative hearing or civil action permitted under Chapter 1.29 of the City of Tacoma Law Against Discrimination, as amended.

**22.05 Other Orders.** The following are examples of other orders which the Hearing Examiner may deem appropriate in order to best effectuate Chapter 1.29 of the City Code. These examples are neither exhaustive nor exclusive:

- (a) An order to hire a person who has been unlawfully denied employment;
- (b) An order to reinstate a person who has been unlawfully terminated, downgraded, or reclassified;
- (c) An order to upgrade a person who has been unlawfully denied promotion;
- (d) An order to pay back wages to a person who would have earned such wages were it not for the unlawful practice of the respondent;
- (e) An order to pay an amount equal to the salary differential between the position the person had and the position which he or she would have had were it not for the unlawful practice of respondent;
- (f) An order restoring employment benefits, such as insurance coverage, pension benefits, sick leave, vacation time, seniority, etc., which were lost because of the unlawful practice of

the respondent;

- (g) An order to admit a person who has been unlawfully excluded from membership in a union;
- (h) An order to restructure a seniority system which unlawfully disadvantages a protected class of persons;
- (i) An order to rent or sell real property to a person who has been unlawfully denied such property;
- (j) An order to grant credit to a person who has been unlawfully denied credit;
- (k) An order to issue or renew insurance to persons who have been unlawfully denied insurance;
- (l) An order to pay a sum of money to compensate persons for humiliation and mental suffering caused by an unlawful practice;
- (m) An order not to retaliate against a charging party, witness, or any other person for having filed a complaint, testified, or assisted in a case;
- (n) An order to institute affirmative programs, practices, or procedures which will eliminate an unlawful practice or its effects and will prevent the recurrence of such practice.

**22.06 Appealability.** Orders rendered by the Hearing Examiner are final actions for the purpose of judicial review.

## **SECTION 23 - Enforcement of Orders**

**23.01 Municipal Offense.** Whenever a respondent has failed to comply with the terms of a Hearing Examiner's order and has also failed to seek judicial review of that order within thirty (30) days after receiving notice of the final entry of such order, the Commission may, through its counsel, bring an action against the respondent in Municipal Court charging a violation of Chapter 1.29 of the City Code and seeking imposition by the court of a \$100.00 per day fine for each day on which the respondent has failed to comply with or seek judicial review of the order in question beyond the allowed thirty (30) day period of performance.

**23.02 Superior Court Action.** Whenever a respondent has failed to comply with the terms of a Hearing Examiner's order and has also failed to seek judicial review of that order within thirty (30) days after receiving notice of the final entry of such order, the commission may, through its counsel, bring an

action against the respondent in Washington State Superior Court seeking enforcement of the Hearing Examiner's order.

**23.03 Enforcement Actions Not Mutually Exclusive.**

A decision by the Commission to pursue one of the enforcement actions described above shall not foreclose the possibility of the Commission's instituting other action to secure enforcement of the Hearing Examiner's order. The Commission may also concurrently pursue both enforcement actions set forth above.



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