

ARTICLE 2.1. Human Rights Ordinance.

Section 11.1-2-1. Authorization; short title.

- (a) Under the authority of Virginia Code §§ 15.2-853 and 15.2-965, the Board of Supervisors enacts this Article prohibiting discrimination in employment, public accommodations, credit, and education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, military status, age, marital status, sexual orientation, gender identity, or disability.¹
- (b) This Article shall be known and cited as the Fairfax County Human Rights Ordinance.
(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-2. Definitions.

The following definitions shall apply to this Article:

- (a) *Complainant* shall mean a person who claims to have been injured by an unlawful discriminatory practice.
- (b) *Complaint* shall mean a written statement by a person, a member of the Commission, or the Commission alleging an act of discrimination prohibited by this Article.
- (c) *Conciliation* shall mean the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the Director.
- (d) *Party* shall mean a complainant or respondent.
- (e) *Person* shall mean one or more individuals, labor unions, partnerships, corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts or unincorporated organizations.
- (f) *Respondent* shall mean a person against whom a complaint of violation of this Article is filed.
(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-3. Declaration of policy.

It is the policy of the County to:

- Safeguard all individuals within the County from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, or disability in places of public accommodation, including educational institutions, and with respect to credit;

¹As explained in Article 1 of this Chapter, Virginia Code § 15.2-853 also authorizes the Board of Supervisors to prohibit discrimination in housing and real estate transactions. Under the authority of Virginia Code § 36-96.21, the Board has enacted a separate Fair Housing Act to prohibit such discrimination, which appears as Article 3.

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- Safeguard all individuals within the County from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, or disability;
 - Preserve the public safety, health, and general welfare;
 - Further the interests, rights, and privileges of individuals within the County; and
 - Protect citizens of the County against unfounded charges of unlawful discrimination.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-4. Construction.

- (a) The provisions of this Article shall be construed liberally for the accomplishment of its policies.
- (b) Nothing in this Article shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, military status, or disability.
- (c) Nothing in this Article shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.
- (d) Nothing in this Article shall be construed to affect any government program, law or activity differentiating between persons on the basis of age over the age of 18 years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the County for the general health, safety and welfare of the population at large.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-5. Unlawful discrimination.

- (a) With the exception of matters relating to housing and residential real estate, conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, including lactation, age, disability, military status, or national origin shall be an "unlawful discriminatory practice" for purposes of this Article.
- (b) It shall be a violation of this Article for any person to engage in an unlawful discriminatory practice.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-6. Commission jurisdiction.

- (a) The Commission shall exercise jurisdiction to enforce this Article within the geographical boundaries of the County, including the Towns of Clifton, Herndon and Vienna, except for complaints of unlawful discrimination made against governmental entities, and the officers, employees and agents of such entities.
- (b) If the Commission determines that a complaint is not within the Commission's jurisdiction, but possibly within the jurisdiction of one of the agencies with which the Commission has an interagency agreement, the complaint shall be sent to the appropriate agency within 15 working days of the determination. The

complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the Commission shall close the case file. In the event the complaint is not under the jurisdiction of the agency to which it was referred, or if additional evidence is submitted, the case file will be reopened. The Commission delegates to the Director authority to make the determination and provide the notice required under this Subsection.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-7 Commission powers and duties.

Under this Article, the Commission shall promote policies to ensure that all persons in the County be afforded equal opportunity, serve as an agency for receiving, investigating, holding hearings, processing, and assisting in the voluntary resolution of complaints regarding unlawful discriminatory practices occurring within the County, and with the approval of the County Attorney, to seek, through appropriate enforcement authorities, prevention of or relief from a violation of any County ordinance prohibiting discrimination.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-8. Service.

Service by the Commission with respect to matters covered by this Article shall be either in person or by mail to the last-known address of the recipient appearing in OHREP's records. The complainant, respondent, counsel of record and any authorized representative shall be responsible for providing the Commission with prompt notice of any change in address.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-9. Filing of complaint.

- (a) Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in writing under oath or affirmation with the Commission. The Commission or a member of the Commission may in a like manner file such a complaint.
- (b) In the event that a complaint is filed on behalf of a person claiming to be aggrieved, the Director shall verify the complaint with the person on whose behalf the complaint is made.
- (c) Where a person is entitled to file a complaint with the Commission, OHREP shall render assistance in the filing of a complaint.
- (d) A complaint may be filed in person at or by mail to OHREP's office located at the Fairfax County Government Center, 12000 Government Center Parkway, Suite 318, Fairfax, Virginia 22035 during normal County business hours, by fax to 703-324-3570, or by email to EPDEmailComplaints@fairfaxcounty.gov. Telephone calls may be made to 703-324-2953, TTY 711, in order to receive information on how and where to file a complaint. Complaints shall not be accepted over the telephone.
- (e) All complaints shall be dated and time-stamped upon receipt.
- (f) The Commission may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential, or when required to do so by law.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-10. Form and contents of complaint.

- (a) A complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged unlawful discriminatory practice. To ensure compliance with this requirement, it should contain the following information:
 - (1) The full name, address and telephone number of the person making the complaint;
 - (2) The full name, addresses and telephone number of the respondent; and
 - (3) A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practice.
- (b) Notwithstanding the provisions of Subsection (a) of this Section, a complaint shall be considered filed when OHREP receives a written statement that identifies the parties and describes generally the actions or practices complained of.
- (c) A complaint may be reasonably and fairly amended by the filing party at any time prior to a hearing. Except for purposes of notifying the respondent as specified in Subsection (d) of this Section, amended complaints shall be considered as having been made as of the original filing date.
- (d) When an amendment is filed, OHREP shall forward a copy of the amendment to the respondent within five working days of the amendment. The respondent shall within ten working days after receiving the amendment file an answer to the amendment.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-11. Dismissal of complaint.

- (a) The Commission shall dismiss a complaint for lack of jurisdiction.
- (b) The Commission shall dismiss a complaint when the complainant fails to cure defects in its allegations or make required amendments within the time prescribed by OHREP.
- (c) When the Commission determines that the complaint (1) is not timely or (2) fails to state a claim under this Article, it shall dismiss the complaint.
- (d) Written notice of any dismissal pursuant to this Section shall be issued to the complainant and the respondent.
- (e) The Commission delegates authority to the Director to dismiss complaints under this Section.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-12. Withdrawal of complaint.

- (a) A complaint may only be withdrawn by the complainant and only with the consent of the Commission. The Commission hereby delegates authority to the Director to consent to a request to withdraw a complaint, where withdrawal of the complaint will not defeat the purposes of the statute or regulation alleged to have been violated.
- (b) The Commission may withdraw any complaint filed by a member of the Commission whose term of office has expired or otherwise ended when it determines that the purposes of this Article are no longer served by processing the complaint.

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- (c) A complaint filed under this Article may not be withdrawn after a determination of reasonable cause has been made.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-13. Service and notice of complaint.

- (a) Upon perfection of a complaint, the Commission shall timely serve the complaint on the respondent and provide all parties with written notice informing them of the complainant's rights, including the right to commence a civil action, and the dates within which the complainant may exercise such rights. The notice also shall notify the complainant that the complaint shall be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the appropriate general district or circuit court. Finally, the notice also shall advise the parties of the need for them to preserve all documents relevant to the complaint until final disposition of the complaint.
- (b) The Commission delegates to the Director authority to serve the complaint and notice provided under this Section.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-14. Mediation.

- (a) The complainant and respondent may agree voluntarily to submit the complaint to mediation without waiving any rights that are otherwise available to each party pursuant to this Article and without incurring any obligation to accept the result of the mediation process.
- (b) Nothing occurring in mediation shall be disclosed by the Commission or OHREP. Nor shall it be admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-15. Investigation.

- (a) Unless the complaint on its face is subject to dismissal under Section 11-1-2-11, the Commission shall conduct an investigation sufficient to determine whether there is reasonable cause to believe the unlawful discriminatory practice alleged in the complaint has occurred or is occurring.
- (b) The Commission delegates the authority to investigate the complaint to OHREP. As part of each investigation, OHREP:
- (1) Shall accept a statement of position or evidence submitted by the complainant, the person making the complaint on behalf of the complainant, or the respondent;
 - (2) May require the complainant to provide a statement which includes: (i) a statement of each specific harm that the complainant has suffered and the date on which each harm occurred; (ii) for each harm, a statement specifying the act, policy or practice which is alleged to be unlawful; and (iii) for each act, policy, or practice alleged to have harmed the complainant, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory; and
 - (3) May submit a request for information to the respondent that, in addition to specific questions, may request a response to the allegations contained in the complaint.

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- (c) OHREP's authority to investigate a complaint is not limited to the procedures outlined in Subsection (b) of this Section.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-16. Subpoena power.

- (a) The Commission has no power itself to issue subpoenas under this Article.
- (b) Whenever OHREP has a reasonable cause to believe that any person has engaged in, or is engaging in, any violation of this Article, and, after making a good faith effort to obtain the data, information, and attendance of witnesses necessary to determine whether such violation has occurred, is unable to obtain such data, information, or attendance, it may request the County Attorney to petition the General District Court for Fairfax County for a subpoena against any such person refusing to produce such data and information or refusing to appear as a witness, and such court may, upon good cause shown, cause the subpoena to be issued.
- (c) Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued by the Commission or OHREP.
- (d) Any witness subpoena issued under this Section shall include a statement that any statements made will be under oath and that the respondent or other witness is entitled to be represented by an attorney.
- (e) Any person failing to comply with a subpoena issued under this Section shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued a subpoena to quash it.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-17. Investigative report.

- (a) Upon completion of the investigation, the Commission shall issue a written investigative report determining whether or not there is reasonable cause to believe a violation of this Article has occurred, and the facts supporting such determination. The report shall be a confidential document subject to review by the Director, authorized OHREP staff members, and the parties.
- (b) The Commission delegates authority to the Director to prepare and issue written investigative reports.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-18. No cause determination.

- (a) If the investigative report concludes that there is no reasonable cause to believe the alleged unlawful discrimination has been committed, the complaint shall be dismissed.
- (b) The Commission delegates authority to the Director to issue no cause letters of determination and dismiss complaints pursuant to this Section.
- (c) If the complainant disagrees with the no cause determination, the complainant may seek reconsideration by the Director or file an appeal with the Commission within ten working days of receipt of the determination.
- (d) Reconsideration shall only be granted when the complainant presents newly discovered evidence. After considering any such evidence, the Director shall (1) reaffirm the determination of no cause and dismiss the complaint, or (2) make a determination of reasonable cause.

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- (e) The Director shall provide a written notice to the complainant of the decision made on the request for reconsideration. In the event the Director reaffirms the no cause determination, this notice shall advise the complainant that the determination shall become final, unless within ten business days of the letter's receipt, the complainant files an appeal with the Commission.
 - (1) The Commission shall only overturn the Director's no cause determination if it decides that (i) a factual finding underlying the determination is clearly erroneous, or (ii) the determination rests upon an incorrect legal conclusion.
 - (2) If the Commission affirms the Director's determination, it shall dismiss the complaint. When the Commission overturns the determination, it shall either: (i) vacate the determination and direct the Director to continue the investigation; or (ii) reverse and determine that there is reasonable cause to believe that a violation of this Article has occurred or is occurring.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-19. Reasonable cause determination.

- (a) If the investigative report concludes that there is reasonable cause to believe the alleged unlawful discriminatory practice has been committed, the complainant and respondent shall be notified of such determination.
- (b) A determination finding reasonable cause shall be based on, and limited to, evidence obtained by during the investigation and does not reflect any judgment of the merits of the allegations not addressed in the determination.
- (c) The Commission delegates to the Director, upon completion of the investigation, to make a reasonable cause determination, issue a cause letter of determination and serve a copy of the letter upon the parties.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-20. Conciliation.

- (a) When a reasonable cause determination has been made, the Commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as conference, conciliation, negotiation, and persuasion.
- (b) The Commission delegates to the Director the authority to enter into informal conciliation efforts, and to negotiate conciliation agreements.
- (c) If the conciliation is successful, and agreed to by the vote of the Commission, the complaint shall be considered resolved, and the case file shall be closed. The terms of any settlement agreement resulting from the conciliation shall be reduced to writing and signed by the complainant, respondent, and the Commission. A copy of the agreement signed by parties and the Chair of the Commission or the Chair's designee shall be sent to the complainant and the respondent.
- (d) When the Commission agrees in any negotiated settlement not to process the complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. Such agreement shall not affect the processing of any other complaint, including, but not limited to, a complaint with allegations which are like or related to the individual allegations settled.
- (e) When the Director determines that further endeavor to settle a complaint by conference, conciliation, negotiation, and persuasion is unworkable and should be bypassed, the Director shall so notify the complainant and the respondent in writing. Within 10 working days of receipt of this notice, the complainant

may request referral of the complaint to the Commission for determination of whether to hold a public hearing. If the complainant makes no such request, the Commission shall close the case file.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-21. Determination whether to hold a public hearing.

The Commission shall determine whether to hold a public hearing on a complaint based upon the totality of circumstances, including how best to further the policies and purposes underlying this Article. If the Commission determines not to hold a public hearing, it shall close the case file.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-22. Confidentiality.

- (a) No member of the Commission or member of OHREP shall make public, prior to a public hearing, as provided herein, investigative notes and other correspondence and information furnished to the Commission or OHREP in confidence with respect to an investigation, mediation, or conciliation process involving an alleged unlawful discriminatory practice under this Article; however, nothing in this Section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.
- (b) This Section does not apply to such disclosures to representatives of federal, state or local agencies as may be appropriate or necessary to carrying out the Commission's functions under this Article; provided, that the Commission may refuse to make disclosures to any such agency which does not maintain confidentiality of such endeavors in accordance with this Section or in any circumstances where the disclosures will not serve the purposes of effective enforcement of the law or regulation alleged to have been violated.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-23. Hearing before commission.

- (a) The Commission may hear appeals made following a no cause determination made under this Article; provided, however, that a member of the Commission who has filed the complaint at issue or otherwise has a personal interest in the matter giving rise to the complaint shall be disqualified from hearing the appeal.
- (b) After hearing all of the evidence and arguments, the Commission shall vote to dismiss the complaint due to insufficient evidence of a violation of this Article or to find reasonable cause based upon evidence sufficient to establish a violation of this Article.
- (c) Once the hearing has concluded, all administrative appeals and hearings shall have been exhausted, and the Commission shall close the case file.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-24. Hearing procedures.

- (a) This Section applies to all hearings held before the Commission, including any panel of its members, under this Article.
- (b) The Commission shall notify the parties of the time, date, and location of a hearing no later than 20 working days prior to the date of the hearing. This notice also shall identify the issues to be considered at the hearing

and, when applicable, specify the deadlines by which parties must submit motions, file exhibits, designate witnesses, and raise evidentiary objections. Motions to continue a hearing or extend a deadline shall be in writing with a copy to the opposing party and submitted to the Commission. The Commission may grant any such motion only where good cause is shown.

- (c) All hearings shall be open to the public.
- (d) Both the complainant and the respondent shall appear and be heard in person.
- (e) All testimony shall be given under oath or affirmation.
- (f) The order of presentation of evidence shall be established by the Commission with the burden of proof being placed on the complainant. The burden of proof shall be a preponderance of the evidence.
- (g) The Commission shall rule on all motions, evidentiary issues, and procedural matters. It shall not be bound by statutory rules of evidence or technical rules of procedure
- (h) Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the Commission, be excluded. The rules of privilege shall be given effect.
- (i) Documents and witness testimony not provided during the prior investigation shall not be admitted as evidence at the hearing, except for good cause shown or upon agreement of the parties.
- (j) A party's exhibit and witness list for a hearing must be distributed to the Commission and the other party no later than five working days prior to the hearing. Non-compliance with this rule shall result in the exclusion of the document or witness testimony left off the list, unless the Commission determines that good cause exists to allow it.
- (k) At the start of the hearing, the Commission shall order the exclusion of witnesses so they cannot hear the testimony of other witnesses. This rule does not authorize excluding parties, or a person authorized to be present.
- (l) Commission members may ask questions of the parties and witnesses.
- (m) Before the hearing concludes, the parties shall be given an opportunity to present oral argument of their cases.
- (n) After the parties have completed their presentations, the Commission's members shall cast their votes. After all members have voted, the Chair shall announce the Commission's decision and conclude the hearing.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-25. Remedies.

- (a) If the respondent fails to adhere to any provision contained in any conciliation agreement or adequately to remedy a violation of this Article giving rise to a reasonable cause determination, the Commission, with the approval of the County Attorney, may seek through appropriate enforcement authorities the prevention of or relief from the violation.
- (b) Upon finding a violation of this Article, the Commission may notify the County Purchasing Agent or any County agency providing financial support to the respondent of the violation.
- (c) The Commission has no authority to award damages or grant injunctive relief under this Article.
- (d) Nothing in this Article creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-26. No waiver of other legal rights.

- (a) Any person who is aggrieved by an unlawful discriminatory practice may bring an appropriate action in a court of competent jurisdiction, as provided for by any other applicable law.
- (b) Nothing in this Chapter shall prevent any person from exercising any right or seeking any remedy to which the person might otherwise be entitled; nor shall any person be required to pursue any remedy set forth herein as a condition of seeking relief from any court or other agency, except as is otherwise provided by applicable Virginia or federal law.

(16-20-11.1 ; 22-21-11.1 .)

Section 11.1-2-27. Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

(16-20-11.1 ; 22-21-11.1 .)