Bill No. 2201-08
As amended 7/1/09

NO. 26-09-OR

ORDINANCE

An Ordinance amending and supplementing the Allegheny County Code of Ordinances, Division 2, entitled "County Government Operations," Chapter 215, entitled "Boards, Commissions and Committees," through the creation of a new Article V, entitled "Human Relations Commission," in order to establish a Countywide nondiscrimination requirement in housing, employment, and other contexts, as well as to establish a formalized means of resolving disputes based on allegations of such discrimination.

WHEREAS, Allegheny County has had a longstanding policy against discrimination, and this policy is incorporated into the Administrative Code of Allegheny County insofar as it relates to County employment, contract, and other activities;

WHEREAS, Allegheny County does not, however, currently have a human rights ordinance in effect to govern discriminatory practices outside the structure of the County government; and

WHEREAS, according to the United States Commission on Civil Rights, human relations commissions or their equivalents have already been established by the City of Allentown, the City of Harrisburg, the City and County of Lancaster, the City of Philadelphia, the City of Pittsburgh, the City of Reading and Berks County, and the City of York, in order to provide local administration of local antidiscrimination laws and dispute mediation in cases of alleged discrimination; and

WHEREAS, the Pennsylvania Commonwealth Court and Supreme Court have both explicitly found that local antidiscrimination ordinances are not preempted by the terms of the Pennsylvania Human Relations Act, 43 P.S. §§951-953; and

WHEREAS, the Pennsylvania Commonwealth Court has explicitly found that local antidiscrimination ordinances are permissible exercises of local authority, and are not prohibited under the terms of the Home Rule Charter and Optional Plans Law, 53 P.S. §§2901-3171; and

WHEREAS, it is the judgment of Council that a locally administered mechanism for ensuring nondiscrimination and mediating disputes in cases of alleged discrimination within Allegheny County is both desirable and practicable; and

The Council of the County of Allegheny hereby enacts as follows:

SECTION 1.

The Allegheny County Code of Ordinances, Division 2, entitled "County Government Operations," Chapter 215, entitled "Boards, Commissions and Committees," is hereby amended through the creation of a new Article V, entitled "Human Relations Commission," and comprised of the following sections:

Chapter 215
Boards, Commissions and Committees
Article V
Human Relations Commission

§215-30. Purpose.

In order to assure that all persons regardless of race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and use of public accommodation facilities, it is necessary that appropriate legislation be enacted.

§215-31. Definitions.

The following words, terms and phrases when used in this article shall be defined as follows, unless the context clearly indicates otherwise:

A. **Accessible** means being in compliance with the applicable standards set forth in the following:

1. The Fair Housing Act (Public Law 90-284 as amended, 42 U.S.C. §3601 et seq.);

2. "Americans with Disabilities Act of 1990" (Public Law 101-336, 42 U.S.C. §12101, et seq.);

B. **Age** includes any person forty years of age or older and shall also include any other person so protected by further amendment to the Federal Age Discrimination in Employment Act.

C. **Commercial property** means:

1. Any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation; and

2. Any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, facility, business concern or public accommodation.

D. **Commission** means the Human Relations Commission of the County of Allegheny.

E. **Disability or Handicap** herein referred to as Disability with respect to a person means:

1. Physical or mental impairment which substantially limits one or more of such person's major life activities;

2. Record of such an impairment; or

3. Regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. §802).

4. For employment, disability means a non job-related disability which does not substantially interfere with the ability to perform the essential functions of the employment which a person with a disability applies for, is engaged in or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a disability job related.

F. **Discrimination** means any exclusion, denial, intimidation, coercion, difference or segregation in treatment as defined under the terms of this Article,and shall include but not be limited to such treatment in hiring, referring for hire, promoting, training; in membership in employee or labor organizations, in the advertisement, sale, lease, rental, financing or zoning of housing; or in rendering service in places of public accommodation because of protected class based upon race, color, religion, national origin or ancestry, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability of any individual or independent contractor or because of the

disability of an individual with whom the person is known to have an association.

G. **Employee** does not include:

1. Any individuals who, as a part of their employment, reside in the personal residence of the employer; or

2. Any individual employed by said individual's parents, spouse or child;

3. Those employed by religious, fraternal, charitable or sectarian corporations or associations in the direct provision of services of the organization wherein membership is a bona fide occupational qualification, except such corporations or associations supported, in whole or in part, by County appropriations.

H. **Employer** means any person who employs four (4) or more employees, exclusive of the parents, spouse or children of such person, including the County of Allegheny, its departments, boards, commissions and authorities, any other governmental agency within its jurisdiction, but excluding any religious, fraternal, charitable or sectarian organization.

I. **Employment Agency** includes any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer or place employees.

J. **Fair Housing Act** means Public Law 90-284, 42 U.S.C. §3601 et seq.

K. **Familial status** means one or more individuals who have not attained the age of 18 years being domiciled with:

1. A Parent or other 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.

L. **Gender Identity or expression** means self-perception, or perception by others whether accurate or not, as male or female, including a person's appearance, behavior, or physical characteristics, that may be in accord

with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth.

M. **Housing accommodations** include:

1. Any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and

2. Any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "housing accommodation" shall not include any personal residence offered for rent by the owner thereof.

N. **Housing for older persons** means housing:

1. Provided under any State or Federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the State or Federal program; or,

2. That is intended for, and solely occupied by persons sixty-two (62) years of age or older; or,

3. That is intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit.

In determining whether housing qualifies as housing for older persons under the terms of this Article, the Commission's requirements shall include but not be limited to the following:

1. That at least eighty percent (80%) of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit; and

2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of unoccupied units provided, that such units are reserved for occupancy by persons who meet the age requirements of this Article.

O. **Independent contractor** includes any person who is subject to the provisions governing any of the professions and occupations regulated by state licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act (Public Law 90-284, as amended, 42 U.S.C. §3601, et seq.,).

P. **Labor organization** includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

Q. **Lending institution** means any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money or guaranteeing loans.

R. **Owner** includes lessee, sublessee, assignee, manager, agent, or any other person having the right of ownership or possession or the authority to sell, rent or lease any housing accommodation, including the County and its departments, authorities, boards and commissions.

S. **Pennsylvania Human Relations Act** means Public Law 744, No. 322 as amended.

T. **Person** includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, lending institution and all authorities, boards and commissions thereof.

U. **Personal residence** means a building or structure containing living quarters occupied or intended to be occupied by no more than two (2) individuals, two (2) groups or two (2) families living independently of each other and used by the owner thereof as a bona fide residence for himself and any members of his family forming his household.

V. **Protected class** means any person legally protected from discrimination based upon race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability of any individual or independent contractor, or because of the disability of an individual with whom the person is known to have an association.

W. **Public accommodation resort or amusement** means any place which is open to, accepts or solicits the patronage of the general public or offers goods or services to the general public, including loans, or is listed in the Pennsylvania Human Relations Act, Section 4l, but shall not include any personal or professional services which are in their nature distinctly private, personal or confidential.

X. **Real estate-related transaction** means any of the following:

1. The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property; or

2. The purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property; or

3. The selling, brokering, using as collateral or appraising of real property.

Y. **Sex** means male or female, and includes the gender of a person, as perceived, presumed or assumed by others.

Z. **Sexual Orientation** means male or female homosexuality, heterosexuality and bisexuality, by preference, practice or as perceived by others, whether or not such perception is accurate.

§215-32. Unlawful Employment Practices.

It shall be an unlawful employment practice for an employer to discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association. It shall further be unlawful:

A. For any employer to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual nor independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract.

1. The provision of this paragraph shall not apply to operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, or age limitations placed upon entry into bona fide apprenticeship programs of two years or more approved by the State Apprenticeship and Training Council of the Department of Labor and Industry.

2. Notwithstanding any provision of this section, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ on the basis of sex in those certain instances where sex is a bona fide occupational qualification because of the religious beliefs, practices, or observances of the corporation, or association.

B. For any employer, employment agency, or labor organization, prior to the employment, contracting with an independent contractor or admission to membership, to:

1. Require an applicant to provide information concerning his or her membership in a protected class. An employer may inquire as to the individual's ability to perform the essential functions of the employment.

2. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon protected class.

3. Deny or limit, through a quota system, employment or membership because of protected class.

4. Substantially confine or limit recruitment or hiring of individuals, with intent to circumvent the spirit and purpose of this Article, to any employment agency, employment service, labor organization, training school or training center or any other employee-referring source which services individuals who are predominantly of the same protected class.

5. Deny employment because of a prior disability.

6. To exclude or otherwise deny equal jobs or benefits to a person because of the disability of an individual with whom the person is known to have a relationship or association.

7. For any labor organization because of protected class to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

8. For any person, employer, employment agency, or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this Article, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this Article; or to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this Article or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.

9. For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of protected class.

10. This Section shall not be construed to prohibit the refusal to hire or the dismissal of a person who is not able to function properly in the job applied for or engaged in.

C. Nothing contained within this Article shall be construed to bar any institution or organization for persons with disabilities from limiting or giving preference in employment or membership to disabled persons.

§215-33. Unlawful Housing Practices.

It shall be an unlawful housing practice for any person to:

A. Because of race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness or because the user is a handler or trainer of support or guide animals, deafness or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association:

1. Refuse to sell, lease, finance or otherwise to deny or withhold any housing accommodation or commercial property because of protected class from any person, prospective owner, occupant or user of such housing accommodation or commercial property

2. Evict or attempt to evict an occupant of any housing accommodation before the end of the term of a lease because of pregnancy or the birth of a child.

B. Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property or otherwise withhold financing of any housing accommodation or commercial property from any person because of protected class.

C. Discriminate against any person in the terms or conditions of selling or leasing any housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any housing accommodation or commercial property because of protected class.

D. Refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental the landlord may, where it is reasonable to do so, grant permission for a modification if the renter agrees to restore the interior of the premises to the condition that existed before the modification, with reasonable wear and tear excepted

E. Refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation.

F. Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodation or commercial property because of protected class.

G. Print, publish, circulate or cause to be made any statement or advertisement: (i) relating to the sale, lease or acquisition of any housing accommodation or commercial property or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or commercial property which indicates any preference, limitation, specification, or discrimination based upon protected class.

H. Require information concerning an individual's protected class in connection with the sale or lease of any housing accommodation or commercial property or loan of any money whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of any housing combination or commercial property.

I. Construct, operate, offer for sale, lease or rent or otherwise make available housing or commercial property which is not accessible.

§215-34. Unlawful Real Estate Practices.

A. It shall be unlawful real estate practice to:

1. Deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings or commercial property, or to discriminate against him or her in the terms or condition of such access, membership, or participation, on account of protected class.

2. For any person or other entity whose business includes engaging in real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of protected class.

3. Induce, solicit or attempt to induce or solicit for commercial profit any listing, sale or transaction involving any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or do not reside, persons of any particular protected class.

4. Discourage, or attempt to discourage, the purchase or lease of any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or may in the future reside in increased or decreased numbers, persons of any protected class.

5. Misrepresent, steer, create or distort a circumstance, condition or incident for the purpose of fostering the impression or belief, on the part of any owner, occupant or prospective owner or occupant of any housing accommodation or commercial property, that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area which would be adversely impacted by the residence, or future increased or decreased residence, of persons of any protected class.

6. In any way misrepresent or otherwise misadvertise within a neighborhood or community, whether or not in writing, that any housing accommodation or commercial property within such neighborhood or community is available for inspection, sale, lease, sublease or other transfer, in any context where such misrepresentation or misadvertising would have the effect of fostering an impression or belief that there has been or will be an increase in real estate activity within such neighborhood or community due to the residence, or anticipated increased or decreased residence, of persons of any protected class.

7. For any person to harass, threaten, intimidate, harm, damage or otherwise penalize any person, group or business because he or they exercised or encouraged others to exercise their rights under this article, or because he or they have complied with the provisions of this article, or enjoyed the benefits of this article, or because he or they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing hereunder.

8. For any person to aid, abet, incite, induce, compel or coerce the commission of an unlawful practice prohibited by this article or to obstruct or prevent any person from complying with the provisions of this article or any order issued hereunder.

9. For any person who with intent to mislead in any proceeding under this Article to destroy or mutilate, falsify, alter or refuse to supply records and documents produced pursuant to subpoena or other lawful order under this section.

B. Nothing in this Article shall be construed to:

1. Prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religious creed, ancestry, national origin, marital status, sex, gender identity or expression, sexual orientation, age, disability, use of a guide or support animal because of a physical disability or because the user is a handler or trainer of guide or support animals, or familial status. (13964 §1 4/4/02)

2. Apply with respect to housing for older persons to the extent that such language pertains to age or familial status.

3. Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons.

4. Prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

5. Apply with respect to discrimination based on sex in the rental or leasing of housing accommodations in a single-sex dormitory.

§215-35. Unlawful Public Accommodations Practices.

It shall be an unlawful public accommodation practice for any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement because of race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness or the training of such animal, deafness or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association to:

A. Refuse, withhold from or deny to any person because of protected class, either directly or indirectly, any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation, resort or amusement.

B. Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld or denied to any person on account of protected class objectionable or not acceptable, desired or solicited.

C. Obstruct any person from enjoyment of his rights under this Article relating to public accommodations.

D. Construct, operate or otherwise make available such place of public accommodation, resort or amusement which is not accessible.

§215-36. Human Relations Commission.

A. Establishment of Commission.

There is hereby established the Human Relations Commission of the County of Allegheny composed of seven (7) members. All members of the Commission shall be residents of the County at the time of appointment and throughout their service. In the event the requirements of the position and/or availability of volunteers cannot be found within the County then the members need not be residents of the County but must be either a County taxpayer, maintain a business, be employed or go to school in the County.

All members shall be eighteen (18) years or older and shall serve terms of four (4) years each. All appointments shall be made by the Chief Executive with the approval of County Council, provided that any seat for which the Executive does not tender a nominee to Council within 30 days of the seat becoming vacant may be filled by any individual approved by a majority of the Seated Members of Council. All nominees for initial appointments shall be tendered to Council by the Executive within thirty (30) days of the effective date of this Article, and any seats for which a nominee is not provided within that time may be filled by any individual approved by a majority of the Seated Members of Council. Three of the initial appointments shall be for terms of two years, and the remaining four initial appointments shall be for terms of four years. All future appointments shall be for terms of four years.

B. Powers and Duties

The Commission is hereby vested with the authority to administer and enforce this Article and shall be given the following powers and duties:

1. To meet and function at any place within the County;

2. To adopt, promulgate, amend and rescind rules and regulations to effect the policies and provisions of this Article and to make recommendations to agencies of the County and County Council to effect such policies,

provided that any such rules or regulations or alterations thereto are approved by a majority of Council through enactment of an ordinance or resolution;

3. To initiate, receive, investigate, refer for investigation and pass upon complaints charging unlawful discriminatory practices in violation of this Article taking place within the County.

4. To study the problems of discrimination and foster, through community effort or otherwise, good will among the groups and elements of the population of the County;

5. To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination.

6. From time to time, but not less than once a year, to report to the Chief Executive or his designee, and the County Council describing in detail the investigations, proceedings, hearings and studies it has conducted and their outcome, the decisions it has rendered and the other work performed by it, and make recommendations for such further legislation concerning abuses and discrimination.

7. To rely upon staff employed by the Allegheny County Law Department and Human Resources Department, to the extent necessary for the accomplishment of its powers and duties as delineated in this Section, provided that such reliance does not otherwise harm the ability of either Department to fulfill its regular functions.

C. The Department of Human Resources shall provide administrative support services to the Commission. The Commission shall function as an agency of the County.

§215-37. Procedure.

A. Filing a Complaint. Any person claiming to be aggrieved by an unlawful discriminatory practice, may make, sign and file with the Commission a verified complaint in writing which shall state the name and address of the person or persons alleged to have committed the unlawful practice and the particulars thereof. The complaint shall also contain such other information as may be required by the Commission. The Commission, upon its own initiative, may in like manner sign and file a complaint. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his/her answer.

B. Timeliness. Any complaint filed pursuant to this section must be so filed within one hundred eighty days after the alleged act of discrimination, unless otherwise required by the Fair Housing Act.

C. Withdrawal. Any complaint may be withdrawn at any time by the party filing the complaint.

D. Preliminary Investigation. After the filing of any complaint, if the Commission determines that an investigation is warranted, the Commission shall refer the complaint to the Allegheny County Department of Human Resources, which shall conduct an investigation in order to determine whether a factual basis for the complaint exists. The procedure governing such investigation shall be modeled after the procedure described in §5-1013.24 of the Administrative Code of Allegheny County, governing investigation of ethics complaints. The Department of Human Resources shall not hold hearings, issue findings to parties, or be empowered to undertake any final action on any complaint forwarded to it for investigation by the Human Relations Commission. At the conclusion of the preliminary investigation, the Department of Human Resources shall forward a summary report to the Human Relations Commission. The Human Relations Commission may request that the Council initiate an investigation and/or issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, and may seek enforcement of any subpoena issued under the terms of this Section by petition to the Court of Common Pleas of Allegheny County.

E. Allegation and Notice. If it shall be determined after such investigation that there is no basis for the allegations of the complaint, the Human Relations Commission shall, within ten (10) days from such determination, cause to be issued and served upon the complainant written notice of such determination and dismissal of the complaint. The complainant may, within ten (10) days after such service, file with the Commission, a request for a review. The Commission shall, upon request for such a review, provide the complainant an opportunity to appear before the Commission to present such additional information as may be available to support the allegations of the complaint. The Commission may reinstate the complaint within ten (10) days of the review upon a determination that the additional information presented warrants such reinstatement.

F. Conciliation. If the Human Relations Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference and conciliation. The Commission and staff shall not disclose identities of the parties except as required by the Fair Housing Act.

G. Hearing.

1. If the Human Relations_Commission, in its discretion, finds it is not possible to eliminate such unlawful practices by persuasion, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended requiring the party named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice. The Commission may appoint a hearing examiner or designate no fewer than three of its members to preside at such a meeting, or it may at its election conduct such hearing en banc.

2. When notice of hearing is given as set forth in subsection (e) and an election procedure is required by the Fair Housing Act, either party may elect, as an alternative to Public Hearing before the Commission, to have the claims asserted in the complaint decided in a civil action brought under the original jurisdiction of Allegheny County Court of Common Pleas. The written notice of the Commission shall be sent to all parties and will inform them of their right to take civil action. An election must be made within twenty (20) days after receipt of the notice of hearing. A party making this election shall notify the Commission and all other parties. If an election for civil action is made by either party, the Commission shall, within thirty (30) days from the date of election, commence and maintain a civil action on behalf of the Complainant. In any action brought under this subsection:

   a. If, after a trial, the Court of Common Pleas finds that a respondent engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the Court may award attorney's fees and costs to the complainant on whose behalf the Commission commenced the action in addition to attorney's fees and costs incurred by the Commission.

H. Conduct of Hearing. The case in support of the complaint shall be presented to the Commission or before a hearing examiner designated by the Commission for the purpose of hearing said complaint by its attorney or agents, by the complainant, or by an agent or representative of the complainant. The respondent may appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant may likewise appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts

of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

I. Findings.

1. If upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or commercial property upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations or commercial property, upon such equal terms and conditions to any person discriminated against or all persons, any other verifiable, reasonable out-of-pocket expenses caused by unlawful discriminatory practice, or other compensation as provided under the Pennsylvania Human Relations Act.

2. In those cases alleging a violation of Sections 215-33 or 215-34 and violations of the Fair Housing Act, the Commission may award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the purposes of this Article, and including a requirement for report of the manner of compliance.

   a. Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Section 215-33 or 215-34 and violations of the Fair Housing Act:

      i. In an amount not exceeding ten thousand dollars ($10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice;

      ii. In an amount not exceeding twenty-five thousand dollars ($25,000) if the respondent has been adjudged to have committed one other discriminatory practice during the five-year period ending on the date of this order; or

iii. In an amount not exceeding fifty thousand dollars ($50,000) if the respondent has been adjudged to have committed more than one other discriminatory practice during the seven-year period ending on the date of this order.

b. If however the acts constituting the discriminatory practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory practice, then the civil penalties set forth in subparagraphs (ii) and (iii) may be imposed without regard to the period of time within which any subsequent discriminatory practice occurred.

c. If upon all the evidence at the hearing, in those cases alleging a violation of Section 215-33 or 215-34, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the Commission may award attorney's fees and costs to prevailing complainants.

J. Commonwealth License. When the respondent is a licensee of the Commonwealth of Pennsylvania, the Commission shall inform the appropriate State licensing authority of the order with the request that the licensing-authority take such action as it deems appropriate against such licensee.

K. Dismissal. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

L. Hearing Rules and Records. The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Three or more members of the Commission or a hearing examiner designated by the Commission shall constitute the Commission for any hearing required to be held by the Commission under this Article. The recommended findings, conclusions and order made by said members or hearing examiner shall be reviewed and approved or reversed by the Commission before such order may be served upon the parties to the complaint. The recommended findings, conclusions and order made by said members or hearing examiner shall become a part of the permanent record of the proceeding and shall accompany any order served upon the parties to the complaint.

§215-38. Enforcement, Judicial Review and Penalty.

A. Injunction. If the Commission concludes, at any time following the filing of a complaint under this Article, that prompt judicial action is necessary to prevent immediate and irreparable harm, the Commission may commence an action in Court of Common Pleas, and that Court may grant an appropriate preliminary or special injunction pending final disposition of the complaint. Any such order or relief shall be granted in accordance with Pennsylvania Rules of Civil Procedure Section 1531.

B. Enforcement. The complainant, or the Commission may secure enforcement of the order of the Commission or other appropriate relief. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in the Court of Common Pleas, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity. The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of enforcement or judicial review of the order. Any failure to obey an order of the Court may be punishable by such Court as contempt thereof.

C. Enforcement by Private Person.

1. In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this Article, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or for whatever reason, closes the complainant's case, or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this Article.

2. An action under this subsection shall be filed within one hundred (100) consecutive calendar days after the date of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.

3. If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate. Back pay

liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this Article.

4. The court shall serve upon the Commission any final order issued in any action brought under this subsection.

5. If, after a trial held pursuant to subsection (c), the court of common pleas finds:

   a. That a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the court may award attorney's fees and costs as provided under the Pennsylvania Human Relations Act, to the prevailing plaintiff.

D. Penalties. Any person who shall willfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this Article, or shall willfully violate an order of the Commission, shall be guilty of a summary criminal offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars ($500.00), or to undergo imprisonment not exceeding thirty (30) days, or both, in the discretion of the Court, but procedure for the review of an order shall not be deemed to be such willful conduct.

E. Construction. The provisions of this Article shall be construed liberally for the accomplishment of the purposes thereof.

F. Timeliness. The time limits for filing under any complaint or other pleading under this Article shall be subject to waiver, estoppel and equitable tolling.

G. Except as otherwise provided, any order of the Commission may be reviewed under the provisions of the Act of December 2, 1968, P.L. 1133 (53 P.S. §11300) known as the "Local Agency Law", as amended.

H. Where a provision of this Article is found to be in conflict with a provision of any other Ordinance of the County, or any regulation issued under the authority of such Ordinance, the provisions which establish the higher standard for the protection of health, safety and welfare shall prevail.

SECTION 2. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.

PRIMARY SPONSOR: COUNCIL MEMBER GREEN

CO-SPONSORS: PRESIDENT FITZGERALD, COUNCIL MEMBERS BURN, FUTULES, ROBINSON, DEFAZIO, CLEARY, & MARTONI

Enacted in Council, this 1st *day of* July, *2009,*

Council Agenda No. 4201-08

Rich Fitzgerald
President of Council

Attest: _____
Allegheny County Council

Chief Executive Office July 6, *2009*

Approved: _____
Dan Onorato
Chief Executive

Attest: Donna Beltz
Donna Beltz
Executive's Secretary