

Ordinance 17-021

An Ordinance Amending Division 2 of Article V. of Chapter 2 of the Code of Ordinances of the City of Brookings, South Dakota and Pertaining to the Human Rights Commission of the City of Brookings.

Be It Ordained and Enacted by the Council of the City of Brookings, State of South Dakota, as follows:

I

Sec. 2-141. - Definitions.

For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADA means the Americans with Disabilities Act, being 42 U.S.C. §§ 12101 et seq.

Age means the chronological age of any person.

City attorney means the duly appointed attorney for the city or such person designated by the city attorney.

Commission means the Brookings Human Rights Commission.

Complainant means a person for or on whose behalf a complaint alleging unlawful discrimination has been filed or issued.

Disability means a physical or mental impairment of a person resulting from disease, injury, congenital condition of birth or functional disorder which substantially limits one or more of the person's major life functions; a record of having an impairment; or being regarded as having an impairment which:

- (1) For purposes of section 2-143(1) through (3), inclusive, is unrelated to an individual's ability to perform the major duties of a particular job or position, or is unrelated to an individual's qualifications for employment or promotion;
- (2) For purposes of section 2-143(4) and (8) is unrelated to an individual's ability to acquire, rent, or maintain property; and
- (3) For purposes of section 2-143(5) and (6) is unrelated to an individual's ability to utilize and benefit from opportunities, programs, and facilities of the accommodations and services.

Discrimination means any unlawful act or attempted unlawful act which, because of actual or perceived race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, results in the unequal treatment or separation or segregation of any person, or denies, prevents, limits or otherwise adversely affects, or if accomplished would deny, prevent, limit or otherwise adversely affect the benefit or enjoyment by any person of employment, membership in a labor union organization, ownership or occupancy of real property, a public accommodation, a public service or an educational institution. "Discrimination" as defined above is unlawful and is a violation of this chapter.

Educational institution means any university, college or school operating within the city including any school, institution or organization for vocational training, but the term shall not apply to the students of, or the education provided by, any school maintained and operated by a religious corporation, or association solely for the benefit of its own membership.

Employ means to use or be entitled to be the use and benefit of the services of a person as an employee.

Employee means any and all persons who perform services for any employer for compensation, whether in the form of wages, salary, commission or otherwise.

Employer means any person within the city who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the city, but the word "employer" shall not include any person with respect to the hiring or employment of a household domestic employee, or any religious corporation, association or society with respect to the hiring or employment of individuals of a particular religion, when religion shall be a bona fide occupational qualification for employment, provided the selection is not based on race, color, sex, creed, religion, ancestry, national origin, disability, marital status, gender identity, or sexual orientation.

Employment means the state of being employed as an employee by an employer.

Employment agency means any person regularly undertaking, with or without compensation, to procure employees for any employer or to procure for employees opportunities to work for any employer and includes any agent of the person.

Familial status means:

- (1) One or more individuals under the age of 18 domiciled with one of the following:
 - a. A parent or another person having legal custody of the individual or individuals.
 - b. The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person.
- (2) Protections 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.

Gender identity or expression means the actual or perceived gender-related identity, appearance, expression or behavior of an individual regardless of the individual's assigned sex at birth.

Hire means to engage or contract for or attempt to engage or contract for the services of any person as an employee.

Labor organization means any person, employee representation commission or plan in which employees participate and which exists wholly or in part for the purpose

of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment and shall include any conference, general commission, joint or system board or joint council.

Lawyer means a person duly authorized and licensed by the state to engage in the practice of law.

Marital status means the state of being married, single, divorced, separated or widowed.

Person includes one or more individuals, partnerships, associations, corporations, unincorporated organizations, mutual companies, joint stock companies, trusts, agents, legal representatives, trustees, trustees in bankruptcy, receivers, labor organizations, public bodies, public corporations and the state and all political subdivisions and agencies thereof.

Public accommodation means each and every place, establishment or facility of whatever kind, nature or class that caters or offers services, facilities or goods to the general public for a fee or charge. Each and every place, establishment or facility that caters or offers services, facilities or goods to the general public gratuitously shall be deemed a public accommodation if the accommodation receives any substantial governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment or facility which is by its nature distinctly private, except that, when such distinctly private place, establishment or facility caters or offers services, facilities or goods to the general public for a fee or charge or gratuity, it shall be deemed a public accommodation during such period.

Public services means the services or facilities provided within the city to the general public including those provided by any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the state, any political subdivision thereof, or any other public corporation.

Real estate broker or real estate salesperson means a real estate broker and a real estate salesperson as defined by state law.

Real property means any right, title, interest in or to the possession, ownership, enjoyment or occupancy of any parcel of land, any building situated thereon, or any portion of the building in the city.

Respondent means a person against whom a complaint alleging unlawful discrimination has been filed or issued.

Sexual harassment means a form of sex discrimination. Sexual harassment may take the form of deliberate or repeated comments, questions, representations or physical contacts of a sexual nature, which are unwelcome to the recipient. Sexual harassment may also take the form of conduct that has the purpose or effect of creating an intimidating, hostile or offensive environment.

Sexual orientation means actual or perceived homosexuality, heterosexuality, or bisexuality.

Sec. 2-142. - Declaration of policy and purpose.

It is the public policy of the city and the purpose of this chapter:

- (1) That discriminatory practices based on race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services, or any of them, tend to create and intensify conditions of poverty, ill health, unrest, lawlessness and vice and adversely affect the public health, safety, order, convenience and general welfare; the rights, privileges and opportunities threatened by those discriminatory practices are hereby declared to be civil rights;
- (2) To declare as civil rights the rights of all persons to the fullest extent of their capacities, and without regard to race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, equal opportunities with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services;
- (3) To prevent and prohibit, to the extent permitted by law, any and all discriminatory practices based on race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services;
- (4) To protect all persons from unfounded charges of discriminatory practices; and
- (5) To effectuate this policy by means of public information and education, mediation and conciliation, and enforcement.

Sec. 2-143. - Act of discrimination.

Without limitation, the following are declared to be discrimination:

- (1) For an employer, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, sexual orientation, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment;
- (2) For an employment agency, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, to accord adverse or unequal treatment to any person in connection with any application for employment, any referral or any request for assistance in procurement of employees, or to accept any listing of employment on that basis;

- (3) For any labor organization, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, to deny full and equal membership rights to an applicant for membership or to a member; to expel, suspend or otherwise discipline a member; or to accord adverse, unlawful or unequal treatment to any person with respect to his or her hiring, apprenticeship, training, tenure, compensation, upgrading, layoff or any term or condition of employment;
- (4) For any owner of rights to housing or real property, or any person acting for an owner, with or without compensation, including any person licensed as a real estate broker or salesman, attorney, auctioneer, agent or representative by power of attorney or appointment, or to any person acting under court order, trust, or will, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, to fail or refuse to sell, rent, assign or otherwise transfer any real property to any other person, or to accord adverse, unlawful, or unequal treatment to any person with respect to the acquisition, occupancy, use and enjoyment of any real property. The provisions of this section do not apply to rooms or units in dwellings that contain living quarters for no more than two families living independently of each other, if the owner maintains and occupies one of the living quarters as his or her residence.
 - a. For the purposes of determining discrimination based on familial status, a family is one or more individuals under the age of 18 who are domiciled with their parent, legal custodian or person granted custody with permission of the parent or custodian. This definition includes a person who is pregnant or in the process of securing custody of a person under the age of 18. Discrimination based on familial status applies to housing accommodations only.
 - b. The provisions of this section as they refer to familial status do not apply to residences publicized as specifically designated for older or disabled residents if:
 1. A state or federal program has designated the residence for the elderly; or
 2. The residences are intended for and solely occupied by persons 62 years of age or older; or
 3. Facilities and services for the residence are designed to meet the needs of the elderly, and at least 80 percent of the units are occupied or intended to be occupied by one or more persons 55 years of age or older.
 - c. It is an unfair or discriminatory practice to design or construct for first occupancy any multi-family dwelling with more than four units for sale, rent, lease, assignment, sublease or transfer that does not enable accessibility to ground floor common areas and usability of ground floor housing units by disabled persons or by wheelchairs. If the

building has elevators, all housing units and common areas shall be usable by disabled persons and persons in wheelchairs. The accommodations may include widened doors, lowered electrical switches and outlets, lowered environmental controls, grab bars or reinforcements, kitchens and bathrooms usable by the disabled. Nothing in this provision may be construed to require prior approval of plans for construction by the commission.

- d. It is also be discriminatory to refuse to permit, at the expense of the disabled person, reasonable modifications of existing property that may be necessary to afford full enjoyment of the property. The landlord may, where it is reasonable to do so, condition permission for remodeling on the renter's agreeing to restore the premises to the condition that existed prior to the modification at the conclusion of renter's tenancy, reasonable wear and tear excepted.
- (5) For any person engaged in the provision of public accommodations, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, to fail or refuse to provide to any person access to the use of and benefit from the services and facilities of those public accommodations; or to accord adverse, unlawful, or unequal treatment to any person with respect to the availability of the services and facilities, the price or other consideration therefor, the scope and quality thereof, or the terms and conditions under which such are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation and repair;
 - (6) For any person engaged in the provision of public services, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, to fail or refuse to provide to any person access to the use and benefit thereof, or the terms and conditions under which such are made available;
 - (7) For any person, because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, directly or indirectly, to conceal any unlawful discrimination; to aid, abet, compel, coerce, incite or induce another person to discriminate; or by any means, trick, artifice, advertisement or sign, to use any form of application, or make any record or inquiry, or device whatsoever to bring about or facilitate discrimination; or to engage in or threaten to engage in any reprisal, economic or otherwise, against any person because of the latter's filing a charge, testifying or assisting in the observance and support of the purposes and provisions of this chapter;
 - (8) For any person, bank, banking organization, mortgage company, insurance company or other financial institution or lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair or maintenance of any real property or any agent or employee thereof to discriminate against any person or group of persons,

because of the race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation of the person or group of persons or of the prospective occupants or tenants of the real property in the granting, withholding, extending, modifying, renewing or in the rates, terms, conditions and the extension of services in connection therewith;

- (9) Wherever religious organizations or bodies are exempt from any of the provisions of this chapter, the exemption shall apply only to religious qualifications for employment or residence in church-owned or church-operated property, and the organizations shall not be exempt from any provisions of this chapter relating to discrimination based upon race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation;
- (10) Nothing contained in this chapter shall apply to any business or enterprise on or near a Native American Indian reservation with respect to any publicly announced employment practice of the business or enterprise under which a preferential treatment is given to any individual because the individual is an Indian living on or near a reservation;
- (11) Nothing in this chapter requires the following people to modify property in any way, incur any additional expenses, or exercise a higher degree of care for persons having a disability than for a person who does not have a disability nor does this chapter relieve any person of any obligations generally imposed on all persons, regardless of any disability, in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including, but not limited to, financial obligations of the lease, agreement or contract:
 - a. Employer;
 - b. Provider of public accommodations;
 - c. Provider of public services;
 - d. Person selling, renting, or leasing real property;
 - e. Person acting on behalf of any of the persons listed in subsections (11)a.- d. above, with or without compensation, including but not limited to any person licensed as a real estate broker or salesman, attorney, auctioneer, agent, or representative by power of attorney or appointment; and
 - f. Person acting under court order, trust or will.

Sec. 2-144. - Contracts with city.

The city and all of its contracting agencies, departments, and units shall include in all contracts entered into or renewed or extended provisions whereby each contracting party agrees that:

- (1) With respect to any and all business conducted or acts performed pursuant to the contract, the other contracting party shall be deemed an employer within the meaning of this chapter and shall be subject to the provisions of this subchapter;
- (2) If the other contracting party fails to perform the contractual provisions, the contract may forthwith be terminated and cancelled in whole or in part by the city, and the other contracting party shall be liable for any costs or expense incurred by it in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the city under the contract so terminated or cancelled;
- (3) Should the commission in a proceeding brought as provided in this chapter find that the contracting party has engaged in discrimination in connection with any contract and issue a cease and desist order with respect thereto, the city shall withhold up to 15 percent of the contract price until such time as the commission's order has been complied with or the other contracting party has been adjudicated not guilty of discrimination;
- (4) The other contracting party will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the commission, its agencies or representatives, to ascertain compliance with the provisions of this chapter applicable to the other contracting party; and
- (5) This section shall be binding on all subcontractors and suppliers.

Sec. 2-145. - Responsibilities and duties of city employees.

All officials, commissioners, agents, employees and servants of the city, elected and appointed, including civil service employees, and whether serving with or without compensation, shall observe the terms and provisions of this chapter and shall, except as expressly prohibited by law, respond promptly to any and all requests by the commission for information and for access to data and records for the purpose of enabling the commission to carry out its responsibilities under this chapter. The failure of any official, commissioner, agent, employee or servant of the city to comply with any provision of this chapter relating to any matter within the scope of his or her official duties shall be deemed a violation of this chapter.

II.

Sec. 2-146. - Continued.

The city has established in and for the city, a human rights commission.

Sec. 2-147. - Composition.

The human rights commission shall consist of ten members, nine of which shall be selected by the mayor with the advice and consent of the council, and one of which shall be selected by the board of county commissioners. In selecting members, due regard shall be given to representation of minority groups on the human rights commission. One member of the human rights commission selected by the mayor shall be a student enrolled in a post-secondary educational institution.

Sec. 2-148. - Term of office; date of appointment; compensation.

(a) All members of the human rights commission shall serve for terms of three years, except the student member who shall serve a one-year term. Any members whose term expires may be reappointed.

(b) All members of the human rights commission shall serve without compensation.

Sec. 2-149. - Vacancies.

If a vacancy on the human rights commission occurs on a date other than the first Monday of the year, then the vacancy may be filled by appointment for the remainder of the vacated term, which term shall expire on the first Monday in January. If a member is absent from three consecutive regular meetings without authorization from the human rights commission, the member's seat may be considered vacant, and a new member may be appointed.

Sec. 2-150. - Officers.

The human rights commission shall designate from among its membership a chairperson, vice-chairperson, and such other officers and subcommittees as it may deem appropriate and necessary.

Sec. 2-151. - Meetings.

The human rights commission shall meet at such times and places as may be determined by such commission.

Sec. 2-152. - Quorum/participation by members limited to one panel.

Three members of the commission shall constitute a quorum for probable cause determination pursuant to section 2-159. Three members of the commission shall constitute a quorum for public hearing panels pursuant to section 2-161. Members participating in a probable cause determination shall not also serve on a public hearing panel for the same matter. A majority of the voting members then holding a current appointment shall constitute a quorum for the transaction of all other business.

Sec. 2-153. - Rules, regulations.

The commission, with the approval of the city council, shall adopt suitable rules and regulations for the conduct of its operations and the effectuation of the purposes of this chapter.

Sec. 2-154. - Purpose.

The purpose of the Brookings Human Rights Commission (BHRC) is to improve human relations and civil rights in the Brookings area by fighting discrimination through educational efforts and a complaint resolution procedure. The commission has the power to investigate complaints alleging discrimination against individuals or groups because of their race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation, with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services.

Sec. 2-155. - Substantive and procedural authority and duties.

The authority and duties of the Brookings Human Rights Commission shall be to:

- (1) Promote human and civil rights for all its citizens and visitors.
- (2) Promote a mutual understanding and respect among all racial, religious and nationality groups and work to discourage and prevent discriminatory practices against any such group.
- (3) Attempt to foster, through community effort or otherwise, goodwill, cooperation and conciliation.
- (4) Study and determine the existence, character, causes and extent of discrimination in employment, housing accommodations, property rights, education, public accommodations, public services in the city, and discrimination based on age, disability, marital status, familial status, ethnicity, religion, sexual orientation, gender identity and political affiliation. The study and determination of discrimination is based on a broad understanding of civil and human rights as embodied in the 1964 Civil Rights Act as amended, which includes race, color, religion, gender and country of origin.
- (5) Seek to prevent and eliminate bias and discrimination because of race, color, sex, creed, religion, ancestry, national origin, familial status, disability, marital status, gender identity, or sexual orientation by means of education, persuasion, conciliation and, to the extent permitted, enforcement, and utilize all the powers at its disposal to carry into execution the provisions of this chapter.
- (6) Receive complaints alleging discrimination and conduct those investigations and inquiries as may reasonably appear necessary to find the facts with respect thereto. Investigations and inquiries can only be initiated upon the

receipt of a complaint and shall be limited to the allegations contained in a complaint.

- (7) Conduct public meetings and hearings, gather and disseminate information to governmental agencies and to the public.
- (8) Utilize the records and services of municipal, state and federal governmental departments and agencies to the extent permitted by law, and pursuant to agreement with departments and agencies may refer matters for preliminary inquiry, conciliation, hearings and findings.
- (9) Furnish to any appropriate state or federal agency having jurisdiction in the premises a transcript of the proceedings and findings in any case in which a court of competent jurisdiction or the commission has, after hearings, found that any person has unlawfully discriminated.
- (10) Enlist the cooperation of various racial, religious and ethnic groups, community, civil, labor and business organizations, student organizations, fraternal and benevolent associations, veterans' organizations, and other groups in educational campaigns and programs devoted to teaching the need for eliminating group tensions, prejudices, intolerance, bigotry and unlawful discrimination.
- (11) Cooperate with federal, state and city agencies in developing programs showing the contributions of the various groups to the culture and traditions of our city and nation, the menace of prejudice, intolerance, bigotry and unlawful discrimination and the need for mutual respect.
- (12) Advise the mayor, city council members, city manager and the respective departments of the city concerning matters consistent with the purposes and powers of the human rights commission.
- (13) Recommend ordinances and other legislation pertinent to the purposes of protection of human rights.
- (14) Conduct educational programs and disseminate information in furtherance of the purposes and policies of the human rights commission.
- (15) Hear and investigate complaints alleging unlawful discrimination in violation of this ordinance.

Sec. 2-156. - Filing complaint.

- (a) Any person claiming to be aggrieved by a discriminatory practice may file with the commission a verified written complaint which shall state the name and address of each person complained against (respondent) and shall set forth the pertinent facts as known to the complainant. Whenever the commission has information indicating that any person has been discriminated, it may issue and file a verified complaint.

- (b) The city may, however, dismiss a complaint if the complainant fails to state a claim upon which relief can be granted, or if the city determines the complaint has been abandoned or withdrawn.

Sec. 2-157. - Time for filing complaint.

Any complaint filed under this chapter shall be filed within 180 days after the last occurrence of an alleged discriminatory or unfair practice.

Sec. 2-158. - Service of respondent and answer.

Promptly upon the filing of any complaint, the commission shall serve a copy thereof, by personal service or registered or certified mail, upon the respondent. Respondent shall file a written answer thereto within ten calendar days after receipt thereof or within any period of extension granted by the representative of the city as designated by the commission. The complaint and answer shall be confidential documents until such time as a public hearing panel conducts a hearing on the complaint.

Sec. 2-159. - Determination of probable cause.

- (a) The commission shall proceed to make the investigation based on a filed complaint as it may deem appropriate to determine whether there is probable cause to believe that the allegations of discrimination are well founded. The investigation shall remain confidential until such time as the matter is heard by a public hearing panel or is removed to circuit court. If there is no probable cause to believe that the allegations of discrimination are well founded, the commission shall dismiss the complaint. If, after investigation, it is found that probable cause to believe that the allegations of discrimination are well founded, the commission shall transmit the finding of probable cause, along with the reasons for the finding and a recitation of the evidence and names of witnesses that support the finding, to both complainant and respondent. Both complainant and respondent shall be permitted to inspect any documents not prepared by the commission in the files of the commission that are relevant to the determination of probable cause. If there is probable cause to believe that the allegations of discrimination are well founded, and the matter has not been satisfactorily resolved, the parties shall be served notice of the time and place of a conciliation conference by personal service or registered or certified mail at least five business days prior thereto.
- (b) No later than 20 days after notice of the finding of probable cause and prior to hearing, the complaining party or the respondent may elect to have the claims asserted in the complaint decided in a circuit court in lieu of a hearing before the commission. Parties shall be notified of their right to this election in the notice of the finding of probable cause. Upon receipt of notice of election, the commission shall have no further jurisdiction over the parties concerning the charge filed. In a civil action, if a court or jury finds that an unfair or discriminatory practice has occurred, it may award the charging party compensatory damages. The court

may grant as relief any injunctive order including affirmative action. Punitive damages may be awarded under SDCL 21-3-2 for a violation of this chapter as they pertain to housing. Attorney's fees and costs may be awarded to the prevailing party for housing matters.

Sec. 2-160. - Conciliation.

The conciliation conference shall be conducted by a representative of the city, who shall attempt to achieve a just resolution and obtain assurances that the respondent will eliminate unfair or discriminatory practices and take appropriate affirmative action. The settlement terms shall be set forth in a conciliation agreement which shall be signed by the complainant, respondent and the commission chairperson. Conciliation shall be a confidential procedure.

Sec. 2-161. - Public hearing.

- (a) If the matter before the commission cannot be resolved by the conciliation conference panel, the matter shall be set for public hearing. The parties shall be served notice of the time and place of a public hearing by personal service or registered or certified mail at least ten days prior thereto. The notice shall include a statement informing the parties of their right to transfer the matter to the circuit court. The public hearing shall be conducted by a public hearing panel which shall be composed of three commissioners, none of whom shall have been involved in the investigation, determination of probable cause or conciliation.
- (b) The public hearing panel shall have authority to conduct prehearing conferences, to subpoena witnesses to appear, testify and produce records, books, papers and other documents, to administer oaths, to take testimony, to receive evidence, to examine and cross examine witnesses and issue orders authorized by this chapter. Any evidence as well as any testimony that is offered or provided during mediation shall be confidential and can't be used in the public hearing.
- (c) Both complainant and respondent shall appear in person at the hearing and may be represented by counsel. Both may, in accordance with the order of procedures as may be determined by the public hearing panel, present evidence, call witnesses and present arguments bearing upon the facts alleged in the complaint.
- (d) All witnesses, including complainant and respondent, may be examined and cross-examined. The hearing may consist of a bifurcated proceeding without direct and cross-examination if the commission deems it appropriate in the circumstances. The conduct of the hearing will be within the sole discretion of the commission. The public hearing panel shall not be bound by the strict rules of evidence applicable to judicial proceedings, but its findings must be based upon competent evidence. Each witness at the hearing shall testify under oath. A stenographic record shall be made of the proceedings or an electronic

device may be used. In a judicial review, the commission may, upon request, furnish the complainant and respondent each with a copy of the transcript of the hearing without charge.

- (e) Hearings before the public hearing panel are not confidential.

Sec. 2-162. - Dismissal of complaint.

- (a) If the commission determines that allegations of discrimination are not well founded, that the unlawful act or practice complained of has been satisfactorily eliminated and that further proceedings are unnecessary, or the allegations complained of are being processed or have been addressed, to the satisfaction of the commission by another agency or court, it may order the dismissal of the complaint. It shall within five days of the determination serve notice of the order upon the complainant and respondent by personal service or registered or certified mail.
- (b) The public hearing panel may also take and direct the affirmative action as in the judgment of the public hearing panel will effectuate its purposes. The powers of the public hearing panel are coextensive with the powers of the state human rights commission as set forth in SDCL 20-13-42. These powers include awarding compensation incidental to the violation other than pain and suffering, punitive or consequential damages; costs allowed under SDCL Ch. 15-17 and any other appropriate relief including reasonable attorney fees for housing matters as in the judgment of the public hearing panel will effectuate the purposes of this chapter.
- (c) Further, the public hearing panel may order the respondent to cease and desist from discriminatory or unfair practices and to take the affirmative action including hiring, reinstatement, or upgrading of employees with or without back pay, the referring of applicants for employment by any respondent employment agency, and the remittance or restoration of membership by any respondent labor organization.

Sec. 2-163. - Depositions and discovery.

The commission, through the city attorney's office, shall have power to cause the deposition of witnesses to be taken or other discovery procedure to be conducted upon notice to the interested person in like manner that depositions of witnesses are taken or other discovery procedure is to be conducted in civil actions pending in court in any manner concerning contested cases.

Sec. 2-164. - Prosecution of violation.

- (a) If a respondent fails to comply with a conciliation agreement or fails to obey an order issued by the public hearing panel, the commission may request the city attorney to prosecute the respondent in a court of competent jurisdiction for violation of the terms of this chapter. The failure of a person to obey a subpoena

issued pursuant to this chapter may be punished as contempt of court. The commission shall render to the city attorney assistance as requested in connection with any prosecution.

- (b) The commission or a party may obtain an order of the court for the enforcement of the provisions of this chapter. The court may allow the prevailing party reasonable attorney's fees and costs against the respondent. The court may also assess a civil penalty against the respondent in an amount not to exceed \$10,000.00 for willful or repeated violations or refusal to comply with the order of the commission.

Sec. 2-165. - Rights of parties to seek judicial determination.

Nothing contained in this ordinance shall be construed to limit the right of the complainant to make and file a complaint, nor to preclude, abridge or restrict the right of appeal or the right of anyone concerned or affected to a review of the facts and issues in a court of competent jurisdiction on the evidence and merits in any matter involved.

Sec. 2-166. - Application to other disabilities.

The commission, to the extent permitted by law, is authorized to apply any portion of this chapter which it may deem applicable to deal with discriminatory actions and practices against individuals or groups disadvantaged by reason of physical, mental or social handicap and not otherwise within the purview of this chapter.

Sec. 2-167. - Time limit for filing complaint.

Any complaint filed under this chapter shall be filed within 180 days after the alleged discriminatory or unfair practice occurred.

Secs. 2-168—2-170. - Reserved.

III.

The adoption of this ordinance constitutes an exercise of the City's home rule powers as granted by Article IX, §2 of the South Dakota Constitution.

IV.

Any or all ordinances in conflict herewith are hereby repealed.

First Reading: September 12, 2017

Second Reading: September 26, 2017

Published:

CITY OF BROOKINGS, SD

ATTEST:

Keith W. Corbett, Mayor

Shari Thornes, City Clerk