

ORDINANCE 4551

**AN ORDINANCE AMENDING ORDINANCE 4201
CREATING THE GOSHEN COMMUNITY RELATIONS COMMISSION
AND PRESCRIBING THE POWERS AND DUTIES OF THE COMMISSION**

WHEREAS, Indiana Code 22-9-1 is known as the Indiana Civil Rights Law; and

WHEREAS, Indiana Code 22-9-1-12.1 authorizes the adoption of an ordinance by a city to effectuate within its territorial jurisdiction the public policy of the state as declared in Indiana Code 22-9-1-2; and

WHEREAS, Indiana Code 22-9.5-4-1 authorizes the creation of a Community Relations Commission in accordance with Indiana Code 22-9-1-12.1 to administer the provisions of Indiana Housing Code as forth in Indiana Code 22-9.5 and adopted by local Ordinance 3258 (Fair Housing Ordinance) as amended by Ordinance 4340.

WHEREAS, the Common Council of the City of Goshen desires to foster communication and understanding within the diverse cultures in the community.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Goshen, Indiana, that Community Relations Ordinance 4201 is amended to read as follows:

Section One. Public Policy

- A. It is the public policy of the City of Goshen to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, ***sexual orientation, gender identity***, disability, national origin or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are declared to be civil rights to be protected by the City of Goshen by the means of this ordinance and the City's Fair Housing Ordinance.
- B. The practice of denying these rights to properly qualified persons by reason of the race, religion, color, sex, ***sexual orientation, gender identity***, disability, national origin, or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of the City and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, ***sexual orientation, gender identity***, disability, national origin, or ancestry through reasonable methods is the purpose of this ordinance.
- C. It is also the public policy of the City to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, and lending institutions from unfounded charges of discrimination.

- D. It is declared to be contrary to the public policy of the City and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, *sexual orientation, gender identity*, disability, national origin, or ancestry.

Section Two. Commission Created

There is created a local civil rights commission to be known as the Goshen Community Relations Commission to effectuate within the city limits of Goshen the public policy of the City as declared in Section One of this ordinance.

Section Three. Membership of Commission; Appointment; Term; Vacancies; Removal

- A. The Goshen Community Relations Commission shall consist of nine (9) members, all who must be residents of the City of Goshen.
- B. The Mayor shall appoint five (5) members of the Commission, and the Goshen Common Council shall appoint four (4) members of the Commission. In making the appointments to the Commission, the appointing authority shall take into consideration all interests in the community's diversity.
- C. Members of the Commission shall be appointed within sixty (60) days after the adoption of this ordinance. Members shall initially be appointed to serve the following terms:
 - 1. Two (2) members appointed by the Mayor and one (1) member appointed by the Common Council shall serve an initial term of one (1) year.
 - 2. One (1) member appointed by the Mayor and two (2) members appointed by the Common Council shall serve an initial term of two (2) years.
 - 3. Two (2) members appointed by the Mayor and one (1) member appointed by the Common Council shall serve an initial term of three (3) years.
- D. After the initial term expires, successors to all members shall be appointed for a term of three (3) years. All terms expire on the first Monday in January, but a member continues in office until his or her successor is appointed.
- E. If a vacancy occurs on the Commission, then the appointing authority shall appoint a successor to serve the remainder of the unexpired term.
- F. The appointing authority may remove a member from the Commission for cause which shall include repeated failure to attend meetings of the Commission; failure or refusal to discharge duties as a Commissioner; commission of a felony; willful or repeated failure or refusal to follow lawful procedures in the conduct of office; or gross misconduct bringing the member, the City or the Commission into discredit. Commission members will automatically be removed for missing in excess of four (4) scheduled meetings during a calendar year unless an exception is made for an excuse ruled acceptable by the appointing authority. In the event of such removal, the appointing authority shall certify in writing to the member and the Community Relations Director the cause for such removal.

Section Four. Meetings; Officers; Quorum

- A. At the first meeting of every calendar year, the Commission shall elect from among its membership a Chairperson who shall serve until the first meeting of the following calendar year.
- B. The Commission shall hold one (1) regular meeting each month, and such called meetings as its Chairperson may deem to be necessary.
- C. A minimum of six (6) members of the Commission must be present to constitute a quorum. It shall take the concurrence of a majority of the Commission membership present at a proper quorum to take official action.

Section Five. Powers and Duties

- A. The Commission may study and recommend to the Common Council programs and policies that enhance communications and understanding among all residents of the community.
- B. The Commission may develop and maintain programs that build positive relations among the community and enhance problem-solving skills among residents throughout the community.
- C. The Commission shall establish and maintain an office in the City.
- D. The Mayor may appoint a Community Relations Director, subject to the approval of the Community Relations Commission. The Director shall serve at the pleasure of the Mayor and may be dismissed without cause. Attorneys, other employees and agents may be hired by the City as authorized by the Community Relations Commission. The Goshen Common Council must appropriate funds for the payment of the Director, attorneys, other employees or agents before such individuals may commence work for the Commission. All such attorneys, employees and agents may be dismissed with or without cause.
- E. Except as it concerns judicial review, the Commission may, adopt, promulgate, amend and rescind such procedural rules and regulations, as are consistent with the provisions of this ordinance and state laws, or its intent and purpose as the Commission may deem necessary. A majority of the entire membership of the Commission is required to adopt, amend or rescind any rules and regulations of the Commission.
- F. The Commission shall formulate policies to effectuate the purposes of this ordinance and make recommendations to the Common Council to effectuate such policies.
- G. The Commission shall receive and investigate complaints alleging practices that are contrary to the public policy stated in this ordinance or that are in violation of the City of Goshen's Fair Housing Ordinance. All investigations of complaints shall be conducted by the Community Relations Director or his or her designee. If the investigation demonstrates that the complaint warrants further action, the Community Relations Director shall encourage the parties to reach an amicable resolution of the issues which may include mediation if both parties agree. If the parties are unable to resolve the issues and the Director has found that the complaint has merit, the Commission shall conduct a hearing in accordance with the provisions of Indiana Code 22-9-1 and Indiana Code 22-9.5-6 et al. The Commission shall not hold hearings in the absence of a complaint.

- H. The Commission may 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 because of race, religion, color, sex, sexual orientation, disability, national origin, or ancestry.
- I. The Commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because he or she filed a complaint, testified in any hearing before this Commission, or in any way assisted the Commission in any matter under its investigation.
- J. The Commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the Commission. The Commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this section shall constitute a contempt. All hearings shall be held within the City of Goshen at a location determined by the Commission. A citation of contempt may be issued upon application by the Commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.
- K. The Commission shall state its findings of fact after a hearing and, if the Commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice. If the Commission finds that a person has engaged in an unlawful discriminatory practice, the cease and desist order shall require the person to take further affirmative action as will effectuate the purposes of this ordinance, including but not limited to the power:
1. To restore complainant's losses incurred as a result of discriminatory treatment, as the Commission may deem necessary to assure justice, however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions. Credit shall be given, in appropriate instances, from earnings received elsewhere than from the respondent and complainant must make a good faith effort to mitigate damages;
 2. To require the posting of notice setting forth the public policy of the state of Indiana and the City of Goshen concerning civil rights and respondent's compliance with the policy in places of public accommodations;
 3. To require proof of compliance to be filed by respondent at periodic intervals; and
 4. To require a person who has been found to be in violation of this ordinance and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why this person's license should not be revoked or suspended.
- L. If, upon all the evidence, the Commission shall find that a person has not engaged in any unlawful practice or violation of this ordinance, the Commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.
- M. The Commission may furnish technical assistance requested by persons subject to this ordinance to further compliance with this ordinance or with an order issued thereunder.
- N. The Commission may conduct conciliation proceedings between the parties. Under certain circumstances and with the consent of the Community Relations Director and written permission from the complainant and agreement by the employer, to attempt to resolve an allegation of discrimination prior to the filing of the complaint. Following a failed resolution proceeding, and after the filing of the complaint, the Commission shall have the power to conduct hearings to find facts, reach

conclusions, and issue orders in proper cases that the respondent cease and desist any discriminatory practice found to exist within the scope of the complaint and the evidence.

- O. The Commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection K. If the Commission determines that a party to the consent agreement is not complying with it, the Commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the Commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.
- P. In lieu of investigating a complaint and holding a hearing under this section, the Commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one of these federal agencies and with the Commission. The Commission shall adopt by rule standards under which the Commission may issue such an order.
- Q. Upon notice that a complaint is the subject of an action in a state or federal court, the Commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint.
- R. The Commission may sue to recover civil damages ordered by the Commission to be paid or enforce the terms of any valid order of the Commission.
- S. All procedures carried on by the Commission shall be in accordance and compliance with Indiana Code 22-9-1, and when applicable, Indiana Code 22-9-5 and Indiana Code 22-9.5-6.
- T. The Commission shall submit to the Mayor and Common Council an annual report of the Commission's activities, including the number of complaints filed with respect to each type of alleged discrimination, the number of cases in each category disposed of, the number still pending, and such other information as may be requested by the Mayor or Common Council or as the Commission may see fit to include.
- U. If the Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this ordinance or the Goshen Fair Housing Ordinance, the Commission may file a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint in a civil or superior court located in Elkhart County in accordance with Indiana Code 22-9.5-6-6.

Section Six. Judicial Review

- A. Either the complainant or the respondent may seek judicial review of a final order of the Commission, if aggrieved by such order.
- B. All proceedings for judicial review of final orders shall be governed by the Administrative Adjudication Act, Section 4-21.5 et. seq. of the Indiana Code, as may be amended. If no proceeding to obtain judicial review is instituted within thirty (30) days from the date of receipt of notice by a person that an order has been made by the Commission, the Commission, if it determines that the

person upon whom a cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the Commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

- C. For purpose of judicial review, the record of the public hearing shall consist of a transcript of the oral testimony, exhibits admitted into evidence, all notices, pleadings, exceptions, motions, requests and other papers filed with the Commission with the exception of briefs or arguments of law. The cost of producing such record for judicial review shall be borne by the party making the appeal. The Commission may require the deposit of reasonable security for the payment of such costs before producing such record.

Section Seven. Definitions

With the exception of the definitions set forth below, the definitions set forth in Indiana Code 22-9-1-3, Indiana Code 22-9-1-12.1, Indiana Code 22-9.5-2-1, Indiana Code 22-9.5-1-2 and Indiana Code 22-9-5 et al. are adopted by reference and shall apply to the interpretation of this ordinance.

- A. "Commission" means the Goshen Community Relations Commission.
- B. "Employer" means the City of Goshen, or any other political subdivision or civil subdivision located in the City of Goshen, and any person employing six (6) or more persons within the City of Goshen, except that the term "employer" does not include:
1. any nonprofit corporation or association organized exclusively for fraternal or religious purposes;
 2. any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or
 3. any exclusively social club, corporation, or association that is not organized for profit.

Section Eight. Construction of Ordinance

This ordinance shall be construed broadly to effectuate its purpose.

Section Nine. Severability

The provisions of this ordinance are severable and, if any provision, sentence, clause, section or part is held illegal, invalid, unconstitutional or inapplicable, it shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the ordinance or their application to other persons or circumstances. It is declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentences, clause, section, or part had not been included therein.

Section Ten. Effective Date

This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

Section Eleven. Funding

No funding, whether budgeted or by special appropriation, will occur in 2008 or after without the Common Council conducting an assessment of the activities of the Community Relations Commission and taking action to approve the continuation of the Commission.

This Ordinance is passed by the Common Council of the City of Goshen, Indiana on the _____ day of _____, 2009.

Allan Kauffman, Presiding Officer

Attest:

Tina M. Bontrager, Clerk-Treasurer

This Ordinance, having been passed by the Common Council, is presented by me to the Mayor for his approval on the _____ day of _____, 2009, at _____ .m.

Tina M. Bontrager, Clerk-Treasurer

This Ordinance, having been passed by the Common Council and presented to me is approved by me and duly adopted on the _____ day of _____, 2009.

Allan Kauffman, Presiding Officer