



**Roll Call Number**

**Agenda Item Number**

16

Date February 6, 2017

**APPROVING CHANGES TO THE CIVIL & HUMAN RIGHTS COMMISSION RULES AND REGULATIONS AND REAFFIRMING APPROVAL OF THE COMMISSION'S RULES AND REGULATIONS ON FILE WITH THE CITY CLERK'S OFFICE**

WHEREAS, at its January 2017 meeting, the Des Moines Civil & Human Rights Commission passed a motion to make changes to its rules and regulations at sections 1-4, 3-3, 3-19, and 4-2; and

WHEREAS, these changes will take effect upon approval by the City Council per Municipal Code section 2-1055(a); and

WHEREAS, the changes are incorporated into the Rules and Regulations on file with the City Clerk's Office;

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA

That the changes to the Des Moines Civil & Human Rights Rules and Regulations passed by the Commission at its January 2017 meeting are approved and the Commission's Rules and Regulations incorporating the changes on file with the City Clerk's Office are reaffirmed and approved as amended.

MOVED BY \_\_\_\_\_ TO ADOPT.

APPROVED AS TO FORM:

Assistant City Attorney

**(Council Communication No. 17-071)**

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

\_\_\_\_\_  
Mayor

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

Rules and Regulations  
Des Moines Human Rights Commission

Revised February 6, 2017

## CHAPTER 1 - ORGANIZATION

1-1. ORDINANCE. The Human Rights Ordinance is Chapter 62 of the Municipal Code of the City of Des Moines, Iowa (hereinafter Des Moines Municipal Code).

1-2. COMMISSION. The Des Moines Human Rights Commission is a seven-member body broadly representative of the community. Members are recommended, appointed and approved by the City Council Members pursuant to §62-41 of the Des Moines Municipal Code.

1-3. LOCATION. The office of the Commission is located on the second floor, Armory Building, 602 Robert D Ray Drive, Des Moines, Iowa 50309-1881; telephone (515) 283-4284. Office hours are 8:00 A.M. to 5:00 P.M., Monday through Friday, except for holidays.

1-4. ADMINISTRATION. The Director of the Commission is appointed by the City Manager pursuant to §62-41 of the Des Moines Municipal Code. The Director is responsible for the day-to-day administration of the Commission's activities as set forth in §62-42(b) of the Des Moines Municipal Code.

## CHAPTER 2 - RULES AND PROCEDURES

2-1. RULE MAKING AUTHORITY. These Rules and Procedures are promulgated pursuant to the power and duty vested in the Commission by the City Council to make such rules as the Commission deems necessary to govern, expedite and effectuate the provisions of §62-11 and §62-42(a) of the Des Moines Municipal Code.

2-2. AMENDMENTS TO RULES. These rules and procedures may be amended from time to time to include new rules, to delete or to revise in some other manner, rules, or portions thereof, as the Commission deems appropriate and necessary. Notice of the proposed changes to the rules shall be given at least seven days in advance of the regular meeting at which the changes are to be considered. Changes to the rules shall require an affirmative vote of two-thirds of the Commission's membership.

2-3. SUSPENSION OR WAIVER OF RULES. To facilitate the proper administration of the Ordinance and advance justice, any rule contained herein may be suspended or waived by the Commission, unless otherwise provided bylaw, in order to prevent undue hardship in a particular instance, to prevent surprise or injustice, or to aid in the orderly and fair administration of the ordinance.

## CHAPTER 3 - GENERAL PROCEDURAL RULES

3-1. MEETINGS - REGULAR. The regular meetings of the Commission shall be held on the second Thursday of each month at 4:30 P.M. in the City Council Chambers, City Hall, 400 Robert D Ray Drive, Des Moines, Iowa or at other designated locations.

3-2. MEETINGS - SPECIAL. Special meetings may be called at the discretion of the Chair and Vice Chair or Secretary in consultation with the Executive Director, or upon the written request of any four Commission members, whenever there are matters requiring the Commission's deliberation and action before the next regular meeting.

3-3. NOTICE AND AGENDA. The notice of regular and special meetings shall include the time, date and place of each meeting and the tentative agenda of the business to be conducted at the meeting in accordance with §21.4 of the Iowa Code. The notice and tentative agenda shall be prepared by the Executive Director and submitted to the Chair for review and approval. The notice and tentative agenda shall be provided to each Commission member not less than seven (7) days in advance of the regular meeting and not less than three (3) days in advance of a special meeting. If such advance notice cannot be reasonably given, notice of at least 24 hours shall be given prior to the commencement of the meeting. The notice shall be provided to the news media who have filed a request for such notice. In addition, notice of all meetings shall be posted on the bulletin board maintained for public notices by the Des Moines City Clerk.

3-4. SUBMISSION OF AGENDA ITEMS. Any person wishing to place an item on the agenda of a regular meeting shall submit the item to the Executive Director, in writing, at least ten (10) days prior to the meeting. At the discretion of the Commission, the provisions of this rule with regard to time of submission may be waived, so long as there is sufficient time before the meeting to allow compliance with the provisions of the open meetings law, Chapter 21 of the Iowa Code.

3-5. OPEN MEETINGS. Meetings of the Commission, including all hearings, shall be open to the public and shall be conducted in compliance with the provisions of the Open Meetings Law, Chapter 21 of the Iowa Code.

3-6. ROLL CALL AND QUORUM. Before proceeding with business at the regular or special meeting, the Recording Secretary shall call the roll of Commission members and enter the names of those present in the minutes. The Recording Secretary shall determine and announce the presence of a quorum (four members); no vote on any matter shall be taken unless a quorum is present.

3-7. ATTENDANCE REQUIREMENTS. The Recording Secretary shall maintain a record of attendance of members at regular and special meetings during the calendar year. The members of the Commission are subject to the attendance requirement set in §2-1050 of the Des Moines Municipal Code, providing that no member shall miss more than four regularly scheduled meetings in a calendar year. Whenever any Commission member fails to meet this requirement, the Recording Secretary shall immediately after the calling of roll at such meeting, inform the Chair. The Commission may authorize an immediate written report to the City Council of such failure and may direct whether it is the recommendation of the Commission that the member be removed or be retained and the reasons supporting such action.

3-8. OFFICERS. The Commission shall elect a Chair, Vice Chair, and Secretary and other such officers it deems appropriate from its members.

- (1) Chair: The Chair recommends policies, procedures, and programs to the Commission, presides at each meeting and conducts other functions which are authorized by the rules or by the Commission or are necessary and proper for carrying out the powers granted by the Human Rights Ordinance.
- (2) Vice Chair: The Vice Chair, in the absence of the Chair, shall preside over the meeting(s), assume the duties, powers, and authority conferred upon the Chair by the Ordinance and Rules. The Vice Chair shall also perform such other duties as the Chair may assign.
- (3) Secretary: The Secretary may be responsible, whenever necessary, for taking notes or recording minutes at an Executive Session or other meetings. In the absence of the Chair and Vice Chair, the Secretary shall preside until a temporary Chair can be selected to serve for the duration of the meeting or until the Chair or Vice Chair is in attendance, whichever occurs first.
- (4) In the absence of the Chair, Vice Chair and Secretary, the Commissioner with the most seniority on the Commission, being the Commissioner first appointed of those present, shall preside for the duration of the meeting or until the Chair, Vice Chair or Secretary arrives.

3-9. CONDUCT OF MEETING. The presiding officer shall call the meeting to order at the appointed hour and shall preside over the discussion on each Agenda item in a manner which assures full participation of all Commission members and members of the general public desirous of being heard upon such issue and subject to rules 3-9.1 and 3-9.2. The presiding officer, as a member of the commission, may enter into any discussion and has the right to close debate and speak last on any item, but may not make a motion. A member of the Commission shall move all action requiring a vote. A motion to reconsider must be made by a Commission member who was on the prevailing side of the original motion or by a Commission member absent at the time of the original action.

#### 3-9.1 TIME LIMIT ON CITIZEN'S REMARKS.

Members of the general public shall be limited to three minutes speaking time per item, unless additional time is granted by the presiding officer. Total general public in-put on any subject under Commission consideration can be limited to a fixed period by the presiding officer. A majority vote of the Commission may extend the time limitations of this rule.

#### 3-9.2 REMARKS OF CITIZENS TO BE GERMANE.

Comments from members of the general public must be directed to the subject under consideration. The presiding officer shall rule on the germaneness of such comments. Citizens making personal, impertinent, or slanderous remarks shall be barred by the presiding officer from further comment before the Commission during the meeting.

3-10. MATTERS NOT COVERED. Any matter of order or procedure not covered by these rules shall be referred to the presiding officer, who shall decide the matter with the assistance and advice of the Commission's legal counsel in conformity with the purpose of these rules in a fair and expeditious manner. The decision of the presiding officer may be reversed by a majority vote of the Commission.

3-11. MINUTES. Accurate minutes of each meeting shall be kept and maintained, including the vote of each Commission member upon each question submitted to the Commission for consideration, deliberation and action. A copy of the minutes of the proceedings at its last meeting in the form proposed for the Commission's adoption shall be forwarded with the notice and agenda for the next regularly scheduled meeting. Upon approval and adoption, a copy of the minutes shall be filed by the Recording Secretary with the City Clerk as required by §2-1050(c) of the Des Moines Municipal Code.

3-12. RECORDING SECRETARY. The Executive Director shall assign a member of his or her staff to serve as the Commission's Recording Secretary. Such employee of the City is hereby designated pursuant to §2-1055(d) and §2-1050(c) of the Des Moines Municipal Code to make detailed handwritten notes and to tape record all regular and special meetings of the Commission and to serve as the official custodian of all records. After each meeting he or she shall promptly prepare minutes of the meeting in draft form from such notes and tape recording for the review and approval of the Secretary and the Chair. Once such minutes are in the form proposed for the Commission's adoption, they shall be forwarded to the members as provided in these rules.

3-13. RECORDS. All records of the Commission relating to the filing and disposition of complaints shall be retained for at least five years from the date of final action. Any disposal of such records after five years shall be in compliance with the requirements of §2-1055(e) of the Des Moines Municipal Code. All other records of the Commission shall be retained for at least three years after final action is taken.

3-14. NOMINATION OF OFFICERS. A nominating committee of three members shall be appointed by the Chair at the regular meeting in July and shall report its proposed nominations for officers at the regular meeting in August. Nominations from the floor shall be permitted at the August meeting. Officers presently serving on the Commission shall be eligible for nomination and election to successive terms of office.

3-15. ANNUAL MEETING. The regular meeting in September is fixed in §62-42(a)(5) of the Municipal Code as the Commission's annual meeting at which time the officers are elected. The Commission's annual report to the City Council shall be approved at the annual meeting. In forwarding the annual report to the City Council, a request for setting the date of the annual joint meeting with the City Council shall be included. Alternative dates within the latter part of September and the month of October shall be suggested to the City Council as possible dates for the joint meeting.

3-16. VACANCY. If a vacancy occurs in the office of the Chair, the Vice Chair shall become the Chair for the unexpired term of the Chair. If a vacancy occurs in either the office of the Vice Chair or the Secretary, the Commission shall select another member to serve the unexpired term of such officer. If a vacancy occurs in a commission seat, for whatever reason prior to its term of expiration, a successor shall be appointed and approved by the City Council to serve the unexpired term, pursuant to §2-1047 of the Des Moines Municipal Code.

3-17. REAPPOINTMENT TO SECOND CONSECUTIVE TERM. No later than the last day of November of each year, the Executive Director shall remind each Commissioner whose first term of office is expiring the following April of such expiration. Each such Commissioner shall

inform the Chair no later than three months in advance of the expiration of the term as to whether he or she desires to be reappointed for a second consecutive term. The Chair shall immediately forward such information to the City Council.

In the event a vacancy occurs or a commissioner is unable, for whatever reason, to complete his/her term, then the individual who is appointed to replace that commissioner and serves at least 2/3 or more of the unexpired three-year term is considered to have served one term of office.

3-18. COMMITTEES. To assist the Commission in fulfilling its duties and responsibilities under the Ordinance two permanent advisory committees are hereby established: the Education, Employment and Public Relations Committee and the Finance, Rules and Procedures Review Committee. Each committee shall be composed of at least three Commissioners with the Chair or Vice Chair serving as an ex officio member. The Chair shall make committee assignments at the annual meeting. To the extent possible the expressed preferences of each Commissioner as to assignments shall be honored. Each newly appointed Commissioner shall designate one (1) or two (2) of the committees upon which he or she desires to serve until the annual committee assignments are made. Each committee shall elect its own Chair from its membership and shall report directly to the Commission as a whole, as follows:

- (1) The Education, Employment and Public Relations Committee shall review and recommend public awareness activities, education and any other action deemed necessary to effectively present the Commission's functions in the prevention and elimination of discrimination or illegal discriminatory practices to various groups and organizations. The Committee shall also review and recommend to the Commission, initiatives toward enhancing employment related issues and opportunities.
- (2) The Finance, Rules and Procedures Review Committee shall provide a continuing review of the ongoing budgetary needs of the Commission and recommend action by the Commission needed to assure the adequacy of the funding allocated to the Commission.

The Committee shall also provide a continuing review of the Commission's rules, procedures and the Ordinance and recommend revisions needed to conform to legislative changes and the developing needs of the Commission.

3-19. SUBCOMMITTEES. Subcommittees shall be established from time to time, as the Commission deems necessary to study the problems of prejudice, intolerance, bigotry and discrimination in any field of human relationships within the purview of the Ordinance. In creating each subcommittee, the Commission shall specify a fixed term for its existence and a specific mandate as to its goal and function. The Chair or Vice Chair and at least one (1) other Commission member shall serve on any subcommittee established pursuant to this rule and the Ordinance. At the conclusion of the subcommittee's work the Commission shall hold one or more public hearings to consider the findings and recommendations of the subcommittee. The Commission shall determine the further action or study it should undertake at the conclusion of the hearings.

## CHAPTER 4 - COMPLAINT PROCESS

4-1. **FILING.** Complaints of violations of the Ordinance shall be filed at the Commission's office on the forms provided for such purpose. Commission staff designated by the Executive Director shall assist persons desiring to file complaints. Notary services for the required verification of the complaint shall be provided at no cost.

4-2. **CONTENTS.** Each complaint shall contain the following:

- (1) full name and address of the person making the complaint;
- (2) full name and address of the person or persons alleged to have committed the illegal or discriminatory acts and/or practices complained of;
- (3) the type or types of discrimination charged, i.e., race, religion, color, national origin, ancestry, creed, sex, age, disability;
- (4) a statement of particulars of the facts and circumstances establishing the alleged discrimination or discriminatory practice; including the date of the alleged discriminatory practice, and if the illegal discriminatory practice or act is of a continuing nature, the date between which it is alleged to have occurred or is occurring;
- (5) a statement as to any other action, civil or criminal, instituted in any other forum based on the same facts and circumstances alleged in the complaint, including the date such action was filed together with a statement as to the status or disposition of the action(s); and
- (6) a statement as to whether or not Complainant desires the complaint to be cross-filed with any other civil rights agency and, if so, which agency or agencies.

4-3. **STAFF CONFERENCE WITH COMPLAINANT.** Upon the filing of the complaint, Commission staff shall advise the Complainant as to:

- (1) whether the facts and circumstances alleged appear to set out a violation of the Ordinance;
- (2) the general process and procedure of the Commission upon the filing of a complaint;
- (3) the confidentiality of the Commission's investigation and conciliation efforts and the need for the cooperation of the Complainant in maintaining the non-adversarial environment fostered by such confidentiality;
- (4) the availability of the Commission to mediate the complaint prior to initiation of or during investigation of the complaint if both parties consent to such effort;
- (5) the preliminary investigation and review process by which the Commission determines it should or should not continue prosecution of the complaint including the Complainant's right to appeal a determination of no probable cause;



- (6) the efforts undertaken by the Commission upon a finding of probable cause to eliminate the illegal discrimination or discriminatory practice by conciliation and persuasion and the right of the Complainant to advise the Commission concerning the terms of settlement which the Complainant believes to be necessary to satisfactorily resolve the complaint; and
- (7) the system for cross-filing civil rights complaints with the Iowa Civil Rights Commission, Equal Employment Opportunity Commission or the U.S. Housing and Urban Development Department, and the availability of Commission staff to assist the Complainant in filling out and filing complaint forms of such agencies.

Where applicable, the Complainant shall be informed of the referral of all complaints filed against the City of Des Moines or any board, commission or department of the City, to the Iowa Civil Rights Commission, the Equal Employment Opportunity Commission or other civil rights enforcement agency for processing, investigation and decision.

4-4. SERVICE OF COMPLAINT TO RESPONDENT. Within ten (10) days after the filing of a complaint against any person or persons alleged to have violated the Ordinance, hereinafter referred to as the Respondent, the Executive Director shall serve a full copy of the complaint, including the statement of particulars setting out the dates and facts upon which the complaint is based, to the Respondent, by Delivery Confirmation Mail Service from the U.S. Postal Service or by hand delivery, with acceptance of service provided. The Respondent shall also be advised as to:

- (1) the right to file a written response to the allegations of the complaint within thirty (30) days of service of the complaint upon the Respondent;
- (2) the right to be represented by an attorney in Commission proceedings upon the complaint;
- (3) the right to present evidence at all stages of the investigation and at public hearings;
- (4) the confidentiality of the Commission's investigation and conciliation efforts and the need for the cooperation of the Respondent in maintaining the non-adversarial environment fostered by such confidentiality; and
- (5) the availability of the Commission to mediate the complaint prior to initiation of or during investigation if both parties consent.

#### 4-5. REPRESENTATION AND PRESERVATION OF RECORDS.

Respondent shall be requested to inform the Commission in writing if an attorney will be representing the Respondent before the Commission in connection with the complaint. Upon receiving such information, the Commission shall make all further contacts with Respondent through such attorney. Respondent shall be informed that any and all records relevant to the investigation and determination of the allegations of the complaint must be preserved until the Commission specifically orders otherwise.

4-6. ACKNOWLEDGEMENT OF FILING AND SERVICE. Upon confirmed service of the Complaint to the Respondent, the Executive Director shall send a written acknowledgement to

Complainant of the filing and service of the complaint. Complainant shall be advised and cautioned that the filing with the Commission protects the Complainant's rights under the Ordinance but that it is Complainant's responsibility to make inquiry as to the rights and benefits available under other municipal ordinances, state or federal laws and to file where appropriate to protect those rights. Complainant shall be advised of the expected time duration for each step of the process to be completed.

4-7. MEDIATION. Upon the consent of both parties, the Executive Director shall attempt mediation. Mediation efforts should not unduly delay the initiation or completion of the case investigation.

4-8. PROBABLE CAUSE DETERMINATION. Upon staff's completion of an investigation, the Executive Director shall carefully review the summary of investigation and shall request any further inquiry or clarification deemed necessary to allow an appropriate decision as to probable cause or no probable cause. The Executive Director shall determine from all the evidence submitted during the investigation whether or not there is probable cause to believe that discrimination or an illegal discriminatory practice exists in violation of the Ordinance and shall promptly notify the Complainant and the Respondent of such determination by Delivery Confirmation Mail through or by the U.S. Postal Service. The notice shall contain a brief summary of the information and reasons which support the finding. If no probable cause is found, the Complainant shall be informed of his or her appeal rights under the ordinance.

4-9. CONCILIATION. If a finding of "Probable Cause" is entered, the Executive Director shall make at least two attempts, by telephone or by mail, to arrange a conference with the Respondent in order to effectuate the conciliation and persuasion required under the Ordinance. In determining what steps must be taken to eliminate the discriminatory or illegal discriminatory practice, the Executive Director shall consult with the Complainant as to the terms of settlement that the Complainant believes appropriate. The Executive Director shall also take into account the Respondent's particular circumstances in fashioning the terms of settlement. The Complainant need not be present at conciliation conferences but shall be kept fully informed of all such meetings. The Respondent shall attend and participate in the Commission's efforts to eliminate the discrimination or discriminatory practice through conciliation.

4-10. CONCILIATION AGREEMENT. The formal conciliation agreement signed by the Respondent and the Complainant in triplicate shall be submitted to the Executive Director, on behalf of the Commission, for signature. The conciliation agreement shall become effective immediately after the Complainant signs it. The Executive Director shall set a reasonable time for acceptance and signature by the Complainant. If the Complainant declines to sign the Agreement, the Executive Director may report the matter to the Commission. If the agreement is acceptable to the Complainant and the Commission, but not to the Respondent, the Executive Director shall determine if further efforts of conciliation should be undertaken or whether the circumstances warrant setting the matter for public hearing without further delay.

4-11. COMPLIANCE REVIEW. The Commission may require the Respondent to submit periodic reports showing compliance with the terms of the conciliation agreement. Respondent shall be informed that failure to satisfy the terms of the agreement can result in the Commission

opening its complaint files to public inspection and initiation of an enforcement action in Polk County District Court as provided in the Ordinance.

4-12. APPEAL OF NO PROBABLE CAUSE. An appeal of a finding of “No Probable Cause” shall be limited to a summary of any material evidence newly discovered which, despite the diligent efforts of the Complainant and the Commission, was not available at the time of the determination that No Probable Cause existed, or action which has happened since the finding was entered or agency or court decisions rendered in similar circumstances which were overlooked or ignored in the entry of the finding. The Respondent shall be informed when an appeal is pending. An appeal of an Administrative Closure is also permitted. The evidence to be presented for the appeal of an Administrative Closure shall be limited to facts appropriate to refute the basis for the case closure.

4-13. PUBLIC HEARING. When the Commission, upon the Executive Director’s recommendation, decides to hold a public hearing upon the allegations of the complaint, the notice of hearing shall inform the Respondent of the date, time and place of the hearing and that Respondent may file a written answer to the complaint. The notice of hearing shall be forwarded to all parties. The notice shall state whether the hearing is to be held before three commissioners serving as hearing commissioners or a hearing officer.

4-14. WAIVER OF PUBLIC HEARING. Where the facts are not in dispute or each party files a written request to waive the public hearing, the Commission or a hearing officer shall decide the merits of the case after giving full review and fair consideration to the whole record contained in the Commission’s file.

4-15. WITHDRAWAL OF COMPLAINT. A complaint may be withdrawn in writing by the Complainant at any time subsequent to its filing. The Executive Director shall then promptly close the Complainant’s file. The Commission shall not be precluded by such withdrawal from seeking to eliminate violations of the Ordinance which have come to its attention during the investigation.

4-16. AMENDMENT OF COMPLAINT. So long as the jurisdictional limitations of the Ordinance are not thereby exceeded, the complaint may be amended at any time prior to the public hearing and thereafter at the discretion of the hearing commissioners or hearing officer.

4-17. TIMELINESS OF CASE PROCESSING. The Commission staff shall make a final administrative disposition of each complaint with one year of the date the complaint is filed, unless it is impracticable or impossible to do so. In the event that the Commission is unable to make its final decision with one year, the Executive Director shall notify the Complainant and the Respondent of the reason for the delay in processing the complaint. The Complainant and Respondent shall be expected to cooperate in this effort to resolve the case in a timely manner.

## CHAPTER 5 - PUBLIC HEARING PROCEDURES

5-1. SUBPOENAS OF WITNESSES AND MATERIALS. In setting the date of hearing and designating the hearing commissioners or hearing officer to hear the case, the Commission shall authorize the issuance of Commission subpoenas to compel the attendance and testimony of

witnesses and/or the production of documents and records by the hearing commissioners or the hearing officer on behalf of the Commission. Any failure or refusal to obey the Commission's subpoena shall be promptly reported to the full Commission. If the failure or refusal continues, the Commission shall report such contempt to the Polk County District Court and shall petition the court for the issuance of the subpoenas.

5-2. PRE-HEARING CONFERENCE. The notice of public hearing provided under these rules shall include notice of the time and place for the pre-hearing conference. At such time the hearing commissioners or hearing officer shall conduct a pre-hearing conference for the following purposes:

- (1) formulation and simplification of the issues;
- (2) identification of the witnesses to be called to testify and the documents to be offered into evidence as exhibits;
- (3) stipulation of facts not in dispute and of the authenticity of documents;
- (4) resolution of any contested evidentiary matters; and
- (5) disposition of such other matters as may expedite the orderly conduct of the public hearing.

5-3. CONDUCT OF PUBLIC HEARINGS. Public hearings shall be conducted by the hearing commissioners designated by the Chair, one of whom shall be designated as presiding commissioner, or by a hearing officer. The hearing commissioners or hearing officer shall have full authority to conduct the hearing in a fair and impartial manner, to admit or exclude testimony or other evidence and to rule upon all motions and objections. All rulings and determinations of the hearing commissioners shall be by majority rule. The hearing commissioners or hearing officer may participate in the examination of the witnesses after the parties have concluded their examinations and may ask for additional evidence from any party introduced into evidence if such evidence is deemed necessary to the appropriate resolution of the complaint. All witnesses shall be sworn by the court reporter or shall otherwise affirm the truth of their testimony.

5-4. PRESENTATION OF EVIDENCE. The case in support of the complaint shall be presented first through direct testimony, opportunity for cross-examination shall be provided. All relevant and material evidence shall be admissible, unless such evidence is unduly repetitious or cumulative. Immaterial or irrelevant evidence shall not be admitted into evidence. The hearing commissioners or hearing officer shall not be bound by the formal rules of evidence governing court proceedings, but the fundamentals of due process shall be afforded to all parties throughout the hearing proceedings.

5-5. CONSOLIDATION. The hearing commissioners or hearing officer on motion of the parties or on motion of the Commission may consolidate complaints with common issues of law and fact for hearing. In proceedings which have been consolidated for hearing, the presiding commissioner or hearing officer shall direct which party is to present evidence first.

5-6. OBJECTIONS. When an objection to the admission or exclusion of evidence is made, the grounds relied upon shall be stated briefly. Any objection not timely urged before the hearing commissioners or hearing officer shall be deemed waived.

5-7. OFFERS OF PROOF. Any offer of proof made in connection with an objection to any ruling of the hearing commissioners or hearing officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be established by such testimony; or, if the excluded evidence consists of evidence in documentary or written form or refers to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

5-8. STIPULATIONS. Written stipulations may be introduced into evidence, if signed by the persons sought to be bound thereby, or by their attorneys. Oral stipulations may be made on the record at the public hearing.

5-9. FILING OF ADDITIONAL EVIDENCE. The hearing commissioners or hearing officer may, if deemed advisable, keep the record open to allow for the filing of specific documentary evidence as a supplement to the record and to allow any party affected by such evidence to file a written response to it within the time fixed at the hearing for such filings.

5-10. ORAL ARGUMENTS AND BRIEFS. The parties shall be allowed to make opening and closing arguments at the hearing or to file post-hearing briefs within such time limits as the hearing commissioners or hearing officer establishes.

5-11. CONTINUANCES. The hearing commissioners or hearing officer may postpone a scheduled hearing or continue a hearing to a later day by announcement thereof at the hearing or by appropriate notice to all parties. Such continuance shall be granted only for good cause shown which may include the potential for settlement of the complaint.

5-12. RECORD OF PROCEEDINGS. All testimony and proceedings at the public hearing shall be taken down and transcribed by an official court reporter retained by the Commission. Upon transcription, the original of the hearing transcript shall be filed by the court reporter with the Commission.

5-13. DISQUALIFICATION. Any hearing commissioner or hearing officer shall withdraw, or otherwise be removed, from a proceeding when it first appears that such individual has any interest in the matters at issue, has personal knowledge of the facts and circumstances at issue, or is otherwise not able to exercise fair and impartial judgment on behalf of the Commission.

5-14. EX PARTE COMMUNICATIONS. The hearing commissioners or hearing officer shall not communicate ex parte either directly or indirectly with any party or other person involved in the proceeding concerning any issue of law or fact for which a hearing has been scheduled. This prohibition shall likewise prohibit any such communication being made by such person or party to the hearing commissioners or hearing officer. The prohibition shall be in effect until the final order of the Commission is entered or the judicial review process is completed and a final court order is entered, whichever is later.

5-15. FINDING OF NO DISCRIMINATION AFTER PUBLIC HEARING. When the hearing commissioners or hearing officer decide that, upon a preponderance of the evidence, the Respondent has not engaged in the alleged discrimination or illegal discriminatory act, written findings of such decision shall be entered and the complaint shall be dismissed. Such dismissal shall constitute a final order by the Commission. Complainant shall be advised of the right to seek judicial review under §62-9 of the Des Moines Municipal Code.

5-16. FINDING OF DISCRIMINATION AFTER PUBLIC HEARING.

When the hearing commissioners or hearing officer decide, based on a preponderance of the evidence, that the Respondent has engaged in discrimination or an illegal discriminatory practice, written findings of fact, conclusions of law, and a proposed order shall be forwarded to the parties and the Commission. The Chair shall establish the date, time and place at which the Commission will review the recommended decision. Exceptions to the proposed findings, conclusions and order may be filed by the parties with supporting brief not later than ten days prior to the Commission's deliberations. The exceptions shall state with particularity the points of law or fact which it is claimed were overlooked or misinterpreted in the proposed decision.

5-17. CONCURRENCE OF COMMISSION IN PROPOSED ORDER.

Upon review of the whole record and any and all exceptions filed, if the Commission concurs in all respects with the proposed decision, a final order to such effect shall be entered and the Complainant and the Respondent shall be informed of the right to seek judicial review under §62-9 of the Des Moines Municipal Code.

5-18. DISAGREEMENT OF COMMISSION WITH PROPOSED ORDER. If upon review of the whole record and any and all exceptions filed, the Commission disagrees with any portion of the proposed order, a hearing to allow oral argument on the matters in the proposed decision with which the Commission disagrees shall be held. The hearing commissioners' or hearing officer's findings of fact are binding upon the Commission. No new evidence shall be admitted at the hearing. The Commission, after affording the Complainant, the Respondent and Commission staff the opportunity to be heard, shall enter the written findings, conclusions, the cease and desist order and the affirmative action it deems appropriate to remedy the discrimination or illegal discriminatory practice. The Complainant and the Respondent shall be informed this decision constitutes a final order of the Commission and of the right to seek judicial review under §62-9 of the Des Moines Municipal Code.

## CHAPTER 6 - ADMINISTRATIVE & PROCEDURAL RULES FOR FAIR HOUSING COMPLAINTS

6-1. DEFINITIONS:

- (1) "Family" includes a single individual.
- (2) "To rent" includes to lease, to sublease, to let and otherwise to grant for consideration the right to occupy premises not owned by the occupant.

- (3) (3) "State" means the State of Iowa and any of its political subdivisions.
- (4) (4) "Aggrieved person" includes any person who....
- (a) claims to have been injured by a discriminatory housing practice; or
  - (b) believes that such person will be injured by a discriminatory housing practice that is about to occur.
- (5) "Complainant" means the person who files a complaint under §62-101 or § 62-102 of the Municipal Code.
- (6) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the Respondent, and the Commission.
- (7) "Conciliation Agreement" means a written agreement setting forth the resolution of the issues in conciliation.
- (8) "Person" includes one or more individuals, partnerships, associations, labor organizations, corporations, legal representatives, mutual companies, trusts, trustees, trustees in bankruptcy or receivers, fiduciaries, joint stock companies, unincorporated organizations, and the City and any of its departments, divisions, boards, commissions, officials, agents and employees.
- (9) "Property or Real Property." As used in Des Moines Municipal Code, Chapter 62, §62-101, et. seq. and any other reference therein, the term "real property" and "property" has the same meaning as is given the term "dwelling" in the ordinance in §62-1.
- (10) "Reasonable Cause Determination" means when the Commission determines that based on the totality of the factual circumstances known at the time of the Commission's review, that reasonable cause or no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The Commission's determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by the complainant and respondent and otherwise disclosed during the investigation. In making this determination the Commission shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in District Court.
- (11) The terms "probable cause" and "no probable cause" shall have the same meaning as "reasonable cause" consistent with the use in the Fair Housing Act and as amended in the Commission's rules.

6-2 . FILING. Complaints of violation of the housing ordinance shall be filed at the Commission's office on the forms provided for such purpose. Commission staff designated by the Executive Director shall assist persons desiring to file complaints. Notarial services for the required verification of the complaint shall be provided at no cost.

- (1) Upon the filing of a complaint the Commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums available under the fair housing ordinance and other similar laws.

6-3. PROCESSING THE COMPLAINT. The Commission shall commence proceedings with respect to the complaint within 30 days after the complaint is filed.

6-4. FINAL DISPOSITION OF HOUSING COMPLAINTS. The Commission shall make final administrative disposition of the housing complaint within one year of the date or receipt of a complaint, unless it is impracticable to do so. In the event the Commission is unable to make its final administrative disposition within one year, it shall notify the complainant and respondent of the reasons for the delay.

6-5. INVESTIGATIVE REPORT. At the end of each investigation, the Commission shall prepare a final investigative report containing:

- (1) the names and dates of contacts with witnesses;
- (2) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- (3) a summary description of other pertinent records;
- (4) a summary of witness statements; and
- (5) answers to interrogatories.

A final report under this paragraph may be amended if additional evidence is later discovered.

6.6 NO PROBABLE CAUSE DISMISSAL. If the Commission determines that no probable cause exists to believe that a discriminatory housing or real estate practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint.

6.7 HOUSING FOR OLDER PERSONS. Housing shall not fail to meet the requirements for housing for older persons by reason of:

- (1) persons residing in such housing as of the date of enactment of the amendment to the housing ordinance who do not meet the age requirements of §62-103(b), provided that new occupants of such housing meet the age requirements of §62-103(b); or
- (2) unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of §62-103(b).

## CHAPTER 7 - ADMINISTRATIVE HEARING PROCESS FOR FAIR HOUSING COMPLAINTS

7-1. EXPEDITED DISCOVERY AND HEARING



- (1) Discovery in administrative proceedings under §62-4 shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.
- (2) A hearing shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

#### 7-2. HEARINGS, FINDINGS AND CONCLUSIONS, AND ORDERS.

- (1) The hearing officer shall commence the hearing under §62-4 no later than one hundred twenty (120) days following the probable cause determination, unless it is impracticable to do so. If the hearing officer is unable to commence the hearing within one hundred twenty (120) days after the determination, the hearing officer shall notify the commission, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

#### 7-3. REVIEW BY COMMISSION: SERVICE OF FINAL ORDER

- (1) The Commission may review the hearing officer's proposed decision, findings and conclusion. Such review shall be completed not later than 60 days after the commission received the proposed decision finding and conclusion; otherwise the proposed findings shall become final.
- (2) Upon completing its review of the hearing officer's proposed decision the commission shall cause to have issued the appropriate order. The Complainant and Respondent shall be informed of the right to seek judicial review under §62-9 of the Des Moines Municipal Code.