



MEMORANDUM

Office of the City Attorney

Registrar No. 040874

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission
FROM: Marion J. Radson, City Attorney

FEBRUARY 28, 2005

DATE: ~~FEBRUARY 14, 2005~~

~~FIRST READING~~

SUBJECT: Ordinance No. 0-05-18

SECOND READING

An ordinance of the City of Gainesville, Florida; amending Chapter 8 of the Code of Ordinances of the City of Gainesville relating to discrimination; amending Section 8-22 relating to the Human Rights Board meetings; Section 8-51 relating to the processing of equal opportunity complaints; and Section 8-95 relating to the processing of fair housing complaints; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

The City Commission at its meeting of January 24, 2005, authorized the City Attorney's Office to draft and the Clerk of the Commission to advertise an ordinance amending Chapter 8 of the Code of Ordinances relating to the Human Rights Board meetings, the processing of equal opportunity complaints, and the processing of fair housing complaints.

Prepared by:

Elizabeth A. Waratuke,
Litigation Attorney

Submitted by:

Marion J. Radson,
City Attorney

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PASSED ON FIRST READING BY A VOTE OF 6-0.

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ORDINANCE NO. 040874
0-05-18

An ordinance of the City of Gainesville, Florida; amending Chapter 8 of the Code of Ordinances of the City of Gainesville relating to discrimination; amending Section 8-22 relating to the Human Rights Board meetings; Section 8-51 relating to the processing of equal opportunity complaints; and Section 8-95 relating to the processing of fair housing complaints; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least ten days notice has been given, once by publication in a newspaper of general circulation notifying the public of this proposed ordinance, and of a public hearing in the auditorium of City Hall in the City of Gainesville; and

WHEREAS, a public hearing was held pursuant to the published notice described, at which hearing the parties and interests and all others had an opportunity to be, and were in fact, heard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. Section 8-22 of the Code of Ordinances of the City of Gainesville is amended to read as follows:

ARTICLE II. HUMAN RIGHTS BOARD

Sec. 8-22. Human rights board-Established; membership; meetings.

There is hereby created the City of Gainesville Human Rights Board.

(a) The board shall be composed of seven members appointed by the city commission. Membership should be representative of the city’s population and whenever possible, should reflect racial, ethnic and religious minorities as well as geographic economic and sexual considerations.

(b) Members of the boards shall serve terms of three years each; provided, however, that three of the initial appointments shall be for a term of one year, two of the initial appointments shall be for a term of two years, and the remaining two initial appointments shall be for a term of three years. Thereafter, all appointments shall be for three-year terms.

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2 (c) The members of the board shall receive no compensation.

3
4 (d) The board shall annually elect one of its members as chair and one as vice-chair.
5 Elections shall be held at the first regularly scheduled meeting after appointment of the board.
6 The chair shall preside and conduct meetings of the board. The vice-chair shall act in the
7 absence of the chair. Unless otherwise stated in this article, all actions and decisions of the board
8 may be by a simple majority vote of those members present at a lawful meeting of the board.
9

10 (e) The board shall have the power and authority to promulgate such procedures and
11 rules as necessary to conduct the business of the board, provided such rules are not inconsistent
12 with this chapter and provided that such rules are subject to approval by the city commission.
13

14 (f) The board shall meet at least monthly if there is business to come before the
15 board, but may also meet as often as necessary. The director shall schedule each meeting and
16 give notice of the time and place of the meetings to all board members, all parties to be heard,
17 and the public. Special meeting of the board may be convened by the chair, with the concurrence
18 of the director, upon giving notice thereof to the members of the board, or may be called by
19 written notice signed by three members of the board. The notice of a special meeting shall be
20 given at least 48 hours prior thereto. All meetings shall be public.
21

22 (g) The city's equal opportunity director shall provide clerical and administrative
23 support to the board as may be reasonably required by the board to discharge its duties and
24 responsibilities. The city's equal opportunity director shall provide a regular meeting place for
25 the board.
26

27 **Section 2.** Section 8-51 of the Code of Ordinances of the City of Gainesville is amended to read
28 as follows:
29

30 **ARTICLE III. EQUAL EMPLOYMENT OPPORTUNITY**

31 **Sec. 8-51. Processing of complaints.**

32 (a) Within 30 days after the filing of a complaint, the director shall commence such
33 investigation as deemed appropriate to ascertain facts and issues. The director may utilize
34 the services and information gathered from other public agencies charged with the
35 administration of equal opportunity laws.

36 (b) The following investigation procedures shall be followed:

37 (1) Complaint verification. As part of the investigation process, the
38 complaining party may be required to provide an additional sworn written
39 statement which shall include:

40 a. A statement of each particular harm or potential harm which the
41 aggrieved person has suffered or will suffer and the date on which each
42 harm occurred or will occur.

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1 b. For each harm, a statement specifying the act, policy, or practice
2 which is alleged to be unlawful.

3 c. For each act, policy, or practice alleged to have harmed the aggrieved
4 person, a statement of the facts which led the complainant to believe that
5 the act, policy, or practice is discriminatory.

6 (2) Requests for information. In investigating a complaint, the director and/or
7 the director's designee may obtain information by:

8 a. Oral interview; and/or

9 b. Requests for written statement or affidavit; and/or

10 c. Any discovery methods set forth in the Florida Rules of Civil
11 Procedure.

12 (3) Investigations. The investigations will seek the voluntary cooperation of all
13 persons in obtaining information. If, however, the director is unable to obtain the
14 voluntary cooperation of persons, the director shall request the board issue
15 subpoenas. The board shall have the power to issue subpoenas or subpoenas duces
16 tecum. Any subpoena issued by the board must be approved by the city attorney as
17 to the subpoena's form and legality before it is issued.

18 (4) Complaining party's failure to cooperate. Where the complainant fails to
19 provide a necessary information statement; fails or refuses to appear or be
20 available for interviews or conferences; fails or refuses to provide necessary
21 information requested by the director pursuant to this section; or otherwise refuses
22 to cooperate to the extent that the director shall dismiss the complaint after
23 providing 20 days' notice to the complainant unless the director, with board
24 approval, determines there is sufficient grounds and sufficient evidence to proceed
25 with the complaint.

26 (5) Access to files during investigation. Information obtained during the
27 investigation of a complaint shall be disclosed only in accordance with the
28 provisions of the Florida Public Records Law.

29 (c) The director shall, within 100 days after the filing of a complaint, complete the
30 investigation of the alleged unlawful discriminatory practice, unless it is impracticable to
31 do so. If the director is unable to complete the investigation within 100 days after the
32 filing of a complaint, the director shall notify, by certified mail or by personal service, the
33 complainant and the respondent in writing of the reasons for not so doing. The director
34 shall notify the aggrieved person and the respondent if administrative disposition of the
35 complaint pursuant to this article cannot be accomplished within one year of the filing of
36 the complaint.

37 (d) Beginning with the filing of the complaint and ending with the filing of a
38 reasonable cause charge, as provided for in subsection (g) herein, the director shall
39 attempt to conciliate the matter by methods of initial conference and conciliation with all
40 interested parties and such representatives as the parties may choose to assist them. Such
41 conciliation conferences may be by whatever method the director determines to be most
42 appropriate. The director shall attempt to achieve a just resolution of all violations found,

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1 and to obtain agreement that the respondent will eliminate the unlawful practice and
2 provide appropriate affirmative relief. Except as provided in subsection (e) of this section,
3 nothing that is said or done in the course of conciliation or such informal endeavors may
4 be made public or used as evidence in a subsequent proceeding without the written
5 consent of the persons concerned.

6 (e) Where conciliation attempts are successful, the terms of a settlement of a complaint
7 shall be reduced to a written conciliation agreement. The agreement must be executed by
8 the respondent and the complainant, and is subject to the approval of the director. The
9 conciliation agreement shall seek to protect the interests of the aggrieved person, other
10 persons similarly situated, and the public interest. Notwithstanding the provisions of
11 subsection (d) above, each conciliation agreement shall be made public in accordance
12 with the public records law.

13 (f) A duly executed conciliation agreement shall operate as a dismissal with prejudice
14 of the complaint.

15 (g) If conciliation has not been reached within 100 days of the filing of the complaint
16 and the complaint has not been withdrawn, the director shall make a determination as to
17 whether reasonable cause exists to believe that an unlawful discriminatory practice has
18 occurred or is about to occur. Reasonable cause shall be based upon sufficiently
19 trustworthy information which would lead an impartial observer to a belief that a
20 discriminatory practice has occurred or is likely to occur. The director and/or the
21 director's designee shall report the results of the investigation and his or her determination
22 to the board. The board shall receive a copy of the director's report and shall have the
23 opportunity to review the report and submit comments to the director. If the board
24 determines that reasonable cause exists to believe that a discriminatory practice has
25 occurred or is about to occur, it shall issue a written notice of determination of reasonable
26 cause. A copy of the notice shall be served upon the respondent, the complainant, and the
27 aggrieved person within ~~20~~ 10 days ~~after~~ of the date of the written notice ~~has been issued~~;
28 along with the notice, the parties shall be advised of the options available under this
29 section.

30 (h) When the board has issued a notice of determination of reasonable cause, the
31 aggrieved person may either:

32 (1) Bring a civil action against the person named in the complaint in any court
33 of competent jurisdiction no later than one year after the date of ~~determination of~~
34 the written notice of reasonable cause by the board; or

35 (2) Request an administrative hearing as provided for in subsection (j) herein.
36 The request for an administrative hearing must be in writing and must be made no
37 later than 35 days after the date of ~~determination of~~ the written notice of
38 reasonable cause by the board. The election by the aggrieved person of filing a
39 civil action or requesting an administrative hearing under this subsection is the
40 exclusive procedure available to the aggrieved person pursuant to this article.

41 (i) If the director determines that the complaint lacks reasonable grounds upon which to
42 base a violation of this article, the director shall dismiss the complaint, then the director
43 shall inform the board of his or her findings through a written report. The board, in its

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1 discretion, may order that the matter be closed or may order, by a three-fourths majority
2 vote, such further investigation as may be deemed necessary. If further investigation is
3 ordered, the results thereof shall be presented to the board in the form of a written report
4 within ten days and shall be acted upon by the board within an additional 20 days.

5 (j) If a request for an administrative hearing is timely made under subsection (h), an
6 ~~administrative evidentiary hearing on the merits shall be held and shall be conducted~~
7 ~~according to the procedures provided in F.S. §§ 120.57(1) and 120.58.~~ The city, through
8 the city attorney's office, shall arrange for the services of a hearing officer to conduct the
9 administrative hearing. Any conciliation agreement reached prior to a scheduled hearing
10 may result in such hearing being cancelled.

11 (k) In conducting any administrative hearing to determine whether or not there has
12 occurred a failure to comply with the provisions of this article, the hearing officer shall
13 have the power to administer oaths, issue subpoenas, compel the production of books,
14 paper, and other documents, and receive evidence. All parties shall have an opportunity
15 to respond, to present evidence and argument on all issues involved, to conduct cross-
16 examination and submit rebuttal evidence, to submit proposed findings of facts and
17 orders, to file exceptions to the presiding officer's recommended order, and to be
18 represented by counsel or other qualified representative. Hearsay evidence may be used
19 for the purpose of supplementing or explaining other evidence, but it shall not be
20 sufficient in itself to support a finding unless it would be admissible over objection in
21 civil actions. In interpreting the provisions of this article, the hearing officer may
22 consider administrative and judicial interpretations of substantially equivalent provisions
23 of state or federal laws.

24 (l) The hearing officer shall prepare a recommended order consisting of findings of
25 fact, conclusions of law and affirmative relief, if applicable. The hearing officer shall
26 transmit the recommended order ~~conforming to the requirements of F.S. § 120.59 to the~~
27 ~~board and all parties.~~ Each party shall have 15 days from the date of the hearing officer's
28 order to submit written exceptions to the hearing officer's order to the board. The board
29 shall review such order and any written exceptions and, in an addendum to such order, the
30 ~~board may set forth any deficiencies it finds its findings and recommendations with~~
31 ~~respect to the order. Said deficiencies shall be limited to determinations that the findings~~
32 ~~were not based upon competent, substantial evidence, or that the proceedings on which~~
33 ~~the findings were based did not comply with the essential requirements of law.~~ In
34 reviewing such recommended order, the board shall not have the power to receive or
35 consider additional evidence. The board shall have no power to reject or modify the
36 findings of fact contained in the recommended order, ~~unless the board first determines~~
37 ~~from a review of the complete record, and states with particularity in the order, that the~~
38 ~~findings were not based upon competent, substantial evidence, or that the proceedings on~~
39 ~~which the findings were based did not comply with the essential requirements of law.~~ The
40 board may either adopt the recommended order as the final order, or by a three-fourths
41 majority vote, remand the recommended order along with the delineated deficiencies back
42 to the hearing officer for consideration of the deficiencies. The hearing officer shall
43 address the identified deficiencies in an addendum to the recommended order. The
44 hearing officer's order along with the addendum addressing the concerns of the Board
45 shall be ~~The recommended order together with the recommendation of the board shall be~~

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1 ~~considered~~ as the final order of the board. The final order shall be served upon the
2 complainant and respondent within ten days of adoption by the board. If the hearing
3 officer finds that a discriminatory practice has occurred or is about to occur, the hearing
4 officer may recommend affirmative relief from the effects of the practice, including actual
5 damages, equitable and injunctive relief and reasonable attorneys fees and costs.
6 Judgment for the amount of damages, equitable relief and costs assessed pursuant to a
7 final order by the board may be entered in any court of competent jurisdiction thereof and
8 may be enforced as any other judgment.

9 (m) Final orders of the board are subject to certiorari review. Unless specifically
10 ordered by a court of competent jurisdiction, the commencement of any appeal does not
11 suspend or stay an order of the board.

12 (n) Either party to the administrative proceeding or the city shall have authority to
13 bring an action in equity in a court of competent jurisdiction to enforce the final
14 administrative order to ensure compliance with this article. The court shall be empowered
15 to issue mandatory or prohibitive injunctions to implement such administrative order.

16 (o) Should any party fail or refuse to comply with the final order issued by the board or
17 breach a conciliation agreement as provided herein, then, following the expiration of the
18 appeal time as provided herein, the board shall forward such order or conciliation
19 agreement to the city commission with a request that the city commission authorize the
20 city attorney to bring such action or actions as necessary to obtain compliance with this
21 article.

22
23 **Section 3.** Section 8-95 of the Code of Ordinances of the City of Gainesville is amended to read
24 as follows:

25 **ARTICLE V. FAIR HOUSING**

26 **Sec. 8-95. Complaint procedure.**

27
28 (a) Any aggrieved person may file with the director, or his designated representative, a
29 written complaint, which shall be verified. The complaint shall state the name and address of the
30 complainant and the person or persons against whom the complaint is made (hereinafter referred
31 to as the "respondent"). The complaint shall set forth the facts upon which the complaint is made
32 and such other information as the director requires. The complaint must be filed within one year
33 after the alleged unlawful practice has occurred. The complaint may be withdrawn by the
34 complainant at any time.

35
36 (b) When it is determined that a complaint has been timely filed, the director shall cause
37 notice of the filing and a copy of the complaint to be served upon the respondent. Notice shall be
38 served within ten days of the date of filing. An amendment likewise shall be served upon the
39 respondent. The notice shall advise the respondent of relevant procedural rights and obligations.
40 The notice shall advise the respondent of the complainant's rights to commence a civil action in a
41 court of competent jurisdiction not later than two years after the occurrence or termination of the
42 alleged discriminatory housing practice. The notice shall state that the computation of this two-
43 year period excludes any time during which the matter is pending for administrative relief with
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1 respect to a complaint or charge based on the alleged discriminatory housing practice. The notice
2 shall state, however, that the time period includes the time during which an action arising from a
3 breach of a conciliation agreement under this article is pending. The notice shall advise the
4 respondent that retaliation against any person because he or she made a complaint or testified,
5 assisted, or participated in an investigation or conciliation under this article is a discriminatory
6 housing practice that is prohibited.

7
8 (c) The director shall serve notice upon the aggrieved person acknowledging the filing of the
9 complaint and advising the aggrieved person of relevant procedural rights and remedies. The
10 notice shall advise the aggrieved person of remedies and choice of forums and inform the
11 aggrieved person that the administrative procedure provided for in this article is neither an
12 obstacle nor a prerequisite to the aggrieved person commencing a separate civil action on his
13 own. The notice shall advise the aggrieved person of his right to commence a civil action in a
14 court not later than two years after the occurrence or termination of the alleged discriminatory
15 housing practice. The notice shall state that the computation of this two-year period excludes any
16 time during which the matter is pending for administrative relief with respect to a complaint or
17 charge based on the alleged discriminatory housing practice. The notice shall also state, however,
18 that the time period includes the time during which an action arising from a breach of a
19 conciliation agreement under this article is pending. The notice shall advise the aggrieved person
20 that retaliation against any person because he or she made a complaint or testified, assisted or
21 participated in an investigation or conciliation under this article is a discriminatory housing
22 practice that is prohibited.

23
24 (d) Once a complaint has been served on the respondent, the respondent shall preserve all
25 records and other evidence which may pertain to the complaint until the matter has been finally
26 determined.

27
28 (e) The respondent may file an answer to the complaint not later than ten days after receipt of
29 the notice of the filing. The answer shall be sworn to or affirmed before a notary public or other
30 person duly authorized by law to administer oaths and take acknowledgments.

31
32 (f) A complaint or answer may be amended at any time when it would be fair and reasonable
33 to do so, and the director shall furnish a copy of each amended complaint or answer to the
34 respondent or aggrieved person, respectively, as promptly as practicable. With respect to any
35 complaint filed pursuant to this article, the initial burden of proof is on the complainant.

36
37 (g) Within 30 days after the filing of a complaint, the director shall commence such
38 investigation as deemed appropriate to ascertain facts and issues. The director may utilize the
39 services and information gathered from other public agencies charged with the administration of
40 equal opportunity laws.

41
42 (h) The following investigation procedures shall be followed:

43
44 (1) Complaint verification. As part of the investigation process, the complaining party
45 may be required to provide an additional sworn written statement which shall include:
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1 a. A statement of each particular harm or potential harm which the aggrieved
2 person has suffered or will suffer and the date on which each harm occurred or
3 will occur.

4
5 b. For each harm, a statement specifying the act, policy, or practice which is
6 alleged to be unlawful.

7
8 c. For each act, policy, or practice alleged to have harmed the aggrieved person,
9 a statement of the facts which led the complainant to believe that the act, policy,
10 or practice is discriminatory.

11
12 (2) Requests for information. In investigating a complaint, the director and/or the
13 director's designee may obtain information by:

14
15 a. Oral interview; and/or

16
17 b. Requests for written statement or affidavit; and/or

18
19 c. Any discovery methods set forth in the Florida Rules of Civil Procedure.

20
21 (3) Investigations. The investigations will seek the voluntary cooperation of all persons
22 in obtaining information. If, however, the director is unable to obtain the voluntary
23 cooperation of persons, the director shall request the board issue subpoenas. The board
24 shall have the power to issue subpoenas or subpoenas duces tecum. Any subpoena issued
25 by the board must be approved by the city attorney as to the subpoena's form and legality
26 before it is issued.

27
28 (4) Complainant's failure to cooperate. Where the complainant fails to provide a
29 necessary information statement; fails or refuses to appear or be available for interviews
30 or conferences; fails or refuses to provide necessary information requested by the director
31 pursuant to this section; or otherwise refuses to cooperate to the extent that the director
32 shall dismiss the complaint after providing 20 days' notice to the complainant unless the
33 director, with board approval, determines there is sufficient grounds and sufficient
34 evidence to proceed with the complaint.

35
36 (5) Access to files during investigation. Access to files during investigation shall be in
37 accordance with the provisions of the Florida Public Records Law.

38
39 (i) The director shall, within 100 days after the filing of a complaint, complete the
40 investigation of the alleged unlawful discriminatory practice, unless it is impracticable to do so.
41 If the director is unable to complete the investigation within 100 days after the filing of a
42 complaint, the director shall notify, by certified mail or by personal service, the complainant and
43 the respondent in writing of the reasons for not so doing. The director shall notify the aggrieved
44 person and the respondent if administrative disposition of the complaint pursuant to this article
45 cannot be accomplished within one year of the filing of the complaint.

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1 (j) Beginning with the filing of the complaint and ending with the filing of a reasonable
2 cause charge as provided for in subsection (n) herein, the director shall attempt to conciliate the
3 matter by methods of initial conference and conciliation with all interested parties and such
4 representatives as the parties may choose to assist them. Such conciliation conferences may be by
5 whatever method the director determines to be most appropriate. The director shall attempt to
6 achieve a just resolution of all violations found, and to obtain agreement that the respondent will
7 eliminate the unlawful practice and provide appropriate affirmative relief. Except as provided in
8 subsection (k) of this section, nothing that is said or done in the course of conciliation or such
9 informal endeavors may be made public or used as evidence in a subsequent proceeding without
10 the written consent of the persons concerned.

11
12 (k) Where conciliation attempts are successful, the terms of a settlement of a complaint shall
13 be reduced to a written conciliation agreement. The agreement must be executed by the
14 respondent and the complainant, and is subject to the approval of the director. The conciliation
15 agreement shall seek to protect the interests of the aggrieved person, other persons similarly
16 situated, and the public interest. Notwithstanding the provisions of subsection (j) above, each
17 conciliation agreement shall be made public in accordance with the public records law.

18
19 (l) A conciliation agreement negotiated under this article to resolve a discriminatory real
20 estate transaction may include, but is not limited to:

21
22 (1) The sale, exchange, lease, rental, assignment, or sublease of real property to an
23 individual;

24
25 (2) The extension to all persons the full and equal enjoyment of the advantages,
26 facilities, privileges, and services of the respondent;

27
28 (3) The reporting as to the manner of compliance;

29
30 (4) The posting of notice in conspicuous places in the respondent's place of business,
31 indicating compliance with equal housing opportunity, and inclusion of such notices in
32 advertising material;

33
34 (5) The payment to the complainant of damages for injury, expenses incurred by the
35 complainant in securing alternate housing or facilities, and other costs actually incurred by the
36 complainant as a direct result of such discriminatory practice.

37
38 (m) A duly executed conciliation agreement shall operate as a dismissal of the complaint.

39
40 (n) If conciliation has not been reached within 100 days of the filing of the complaint and if
41 the complaint has not been withdrawn, the director shall make a determination as to whether
42 reasonable cause exists to believe that an unlawful discriminatory practice has occurred or is
43 about to occur. Reasonable cause shall be based upon sufficiently trustworthy information which
44 would lead an impartial observer to a belief that a discriminatory housing practice has occurred
45 or is likely to occur. The director and/or the director's designee shall report the results of the
46 investigation and his or her determination to the board. The board shall receive a copy of the
47 director's report and shall have the opportunity to review the report and submit comments to the

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1 director. If the board determines that reasonable cause exists to believe that a discriminatory
2 housing practice has occurred or is about to occur, it shall issue a written notice of determination
3 of reasonable cause. A copy of the notice shall be served upon the respondent, the complainant,
4 and the aggrieved person within ~~20~~ 10 days ~~after of the date of the written notice has been issued.~~
5 At the time the notice of determination of reasonable cause is served, notice shall be given that a
6 complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may
7 elect, in lieu of an administrative hearing pursuant to this article, to have the claims asserted in
8 the charge decided in a civil action and advise that such election must be made not later than 20
9 days after the date of receipt of the notice of determination of reasonable cause. The person
10 making the election shall give notice to the board and all other parties.

11
12 (o) If the director determines that the complaint lacks reasonable grounds upon which to base
13 a violation of this article, the director shall dismiss the complaint, then the director shall inform
14 the board of his or her findings through a written report. The board, in its discretion, may order
15 that the matter be closed or may order, by a three-fourths majority vote, such further investigation
16 as may be deemed necessary. If further investigation is ordered, the results thereof shall be
17 presented to the board in the form of a written report within ten days and shall be acted upon by
18 the board within an additional 20 days.

19
20 (p) If timely election of a civil action is not made under subsection (n), the charge will
21 proceed to an administrative hearing. An evidentiary administrative hearing on the merits shall be
22 ~~held and shall be conducted according to the procedures provided in F.S. §§ 120.57(1) and~~
23 120.58. Any conciliation agreement reached prior to a scheduled hearing may result in such
24 hearing being cancelled. The city, through the city attorney's office, shall arrange for the services
25 of a hearing officer to conduct the administrative hearing.

26
27 (q) In conducting any administrative hearing to determine whether or not there has occurred a
28 failure to comply with the provisions of this article, the hearing officer shall have the power to
29 administer oaths, issue subpoenas, compel the production of books, paper, and other documents,
30 and receive evidence. All parties shall have an opportunity to respond, to present evidence and
31 argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to
32 submit proposed findings of facts and orders, to file exceptions to the hearing officer's
33 recommended order, and to be represented by counsel or other qualified representative. Hearsay
34 evidence may be used for the purpose of supplementing or explaining other evidence, but it shall
35 not be sufficient in itself to support a finding unless it would be admissible over objection in civil
36 actions. In interpreting the provisions of this article, the hearing officer may consider
37 administrative and judicial interpretations of substantially equivalent provisions of state or
38 federal laws.

39
40 (r) The hearing officer shall prepare a recommended order consisting of findings of fact,
41 conclusions of law and affirmative relief, if applicable. The hearing officer shall transmit the
42 recommended order ~~conforming to the requirements of F.S. § 120.59~~ to the board and all parties.
43 Each party shall have 15 days from the date of the hearing officer's order to submit written
44 exceptions to the hearing officer's order to the board. The board shall review such order and any
45 written exceptions and, in an addendum to such order, the board may set forth any deficiencies it
46 finds its findings and recommendations with respect to the order. Said deficiencies shall be

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1 limited to determinations that the findings were not based upon competent, substantial evidence,
2 or that the proceedings on which the findings were based did not comply with the essential
3 requirements of law. In reviewing such recommended order, the board shall not have the power
4 to receive or consider additional evidence. The board shall have no power to reject or modify the
5 findings of fact contained in the recommended order, ~~unless the board first determines from a~~
6 ~~review of the complete record, and states with particularity in the order, that the findings were~~
7 ~~not based upon competent, substantial evidence, or that the proceedings on which the findings~~
8 ~~were based did not comply with the essential requirements of law.~~ The board may either adopt
9 the recommended order as the final order, or by a three-fourths majority vote, remand the
10 recommended order along with the delineated deficiencies back to the hearing officer for
11 consideration of the deficiencies. The hearing officer shall address the identified deficiencies in
12 an addendum to the recommended order. The hearing officer's order along with the addendum
13 addressing the concerns of the Board shall be ~~The recommended order together with the~~
14 ~~recommendation of the board shall be considered as~~ the final order of the board. The final order
15 shall be served upon the complainant and respondent within ten days of adoption by the board. If
16 the hearing officer finds that a discriminatory practice has occurred or is about to occur, the
17 hearing officer may recommend affirmative relief from the effects of the practice, including
18 actual damages, equitable and injunctive relief and reasonable attorneys fees and costs. Judgment
19 for the amount of damages, equitable relief and costs assessed pursuant to a final order by the
20 board may be entered in any court of competent jurisdiction thereof and may be enforced as any
21 other judgment.

22
23 (s) Any sale, encumbrance, or rental consummated prior to the issuance of an order by the
24 board issued under the authority of this article and involving a bona fide purchaser,
25 encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil
26 action under the provisions of this article shall not be affected.

27
28 (t) Either party to such administrative proceedings shall have the right to appeal the final
29 administrative order described herein by certiorari review. Unless specifically ordered by the
30 court, the commencement of an appeal does not suspend or stay an order of the board. Costs or
31 fees may not be assessed against the board in any appeal from a final order issued by the board
32 under this article. Either party to the administrative proceeding or the city shall have authority to
33 bring an action in equity in a court of competent jurisdiction to enforce the final administrative
34 order to ensure compliance with this article. The court shall be empowered to issue mandatory or
35 prohibitive injunction to implement such administrative order.

36
37 (u) Should any party fail or refuse to comply with the final order issued by the board or
38 breach a conciliation agreement as provided herein, then, following the expiration of the appeal
39 time as provided herein, the board shall forward such order or conciliation agreement to the city
40 commission with a request that the city commission authorize the city attorney to bring such
41 action or actions as necessary to obtain compliance with this article.

42
43 **Section 4.** It is the intention of the City Commission that the provisions of Sections 1 through 3
44 of this ordinance shall become and be made a part of the Code of Ordinances of the City of
45 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered
46 or relettered in order accomplish such intentions.

D R A F T

1 **Section 5.** If any section, sentence, clause or phase of this ordinance is held to be invalid or
2 unconstitutional by any court of competent jurisdiction, then said holding in no way affects the
3 validity of the remaining portions of this ordinance.

4
5 **Section 6.** All ordinances, or parts of ordinance, in conflict herewith are to the extent of such
6 conflict hereby repealed.

7
8 **Section 7.** This ordinance shall take effect immediately upon its adoption.

9
10 **PASSED AND ADOPTED** this ____ day of _____, 2005.

11
12
13
14
15 _____
16 Pegeen Hanrahan, Mayor

17 **ATTEST:** Approved as to form and legality

18
19
20 _____
21 Kurt M. Lannon Marion J. Radson
22 Clerk of the Commission City Attorney

23 This Ordinance passed on first reading this ____ day of February, 2005.

24 This Ordinance passed on second reading this ____ day of February, 2005.

25
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27
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29
30