

## ARTICLE IV. PROHIBITION OF DISCRIMINATION IN EMPLOYMENT, HOUSING AND COMMERCIAL SPACE, PUBLIC ACCOMMODATIONS, EDUCATIONAL INSTITUTIONS AND HEALTH AND WELFARE SERVICES\*

Sec. 28-91. Intent of council.

(a) It is the intent of the council that every individual shall have an equal opportunity to participate fully in the economic, cultural and intellectual life of the city and to have an equal opportunity to participate in all aspects of life, including but not limited to employment, housing and commercial space, public accommodations, education and health and welfare services.

(b) It is the intent of the council in enacting this article to eliminate within the city **discrimination** by reason of race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability. Discriminatory practices as defined in this article may be subject to investigation, conciliation, administrative hearings and orders or other enforcement procedures.

(c) Except where specifically provided, the provisions of section 1-13 do not apply to this article.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 893-91, § 1, 12-2-91; Ord. No. 934-01, § 1, 11-5-01)

Sec. 28-92. Definitions.

The following words and terms when used in this article shall have the following meanings:

*Age*: A chronological age of at least forty (40) years.

*Agency*: The agency for human rights and community relations.

*Director*: The duly appointed executive director of the agency for human rights and community relations.

*Educational institution*: Any private educational institution, including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university and a business, nursing, professional, secretarial, technical or vocational school and includes an agent of an educational institution.

*Employee*: Any individual employed by or applying for employment with an employer.

*Employer*: Any person, excluding governmental entities and political subdivisions but including any agent of such entity or subdivision where the agency relationship is created by a written contract, engaged in an industry affecting commerce who has twenty (20) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year; the term shall also mean any agent of such a person.

*Employment agency*: Any person regularly undertaking or attempting with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

*Gender identity*: A person's various individual attributes, actual or perceived, that may be in accord with, or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

*Gender variance*: A persistent sense that a person's gender identity is incongruent with the person's biological sex, excluding the element of persistence for persons under age twenty-one and including, without limitation, transitioned transsexuals.

*Genital reassignment surgery:* Surgery to alter a person's genitals, in order to complete a program of sex reassignment treatment.

*Labor organization:* Any organization, agency, employee representation committee, group, association or plan in which employees participate directly or indirectly and which exists for the purpose, in whole or in part, of dealing with employers or any agent thereof concerning grievances, labor disputes, wages, rates of pay, hours or other terms, conditions or privileges of employment and any conference, general committee, joint or system board or joint council which is subordinate to a national or international labor organization.

*Marital status:* The state of being married, single, divorced, separated or widowed and the usual conditions associated therewith, including parenthood.

*Military status:* Being or having been in the service of the military.

*Physical or mental disability:* A physical or mental impairment of an individual which substantially limits one (1) or more major life activities and includes a record of such impairment or being regarded as having such impairment; however, such term does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of a job or whose current alcohol abuse would constitute a direct threat to property or the safety of others; and in the areas of public accommodations or real estate transactions, such term does not include any individual who is an alcoholic and whose unreasonable conduct as a result of use of alcohol is the basis on which a covered entity acts; and such term does not include an individual who is currently engaged in the illegal use of drugs when a covered entity acts on the basis of such use.

*Place of public accommodation:*

(1) As defined by section 59-2 of this Code: All hostels; hotels; motels; rental rooms; rooming and/or boardinghouses; eating places; shops and stores dealing with goods or services of any kind; hospitals; recreational facilities, public parks; theaters of all kinds and any establishments licensed under chapter 7 (Amusements) of this Code.

(2) Any establishment licensed under the Colorado Liquor Code or the Colorado Beer Code; all banks, credit information services and all other financial institutions; insurance companies and establishments of insurance brokers; clinics, dental or medical; clubs and lodges; bathhouses and swimming pools; commercial or public garages, public transportation as well as the stations or terminals thereof; any establishment offering travel or tour services; and public areas and public elevators of buildings and structures.

*Real estate broker or salesperson:* Any person licensed as such in accordance with the provisions of the Colorado Real Estate Commission.

*Religious organizations or associations:* Any organization affiliated with a church, synagogue, congregation, parish, brotherhood, religious corporation or any religious society engaging in the works of education, benevolence, charity or missions.

*Sex:* Biological sex, the sum of a person's physical characteristics.

*Sex reassignment treatment:* Treatment to change a person's sex, based on medically recognized treatment protocols such as that published by the Harry Benjamin International Gender Dysphoria Association.

*Transaction in real property:* Exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest in real property or improvements thereon.

*Transitioning transsexual:* A person experiencing gender variance who is undergoing sex reassignment treatment.

*Transitioned transsexual*: A person who has completed genital reassignment surgery.  
(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 934-01, § 2, 11-5-01)

Sec. 28-93. Discriminatory practices in employment.

(a) *Generally*. It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual who is otherwise qualified:

(1) *By an employer*: To fail or refuse to hire an applicant or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the person from the job and the disability has a significant impact on the job;

(2) *By an employment agency*: To fail or refuse to refer for employment or to classify or refer for employment any individual or otherwise to discriminate against any individual; but with regard to a disability, it is not a discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the applicant from the job and the disability has a significant impact on the job;

(3) *By a labor organization*: To exclude or to expel from its membership or otherwise to discriminate against any individual or to limit, segregate or classify its membership or fail or refuse to refer any individual to employment or to classify any individual in any way which would deprive such individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment; or

(4) *By an employer, employment agency, apprenticeship program, labor organization or joint labor/management council*:

a. To discriminate against any individual in admission to or employment in any program established to provide apprenticeship or other training or retraining, including an on-the-job training program; but with regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold the right to be admitted to or participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the applicant from the program and the disability has a significant impact on participation in the program; and

b. To communicate, print or publish or cause to be communicated, printed or published any notice or advertisement or use any publication form relating to employment by such employer or to membership in or any classification or referral for employment by such a labor organization or to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification or distinction based on the race, color, religion, national

origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual.

(b) *Women affected by pregnancy.*

(1) **Discrimination** on the basis of gender shall include but not be limited to **discrimination** on the basis of pregnancy, childbirth or related medical conditions.

(2) Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work; and this requirement shall include but not be limited to a requirement that an employer must treat an employee temporarily unable to perform the functions of her job because of pregnancy-related condition in the same manner as it treats other temporarily disabled employees.

(c) *Exceptions.*

(1) *Seniority system.* It shall not be considered a discriminatory practice for an employer to observe the conditions of a bona fide hiring or seniority system or a bona fide employee benefit system, such as retirement, pension or insurance plan which is not a subterfuge to evade the purposes of this act, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual because of the age of such individual.

(2) *Elderly or physically or mentally disabled.* It shall not be discriminatory for employment to be limited to the elderly or physically or mentally disabled provided that such employment shall not discriminate among the elderly or physically or mentally disabled on the basis of other discriminatory criteria set forth in subsection (a) hereof.

(3) *Bona fide occupational classifications.* Any bona fide occupational qualifications or differentiation based on factors reasonably necessary to the normal operation of the particular employer shall not be deemed discriminatory.

(4) *Religious organizations.* This article shall not apply to employment by religious organizations or associations.

(5) *Individualized agreements.* Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program of no more than twenty (20) hours per week and lasting no more than eighteen (18) months.

(6) *Age; position.* It shall not be discriminatory to compel the retirement of any employee who is sixty-five (65) years of age or older who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan or any combination of such plans of the employer of such employee and if such plan equals in the aggregate at least forty-four thousand dollars (\$44,000.00).

(7) *Sexual orientation; marital status.* With respect to sexual orientation or marital status, it shall not be discriminatory for fringe benefits, insurance coverage or any other term, condition or privilege of employment to be denied where the employee seeks coverage for an individual on the basis that the individual is their spousal equivalent.

(8) *Gender variance:* Notwithstanding any other provision of this chapter, a workplace supervisor may require that a worker have reasonably consistent gender presentation in the workplace.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 893-91, § 2, 12-2-91; Ord. No. 934-01, §§ 3, 4, 11-5-01)

Sec. 28-94. Discriminatory practices in educational institutions.

(a) *Generally.* It is a discriminatory practice for an educational institution to deny or restrict or to abridge or condition the use of or access to any of its facilities and services to any person otherwise qualified or to discriminate based on the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual.

(b) *Exceptions.* It shall not be a discriminatory practice for admissions to be limited to persons with physical or mental disabilities, of specific religions or sex; except that when any of the above exempted colleges offers a course nowhere else available in the city, opportunity for admission to that course must be open to students of both sexes who otherwise meet lawful requirements for admission.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 934-01, § 5, 11-5-01)

Sec. 28-95. Discriminatory practices in real estate transactions.

(a) *Generally.* It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual:

(1) To interrupt or terminate or refuse to initiate or conduct any transaction in real property or to require different terms for such transaction or to represent falsely that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property any clause, condition or restriction prohibited by this article;

(3) To refuse to lend money, guarantee a loan, accept a deed of trust or mortgage or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property or impose different conditions on such financing or refuse to provide title or other insurance, relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, service, repairs or improvements for a tenant or lessee;

(5) To communicate, make, print or publish or cause to be communicated, made, printed or published any notice, statement or advertisement with respect to a transaction or proposed transaction in real property or financing related thereto, which notice, statement or advertisement indicates or attempts to indicate any preference, limitation or **discrimination** based on race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status, family status or physical or mental disability of any individual;

(6) To discriminate in any financial transaction involving real property on account of the location of residence or business, i.e., to red-line; or

(7) To restrict or attempt to restrict housing choices or to engage in any conduct relating to the sale or rental of a dwelling that otherwise denies the rental or sale or makes it unavailable.

(b) *Exceptions.*

(1) It shall not be a discriminatory practice for a person to act in conformity with chapter 59 (Zoning) of this Code, and nothing in this chapter of the Code shall supersede any provisions of chapter 59 (Zoning) of this Code.

(2) This section shall not apply to multiple-unit dwellings of not more than two (2) dwelling units where at least one (1) of the units is owner-occupied.

(3) Nothing in this section shall prohibit group homes, self-care elderly homes, special-care homes or other facilities whose use is restricted to the elderly or to individuals with physical or mental disabilities.

(4) This article shall not apply to religious organizations or associations.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 934-01, § 6, 11-5-01)

#### Sec. 28-96. Discriminatory practices in places of public accommodation.

(a) *Generally.* It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability of any individual:

(1) To deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.

(2) To communicate, print, circulate, post or mail or otherwise cause, directly or indirectly, to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodation will be refused, withheld from or denied an individual or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.

(b) *Exceptions.*

(1) It shall not be a discriminatory practice for a person to act in conformity with chapter 59 (Zoning) of this Code, and nothing in this chapter of the Code shall supersede any provisions of chapter 59 (Zoning) of this Code.

(2) This section shall not apply to multiple-unit dwellings of not more than two (2) dwelling units where at least one (1) of the units is owner-occupied.

(3) Nothing in this section shall prohibit group homes, self-care elderly homes, special-care homes or other facilities whose use is restricted to the elderly or to individuals with physical or mental disabilities.

(4) This article shall not apply to religious organizations or associations.

(5) This article shall not apply to insurance risk classification.

(c) *Transitioned transsexuals.* Notwithstanding any other provision of this chapter, transitioned transsexuals may use the locker rooms and shower facilities of their new sex and shall be protected by this section from **discrimination** in their use of such locker rooms and shower rooms.

(d) *Transitioning transsexuals.* Notwithstanding any other provision of this chapter, transitioning transsexuals shall be granted reasonable accommodation in access to locker rooms and shower facilities.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 934-01, § 7, 11-5-01)

#### Sec. 28-97. Discriminatory practices in health and welfare services.

(a) *Generally.* It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status or physical or mental disability, of any individual:

(1) To communicate, publish, advertise or represent or cause to be communicated, published, advertised or represented by any health and welfare agency or owner, supervisor, staff person,

director, manager or officer thereof, excluding governmental entities and political subdivisions, that any of the services, programs, benefits, facilities or privileges of any health or welfare agency are withheld from or denied to any person;

(2) For any health and welfare agency or worker, supervisor, staff person, director, manager or officer thereof, excluding governmental entities and political subdivisions, to deny or refuse to provide access to any of the services, programs, benefits, facilities or privileges of any health or welfare agency.

(b) *Exceptions.*

(1) This article shall not apply to religious organizations or associations.

(2) This article shall not apply to insurance risk classification.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 934-01, § 8, 11-5-01)

Sec. 28-97.5. Gender variance exemptions.

Competitive sports and sports-related records and sex-segregated housing for persons under age twenty-five shall be exempt from the gender variance **discrimination** provisions of this chapter.

(Ord. No. 934-01, § 9, 11-5-01)

Sec. 28-98. Coercion or retaliation.

(a) It shall be a discriminatory practice to coerce, threaten, retaliate against or interfere with any person in the exercise or enjoyment of or on account of having exercised or enjoyed or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this article.

(b) It shall be a discriminatory practice for any person to require, request or suggest that a person retaliate against, interfere with, intimidate or discriminate against a person because that person has opposed any practice defined as discriminatory or unlawful by this article or because that person has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing authorized under this article.

(c) It shall be a discriminatory practice for any person to cause or coerce or attempt to cause or coerce, directly or indirectly, any person to prevent any person from complying with the provisions of this article.

(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-99. Aiding or abetting.

It shall be a discriminatory practice for any person to aid, abet, invite, compel or coerce the doing of any of the acts forbidden under the provisions of this article or to attempt to do so.

(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-100. Conciliation agreements.

It shall be a discriminatory practice for a party to a conciliation agreement made under the provisions of this article to violate the terms of such agreement.

(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-101. Resisting the agency.

It shall be unlawful for any person to willfully resist, impede or interfere with the agency or any of its representatives in the performance of any duty under the provisions of this article or to

willfully violate an order of the agency. The provisions of section 1-13 of this Code shall apply to violations of this section. Each incident shall be treated as a separate offense.  
(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-102. Falsifying documents and testimony.

It shall be unlawful to willfully falsify documents, records or reports which are required or subpoenaed pursuant to this article or willfully to falsify testimony or to intimidate any witness or complainant. The provisions of section 1-13 of this Code shall apply to violations of this section. Each incident of such intimidation or falsification shall be treated as a separate offense.  
(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-103. Compliance with article prerequisite for licenses.

All permits or licenses issued by or on behalf of the city shall specifically require and be conditioned upon full compliance with the provisions of this article. The failure or refusal to comply with any provision of this article shall be a proper basis for revocation of such permit or license.  
(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-104. Posting of notice.

(a) Every person subject to this article except private residences and rental complexes of fewer than five (5) units shall post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated a notice whose language and form have been prepared by the agency setting forth excerpts from or summaries of the pertinent provisions of this article and information pertinent to the filing of a complaint.

(b) It shall be a discriminatory practice for a person subject to this article to fail to post notices, maintain records, file reports as required by sections 28-105 and 28-106 or to fail to supply documents and information requested by the agency in connection with a matter under investigation.

(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-105. Preservation of business records.

(a) Where a charge of **discrimination** has been filed against a person under this article, the respondent shall preserve all records which may be relevant to the charge or action until a final disposition of the charge in accordance with subsection (b) of this section.

(b) All persons subject to this article shall furnish to the agency at the time and in the manner prescribed by the agency such reports relating to information under their control as the agency may require. The identity of persons and properties contained in reports submitted to the agency under the provisions of this section shall be kept confidential and shall not be made public. Every employer, employment agency and apprenticeship program, labor organization or joint labor/management council subject both to this article and to Title VII of the Civil Rights Act of 1964 as amended shall upon request furnish to the agency all reports that may be required by the equal employment opportunity commission established under the Civil Rights Act of 1964.

(Ord. No. 623-90, § 2, 10-15-90)

Sec. 28-106. Powers of agency.



(a) The agency is hereby empowered to undertake its own investigations and public hearings on any racial, religious and ethnic or other listed minority group tensions, prejudice, intolerance, bigotry and disorder and on any form of or reason for **discrimination** in accordance with section 28-91 against any person, for the purpose of making appropriate recommendations for action, including legislation, against such **discrimination**.

(b) The agency may adopt such rules and regulations as it deems necessary to effectuate and which are not in conflict with the provisions of this chapter.

(c) The agency may at its discretion choose to refer the investigation of any complaint to any other investigatory body, whether public or private, with which it shall arrange to perform such investigation.

(d) The agency may hold hearings pursuant to section 28-111, subpoena witnesses and compel their attendance, administer oaths and take the testimony of any person under oath and compel such respondent to produce for examination any books and papers relating to any matter involved in such complaint. Such hearings shall comply with due process requirements.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-107. Filing of complaints.

(a) Any person may file with the agency a complaint of a violation of the provisions of this article. The complaint shall state the name and address of the person alleged to have committed the violation, who shall be called the respondent, and shall set forth the substance thereof and such other information as may be required by the agency. Any complaint under this article shall be filed with the agency within one hundred eighty (180) days of the occurrence of the discriminatory practice.

(b) Complaints filed with the agency under the provisions of this article may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the agency's investigation and findings as specified in section 28-108, except that the circumstances accompanying said withdrawal may be fully investigated by the agency.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-108. Investigation.

(a) Within fifteen (15) days of the filing of any complaint, the agency shall serve a copy thereof upon the respondent and upon all persons it deems to be necessary parties and shall arrange for prompt investigation in connection therewith.

(b) Within two hundred seventy (270) days after service of the complaint upon all parties thereto or within two hundred seventy (270) days after the completion of the investigation by any person or agency to whom the complaint has been referred for investigation, the agency shall determine whether, in accord with its own rules, it has jurisdiction and, if so, whether there is probable cause to believe that the respondent has engaged or is engaging in a discriminatory practice.

(c) Upon determination of whether probable cause exists for crediting the allegations of the charge, the director shall follow one of the following courses of action:

(1) If the director determines that probable cause does not exist, the director shall dismiss the charge and shall notify the person filing the charge and the respondent of such dismissal. In addition, in such notice the director shall advise both parties:

(A) That if the charging party wishes to file a civil action in county court or state district court, which action is based on the alleged discriminatory or unfair practice that was the subject of the

charge, the charging party must do so within ninety (90) days of the date of mailing of the notice specified in this subparagraph (1);

(B) That, if the charging party does not file an action within the time limits specified in subparagraph (A) of this subparagraph (1), such action will be barred and no county or district court shall have jurisdiction to hear such action.

(2) If the director determines that probable cause exists, the respondent shall be served with written notice which states with specificity the legal authority and jurisdiction of the agency and the matters of fact and law asserted and the director shall order the charging party and the respondent to participate in compulsory mediation. Immediately after such notice has been given, the director shall endeavor to eliminate such discriminatory or unfair practice by conference, conciliation, and persuasion and by means of the compulsory mediation required by this subparagraph (2). If such compulsory mediation does not result in a conciliation agreement between all parties, the charging party may request a notice of right to sue as provided by paragraph (b) of Sec. 28-110.5 of this ordinance.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 904-02, § 1, 11-4-02)

#### Sec. 28-109. Conciliation.

(a) If, in the judgment of the agency, the circumstances so warrant, it may at any time after the filing of the complaint endeavor to eliminate such discriminatory practice by conference, conciliation or persuasion.

(b) The terms of a conciliation agreement may require a respondent to refrain from committing specified discriminatory practices and to take such affirmative action as in the judgement of the agency will effectuate the purposes of this act.

(c) Upon agreement of all parties to a complaint and upon notice to all parties thereto, a conciliation agreement shall be deemed an order of the agency and shall be enforceable as such. Information concerning conciliation efforts shall be confidential.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-110. Service of process.

In all cases where the agency is required to effect service, it shall be accomplished by prepaid first-class mail or by personal service and shall otherwise be in accordance with rules of the agency regarding service and notice.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-110.5. Right to sue.

(a) No person may file a civil action in county court or state district court based on an alleged discriminatory or unfair practice prohibited by this ordinance without first exhausting the proceedings and remedies available to that person under this ordinance unless the person shows, in an action filed in the appropriate county or district court, by clear and convincing evidence, that the person's ill health which is of such a nature that pursuing administrative remedies would not provide timely and reasonable relief and would cause irreparable harm.

(b) The charging party in any action may request a written notice of right to sue at any time prior to service of a notice of determination of whether or not probable cause exists to credit the allegations of **discrimination**. Any request for notice of right to sue shall be in writing. A claimant's request for notice of right to sue made after the expiration of one hundred eighty (180) days following the filing of the charge shall be granted promptly. If a claimant makes a request

for a notice of right to sue prior to the expiration of one hundred eighty (180) days following the filing of the charge, said request shall be granted upon a determination by the agency that the investigation of the charge will not be completed within one hundred eighty (180) days following the filing of the charge. A notice of right to sue shall constitute final agency action and exhaustion of administrative remedies and proceedings pursuant to this section.

(c) If the agency has not made a determination of whether or not probable cause exists to credit the allegations of **discrimination** within two hundred seventy (270) days, if written notice that a formal hearing will be held is not served within two hundred seventy (270) days after the filing of a charge, or if the complainant has requested and received a notice of right to sue pursuant to subsection (b) of this section, the jurisdiction of the agency over the complaint shall cease, and the complainant may seek the relief by filing a civil action in county court or state district court for all appropriate remedies. Such action must be filed within ninety (90) days of the date upon which the jurisdiction of the agency ceased, and if not so filed, it shall be barred and the court shall have no jurisdiction to hear such action. If any party requests an extension of any time period prescribed by this section such extension may be granted for good cause by the agency, but the total period of all such extensions to either the respondent or the complainant shall not exceed ninety days each, and, in the case of multiple parties, the total period of all extensions shall not exceed one hundred eighty (180) days.

(Ord. No. 904-02, § 2, 11-4-02)

#### Sec. 28-111. Hearings.

(a) The agency may hold a formal hearing upon a finding of probable cause to believe that **discrimination** has occurred. The agency shall serve upon all parties a written notice which shall state the time and place of the hearing.

(b) In accordance with rules adopted by the agency, discovery procedures may be used by the agency and the parties as provided by the Colorado Rules of Municipal Procedure after the notice of hearing has been given.

(c) The respondent may file a written answer prior to or on the date of the hearing. When a respondent fails to answer at a hearing, the agency or its designee may enter a default judgment. For good cause shown, the entry of default may be set-aside within ten (10) days after the date of such entry. If the respondent fails to appear, testimony may be heard on behalf of complainant *ex parte*. After hearing such testimony, the agency or its designee may enter such order as the evidence warrants.

(d) The case in support of the complaint shall be presented at the hearing by one (1) of the agency's attorneys, but no one presenting the case in support of the complaint shall counsel or advise the agency representative or designee who hears the case.

(e) At any such hearing, the person presenting the case in support of the complaint shall have the burden of showing that the respondent has engaged or is engaging in an unfair or discriminatory practice, and the respondent's conduct shall be presumed not to be unfair or discriminatory until proven otherwise.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-112. Decision and order.

(a) If after a hearing the agency determines that a respondent has engaged in a discriminatory practice or has otherwise violated the provisions of this article, the agency shall issue and cause to be served on such respondent a decision and order accompanied by findings of fact and

conclusions of law which shall require such respondent to cease and desist from such discriminatory practice and may require such respondent to take action, including but not limited to:

- (1) The hiring, reinstatement or upgrading of employees with or without back pay;
- (2) The restoration to the membership in any respondent labor organization, admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program;
- (3) The extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons;
- (4) Appropriate injunctive relief;
- (5) The payment of hearing costs as in the judgment of the agency will effectuate the purposes of this article, including a requirement for a report as to the manner of compliance with such decision and order.

(b) If upon all the evidence the agency finds that a respondent has not engaged in any discriminatory practice, the agency shall issue and cause to be served on the respondent and the complainant an order dismissing the complaint as to such respondent.

(Ord. No. 623-90, § 2, 10-15-90; Ord. No. 893-91, § 3, 12-2-91)

#### Sec. 28-113. Judicial review.

Any person suffering a legal wrong or adversely affected or aggrieved by an order or decision of the agency in a matter pursuant to the provisions of this article is entitled to a judicial review thereof in accordance with Colorado Rule of Civil Procedure 106 upon filing in the appropriate court a written complaint for such review.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-114. Enforcement and order.

The decision and order of the agency shall be served on the respondent with notice that, if the agency determines that the respondent has not corrected the discriminatory practice and complied with the order within thirty (30) calendar days following service of its order, the agency will conduct further enforcement proceedings.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-115. Referral to licensing agencies.

Whenever it appears that the holder of a permit or license issued by any agency or authority of the city is a person against whom the agency after a hearing has rendered a decision and order that a discriminatory practice or a violation of this article has occurred pursuant to section 28-112, the agency, notwithstanding any other action it may take under the authority of the provisions of this article, may refer to the proper entity of the city the facts and identities of all persons involved in the complaint for such action as such agency or authority in its judgment considers appropriate based upon the facts thus disclosed to it.

(Ord. No. 623-90, § 2, 10-15-90)

#### Sec. 28-116. Effective date.

This article shall become effective February 1, 1991.

(Ord. No. 623-90, § 2, 10-15-90)