

Your Committee, to which this proposal was referred, has amended the proposal to read as follows and recommends its adoption as amended.

CITY COUNTY COUNCIL PROPOSAL NO. 215, 2014
CITY OF INDIANAPOLIS-MARION COUNTY, INDIANA

INTRODUCED: 06/23/2014

REFERRED TO: Rules and Public Policy Committee

SPONSOR: Councillor Robinson

DIGEST: amends Chapter 581 of the code to add as a discriminatory practice the denial of equal opportunities based on source of income

SOURCE:

Initiated by: Councillor Robinson
Drafted by: Fred Biesecker, General Counsel

LEGAL REQUIREMENTS FOR ADOPTION:
Subject to approval or veto by Mayor

PROPOSED EFFECTIVE DATE:
Adoption and approvals

GENERAL COUNSEL APPROVAL: _____ Date: June 19, 2014

CITY-COUNTY GENERAL ORDINANCE NO. , 2014

PROPOSAL FOR A GENERAL ORDINANCE to amend Chapter 581 of the Revised Code to add as a discriminatory practice the denial of equal opportunities based on source of income.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. Chapter 581, Article I of the "Revised Code of the Consolidated City and County," regarding general provisions for human relations; equal opportunity, is hereby amended by the addition of the language that is underscored, to read as follows:

Sec. 581-101. Findings and purposes.

(a) The council finds that the practice of denying equal opportunities in employment, education, access to and use of public accommodations, and acquisition of real estate based on race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, source of income, or United States military service veteran status is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the policies contained herein and shall be considered discriminatory practices.

(b) It is the purpose of this chapter to carry out the following policies of the city and county:

- (1) To provide equal employment opportunity in all city and county jobs without regard to race, color, religion, disability, national origin, ancestry, age, sex, sexual orientation, gender identity, source of income, or United States military service veteran status;
- (2) To encourage the hiring of the persons with disabilities in both the public and the private sectors and to provide persons with disabilities with equal access to public accommodations;
- (3) To utilize businesses owned by persons with disabilities;

- (4) To protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, lending institutions, governmental and educational agencies and other persons from unfounded charges of discrimination;
- (5) To provide all citizens of the city and county equal opportunity for education, employment, and access to public accommodations without regard to race, religion, color, disability, sex, sexual orientation, gender identity, national origin, ancestry, age, source of income, or United States military service veteran status; and
- (6) To provide all citizens of the city and county equal opportunity for acquisition through purchase or rental of real property including, but not limited to, housing without regard to race, religion, color, disability, sex, sexual orientation, gender identity, familial status, national origin, ancestry, age, source of income, or United States military service veteran status.

Sec. 581-102. Nondiscrimination clauses.

(a) Every contract to which one (1) of the parties is the city or the county, or any board, department or office of either the city or county, including franchises granted to public utilities, shall contain a provision requiring the governmental contractor and subcontractors not to discriminate against any employee or applicant for employment in the performance of the contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, source of income, and United States military service veteran status. Breach of this provision may be regarded as a material breach of the contract.

(b) All applications, postings, announcements, and advertisements recruiting applicants for employment with the city or county shall conspicuously post in the bottom margin of such recruiting bids a clause as follows: "An Affirmative Action Equal Employment Opportunity Employer."

Sec. 581-103. Definitions.

(a) Unless defined otherwise in this section, terms used in this chapter shall have the meanings ascribed to them in the Indiana Civil Rights Law (currently codified at IC 22-9-1-1 et seq.), and/or the Indiana Fair Housing Law (currently codified at IC 22-9.5-1-1 et seq.), as those laws may be amended from time to time. Unless this chapter expressly creates greater rights or protections than the Indiana Civil Rights Law and/or the Indiana Fair Housing Law, it is the general intent of this chapter to provide the same rights and protections as the Indiana Civil Rights Law and/or the Indiana Fair Housing Law.

(b) As used in this chapter, the following terms shall have the meanings ascribed to them in this section.

Acquisition of real estate means the sale, rental, lease, sublease, advertising, construction or financing, including negotiations and any other activities or procedures incident thereto, of:

- (1) Any building, structure, apartment, single room or suite of rooms or other portion of a building, occupied as or designed or intended for occupancy as living quarters by one (1) or more families or single individuals;
- (2) Any building, structure or portion thereof, or any improved or unimproved land utilized or designed or intended for utilization, for business, commercial, industrial or agricultural purposes; or
- (3) Any vacant or unimproved land offered for sale or lease for any purpose whatsoever.

Appointing authorities means and includes the mayor, council and such other person or agency as may be entitled to appoint any member of the equal opportunity advisory board created in this chapter.

Appraiser means any person who, for a fee or in relation to his or her employment or usual occupation, establishes a value for any kind of real estate, the acquisition of which is defined in this section.

Board means the equal opportunity advisory board.

Complainant means any person who signs a complaint on his or her own behalf alleging that he or she has been aggrieved by a discriminatory practice.

Complaint means a written grievance filed with the office of equal opportunity, either by a complainant or by the board or office, which meets all the requirements of sections 581-406 and 581-407 of this chapter.

Disability means "disability" as that term is defined in the Americans with Disabilities Act ("ADA"), as that Act may be amended from time to time, and as that definition may be interpreted by the federal courts. To the extent that the ADA would require a person to be a "qualified individual with a disability" in order to be protected from a specific form or type of discrimination under the ADA, then the same is true with respect to this chapter.

Discriminatory practice means and includes the following:

- (1) The exclusion from or failure or refusal to extend to any person equal opportunities or any difference in the treatment of any person by reason of race, sex, sexual orientation, gender identity, religion, color, national origin or ancestry, disability, age, source of income, or United States military service veteran status;
- (2) The exclusion from or failure or refusal to extend to any person equal opportunities or any difference in the treatment of any person, because the person filed a complaint alleging a violation of this chapter, testified in a hearing before any members of the board or otherwise cooperated with the office or board in the performance of its duties and functions under this chapter, or requested assistance from the board in connection with any alleged discriminatory practice, whether or not such discriminatory practice was in violation of this chapter;
- (3) In the case of a real estate broker or real estate salesperson or agent, acting in such a capacity in the ordinary course of his or her business or occupation, who does any of the following:
 - a. Any attempt to prevent, dissuade or discourage any prospective purchaser, lessee or tenant of real estate from viewing, buying, leasing or renting the real estate because of the race, sex, sexual orientation, gender identity, religion, national origin, age, color, disability, ancestry, familial status, source of income, or United States military service veteran status of:
 1. Students, pupils or faculty of any school or school district; or
 2. Owners or occupants, or prospective owners or occupants, of real estate in any neighborhood or on any street or block; provided, however, this clause shall not be construed to prohibit disclosure in response to inquiry by any prospective purchaser, lessee or tenant of:
 - (i) Information reasonably believed to be accurate regarding such race, sex, sexual orientation, gender identity, religion, national origin, age, color, disability, ancestry, familial status, source of income, or United States military service veteran status; or
 - (ii) The honest professional opinion or belief of the broker, salesperson or agent regarding factors which may affect the value or desirability of property available for purchase or lease; or
 - b. Any solicitation, promotion, advertisement or attempt to influence or induce any owner to sell, lease or list for sale or lease any real estate, which solicitation, promotion, advertisement or attempted inducement includes representations concerning:
 1. Race, sex, sexual orientation, gender identity, religion, national origin, age, color, disability, ancestry, familial status, source of income, or United States military service

veteran status of present, prospective or possible purchasers or occupants of real estate in any area, neighborhood or particular street or block;

2. Present, prospective or possible neighborhood unrest, tension or change in the race, sex, sexual orientation, gender identity, religion, national origin, age, color, disability, ancestry, familial status, source of income, or United States military service veteran status of occupants or prospective occupants of real estate in any neighborhood or any street or block;
 3. Present, prospective or possible decline in market value of any real estate by reason of the present, prospective or possible entry into any neighborhood, street or block of persons of a particular race, sex, sexual orientation, gender identity, religion, national origin, age, color, disability, ancestry, familial status, source of income, or United States military service veteran status; or
 4. Present, prospective or possible decline in the quality of education offered in any school or school district by reason of any change in the race, sex, sexual orientation, gender identity, religion, national origin, age, color, disability, ancestry, familial status, source of income, or United States military service veteran status of the students, pupils or faculty of such school or district; and
- (4) Making unavailable or denying the sale or rental of a dwelling to any buyer or renter, or the refusal to extend to any person equal opportunities in the terms, conditions, or privileges of the sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:
- a. The buyer or renter;
 - b. A person residing in or intending to reside in the dwelling after the dwelling is sold, rented, or made available; or
 - c. Any person associated with the buyer or renter.

For purposes of this subsection (4), discrimination includes the following:

- a. A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises;
- b. A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; and
- c. In connection with the design and construction of covered multifamily dwellings (as defined in the Indiana Civil Rights Law, as that law may be amended from time to time) for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:
 1. The public use and common use parts of the dwellings are readily accessible to and usable by persons with disabilities;
 2. All the doors are designed to allow passage into and within all premises within the dwellings and are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and
 3. All premises within the dwellings contain the following features of adaptive design:
 - (i) An accessible route into and through the dwelling;

- (ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- (iii) Reinforcements in bathroom walls to allow later installation of grab bars; and
- (iv) Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

Compliance with the rules of the fire prevention and building safety commission that incorporate by reference the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for people with physical disabilities (ANSI A117.1) satisfies the requirements of this subpart 3.

This subsection (4) does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Education means the construction, maintenance or operation of any school or educational facility utilized or intended to be utilized for the education or training of persons residing within the territorial jurisdiction of the office and controlled by a public governmental board or agency which operates one (1) or more elementary or secondary schools.

Employer means:

- (1) Any political subdivision within the county, not represented by the office of corporation counsel under section 202-103 of the Code and any separate municipal corporation which has territorial jurisdiction primarily within the county; and
- (2) Any person who employs at the time of any alleged violation six (6) or more employees within the territorial jurisdiction of the office.

Employment means a service performed by an individual for compensation on behalf of another person, except for:

- (1) Services performed by an individual who in fact is engaged in an independently established trade, occupation, business or profession, and who has been and will continue to be free from direction or control over the manner of performance of such services;
- (2) Services performed by an agent who receives compensation solely upon a commission basis and who controls his or her own time and efforts; or
- (3) Services performed by an individual in the employ of his or her spouse, child or parent.

Employment agency means and includes any person who undertakes, with or without compensation, to procure, recruit, refer or place any individual for employment.

Familial status means an individual who is (1) pregnant; (2) domiciled with an individual younger than eighteen (18) years of age in regard to whom the person: (A) is the parent or legal custodian; or (B) has the written permission of the parent or legal custodian for domicile with that person; or (3) in the process of obtaining legal custody of an individual younger than eighteen (18) years of age.

Gender identity means an individual having or being perceived as having a gender-related self-identity, self-image, appearance, expression or behavior different from those characteristics traditionally associated with the individual's assigned sex at birth.

Labor organization means and includes any organization which exists for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

Lending institution means any bank, building and loan association, insurance company or other corporation, association, firm or enterprise, the business of which consists in whole or in part in making or guaranteeing loans, secured by real estate or any interest therein.

Office means the office of equal opportunity created by this chapter.

Owner means and includes the title holder of record, a contract purchaser, lessee, sub lessee, managing agent or other person having rights of ownership or possession, or the right to sell, rent or lease real estate.

Person means and includes one (1) or more individuals, partnerships, associations, organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, governmental agencies and other organized groups of persons.

Public accommodation means an establishment which caters to or offers its services, facilities or goods to the general public.

Public facility means any facility or establishment, other than an educational institution, which is owned, operated or managed by or on behalf of a governmental agency.

Real estate broker means any person who, for a fee or other valuable consideration, sells, purchases, rents, leases or exchanges, or negotiates or offers or attempts to negotiate the sale, purchase, rental, lease or exchange of real property owned by another person; or a person who is licensed and holds himself or herself out to be engaged in the business of selling, purchasing, renting, leasing or exchanging real property for other persons, or who manages and collects rents for the real property of another.

Real estate salesperson or agent means any person employed by a real estate broker to perform or assist in performing any or all of the functions of the real estate broker.

Respondent means one (1) or more persons against whom a complaint is filed under this chapter, and who the complaint alleges has committed or is committing a discriminatory practice.

Sexual orientation means an individual's actual or perceived identity or practice as a lesbian woman, gay male, bisexual person or heterosexual person.

Source of income means income derived from Social Security, supplemental security income, housing assistance, child support, alimony, or public or state-administered general assistance.

SECTION 2. Chapter 581, Article II of the "Revised Code of the Consolidated City and County," regarding the office of equal opportunity, is hereby amended by the addition of the language that is underscored, to read as follows:

Sec. 581-201. Office created; purpose.

There is hereby created an office of equal opportunity within the office of corporation counsel. This office and its board are empowered as provided in this chapter to carry out the public policy of the state as stated in the Indiana Civil Rights Law at IC 22-9-1-2, and the Indiana Fair Housing Law, at IC 22-9.5-1-1, within the territorial boundaries of the county, and the public policy of the city, as stated in this chapter.

Sec. 581-202. Composition and functions.

The office shall be directed by an administrator who shall also be the affirmative action officer for the city and county. The administrator shall be appointed by and serve at the pleasure of the mayor and shall be responsible for performing the following functions:

(1) To monitor internal employment practices as follows:

- a. By ensuring that city and county government offers equal employment opportunities to persons regardless of race, religion, color, sex, sexual orientation, gender identity, national

- origin, ancestry, age, disability, source of income, or United States military service veteran status;
- b. By providing a vehicle through which employees may seek redress for alleged discriminatory acts by city and county government and/or retaliatory acts by city or county government for filing or assisting in the discrimination complaint process;
 - c. By establishing affirmative action goals for city and county government;
 - d. By complying with federal reporting requirements concerning affirmative action and equal opportunity; and
 - e. By reviewing policies and procedures of the city and the county to eliminate discriminatory practices; and
- (2) To receive, investigate and adjudicate community complaints as specified in Article IV of this chapter.

Sec. 581-203. General powers and duties.

In addition to the functions previously mentioned in section 581-202 of this chapter, the office shall have the following powers and duties:

- (1) To gather and distribute information for the purpose of improving human relations and removing inequities in the areas of housing, recreation, education, employment, law enforcement, vocational guidance and related matters;
- (2) To assist other governmental and private agencies, groups and individuals in reducing community tensions and preventing conflicts between persons of different racial, ethnic and religious groups;
- (3) To discourage persons from engaging in discriminatory practices through informal methods of persuasion and conciliation and through programs of public information and education;
- (4) To furnish technical assistance upon request to persons to assist them in eliminating discriminatory practices or otherwise implementing the policy and purposes of the Indiana Civil Rights Law and the Indiana Fair Housing Law;
- (5) To make such general investigations, studies and surveys as the office shall deem necessary for the performance of its duties;
- (6) To prepare and submit at least annually a report of its activities to the mayor and to the public, which report shall describe the investigations and proceedings conducted by the office, the outcome thereof and the progress and achievements of the office and the community toward elimination of discriminatory practices;
- (7) To cooperate with the state civil rights commission, any appropriate federal, state or local agencies, and with private organizations, individuals and neighborhood associations in order to effectuate the purposes of this chapter and to further compliance with federal, state and local laws and ordinances prohibiting discriminatory practices; and
- (8) To perform any other duties assigned by ordinance or the mayor.

SECTION 3. Chapter 581, Article IV, Sec. 581-414, of the "Revised Code of the Consolidated City and County," regarding hearings, findings and recommendations when conciliation not effected, is hereby amended by the addition of the language that is underscored, to read as follows:

Sec. 581-414. Hearings, findings and recommendations when conciliation not effected.

(a) *Hearing to be held; notice.* If a complaint has not been satisfactorily resolved within a reasonable time through informal proceedings under section 581-412 of this chapter, or if the panel investigating the

complaint determines that reasonable cause exists to believe a respondent has violated section 581-403 of this chapter but that a conciliation conference is inappropriate under the circumstances surrounding the complaint, then the chairperson of the board shall assign the case to the adjudication committee or, in the case of a complaint not related to housing, to either the adjudication committee or to a hearing officer. The adjudication committee or the hearing officer may hold a public hearing thereon upon not less than ten (10) working days' written notice to the complainant or other aggrieved person and to the respondent. If the respondent has not previously filed a written response to the complaint, he or she may file such response and serve a copy thereof upon the complainant and the office not later than five (5) working days prior to the date of the hearing.

(b) *Powers; rights of parties at hearing.* In connection with a hearing held under subsection (a) of this section, the adjudication committee or the hearing officer shall have the power, upon any matter pertinent to the complaint or response thereto, to subpoena witnesses and compel their attendance; to require the production of pertinent books, papers or other documents; and to administer oaths. The complainant shall have the right to be represented by the administrator or any attorney of his or her choice. The respondent shall have the right to be represented by an attorney or any other person of his or her choice. The complainant and respondent shall have the right to appear in person at the hearing, to be represented by an attorney or any other person, to subpoena and compel the attendance of witnesses, and to examine and cross examine witnesses. The board may adopt appropriate rules for the issuance of subpoenas and the conduct of hearings under this section. The adjudication committee, the hearing officer and the board shall have the power to enforce discovery and subpoenas by appropriate petition to the Marion County Circuit or Superior Courts.

(c) *Statement of evidence; exceptions; arguments.* Following the close of the hearing, the adjudication committee or the hearing officer shall prepare a report containing written recommended findings of fact and conclusions and file such report with the office. The adjudication committee or hearing officer shall make a good faith effort to complete the report within thirty (30) working days from the close of the hearing, but may extend the time for completing the report as needed, up to an additional thirty (30) working days. A copy of the report shall be furnished to the complainant and respondent, each of whom shall have an opportunity to submit written exceptions within such time as the rules of the complaint adjudication committee shall permit. The adjudication committee or the hearing officer may, in its, his or her discretion, upon notice to each interested party, hear further evidence or argument upon the issues presented by the report and exceptions, if any.

(d) *Findings of fact; sustaining or dismissing complaint; remedies.* Upon the preponderance of the evidence, the adjudication committee or the hearing officer shall issue written findings of fact and conclusions, and shall and serve a copy thereof upon the complainant and the respondent. Findings and conclusions made by the adjudication committee or the hearing officer shall be based solely upon the record of the evidence presented at the hearing.

If, in the opinion of the adjudication committee or the hearing officer, any respondent has engaged or is engaging in a discriminatory practice in violation of the chapter, the adjudication committee or the hearing officer may cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to:

- (1) The restoration of complainant's losses (including compensatory payment of actual damages, except that damages to be paid as a result of discriminatory practices relating to employment shall be limited to lost wages, salaries, commission or fringe benefits) incurred as a result of discriminatory treatment, as the adjudication committee or hearing officer may deem necessary to assure justice;
- (2) The posting of notice setting forth the public policy of the city and county concerning equal opportunity and respondent's compliance with such policy in places of public accommodations;
- (3) The submission of proof of compliance to be filed by respondent at periodic intervals; and
- (4) If the respondent is licensed by a city or county agency authorized to grant a license, the submission of a statement to show cause to the licensing agency why his or her license should not be revoked or suspended.

If, in the opinion of the adjudication committee or the hearing officer, any respondent has not engaged in a discriminatory practice in violation of this chapter, the adjudication committee or the hearing officer shall state dismiss the complaint against that respondent.

The adjudication committee or the hearing officer shall make a good faith effort to serve its, his or her findings and conclusions within one (1) year from the date of receipt of the complaint. If it is impracticable to serve the findings and conclusions within one (1) year from the date of receipt of the complaint, the adjudication committee or the hearing officer may extend the time for serving the findings and conclusions. The adjudication committee or the hearing officer also shall notify the parties in writing of the reason(s) for the delay.

(e) *Appeal to the board.* Within thirty (30) working days after the issuance of findings and conclusions by the adjudication committee or the hearing officer, either the complainant or the respondent may file a written appeal of the decision of the adjudication committee or the hearing officer to the board. If no appeal is filed within thirty (30) working days, then the findings and conclusions are final. After considering the record of the evidence presented at the hearing and the findings and conclusions of the adjudication committee or the hearing officer, the board may affirm the decision of the adjudication committee or the hearing officer and adopt the findings and conclusions of the adjudication committee or the hearing officer, or it may affirm the decision of the adjudication committee or the hearing officer and make supplemental findings and conclusions of its own, or it may reverse the decision of the adjudication committee or the hearing officer and make findings of fact and conclusions to support its decision. The board may also adopt, modify or reverse any relief ordered by the adjudication committee or the hearing officer. The board shall make a good faith effort to take any of the above actions within thirty (30) working days after the appeal is filed, but may extend the time as needed, up to an additional thirty (30) working days.

(f) *Members of board who are ineligible to participate.* No member of the board who initiated a complaint, who is the subject of a complaint, or who has an immediate family member who is the subject of a complaint shall participate in the adjudication of that complaint as a member of the three-person panel, the adjudication committee or the board. In the event of an appeal to the board, a board member's participation on the three-person panel or on the adjudication committee shall not be a basis for ineligibility.

(g) *Judicial review.* Any respondent who disagrees with a decision of the board rendered pursuant to subsection 581-414(e) of this chapter shall have the right to file a verified petition to the superior or circuit court of Marion County for a review of the board's decision. The petition for review must be filed within thirty (30) calendar days after the date of issuance of the written decision of the board. The City of Indianapolis shall be the sole defendant in the petition for review. Within thirty (30) calendar days after receipt of a summons, the city shall cause the board to file a true and complete copy of the transcript of the hearing with the court. The court, without jury, shall review the record and render its decision as in other administrative reviews. The clerk of the court shall send a copy of the court's decision to the respondent and to the office of equal opportunity, either of whom may appeal the court's decision.

SECTION 4. This ordinance shall be in effect from and after its passage by the Council and compliance with Ind. Code § 36-3-4-14.

The foregoing was passed by the City-County Council this _____ day of _____, 2014, at _____ p.m.

ATTEST:

Maggie A. Lewis
President, City-County Council

NaTrina DeBow
Clerk, City-County Council

Presented by me to the Mayor this _____ day of _____, 2014, at 10:00 a.m.

NaTrina DeBow
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2014.

Gregory A. Ballard, Mayor