

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MIDWAY, KENTUCKY, ESTABLISHING A NEW CHAPTER IN THE CITY OF MIDWAY CODE OF ORDINANCES TITLED "HOUSING, PUBLIC ACCOMMODATIONS AND EMPLOYMENT" PROHIBITING DISCRIMINATION AGAINST INDIVIDUALS ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, FAMILIAL STATUS, DISABILITY, GENDER IDENTITY AND SEXUAL ORIENTATION AND CREATING AN ADMINISTRATIVE ENFORCEMENT PROCEDURE.

WHEREAS, the City of Midway, Kentucky, by and through its City Council (hereinafter "City") is an inclusive community and believes that individuals should be treated with respect and dignity;

WHEREAS, the City wishes to prohibit discrimination against individuals in housing, employment and public accommodations on the basis of race, color, religion, national origin, sex, familial status, age, disability, gender identity and sexual orientation and provide for the enforcement of same under this ordinance; and

WHEREAS, the City further recognizes the long standing tradition of religious liberty, free speech and free exercise of rights established by our country's founding fathers and the words of the First Amendment to the United States Constitution that government shall make no law respecting an establishment of religion, nor prohibit the free exercise thereof, and therefore our Constitution seeks to balance the right of persons to be free from discrimination with the free exercise of religion and freedom of speech by providing an exception for same.

NOW, THEREFORE, it is ORDAINED by the City of Midway, Kentucky, that a new chapter in its Ordinances be established and titled HOUSING, PUBLIC ACCOMMODATION AND EMPLOYMENT, and shall read as follows:

SECTION ONE: POLICY AND PURPOSE.

The City desires to implement a policy that treats individuals within the City equally and free from discrimination in the context of housing, employment and public accommodation on account of race, color, religion, national origin, sex, age, familial status, age, disability, gender identity and sexual orientation.

SECTION TWO: DEFINITIONS.

For the purpose of this chapter, the following definitions apply unless the context clearly indicates or requires a different meaning. These definitions shall be superseded by KRS 344.010(4) and KRS 344.030(1) and applicable federal and state law that may be in effect at the time of a violation.

AGE. Age forty (40) years and older.

BONA FIDE OFFER. A written offer to purchase, exchange, rent, or lease of any housing accommodation that is made in good faith without fraud or deceit.

DISABILITY. An individual who: (a) has a physical or mental impairment that substantially limits one (1) or more of the major life activities of the individual; (b) has record of such an impairment; or (c) is regarded as having such an impairment. The term does not include persons with current or past controlled substances abuse or alcohol abuse problems and persons excluded from coverage by the Americans with Disabilities Act of 1990.

DISCRIMINATION. An act or practice of exclusion, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person or persons prohibited under this chapter.

DISCRIMINATORY PRACTICE. An act that is unlawful under this chapter.

DWELLING. A building, structure or portion thereof which is occupied as or intended for occupancy as a residence by two (2) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure or portion thereof.

EMPLOYEE. An individual employed by an employer, but not including an individual employed by his or her parents, spouse, child, relatives, or an individual employed to render services as an advisor, counselor or confidant, or as a nurse, domestic or personal companion in the home of the employer.

EMPLOYER. Any person who has ten (10) or more employees within the City in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person, except for purposes of determining discrimination based on disability, an employer means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of that person, excluding the United States, the Commonwealth of Kentucky or one of its agencies or corporations.

EMPLOYMENT AGENCY. Any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer and includes any agent of such person.

FAMILIAL STATUS. Any individual who has not attained the age of eighteen (18) years and is domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having custody, with the written permission of such parent or other persons. The protection afforded against discrimination on

the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual under the age of eighteen (18) years.

GENDER IDENTITY. Manifesting a gender identity not traditionally associated with one's biological or psychological maleness or femaleness.

FAMILY. Includes an individual, spouse, and child(ren), whether related by blood, legal guardianship, marriage or adoption.

PERSON. An individual, corporation, limited liability company, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receivers and fiduciaries.

PLACE OF PUBLIC ACCOMMODATION, RESORT OR AMUSEMENT. A place, building, facility, store or other establishment, whether licensed or unlicensed, from which goods or services are furnished to the general public or from which patronage or trade is solicited of the general public or which is directly supported by government funds; provided, however, that a private club or organization is not a place of public accommodation, resort or amusement if its policies are determined by its members and its facilities or services are available only to its members and its member's guests. This definition does not include a dwelling, rooming or boarding house containing fewer than three (3) rooms for rent or hire and which is within a building occupied by the proprietor as his or her residence. The exemptions afforded to a place of public accommodation, resort or amusement shall also include those contained in KRS 344.130.

SEXUAL ORIENTATION. An individual's actual or imputed hetero-, homo-, or bi-sexuality.

SECTION THREE: UNLAWFUL HOUSING DISCRIMINATION.

Except as otherwise provided herein, it is a prohibited unlawful practice:

- (A) To refuse to sell, purchase, exchange, rent or lease, or otherwise deny or withhold housing accommodation from a person because of his or her race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation;
- (B) To discriminate against a person because of his or her race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation in terms, conditions, or privileges of the sale, purchase, exchange, rental, or lease of housing accommodation or in the furnishing of facilities or services in connection therewith;
- (C) To refuse to receive or transmit or negotiate a bona fide offer to sell, purchase, exchange, rent, or lease housing accommodation from or to a person because of his or her race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation;
- (D) To represent to a person that a housing accommodation is unavailable for inspection, sale, purchase, exchange, rental or lease when in fact it is available because of his or her race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation;
- (E)
- (F) To deny access to or withhold a housing accommodation from a person because of his or her race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation;
- (G) For a bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business is involved in whole or in significant

part in the making of residential real estate loans to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, by discriminating against him or her in the approval, fixing of the amount, interest rate, duration or other terms or conditions of the loan or other financial assistance because of race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation of the person or of any person associated with him or her in connection with the loan or other financial assistance or purpose of the loan or other financial assistance, or of the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to which the loan or other financial assistance is sought. Nothing in this section shall impair the nature, scope or effectiveness of the exemptions contained in Section Four.

SECTION FOUR: EXEMPTIONS FROM UNLAWFUL HOUSING PRACTICES.

The provisions of this chapter prohibiting discriminatory housing practices, other than the prohibition of discriminatory advertising, shall not apply to:

- (A) The rental or lease of any housing accommodations in a building which contains or has accommodations for three (3) or fewer families living independently of each other, if the owner or a member of his or her family resides in one of the housing accommodations;
- (B) The rental or lease of any rooming units in a housing unit, if the owner or a member of his or her family resides in the housing unit;
- (C) The rental or lease of any rooming units in a house in which the owner of the entire house or member of his or her family resides;
- (D) Rental of lodging by a private club or organization not open to the general public that, as an incident to its primary purpose or purposes, provides lodging that it owns, leases or

operates for other than a commercial purpose, from limiting the rental or occupancy of the lodging to its members and guests or from giving preference to its members and guests;

(E) A private individual or business disposing of his or her property through private sale without the aid of any real estate broker or real estate salesperson, and without advertising or public display, but nothing in this section shall prohibit the owner from using attorneys, escrow agents, abstractors, title professionals and other professionals for assistance as necessary to perfect or transfer title;

(F) Housing for older persons with respect to familial status. Housing for older persons means housing:

(1) provided under any program of a state or federal housing agency that is specifically designed and operated to assist elderly persons (as defined by the state or federal program);

(2) intended for, and solely occupied by, persons sixty-two (62) years of age or older; or

(3) intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit. In determining whether housing qualifies as housing for older persons under this chapter, state or federal housing agency regulations must require at least the following factors:

(a) The existence of facilities and services are designed to meet the physical or social needs of older persons or to present housing opportunities for older persons;

(b) That at least eighty (80%) of the dwellings are occupied by at least one person fifty-five (55) years of age or older per unit;

(c) The publication of, and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

(G) Nothing in this chapter requires 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 owner's property or the property of others.

(H) Nothing in this chapter shall require an owner of real property to negotiate with any individual who has not shown evidence of financial ability to consummate the purchase or rental of a housing accommodation.

(I) Nothing in this chapter shall prohibit conduct against a person who has been convicted by any court of competent jurisdiction of the illegal manufacture, use, sale or distribution of a controlled substance.

SECTION FIVE: UNLAWFUL PRACTICES IN PUBLIC ACCOMMODATIONS.

Except as otherwise provided herein, it is unlawful to deny a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the ground of race, color, religion, national origin, sex, disability, gender identity or sexual orientation. This section shall not apply with regards to sex, sexual orientation and gender identity to the following:

(A) Restrooms, shower rooms, bathhouses, locker rooms, changing areas or similar facilities which are, by their nature, designed for separate sexes;

(B) YMCA, YWCA and similar dormitory-type lodging facilities;

(C) The exemptions contained in the definitions of Place of Public Accommodation, Resort, or Amusement as set forth in Section Two;

(D) Hospitals, churches, nursing homes, schools, athletic facilities and gyms, childcare facilities, jails, penal or similar facilities with respect to any requirement that men and women not be in the same room; or.

(E) Infringing upon the right of free speech-expression of a provider of goods or services not to be compelled to express a message with which they disagree.

SECTION SIX: UNLAWFUL PRACTICES IN EMPLOYMENT.

(A) It is a prohibited, unlawful practice for an employer or employment agency:

(1) To fail or refuse to hire or to discharge an individual, or otherwise discriminate against an individual with respect to his or her terms or conditions of employment, because of his or her race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation; and

(2) To limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of the individual's race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation.

(3) To exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership because of that individual's race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation;

(4) To limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his

or her status as an employee because of the individual's race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation.

(5) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(B) It is a prohibited, unlawful practice for an employer, controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of the individual's race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation in admission to or employment in any program established to provide such apprenticeship, training or retraining.

(C) It is a prohibited, unlawful practice for a an employer, labor organization or employment agency to print, publish, or cause to be printed or published any notice, advertisement, classification, or referral for employment imposing any limitation, preference, or specification based on race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation, except that such notice, advertisement, classification, referral for employment may indicate such a limitation, preference or specification based on race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation when it is a bona fide occupational qualification for employment.

(D) Nothing herein shall prevent an employer from:

- (1) Enforcing a written employee dress code policy; or
- (2) Enforcing a written drug code; or
- (3) Designating appropriate restroom and shower facilities.

SECTION SEVEN: EXEMPTIONS FROM UNLAWFUL EMPLOYMENT PRACTICES.

(A) Notwithstanding any other provision of this chapter, it is not an unlawful for:

(1) An employer to hire and employ employees; or an employment agency to classify or refer for employment an individual; to classify its membership or to classify or refer for employment an individual; or for an employer, apprenticeship or other training or retraining programs to admit or employ an individual in such program on the basis of his or her religion, national origin or sex as a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise; or

(2) A church, school, college, university, or other religiously affiliated or educational institution to hire and employ individuals of a particular religious beliefAn employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a seniority or merit system, or a system which determines earnings by quantity or quality of production, or customer satisfaction, or to employees who work in different locations, if the differences are not the result of an intention to discriminate because of race, color, religion, national origin, sex, familial status, age, disability, gender identity and sexual orientation; or

(3) For an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration, or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, national origin, sex, familial status, age, disability, gender identity and sexual orientation.

(B) An employer who has ten (10) or fewer employees within the City in each of twenty (20) or more calendar weeks in the current or preceding calendar year, is exempt from the provisions of this chapter.

SECTION EIGHT: GENERAL EXEMPTIONS FROM THIS CHAPTER.

(A) No action taken under or required by this Ordinance shall burden a person's freedom of religion. The right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be burdened unless it is proven by clear and convincing evidence that the government has a compelling interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest. Where a person, by action or inaction, is alleged to have failed to adhere to the provisions of this Chapter of the City's Code of Ordinances due to his or her sincerely held religious belief, the individual or entity alleging the violation must prove by clear and convincing evidence that the City has a compelling governmental interest in infringing upon the specific act or refusal to act and has used the least restrictive means to further that interest to establish the existence of the alleged violation. A "burden" shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access facilities. This section shall apply in any legal or administrative proceeding brought to enforce the provisions of this chapter, whether the City or other governmental authority is a party to such proceeding. A person's sincerely held religious belief may be established by the execution of a sworn affidavit.

(B) The provisions of this chapter shall not apply to a faith based social service providers or counselors, to any religious institutions, associations, societies, entities, or to an organization operated for charitable or educational purposes which is owned, operated, controlled by or affiliated with a religious institution, association, society or entity.

SECTION NINE: ADMINISTRATION AND ENFORCEMENT.

(A) The responsibility for administering this chapter shall be borne by the City's Mayor, or any other individual designated by the Mayor.

(B) Any claims filed under this chapter regarding race, color, religion, national origin, sex, familial status, age, or disability shall be delegated and referred to the Woodford County Human Rights Commission, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter regarding those types of claims.

(C) Administration and enforcement this regarding claims filed under this chapter regarding gender identity or sexual orientation shall be as follows:

(1) Any person claiming to be aggrieved by a violation of this chapter may, within ninety (90) days of the alleged violation or within thirty (30) days of the dismissal of a charge or complaint concerning the same matter by another governmental agency or state or federal court without a final judgment on the merits, whichever occurs last, file a written complaint under oath with the Mayor. The Mayor may designate an agent to fulfill the duties and procedures outlined herein.

(2) A person who has filed a complaint with the a Human Rights Commission having appropriate jurisdiction, and whose complaint is pending shall provide written notice to the Human Rights Commission within five (5) business days of the filing of any complaint or charge on his or her behalf with another agency or state or federal court that seeks relief or damages for the same alleged violation(s) arising from the same transaction(s) or occurrence(s) upon which the person seeks relief hereunder. Upon receiving notice of the other charge or complaint, the Human Rights Commission shall have discretion to dismiss the complaint filed hereunder. The failure to provide such notice in a timely manner may result in the immediate dismissal of the complaint filed herein. In making the complaint, the complainant shall state as follows:

(a) His or her , name, address and telephone number;

(b) The name and address (if known) of the alleged actor, or provide facts sufficient to identify such person;

(c) Full details of the material facts upon which the complaint is based;

(d) The alleged violation;

(e) The nature of the transaction or occurrence;

(f) That any conduct of the complainant was for the purpose of obtaining the housing, employment or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made; and

(g) That a complaint concerning this same matter has not been filed with another agency or if a complaint concerning this matter has been filed with another agency, the name of the agency, and whether it has been dismissed by such agency without final judgment on the merits.

(3) The Mayor shall furnish a copy of the complaint to the person against whom the complaint is made.

(4) Before conducting an investigation of the complaint, the Mayor may attempt to negotiate a settlement of the dispute between the parties, if the Mayor deems that such an attempt is practicable.

(5) If the Mayor does not deem it practicable to attempt a pre-investigation settlement or if such settlement attempt is unsuccessful, then the Mayor will conduct an investigation to determine if there is probable cause to believe the allegations of the complaint.

An investigation can include but is not limited to interviews of the parties or requests for written

statements and information. Said investigation must be completed within sixty days (60) of receipt of the complaint.

(6) If the Mayor determines that there is no probable cause that a discriminatory action occurred, the Mayor shall dismiss the complaint. Written notice of the dismissal shall be served upon the complainant by regular U.S. Mail. The notice shall state that the complainant may request a hearing within fourteen (14) days of the date of the dismissal before the City Council, in writing, and shall include a hearing request form with instructions on how to file that request. If a hearing is held, the City Council may affirm the decision of the Mayor or determine that probable cause exists and direct the Mayor to act in accordance with Section 9(11) and the remaining provisions of this Section.

(7) If after an investigation the Mayor determines that there is probable cause and sufficient basis in fact to support the allegation(s) made in the complaint, the Mayor shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by the parties and the Mayor, resolving alleged violation and making whole the complainant to the extent practicable.

(8) The Mayor shall furnish a copy of such signed conciliation agreement to the complainant and the person charged.

(9) A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred, but may provide for dismissal of the complaint with or without prejudice.

(10) The Mayor shall have thirty (30) days from the filing of the complaint to attempt to eliminate the alleged violation by conciliation agreement. If either the complainant or the person or entity charged indicates an unwillingness to participate in the conciliation process

or if no conciliation process or no conciliation agreement has been reached with the time provided, the Mayor shall refer the complaint for an administrative hearing. The Mayor may continue attempts to reach a conciliation agreement after referral of the complaint for hearing.

(11) The Mayor shall set a date for an administrative hearing and shall notify the complainant and the person or entity charged in writing at least fourteen (14) calendar days in advance of the hearing date.

(D) Hearings.

(1) A hearing officer shall be appointed by the Mayor to preside over the conduct of an administrative hearing to regulate the course of the proceedings in a manner that will promote the orderly and prompt conduct of the hearing. The hearing officer must be an attorney licensed to practice law in the Commonwealth of Kentucky.

(2) A hearing officer shall afford all parties the opportunity to respond, present documentary or tangible evidence, conduct cross-examination and submit rebuttal evidence regarding all relevant facts and issues. The hearing officer shall determine what discovery is appropriate, including, but not limited to, interrogatories, requests for production of documents and depositions.

(3) Any party to an administrative hearing may represent themselves in person and/or be represented by counsel, except that a legal entity as a party to any Complaint shall be required to retain counsel.

(4) If a party fails to attend or participate in a hearing, the hearing officer may adjourn the proceedings and issue a default order.

(5) Hearings shall be conducted in accordance with KRS 13B.080 and KRS 13B.090 unless otherwise provided herein. Notwithstanding the foregoing, the hearing officer

may receive additional evidence as he or she deems proper. Discovery of materials shall be completed at least fourteen (14) days before the hearing. All witness testimony, except by way of depositions, must be presented in the presence of the hearing officer.

(6) Written findings of fact shall be made of the hearing officer's decision based exclusively on the evidence in the record. The strict rules of evidence governing civil proceedings shall not apply; however, the hearing officer will abide by the general principles of evidence in an effort to conduct a proper and reasonable investigation in deciding the truth of the matter. All findings of fact shall be based upon a preponderance of the evidence. The order of proof shall be that set forth in the Kentucky Rules of Civil Procedure. The hearing officer shall have the discretion to grant a continuance or continue a hearing in progress on a showing of good cause.

(7) All testimony shall be made under oath or affirmation. Any part of evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party, or if such practice is authorized by statute. Parties shall have the right to inspect the documentary or tangible evidence relating to an administrative hearing either in person or by counsel.

(8) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(9) A hearing officer may take official notice of any matter of which a court of the Commonwealth of Kentucky may take such notice.

(10) The hearing officer may order the removal of a person who exhibits disruptive behavior that interferes with the proceedings.

(11) A hearing officer shall cause all testimony given in a hearing to be accurate and recorded. A hearing officer may upon request prepare a transcript of a hearing, but the requesting party shall be responsible for the cost thereof.

(12) Within ninety (90) days after the conclusion of hearing, the hearing officer shall issue a recommended written order containing findings of fact, conclusions of law, and final disposition of the complaint. A copy of the order shall be sent to each party and the Mayor.

(E) Enforcement of Orders.

(1) Upon receipt of a recommended written order from the hearing officer finding no violation of this chapter, the Mayor shall enter an order dismissing the complaint. Upon receipt of a written order from the hearing officer finding a violation of this chapter, the Mayor may issue one or more of the following orders:

(a) An order directing the person or entity found to have violated this chapter to cease and desist from the discriminating practice;

(b) An order subjecting any person or entity found to have violated this chapter to civil penalties of not less than \$100.00 or more than \$500.00.

(2) The prevailing party may recover from the non-prevailing party the cost of the administrative proceeding and a reasonable attorney's fee and the order shall state same.

(3) Upon entry of the order, a copy of the order shall be sent to all parties by U.S. mail informing the parties of the right to appeal to the City Council along with instructions for doing so.

(F) Appeals.

(1) The order of the Mayor, and the recommended order of the hearing officer may be appealed to the City Council within thirty (30) calendar days following entry of the order

and said appeal shall be in writing and delivered by U.S. mail to the City Clerk. The City Council shall review *de novo* the record at a special called meeting within thirty (30) days of the written appeal and may hear testimony from the parties before making a decision to affirm, modify or set aside the order(s) entered by the Mayor.

(2) After an order is entered by the City Council to affirm, modify or set aside the underlying order(s), an aggrieved party may appeal the decision to the Woodford Circuit Court within thirty (30) calendar days of the entry of order by the City Council. The prevailing party on appeal may recover from the non-prevailing party its court costs and a reasonable attorney's fee.

(G) Enforcement by Private Action.

(1) The rights granted by this chapter may be enforced by civil action in state or court of general jurisdiction. A civil action must be commenced within 180 calendar days after the alleged discriminatory practice occurred. The court shall continue the civil case brought pursuant to this chapter from time to time before bringing it to trial if the court believes that the conciliation efforts of the Mayor or Woodford County Human Rights Commission may result in satisfactory settlement of the discriminatory action alleged.

(2) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, award to the plaintiff actual damages and punitive damages of not more than \$1,000.00, and shall allow the prevailing party to recover from the non-prevailing party court costs and a reasonable attorney's fee.

(3) Any sale, encumbrance, or rental consummated before the issuance of any court order issued under this chapter, and involving a bona fide purchaser, encumbrance or

tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this chapter shall not be affected.

SECTION TEN: OBSTRUCTION AND RETALIATION.

(A) It is a prohibited, unlawful practice for any person:

(1) To retaliate in any manner against a person because he or she has opposed a practice unlawful by this chapter or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing, or conference before the Mayor, hearing officer, or City Council under this chapter;

(2) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this chapter or to obstruct or prevent any person from complying with the provisions of this chapter;

(3) To obstruct, or prevent a person from complying with the provisions of this chapter, or any order of the Mayor or City Council issued thereunder; or

(4) To resist, prevent, impede, or interfere with the Mayor, the hearing officer, or the City Council or any of its members or representatives in the lawful performance of his, her, its or their duty under this chapter.

(B) Any complaint filed with the Mayor involving an alleged violation of this section shall be processed in conformity with Section Nine.

(C) This section shall not be construed to impose individual or personal liability on owners, supervisors, or employees in the event of an alleged discriminatory act or retaliation.

SECTION ELEVEN: FRIVOLOUS CONDUCT.

(A) It shall be a violation of this chapter for a party or to aid, abet, incite, compel or coerce a person to engage in frivolous conduct. Frivolous conduct shall mean conduct that

serves to harass or maliciously injure another party, such as, but not limited to, filing a false or misleading claim or defense; or in filing or in assisting in the filing of a complaint or asserting a defense that is not warranted under existing law and for which the complaint, claims, charges and defenses cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(B) Upon a finding by the Mayor, hearing officer, City Council or court of law that frivolous conduct has occurred, the Mayor, hearing officer, City Council or court of law may award reasonable attorney's fees and costs incurred by the City of Midway and the non-violating party against the party who engaged in such frivolous conduct.

SECTION TWELVE: ANNUAL REPORT.

The Mayor is to submit an annual report by January 30th of each calendar year to the City Council, containing a summary of claims filed under this chapter during the preceding calendar year, how each was resolved, and the costs expended for same.

SECTION THIRTEEN: If any section, sentence, clause, or portion of this Ordinance is for any reason declared illegal, unconstitutional, or otherwise invalid, such declaration shall not affect the remaining portions thereof.

Introduced and give a first reading at a meeting of the Midway City Council on the _____ day of _____ 2015, and fully adopted after the second reading at a meeting of said Council held on the _____ day of _____ 2015.

CITY OF MIDWAY

BY: _____
Grayson Vandegrift, Mayor

ATTEST:

Phyllis Hudson, City Clerk

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