

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT
REPEALING ORDINANCE NO. 482, AS AMENDED, WHICH IS CODIFIED AS
PART ONE ADMINISTRATIVE CODE, CHAPTER SEVEN BOARDS,
COMMISSIONS AND AUTHORITIES, ARTICLE 175 HUMAN RIGHTS
COMMISSION, OF THE FAIRMONT CITY CODE, AND RE-ENACTING SAID
ARTICLE 175 HUMAN RIGHTS COMMISSION.**

WHEREAS, West Virginia Code §5-11-12 authorizes and empowers the City of Fairmont to “establish or membership in and support of a local human relations commission.

WHEREAS, pursuant to the aforementioned authority, on November 8, 1978, the City of Fairmont established the City of Fairmont Human Rights Commission.

WHEREAS, the Council for the City of Fairmont finds it in the best interest of said City to repeal Article 175, and re-enact same to safeguard the right and opportunity of all persons to be free from all forms of discrimination, whether as a result of race, religion, color, national origin, ancestry, sex, age, sexual orientation, gender identity, blindness, or handicap, and to provide for an inclusive community for all residents, businesses and visitors.

**NOW, THEREFORE, THE CITY OF FAIRMONT HEREBY ORDAINS
THAT:**

Part One-Administrative Code, Chapter Seven-Boards, Commissions and Authorities, Article 175 Human Rights Commission of the Fairmont City Code be and is hereby repealed in its entirety, and said Article 175 Human Rights Commission be and is hereby reenacted as follows (matter to be repealed bracketed; new or reenacted matter double-underlined):

SECTION 1: REPEAL

[Article 175- Human Rights Commission

175.01 DECLARATION OF POLICY.

It is the public policy of the City provide all of its residents equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil

right of all person without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness or handicap is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

175.02 DEFINITIONS.

When used in this article:

(a) "Person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.

(b) "Commission" means the Fairmont Human Rights Commission.

(c) "Director" means the executive director of the Fairmont Human Rights Commission.

(d) "Employer" includes any person who is doing business in the City and is employing twelve or more persons; provided that such term shall not be taken, understood or construed to include a private club.

(e) "Employee" shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person.

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

(g) "Employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency.

(h) "Discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to a person, equal opportunities because of race, religion, color, national origin, ancestry, sex, age, , blindness or handicap and includes "separate" or "segregate".

(i) "Unlawful discriminatory practices" includes those practices specified in West Virginia Code 5-11-9, and those practices specified in Section http://whdrane.conwaygreene.com/NXT/gateway.dll?f=jumplink&jumplink_x=Advanced&jumplink_vpc=first&jumplink_xsl=querylink.xsl&jumplink_sel=title;path;content-type;home-title;item-bookmark&jumplink_d=%7bfairmont%7d&jumplink_q=%5bfield%20folio-destination-name:'175.08%5d&jumplink_md=target-id=0-0-0-661 \t "main" [175.08](#).

(j) "Place of public accommodations" means any establishment or person, as defined herein, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private.

(k) "Housing accommodations" means any building or portion thereof, which is used or intended for use as the residence or sleeping place of one or more persons, but does not include the rental of a room or rooms in a rooming house occupied by the owner as a place

of residence and containing no more than four rented rooms, or rooms to be rented.

(l) "Real property" includes real estate, lands, households, commercial or industrial buildings, and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers.

(m) "Real estate broker" includes a person, who, for a fee, commission or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate, or solicits for prospective purchaser or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a private or public competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker.

(n) "Real estate salesman" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise to sell real estate, or any parts hereof, in lots or other parcels.

(o) "Purchaser" includes any occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.

(p) "Owner" includes the owner, lessee, sublessee, assignee, manager, agents or other person, firm or corporation having the right to sell, rent or lease any housing accommodation or real property within the City or any agent of any of these.

(q) "Age" means ages forty through sixty-five years, both inclusive.

(r) "Rooming house" means a house or building where there are one or more bedrooms which the proprietor can space for the purpose of giving lodgings to such persons as he chooses to receive.

(s) For the purposes herein, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

(t) "Complainant" means any person claiming to be aggrieved by unlawful discriminatory practices.

(u) "Handicap" means any physical or mental impairment which substantially limits one or more of an individual's major life activities.

175.03 ESTABLISHMENT; PURPOSE.

A human rights commission is hereby established in the City government to be known as the Fairmont Human Rights Commission. The Commission shall have the powers and authority and shall perform the functions and services as prescribed herein and as otherwise provided by law. The Commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the City and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap.

175.04 MEMBERS; COMPENSATION.

The Human Rights Commission shall be composed of nine members, residents of the City, to be appointed by the City Manager with advice and consent of Council. Eight members appointed to serve on the Commission shall be broadly representative of the racial, religious and ethnic groups residing within the City; one member shall be a duly licensed attorney who is a practicing member of the Marion County Bar.

No member may hold office in any political party.

Upon passage hereof, members of the Commission shall be appointed for terms of three years commencing on July 1, 1978, except that of the nine members first appointed hereunder three shall be appointed for terms of three years. Three for two years and three for one year respectively. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the Commission, each Commission member shall take and subscribe to the official oath prescribed in Section 5, Article IV of the Constitution of West Virginia, which executed oath shall be filed in the office of the Clerk of the City.

Members shall serve without salary, provided, however, members shall be reimbursed for any reasonable and necessary expenses incurred in performance of the Commission services.

Any member shall forfeit his office if he fails to attend three consecutive regular meetings of the Commission without being excused by the Commission as reflected in the minutes.

Vacancies may be filled by appointment by the City Manager and confirmed by Council for the unexpired term.

175.05 ORGANIZATION; PERSONNEL.

As soon as practical after the creation of the Human Rights Commission, a meeting of its members shall be called. The Commission shall organize, at the meeting, by electing one of its members as chairperson of the Commission and one as vice-chairperson thereof for a term of one year or until their successors are elected and qualified. At such meeting the Commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization. Annually thereafter, as soon as practical after the anniversary of the enactment hereof, the Commission shall elect a chairperson and vice-chairperson from its membership and such other officers as may be found necessary and proper for its effective organization.

The Commission shall select an executive director who shall serve at the will and pleasure of the Commission. The executive director shall serve as secretary of the Commission. The director shall be selected with particular reference to his or her training, experience and qualifications for the position and shall be paid an annual salary. The Commission upon recommendation of the executive director, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the Commission.

The Commission shall equip and maintain its offices at a place to be designated by Council and shall hold its annual organizational meeting there. The Commission may hold other meetings during the year at such times and places within the City as may be found necessary. Any five members of the Commission shall constitute a quorum for the transaction of business. Minutes of the meetings shall be kept by the secretary.

The executive director and other Commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in performance of Commission services upon presentation of properly verified expense accounts as prescribed by law.

The Commission shall prepare and submit an annual budget to the City Manager in accordance with the provisions of the Charter.

175.06 ASSISTANCE TO COMMISSION; LEGAL SERVICES.

The Fairmont Human Rights Commission may call upon other officers, departments and agencies of the City government to assist in its hearings, programs and projects. At its discretion, the Commission may accept volunteer services of private legal counsel or employ private legal counsel.

175.07 DUTIES; POWERS.

The Human Rights Commission is hereby authorized and empowered:

(a) To cooperate and work with Federal, State and Local Government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups of this City;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations, and other identifiable groups of the City in programs and campaigns devoted to the advancement of tolerance, understanding and equal protection of the laws for all groups and peoples;

(c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sex, blindness or handicap and to initiate its own consideration of any situations, circumstances or problems including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the City;

(d) To hold and conduct public and private hearings on complaints, matters and questions before the Commission and, in connection therewith, relating to discrimination in employment, places of public accommodations or in the sale, purchase, lease, rental and financing of housing accommodations or real property, and during the investigation of any formal complaint before the Commission relating thereto, to:

(1) Issue subpoenas and subpoenas duces tecum upon the concurrence of at least six members of the Commission, administer oaths, take the testimony of any person under oath, and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the Commission;

(3) Delegate to a panel of three Commission members appointed by the chairperson, a hearing examiner who shall be an attorney, duly licensed to practice law in West Virginia, who shall also be appointed by the chairperson and who may or may not be a member of the Commission the power and authority to hold and conduct the hearings, as herein provided, but all decisions and actions growing out of or upon any such hearings shall be reserved for determination by the Commission;

(4) Enter into conciliation agreements and consent orders;

(5) Apply to the Circuit Court of Marion County for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) Issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article, or the rules and regulations of the Commission;

(7) Apply to the Circuit Court of Marion County for an order enforcing any lawful cease and desist order issued by the Commission;

(e) To recommend to Council policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

(g) To prepare a written report on its work functions and services for each year ending on June 30 and to deliver copies thereof to the Mayor on or before December 1 next

thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article or West Virginia Code 5-11-1 et seq., including the promulgation of rules and regulations implementing the powers and authority hereby vested in the Commission;

(i) To create such advisory agencies and conciliation councils, within the City as in its judgment will aid in effectuating the purposes of this article, to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, age, sex, blindness or handicap; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this City, and to make recommendations to the Commission for the development of policies and procedures, and for programs of formal and informal education, which the Commission may recommend to the appropriate City agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay, but who shall be reimbursed for their reasonable and necessary expenses actually incurred. The Commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the City;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section, and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination; provided that the identity of the parties involved shall not be disclosed;

(l) Pursuant to the "Sunshine Law", West Virginia Code 6-9A-1 et seq., meetings of the Commission shall be open to the public.

175.08 UNLAWFUL DISCRIMINATORY PRACTICES.

It shall be unlawful discriminatory practice, unless based upon a bona-fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, unless the employer is able to prove that the person is not able and competent to perform the services required. Provided, that it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision.

(b) For any employers, employment agency or labor organization, prior to the employment or admission to membership, to:

(1) Elicit information or make or keep a record of or use any form of application or

application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership;

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex, or age; or

(3) Deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

(c) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(d) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(1) Select individuals for an apprentice training program registered with the State on any basis other than their qualifications as determined by objective criteria which permit review;

(2) Discriminate against any individual with respect to his right to be admitted to or participate in guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(3) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona-fide occupational qualification;

(e) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

(f) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(1) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodation;

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or handicap, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age or who is blind or handicapped is unwelcome, objectionable, not acceptable, undesired or not solicited;

(g) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons. Provided, that this provision shall not require any person named herein to rent, lease, assign or sublease any housing accommodations or real property, or any portion thereof to both sexes where the facilities of such housing accommodations or real property, or any portion thereof, are suitable for only one sex;

(2) To discriminate against any person or group of persons because of the race, religion, color, national origin, ancestry, sex, blindness or handicap of such person or group of persons in the terms, conditions, or privileges of the sale, rental or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment or sublease of any housing accommodations or real property or part or portion thereof, which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex, blindness or handicap or any intent to make any such discrimination and the production of any statement, advertisement, publicity, sign, form of application, record or inquiry purporting to be made by any such person shall be *prima facie* evidence in any action that the same was authorized by such person. Provided, that with respect to sex discrimination, this provision shall not apply to any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only one sex;

(h) For any person or financial institution or lender to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodations or real property, or part or portion thereof, or any agent or employee thereof to:

(1) Discriminate against any person or group of persons because of race, religion, color, national origin, ancestry, sex, blindness or handicap, of such person or group of persons or of the prospective occupants or tenants of such housing accommodations or real property, or part or portion thereof, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions or provisions of any such financial assistance or in the extension of services in connection therewith;

(2) Use any form of application for such financial assistance or to make any record of

inquiry in connection with applications for financial assistance which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex, blindness or handicap or any intent to make any such discrimination;

(i) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(1) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(2) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the Human Rights Commission or any of its members or representatives in the performance of duty under this article;

(3) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article;

(4) For profit to induce or attempt to induce any person to sell or rent or to not sell or rent any housing accommodations or real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons who are blind or handicapped or who are of a particular race, religion, color, national origin, ancestry or sex. Provided, that for the purposes of this article it shall not be an unlawful discriminatory practice for any person, employee or owner to refuse to make any unreasonable capital expenditure to accommodate the physical or mental impairment of any handicapped person.

175.09 CITY CONTRACTS.

The City and its respective agencies shall require that all contractors comply with this article, any State or federal law or laws or regulations and executive orders relating to unlawful employment practices in connection with any work to be performed by such contractor or subcontractor for or in behalf of the City and shall require the contractor to include a similar provision in all subcontracts.

The Human Rights Commission shall promulgate rules and regulations for the processing of complaints of discrimination under this section.

175.10 PROCEDURES.

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the Human Rights Commission a verified complaint, which shall state the name and address of the person, employer, labor organization, owner, real estate broker, real estate salesman, financial institution, lender or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission's rules and regulations. The Commission upon its own initiative or the City Manager or City Attorney may, in like manner, make, sign and file such complaint. Any employer whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, shall file with the Commission a verified complaint,

asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be taken, held or made by the Commission against such employer. Any complaint filed pursuant to this article must be filed within ninety days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith.

If it is determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the Commission shall, within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the complainant or his attorney may, within ten days after such service, file with the Commission a written request for a meeting with the Commission to show probable cause for substantiating the allegations of the complaint. If it is determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion. The members of the Commission and its staff shall not disclose what has transpired in the course of such endeavors. Provided, that the Commission may publish the facts in the case of any complaint which has been dismissed, and the terms of the conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure to eliminate such practice by conference, conciliation or persuasion, or in advance thereof, if in the judgment of the Commission circumstances so warrant, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman, financial institution or lender, named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the Commission in Marion County at a time and place to be specified in such notice; provided, however, that such written notice is served at least thirty days prior to the time set for the hearing.

The case in support of the complaint shall be presented before the Commission by one of its attorneys or agents, but this shall not be interpreted to prohibit counsel for the complainant from participating in the presentation in the case. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony and evidence. Except as provided in the immediately preceding provision, all of the pertinent provisions of West Virginia Code 29A-5, shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing with like effect as if such provisions were set forth in extenso in this section. Provided, however, that with respect to judicial review, venue shall lie in the Circuit Court of Marion County.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the Commission shall issue and

cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities or accommodations offered by any respondent place of public accommodations, and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property, denied in violation of this article, and any other order within the power of the Commission, as in the judgment of the Commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in West Virginia Code 29A-5-3.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the Commission finds that a respondent has not engaged in such unlawful discriminatory practice, the Commission shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the complaint as to such respondent.

A copy of its order shall be delivered in all cases by the Commission to the complainant, the respondent, and such other public officers as the Commission may deem proper. Any such order shall not be enforceable except as provided in Section [HYPERLINK "http://whdrane.conwaygreene.com/NXT/gateway.dll?f=jumplink&jumplink_x=Advanced&jumplink_vpc=first&jumplink_xsl=querylink.xsl&jumplink_sel=title;path;content-type;home-title;item-bookmark&jumplink_d=%7bfairmont%7d&jumplink_q=%5bfield%20folio-destination-name:'175.11%5d&jumplink_md=target-id=0-0-0-667"](http://whdrane.conwaygreene.com/NXT/gateway.dll?f=jumplink&jumplink_x=Advanced&jumplink_vpc=first&jumplink_xsl=querylink.xsl&jumplink_sel=title;path;content-type;home-title;item-bookmark&jumplink_d=%7bfairmont%7d&jumplink_q=%5bfield%20folio-destination-name:'175.11%5d&jumplink_md=target-id=0-0-0-667) \t "main" [175.11](#).

Any order of the Commission under this section shall have the legal effect of a judgment as defined in West Virginia Code 2-2-10(l)

175.11 ENFORCEMENT OF ORDER.

In the event any person fails to obey a lawful order, the Human Rights Commission may seek an order of the Circuit Court for its enforcement, in a proceeding as provided in this section. Such proceeding shall be brought in the Circuit Court of Marion County. Such proceeding shall be initiated by the filing of a petition in such Court, together with a written transcript of the entire record upon the hearing before the Commission. Notice of the filing of such petition, together with a copy thereof, shall be served upon respondent in the manner provided by law for the service of summons in civil actions. No hearing shall be held upon such petition within twenty days of the date of service thereof on the respondent.

The Court may grant such temporary relief or restraining order as it deems just and proper and shall make and enter upon the pleadings, testimony and proceedings set forth in such transcript an order enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission. All such proceedings shall be heard and determined by the Court. The jurisdiction of the Circuit Court shall be exclusive and its judgment and order shall be final subject to review by the Supreme Court of Appeals.

175.12 EXCLUSIVENESS OF REMEDY.

The procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he may not subsequently resort to the procedure herein.

175.13 INJUNCTIONS IN CERTAIN HOUSING COMPLAINTS.

When it appears that a housing unit or units described in a complaint may be sold, rented or otherwise disposed of before a determination of the complaint or case has been made by the Human Rights Commission or during judicial review of any final order of the Commission, the Circuit Court of Marion County may, upon the joint petition of the Commission and the complainant, or if there is more than one complainant, all such complainants, issue a prohibitive injunction restraining the sale, rental or other disposition of such housing unit or units except in compliance with the order of the court. No such injunction shall be issued by the Court until the complainant or complainants shall have posted bond, with good security therefor, in such penalty as the Court or judge awarding it may direct. The Court may include in any such injunction granted such other conditions as it deems proper and just. Such injunction, if granted, shall be of no more than thirty days' duration. If at the end of such thirty-day period the Commission notifies the Court that additional time is needed for the disposal or determination of the complaint or case or the conclusion of such judicial review, the Court, for good cause shown, may extend the period of the injunction for such additional time as the Court deems proper. No such extension shall be granted except upon the continuation or reposting of the bond required for the original injunction and any such extension of the injunction may be granted upon such additional terms and conditions as to the Court seem proper and just.

175.14 PRIVATE CLUB EXEMPTION.

Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or guests of members or from giving preference to its members or guests of members. Provided, that this exemption shall not apply to any private club not in fact open to the public which owns or operates residential subdivisions providing lodgings for rental occupancy or sale, or which provides real estate for sale for the construction of single or multi-unit dwellings.

175.15 CONSTRUCTION; SEVERABILITY.

This article shall in no way be construed to deny to any person his rights as they exist at common law, or under the laws of the State, or under the laws of the United States of America, for redress or damages, in the event of willful and malicious wrongs or harassment committed upon them.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any provision of this article is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.

175.99 PENALTY.

Any person who willfully resists, prevents, impedes or interferes with the Human Rights Commission, its members, agents or agencies in the performance of duties pursuant to this article, or willfully violates a final order of the Commission, shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), or imprisoned not more than thirty days, or both, but seeking judicial review of an order shall not be deemed to be such willful conduct.]

SECTION 2: RE-ENACTMENT

175.01 DECLARATION OF POLICY.

It is the public policy of the City to safeguard the right and opportunity of all persons to be free from all forms of discrimination, whether as a result of race, religion, color, national origin, ancestry, sex, age, sexual orientation, gender identity, blindness, or handicap, and to provide for an inclusive community for all residents, businesses and visitors.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or handicap is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

175.02 DEFINITIONS: All words utilized in this ordinance shall be ascribed their ordinary meaning unless otherwise defined in Article 11, Chapter 5 of the West Virginia Code, as amended, (§5-11-1 et seq.) which is entitled West Virginia Human Rights Commission. If any such word is so defined by the aforementioned Code (§5-11-1 et seq.) then such word shall be ascribed the definition contained therein.

175.03 ESTABLISHMENT; PURPOSE.

A non-partisan human rights commission is hereby established in the City government to be known as the Fairmont Human Rights Commission. The Commission shall have the powers and authority and shall perform the functions and services as prescribed herein. The Commission shall encourage and endeavor to bring about mutual understanding and respect among all persons and encourage and endeavor to safeguard the right and

opportunity of all persons to be free from all forms of discrimination whether by virtue of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or handicap.

175.04 MEMBERS; COMPENSATION.

The Human Rights Commission shall be composed of seven members to be appointed by the City Manager and confirmed by the Council. All members appointed to serve on the Commission shall be residents of the City of Fairmont.

No member may hold office in any political party.

Members of the Commission shall be appointed for terms of three years commencing on the effective date of this Ordinance. Appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the Commission, each Commission member shall take and subscribe to the official oath prescribed in Section 5, Article IV of the Constitution of West Virginia, which executed oath shall be filed in the office of the Clerk of the City.

Members shall serve without salary, provided, however, members shall be reimbursed for any reasonable and necessary expenses incurred in performance of the Commission services.

Any member shall forfeit his office if such member fails to attend three consecutive regular meetings of the Commission without being excused by the Commission as reflected in the minutes. Vacancies may be filled by appointment by the City Manager and confirmed by Council for the unexpired term.

175.05 ORGANIZATION; PERSONNEL.

As soon as practical after the creation of the Human Rights Commission, a meeting of its members shall be called. The Commission shall organize, at the meeting, by electing one of its members as chairperson of the Commission, one as vice-chairperson thereof, and one as secretary thereof, for a term of one year or until their successors are elected and qualified. At such meeting the Commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization. Annually thereafter, as soon as practical after the anniversary of the enactment hereof, the Commission shall elect a chairperson, vice-chairperson and secretary from its membership and such other officers as may be found necessary and proper for its effective organization.

The Commission shall hold its initial organizational meeting, annual meetings, and all ordinary and special meetings at a place to be designated by City Manager. Any four members of the Commission shall constitute a quorum for the transaction of business. Minutes of the meetings shall be kept by the secretary.

175.06 ASSISTANCE TO COMMISSION; LEGAL SERVICES.

The Fairmont Human Rights Commission may, with the consent and approval of the City Manager, call upon other officers, departments and agencies of the City government to assist in its, programs and projects. At its discretion, the Commission may accept volunteer services, including volunteer services of private legal counsel.

175.07 DUTIES; POWERS.

The Human Rights Commission is hereby authorized and empowered:

- (a) To cooperate and work with Federal, State and Local Government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all persons regardless of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or handicap;
- (b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations, and other identifiable groups of the City in programs and campaigns devoted to the education and advancement of tolerance, understanding and equal protection of the laws for all groups and peoples regardless of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, age, blindness or handicap.;
- (c) To recommend to Council policies, procedures, practices and legislation in matters and questions affecting human rights and relations;
- (d) To create such committees and sub-committees from within the Commission and its volunteers, which in its judgment will aid in effectuating the purposes of this article, to study the problem of discrimination in all fields of discrimination because of race, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity, blindness or handicap; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of this City, and to make recommendations to the Commission for the development and implementation of programs of formal and informal education.
- (e) To accept contributions from any person, private corporation, or governmental agency, including the City of Fairmont as part of its budgetary process, to assist in the effectuation of the purposes of this Article and to apply for grants and other funding, and to seek and enlist the cooperation and support of private, public, governmental, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;
- (f) To hold, formulate, and develop forums, workshops, and opportunities to allow for the dissemination, sharing, and discussion of information to the understanding and work of the Commission and which will tend to promote good will and minimize or eliminate discrimination;
- (g) To issue such publications and results of research as in its judgment will tend to promote good will and minimize or eliminate discrimination;
- (l) Pursuant to the "Sunshine Law", West Virginia Code 6-9A-1 et seq., meetings of the Commission shall be open to the public.

175.08 CITY CONTRACTS.

The City shall require that all contractors execute the Non-discrimination in Workplace Conformance Affidavit, or such other form which the City deems warranted, which provides that such contractor does not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, sexual

orientation, gender identity, age, blindness or handicap, or any other form of discrimination in hiring, placement, upgrading, transfer, demotion, recruitment, advertising, or solicitation for employment, training, rates of pay or other forms of compensations, selection of apprenticeship, layoff or termination, and will otherwise comply with all federal law or laws or regulations and executive orders relating to unlawful employment practices.

175.09 CONSTRUCTION; SEVERABILITY.

This article shall in no way be construed to deny to any person such rights as they exist at common law, or under the laws of the State, or under the laws of the United States of America, for redress or damages, in the event of willful and malicious wrongs or harassment committed upon them.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any provision of this article is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.

This Ordinance shall become effective thirty (30) days after adoption.

Adopted this _____ day of _____, 2017

M A Y O R

ATTEST:

CITY CLERK

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNCIL FOR THE CITY OF FAIRMONT
REPEALING ORDINANCE NO. 482, AS AMENDED, WHICH IS CODIFIED AS
PART ONE ADMINISTRATIVE CODE, CHAPTER SEVEN BOARDS,
COMMISSIONS AND AUTHORITIES, ARTICLE 175 HUMAN RIGHTS
COMMISSION, OF THE FAIRMONT CITY CODE, AND RE-ENACTING SAID**

ARTICLE 175 HUMAN RIGHTS COMMISSION.

Synopsis

By this proposed ordinance, the Council for the City of Fairmont repeals Article 175 Human Rights Commission of the Fairmont City Code, and re-enacts same to safeguard the right and opportunity of all persons to be free from all forms of discrimination, whether as a result of race, religion, color, national origin, ancestry, sex, age, sexual orientation, gender identity, blindness, or handicap, and to provide for an inclusive community for all residents, businesses and visitors.