

**COMMONWEALTH OF KENTUCKY  
DAVIESS COUNTY FISCAL COURT**

**KOC 113.00 (2020)  
03-2020**

**AN ORDINANCE AMENDING THE DAVIESS COUNTY CODE OF ORDINANCES, ADDING A NEW SECTION  
TO TITLE 11, CHAPTER 113, REGARDING DISCRIMINATION IN HOUSING, PUBLIC ACCOMMODATIONS  
AND EMPLOYMENT**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY OF DAVIESS, KENTUCKY:**

**SECTION ONE**

Definitions.

When used in this chapter the following words and phrases shall have the meanings ascribed to them:

1. "Age" means a person 40 years and older.
2. "Bisexual" means a person who is sexually attracted not exclusively to people of one particular sex.
3. "Bona fide offer" means a written offer to purchase, exchange, rent, or lease any housing accommodation made in good faith without fraud or deceit.
4. "Disability" means an individual who: (a) has a physical or mental impairment that substantially limits one 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 substance or alcohol abuse problems and persons excluded from coverage by the Americans with Disabilities Act of 1990.
5. "Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial or any other act or practice of differentiation or preference in the treatment of a person because of race; color, religion, national origin, sex, disability or age between forty (40) and seventy (70), gender identity or sexual orientation or aiding, abetting, inciting, coercing or compelling such conduct.
6. "Discriminatory practice" means an act unlawful under this chapter.
7. "Dwelling" means a building, structure or portion occupied as or intended for occupancy as a residence by two or more families, and any vacant land offered for sale or lease for the construction or location of any building structure.
8. "Employee" means an individual employed by an employer, excluding 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.
9. "Employer" means a person employing fifteen (15) or more employees within the county in each of twenty (20) or more calendar weeks in the current or preceding calendar year and any agent of such a person.

10. "Employment agency" means 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, including any agent of such person.
11. "Familial status" means any individual under the age of eighteen (18) years and who is domiciled with a parent or another person having legal custody of such individual(s); or the designee of such parent or other custodian, 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.
12. "Family" includes an individual, spouse, parent, and child(ren), whether related by blood, legal guardianship, marriage or adoption.
13. "Financial institution" means bank, banking organization, mortgage company, insurance company, or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance, or improvement of real property, or an individual employed by or acting on behalf of any of these.
14. "Gender identity" means manifesting an identity not traditionally associated with one's biological maleness or femaleness.
15. "Heterosexual" means a person who is sexually attracted to people of the opposite sex.
16. "Homosexual" means a person who is sexually attracted to people of the same sex.
17. "Housing accommodations" includes improved and unimproved property and means a building, structure, lot or any part used or occupied, or intended, arranged or designed for use or occupied as the home or residence of one or more individuals.
18. "Labor organization" includes any labor organization, or an agent of such an organization, including an organization of any kind, an agency or an employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, or a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization.
19. "Person" means one or more individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or other legal or commercial entity; the state, and of its political local subdivisions or agencies.
20. "Place of public accommodation, resort or amusement" means any 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 directly supported by government funds; except 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 members' bona fide guests. This definition does not include a dwelling or rooming or boarding house containing not more than one (1) room 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 be the same as those contained in KRS 344.130.
21. "Real estate broker or real estate salesman" means an individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with

the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements, including options, or who negotiates or attempts to negotiate on behalf of others such an activity; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract undertakes to promote the sale, purchase, exchange, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

22. "Real estate operator" means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entity, the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate; or an individual employed by or acting on behalf of any of these.
23. "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in the above.
24. "Sexual orientation" means an individual's actual or imputed heterosexuality, homosexuality or bisexuality.

## **SECTION TWO**

### **Policy and Purpose.**

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

## **SECTION THREE**

### **I. Unlawful practices in housing.**

- (a) Except as otherwise provided because of a person's race, color, religion, national origin, sex, familial status, disability, gender identity or sexual orientation, it is unlawful:
- (b) To refuse to sell, purchase, exchange, rent or lease, or otherwise deny or withhold housing accommodation in terms, conditions, or privileges of the sale, purchase, exchange, rental, or lease of housing accommodation or in the furnishing of facilities or services;
- (c) To refuse to receive or transmit or negotiate a bona fide offer to sell, purchase, exchange, rent, or lease housing accommodation;
- (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;
- (e) To deny access to or withhold a housing accommodation;
- (f) 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, to discriminate 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 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 this ordinance.

## **II. 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 (1) 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 or provision of lodging by a private club or organization not open to the general public that, as an incident to its primary purpose or purposes of 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) percent 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 on 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.

### **III. Unlawful practices in public accommodations.**

Except as otherwise provided, 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 grounds of race, color, religion, national origin, sex, disability, gender identity or sexual orientation. This section shall not apply with regards to sex and gender identity, to the following:

(a) Restrooms, shower rooms, bathhouses, locker rooms, changing areas or similar facilities which are, by their nature, designed or intended 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 this ordinance; and

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

### **IV. Unlawful practices in employment.**

(a) It is unlawful because of an individual's race, color, religion, national origin, sex, age, disability, gender identity and sexual orientation for:

(1) An employer or employment agency to refuse to hire or discharge an individual, or discriminate against an employee with respect to the employee's conditions of employment,

(2) An employer or employment agency 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 of a labor organization to exclude or to expel from its membership or to otherwise discriminate against a member or applicant for membership

- (3) A labor organization 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;
  - (4) A labor organization to cause or attempt to cause an employer to discriminate against an individual in violation of this section;
  - (5) For an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual in admission to or employment in any program established to provide such apprenticeship, training or retraining; and
  - (6) For 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 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.
- (b) Nothing in this ordinance shall prevent an employer from:
- (1) Enforcing a written employee dress code policy;
  - (2) Enforcing a written drug code or policy; or
  - (3) Designating appropriate restroom and shower facilities.

**V. Exemptions from unlawful employment practices.**

- (a) Notwithstanding any other provision of this chapter, an employer may:
- (1) 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;
  - (2) Hire and employ individuals of a particular religious belief if the employer is a church, a religiously affiliated school, college, university, or other religiously affiliated educational institution;
  - (3) 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
  - (4) Give and 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 fewer than fifteen (15) employees within the county in each of twenty (20) or more calendar weeks in the current or preceding calendar year, shall be exempt from the provisions of this chapter.

**VI. General exemptions from this chapter.**

(a) The provisions of this ordinance regarding sexual orientation and gender identity shall not apply to 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

(b) Nothing in this ordinance shall infringe upon the protections set forth in KRS 446.350, which reads that "Government shall not substantially 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 substantially burdened unless the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest. A "burden" shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities."

**VII. Administration and enforcement.**

(a) The County's Judge Executive shall administer this chapter by designating any other individual or Administrative Agency(ies) to perform these duties. The Judge Executive may establish a local Human Rights Commission or enter into Interlocal Agreements with other agencies to whom Daviess County may delegate and refer complaints, 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 ("Administering Agency").

(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 proper Administering Agency, as outlined in a duly executed Interlocal Agreement.

(c) Any claims filed under this chapter regarding gender identity or sexual orientation shall be delegated and referred to the proper Administering Agency, as outlined in a duly executed Interlocal Agreement.

(d) Any person claiming to be aggrieved by a violation of this chapter shall, 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 proper Administering Agency. Information on the proper Administering Agency may be found in the Daviess County Fiscal Court Clerk's office at 212 Saint Ann Street, Room 202, Owensboro, Kentucky 42303.

(e) Enforcement by private action.

- (1) The rights granted by this chapter may be enforced by civil action in state or local court of general jurisdiction. A civil action must be commenced within one hundred eighty (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 Administering Agency are likely to 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 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 prior to 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.

**VIII. Obstruction and retaliation.**

- (a) It is unlawful 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 Administering Agency 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 provision of this chapter;
  - (3) To obstruct or prevent a person from complying with the provisions of this chapter or any order of the Administering Agency issued thereunder; or
  - (4) To resist, prevent, impede, or interfere with the Administering Agency or any of its members or representatives in the lawful performance of its duty under this chapter.
- (b) Any complaint filed with the Administering Agency involving an alleged violation of this section shall be processed in conformity with this ordinance.
- (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.

**IX. 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 Administering Agency or court of law that frivolous conduct has occurred, the Administering Agency or court of law may award reasonable attorney's fees and costs incurred Daviess County and the non-violating party against the party who engaged in such frivolous conduct.



**SECTION FOUR**

If any section, subsection, paragraph, sentence, clause, phrase, or a portion of this ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions.

**SECTION FIVE**

All ordinances or parts of ordinances in conflict with this Ordinance are repealed.

**SECTION SIX**

This Ordinance shall be in full force and effect beginning January 1, 2020 and upon passage and publication.

**INTRODUCED AND PUBLICLY READ** on first reading on this the \_\_\_\_ day of \_\_\_\_\_, 2020.

**PUBLICLY READ AND APPROVED** on second reading on this the \_\_\_\_ day of \_\_\_\_\_, 2020.

DAVIESS COUNTY FISCAL COURT

BY: \_\_\_\_\_  
Al Mattingly  
Davieess County Judge/Executive

ATTEST:

\_\_\_\_\_  
Jennifer Warren  
Fiscal Court Clerk

PREPARED BY:

\_\_\_\_\_  
Claud Porter  
Davieess County Attorney