

Ord 2018-5  
Form 61  
Fair Housing Ordinance

**Section 1. POLICY**

It is the policy of the City of Ozark to provide, within constitutional limitations, for fair housing throughout its jurisdiction. It is hereby declared that this policy of the City of Ozark assures full and equal opportunity to all residents to obtain fair and adequate housing for themselves and their families without discrimination against them because of race, color, national origin, sex, religion, familial status and disability.

**Section 2. DEFINITIONS**

- (a) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- (b) "Family" includes a single individual.
- (c) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.
- (d) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- (e) "Discriminatory housing practice" means an act that is unlawful under Sections 3, 4, & 5.
- (f) "Handicap" means, with respect to a person –
  - (1) a physical or mental impairment which substantially limits one or more of such person's major life activities,
  - (2) a record of having such an impairment, or
  - (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.
- (g) "Aggrieved person" includes any person who –
  - (1) claims to have been injured by a discriminatory housing practice; or
  - (2) believes that such person will be injured by a discriminatory housing practice that is about to occur.
- (h) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with –
  - (1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections 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 who has not attained the age of 18 years.

### **Section 3. UNLAWFUL PRACTICES**

It shall be unlawful for any owner, lessee, sub-lessee, assignee, managing agent, or other person, firm or corporation having the right to sell, rent, lease or sublease any housing accommodation, or any agent of these—

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, national origin, religion, sex, familial status, or handicap;
- (b) To discriminate against any person in the price, terms, conditions, or privileges of sale, rental or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, religion, sex, familial status, or handicap;
- (c) To make, print or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination;
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;
- (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin;
- (f) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--
  - (A) that buyer or renter,
  - (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (C) any person associated with that buyer or renter;
- (g) To refuse to any renter because of a handicap to make reasonable modifications to the dwelling or common use areas, if necessary for the disabled person to use the housing.

(Where reasonable, the owner may permit changes only if the renter/lessee agrees to restore the property to its original condition upon termination of rental agreement.)

- (h) To refuse to any renter because of a handicap to make reasonable accommodations in rules, policies, practices or services if necessary for the disabled person to use the housing.
- (i) To deliberately and knowingly refuse examination of any listing of residential real estate to any person because of race, color, national origin, sex, religion, familial status or disability.

#### Section 4. EXEMPTIONS

The prohibitions against discrimination in the sale or rental of housing set forth in Section 3 shall apply to all dwellings except the following:

- (a) Restricting rental or sale of a housing accommodation to a person of a certain age group when such housing accommodation is authorized, approved, financed, or subsidized in whole or in part for the benefit of that age group by a unit of state, local, or federal government;
- (b) A religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of a dwelling which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons of the same religion, unless membership in such religion is restricted on account of race, color or national origin.
- (c) Nor shall anything in this ordinance 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 from giving preference to its members.
- (d) Any single-family house sold or rented by an owner: **Provided**, that such private individual owner does not own more than three such single-family houses at any one time; **Provided further**, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period; **Provided further**, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; **Provided further**, that the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented:

- a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and
  - b. Without the publication, posting or mailing, after notice of any advertisement or written notice in violation of Section 3 (c) of this ordinance, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer title
- (e) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

**Section 5.     DISCRIMINATION IN SEXUAL ORIENTATION, GENDER IDENTITY AND MARITAL STATUS**

It shall be unlawful to discriminate in housing on the basis of sexual orientation, gender identity and/or marital status and precludes owners and operators of HUD-assisted housing from inquiring about the sexual orientation or gender identity of an applicant or occupant of a dwelling, whether renter-or owner-occupied.

This does not prohibit any individual from voluntarily self-identifying his or her own sexual orientation or gender identity nor does it prohibit otherwise lawful inquiries of an applicant or occupant's sex for the limited purpose of determining placement or meeting occupancy requirements in temporary or shared housing.

The Arkansas Fair Housing Commission and HUD may pursue an enforcement action upon violations of the Fair Housing Act, such as discrimination based on nonconformity with gender stereotypes or discrimination based on perceived disability.

**Section 6.     UNFAIR HOUSING/LENDING PRACTICES**

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to:

- (a) Deny a loan or other financial assistance to a person applying for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling on account of race, color, national origin, sex, religion, familial status and disability; or
- (b) Discriminate in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance to the present or prospective owners, lessees, tenants or occupants of the dwelling or dwellings in relation to such loan or other financial assistance to be made or provided because of race, color, national origin, sex, religion, familial status or disability.

**Section 7. DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES**

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, handicap, familial status, or national origin.

**Section 8. ADMINISTRATION**

- (a) The authority and responsibility for administering this Act shall be in the Chief Executive Officer of the City of Ozark.
- (b) The Chief Executive Officer may delegate any of these functions, duties, and powers to employees of the City or to boards of such employees, 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 under this ordinance. The Chief Executive Officer shall by rule prescribe such rights of appeal from the decisions of his hearing examiners to other hearing examiners or to other officers in the City/County, to boards of officers or to himself, as shall be appropriate and in accordance with law.
- (c) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this ordinance and shall cooperate with the Chief Executive Officer to further such purposes.

**Section 9. EDUCATION AND CONCILIATION**

Immediately after the enactment of this ordinance, the Chief Executive Officer shall commence such educational and conciliatory activities as will further the purposes of this ordinance. He shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this ordinance and his suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.

**Section 10. COMPLAINT PROCEDURE**

- (a) An "aggrieved person" who claims to have been injured by a discriminatory housing practice or who believes that he/she will be irrevocably injured by a discriminatory housing practice that is about to occur may file a complaint with the Chief Executive Officer. Complaints shall be in writing and shall contain such information and be in such form, as the Chief Executive Officer requires. Upon receipt of such a complaint, the Chief Executive Officer shall furnish a copy of the same to the person or persons who allegedly committed or was about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any

period of reference under subsection (c), the Chief Executive Officer shall investigate the complaint and give notice in writing to the person aggrieved whether he intends to resolve it. If the Chief Executive Officer decides to resolve the complaints, he shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this ordinance without the written consent of the persons concerned. Any employee of the Chief Executive Officer who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned not more than one year.

- (b) A complaint under Sub-section (a) shall be filed within one year after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Chief Executive Officer, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be verified.
- (c) If within thirty days after a complaint is filed with the Chief Executive Officer, he/she has been unable to obtain voluntary compliance with this ordinance, the person aggrieved may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Chief Executive Officer will assist in filing.
- (d) If the Chief Executive Officer has been unable to obtain voluntary compliance within thirty days of the complaint, the person aggrieved may, within thirty days hereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this ordinance, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.
- (e) In proceedings brought pursuant to this section, the burden of proof shall be on the complainant.
- (f) Whenever an action filed by an individual shall come to trial, the Chief Executive Officer shall immediately terminate all efforts to obtain voluntary compliance.

#### **Section 11. INVESTIGATIONS; SUBPOENAS; GIVING OF EVIDENCE**

- (a) In conducting an investigation, the Chief Executive Officer shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation: **Provided, however,** that the Chief Executive Officer first complies with the provisions of the Fourth Amendment relating to unreasonable searches

and seizures. The Chief Executive Officer may issue subpoenas to compel his access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Chief Executive Officer may administer oaths.

- (b) Upon written application to the Chief Executive Officer, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Chief Executive Officer to the same extent and subject to the same limitations as subpoenas issued by the Chief Executive Officer himself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.
- (c) Witnesses summoned by subpoena of the Chief Executive Officer shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him.
- (d) Within five days after service of a subpoena upon any person, such person may petition the Chief Executive Officer to revoke or modify the subpoena. The Chief Executive Officer shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (e) In case of contumacy or refusal to obey a subpoena, the Chief Executive Officer or person at whose request it was issued may petition for enforcement in the Municipal or State court for the district in which the person to whom the subpoena was addressed resides, was served, etc.
- (f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Chief Executive Officer shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Chief Executive Officer, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Chief Executive Officer pursuant to his subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.
- (g) The Grantee's Attorney shall conduct all litigation in which the Chief Executive Officer participates as a party or as amicus pursuant to this ordinance.

**Section 12. ENFORCEMENT BY PRIVATE PERSONS**

- (a) The rights granted by Sections 3, 4, 5, 6 and 7 may be enforced by civil actions in State or local courts of general jurisdiction. A civil action shall be commenced within two years after the alleged discriminatory housing practice occurred: **Provided, however,** that the court shall continue such civil case brought pursuant to this Section or Section 10 (d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Chief Executive Officer are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Chief Executive Officer and which practice forms the basis for the action in court: **And provided, however,** that any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this ordinance, and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this ordinance shall not be affected.
- (b) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000 in punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff: **Provided,** That the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

**Section 13. SEVERABILITY OF PROVISIONS**

If any provision, section, or paragraph of this ordinance is for any reason held invalid or unconstitutional, the remainder of the ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

**Section 14. VIOLATION OF ORDINANCE**

It shall be unlawful practice for any person(s) to:

- (a) Retaliate or discriminate against a person because the person has opposed a violation or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this ordinance;
- (b) Attempt, directly or indirectly, to commit an act prohibited by this ordinance;
- (c) Willfully interfere, obstruct, or prevent a person from complying with an order issued or rule promulgated under this ordinance; or
- (d) Discharge, threaten, coerce, intimidate, or take any other adverse action against an employee, broker, agent, or other person because he or she refused to take part in a discriminatory housing practice or because he or she has aided or encouraged any other person in the exercise or enjoyment of any right granted under the provisions of this ordinance; or



- (e) To resist, prevent, impede, or interfere with the enforcing agent(s) in the lawful performance of duty under this ordinance.

### **Section 15. PENALTY IN UNFAIR HOUSING**

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

- (a) Any person because of his race, color, religion, sex, handicap, familial status, or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or
- (b) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:
- Participating, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations or facilities described in section (a) above; or
  - Affording another person or class of persons opportunity or protection so to participate; or
- (c) Any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations or facilities described in subsection (a) above, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--

Shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

A housing provider found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties and attorney's fees.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018.

- (e) To resist, prevent, impede, or interfere with the enforcing agent(s) in the lawful performance of duty under this ordinance.

### Section 15. PENALTY IN UNFAIR HOUSING

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with--

- (a) Any person because of his race, color, religion, sex, handicap, familial status, or national origin and because he is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or
- (b) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from:
- Participating, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations or facilities described in section (a) above; or
  - Affording another person or class of persons opportunity or protection so to participate; or
- (c) Any citizen because he is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, handicap, familial status, or national origin, in any of the activities, services, organizations or facilities described in subsection (a) above, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate--

Shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

A housing provider found to have violated the Fair Housing Act may be liable for actual damages, injunctive and other equitable relief, civil penalties and attorney's fees.

PASSED AND ADOPTED THIS 11 DAY OF June, 2018.

Dated: 6-11-18 Approved: Tommy R McNutt  
Tommy McNutt, Mayor

Attest: Sonya Ewald  
City Clerk