ORDINANCE 80-60

To Amend Various Sections of Chapter 2.60 of the Bloomington Municipal Code, Entitled "Human Rights Commission"

BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. Section 2.60.020 of the Bloomington Municipal Code, entitled "Definitions", shall be amended to delete subsection (g), entitled "Director", and to renumber all subsequent sections accordingly. The following definitions shall be amended to read as follows:

(d) "Complainant" means any individual charging on his own behalf to have been personally aggrieved by a discriminatory practice or the commission attorney or a commissioner to the Bloomington human rights commission charging that a discriminatory practice was committed against a person, other than himself, or a class of people in order to vindicate the public policy of the state as defined in Indiana Code 22-9-1-2, and the public policy of the city as defined in Section 2.60.010.

(e) "Complaint" means any written grievance filed by a complainant with the legal department. The original shall be signed and verified before a notary public or another person duly authorized by law to administer oaths and take acknowledgments. Notarial service shall be furnished by the legal department without charge.

(h) "Educational institution" includes all public and private schools and training centers, except that the term does not include any state agency as defined in subsection (u) of this section.

(j) "Employer" includes any person employing six or more employees within the city, except that the term does not include any not-for-profit corporation or association organized exclusively for fraternal or religious purposes; nor any school, educational or charitable religious institution owned or conducted by, or affiliated with, a church or religious institution; nor any exclusively social club, corporation or association that is not organized for profit; nor the city of Bloomington or any department thereof; nor any state agency as defined in subsection (u) of this section.

(n) "Person" includes one or more individuals, partnerships, associations, organizations, labor organizations, corporations, cooperatives, legal representatives, trustees in bankruptcy, trustees, receivers, any subdivisions of the state, and other organized groups of persons.

SECTION II. Section 2.60.030, entitled "Created--Membership--Terms", shall be repealed and re-enacted to read as follows:

2.60.030 Created--Membership--Terms. (a) There is created a human rights commission composed of five members representative of the community. Three appointments shall be made by the mayor and two by the common council. Terms shall be two years. All appointments shall begin to run on August 1 of the calendar year of appointment or reappointment and shall expire August 1 of the calendar year that is two years from the date of appointment or reappointment.

(b) If a member dies, resigns, or is removed, his successor shall be appointed by the mayor if the mayor appointed him, or the common council if the council appointed him, to serve the unexpired period of the term to which his predecessor had been appointed. The mayor may remove commission members appointed by him for cause but not without reason, and the common council may remove commission members appointed by it for cause but not without reason. "Cause" shall include but not be limited to failure to attend three consecutive regularly scheduled meetings of the commission or four regularly scheduled meetings of the commission in any twelve-month period; provided, that any commissioner may submit in writing to the mayor if the mayor appointed him, or the common council if the council appointed him, any extenuating circumstances. Such written submission must be made before the formal decision to remove is reached. Acceptance of extenuating factors by the appointing official or body puts the commissioner on notice that further excessive absenteeism will result in removal. Any commissioner who has an interest, direct or indirect, shall be disqualified from participation in any case under consideration.

(c) The commission shall elect from its membership at its first meeting and annually thereafter at its September meeting a chairman, vice chairman, and a secretary. The first meeting of the commission shall be held within thirty days after its appointment. A quorum shall be present at all meetings in order for the commission to conduct business.

SECTION III. Section 2.60.040, entitled "Powers and duties", shall be amended to read as follows:

2.60.040 Powers and duties. The commission shall have the following powers and duties:

(a) To create subcommittees and advisory committees as in its judgment will aid in effectuating the purpose of this chapter.

(b) To issue such publications and such results of investigation and research as in its judgment will tend to minimize or eliminate discrimination because of race, religion, color, sex, national origin, ancestry or handicap.

(c) To schedule complaints for public hearings upon a determination of probable cause by the legal department. Complaints of discrimination shall be received and investigated by the legal department. To be acceptable to the legal department, a complaint shall be sufficiently complete so as to reflect properly the name and address of the complainant; the name and address of respondent against whom the complaint is made; the alleged discriminatory practice and a statement of particulars thereof; the date or dates and places of the alleged discriminatory practice; if it is of a continuing nature, the dates between which said continuing acts of discrimination are alleged to have occurred; and a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance as is alleged in the complaint, together with a statement as to the status or disposition of such other action; provided that no complaint or charge of discrimination in employment on the basis of handicap shall be considered valid and acceptable to the legal department unless it is submitted by an individual who has been properly certified as a handicapped person as defined in subsection (x) of Section 2.60.020. No complaint shall be valid unless filed within ninety days from the occurrence of the alleged discriminatory practice, or from the date of the termination of a published and meaningful grievance procedure provided by a respondent employer or labor union; provided, that complaints filed only with the Equal Employment Opportunity Commission shall be deemed to have been filed simultaneously with the legal department for purposes of measuring the ninety-day limitation, as long as the complaint is otherwise within the legal department's jurisdiction; provided, further, that any person who files a complaint with the Indiana Civil Rights Commission shall have no recourse to the City of Bloomington legal department concerning any of the matters alleged in such complaint; provided, further, that the legal department shall have no jurisdiction over the state or any of its agencies, or over the city or any of its departments. After a complaint is scheduled for a public hearing, the legal department shall make reasonable efforts to conciliate all issues raised during the investigation of the case.

(d) To prevent any person from discharging, expelling, or otherwise discriminating against any other person because he filed a complaint or testified in any hearing before the commission or in any way assisted in any matter under investigation.

(e) To issue a temporary emergency order against any person requiring such person to do an act preserving the possibility of a remedy for a complaint or to refrain from doing an act damaging the possibility of a remedy during the investigation of the complaint; provided, however:

(1) That no emergency order shall be issued unless a time and place for hearing on the temporary order is designated in the order;

(2) That the hearing on the temporary emergency order shall be held within ten days following the issuance of the temporary order, unless continued by the commission at the request of the respondent. At such hearing the complainant shall show that a failure to continue the temporary order would damage his remedy. The commission shall thereupon weigh the comparative hardship to the complainant

and respondent and issue a decision continuing or terminating the temporary emergency order, pending final disposition of the complaint. The respondent may waive said hearing without prejudice to his defense of the matters charged in the complaint, in which case the temporary order shall remain in effect pending final disposition of the complaint.

(3) The commission may by rule provide for issuance of its temporary order by a majority of the commission, and it may compel compliance with any such temporary order by bringing in any circuit or superior court for prohibitory or mandatory injunction upon showing that such person is subject to the court's jurisdiction, resides or transacts business within the county in which the proceeding is brought, and that such injunction is necessary to protect the complainant's rights under this chapter until his complaint is resolved through conciliation or public hearing.

(f) To reduce the terms of conciliation agreed to by the parties in writing, to be called a consent agreement, which the parties and a majority of the commissioners shall sign. When so signed, the consent agreement shall have the same effect as a cease and desist order pursuant to subsection (h) of this section. If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement, and the party is subject to the commission's jurisdiction, and resides or transacts business within the county in which the petition for enforcement is brought.

(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath and require the production for examination of all books and papers relating to any matter under investigation or in question before the commission. The commission may make rules governing the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena or temporary emergency order issued pursuant to this section shall be a breach of this chapter and such person shall be liable to a penalty therefor, if adjudged by the circuit or superior court, of the payment of a penalty not to exceed three hundred dollars. Each penalty shall be deposited in the general fund of the city; provided, however, that the payment of such penalty by a party shall not impair the commission's ability to grant affirmative relief and compensatory damages to the complainant, should justice so require.

(h)(1) To state its findings of fact after hearing, which statement shall be made in a written opinion containing both the findings of fact and the principles of law applied. All written opinions shall be compiled and maintained as public record and, in making decisions, the commission shall give due consideration to its prior decisions which may be applicable. If a majority of the commissioners who hear the case finds that a person has engaged in unlawful discriminatory practice, the commission shall cause to be served on the person an order requiring the person to cease and desist from the unlawful discriminatory practice and requiring such person to take further affirmative action necessary to effectuate the purposes of this chapter.

(2) If unlawful discrimination is found in the area of employment, an order shall be issued requiring the respondent to take such affirmative action including but not limited to hiring, reinstatement, and upgrading of employees or people deprived of employment, with or without compensatory damages to which the complainants would have been entitled had they not been deprived of equal opportunity; provided, that this subsection shall not be construed to require any employer to modify physical accommodations or administrative procedures to accommodate a handicapped person.

(3) If unlawful discrimination is found in the area of housing or acquisition of real property, an order may be issued requiring a respondent to take affirmative action, including but not limited to renting, selling or leasing to a person deprived of equal opportunity. Compensation for the denial of equal opportunity shall be allowed within the discretion of the commission.

(4) If unlawful discrimination is found in the area of public accommodation, an order shall be issued requiring respondent to take affirmative action, including but not limited to providing services, goods, or access to property,

instatement to membership, reinstatement to membership, posting of notice that a facility is a public accommodation, with or without compensatory damages for a complainant's being denied equal opportunity.

(5) If unlawful discrimination is found in the area of education, an order may be issued requiring a respondent to take affirmative action including but not limited to a review and revision of school boundaries, revision of teaching aids, and materials, human relations training for personnel recruitment of minority people for professional staff, with or without compensatory damages to which the complainant would have been entitled except for the denial of equal opportunity.

(6) If, upon all the evidence, the commission finds that a person has not engaged in any such unlawful practice or violation of this chapter, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such person.

(i) Judicial review of such cease and desist order, or other final order, or other affirmative action or damages as referred to in this chapter may be obtained by filing in the county circuit or superior courts. The scope of review shall be in accordance with the provisions set out in IC 1971, Section 4-22-1. If no proceeding to obtain judicial review is instituted within fifteen days from the receipt of notice by a person that such order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of such order in circuit or superior court upon showing that such person is subject to the commission's jurisdiction and resides and transacts business within the county in which the petition for enforcement is brought, or may request the city attorney, commission attorney, or attorney representing the complainant to seek enforcement.

SECTION IV. Subsection (c) of section 2.60.070, entitled "Rules and regulations", shall be amended to read as follows:

(c) The rules, regulations and guidelines of the commission shall be available to the public at the office of the legal department.

SECTION V. Section 2.60.090, entitled "Relationship with Civil Rights Commission", shall be amended to read as follows:

2.60.090 Relationship with Civil Rights Commission. The legal department may enter into a working relationship with the Indiana Civil Rights Commission to perpetuate the mutual objectives set forth in this chapter and the Indiana Civil Rights Law.

SECTION VI. This ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 31st day of July, 1980.

Tomilea Allison
Tomilea Allison, President
Bloomington Common Council

ATTEST:

Nora M. Connors
Nora M. Connors, City Clerk

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 1st day of August, 1980.

Nora M. Connors
Nora M. Connors, City Clerk

SIGNED and APPROVED by me upon this 1st day of August, 1980.

Francis X. McCloskey
Francis X. McCloskey, Mayor
City of Bloomington

SYNOPSIS

This ordinance makes a number of basic changes in the Human Rights ordinance: it decreases the size of the Human Rights Commission from twelve members to five; provides that an attorney in the city legal department will enforce the ordinance rather than the Commission having its own attorney and support staff; provides that the legal department attorney, not the Commission, will make findings of probable cause; and provides that human rights complaints against the city must be filed with the state and/or federal civil rights commission rather than the city. These changes will allow the present Human Rights attorney and secretary to spend time in the enforcement of other city ordinances, will allow for quicker probable cause determination, and will make it possible to decrease the total size of the legal department and Human Rights staff and budget.

I HEREBY MOVE THAT XX ORDINANCE ____ APPROPRIATION ORDINANCE # 80-60, ENTITLED To Amend Various Sections of Chapter 2.60 of the BMC, Entitled, "Human Rights Commission"

BE INTRODUCED AND READ FOR FIRST READING BY TITLE ONLY AT THE COUNCIL MEETING HELD ON July 10, 1980.

Floyd W. Olcott

(Signature)