

**ORDINANCE No. 9, 2016**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA  
PROHIBITING CERTAIN DISCRIMINATORY CONDUCT WITHIN THE CITY**

**WHEREAS**, the City of Valparaiso, Porter County, Indiana (“City”) and its citizens strive to maintain and encourage a civic environment that is welcoming and inclusive to all; however, the City acknowledges that there are times, whether intentional or not, when members of the community fail to meet this standard; and

**WHEREAS**, the City desires to address those situations by establishing a meaningful process that offers the opportunity for the City to investigate inappropriate acts and to foster conversation, understanding and reconciliation between parties; and

**WHEREAS**, it is the public policy of the City to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, and to eliminate segregation or separation based on race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age, veteran status, and familial status in housing, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition or lease of real property including but not limited to housing are hereby declared to be civil rights; and

**WHEREAS**, the practice of denying these rights to properly qualified persons by reason of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity age, veteran status, or familial status in the case of housing of such person, is contrary to the principles of freedom and equal opportunity, and is contradictory to the objectives of the public policy of this City and shall be considered discriminatory practices; and

**WHEREAS**, it is also the public policy of this City to ensure that accusations of discrimination filed with the City are timely and thoroughly investigated and that all parties, including the accused, are treated with respect; and

**WHEREAS**, in drafting this Ordinance the City has engaged in a careful and comprehensive process to investigate the matters to which this Ordinance addresses. The Common Council of the City (“City Council”) has also relied on the recommendation provided by the City’s Human Rights Council; and

**WHEREAS**, this Ordinance and the policies contained herein serves a compelling governmental interest and is the least restrictive means of furthering that interest;

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City as follows:

**Section 1**     **Recitals** The foregoing Recitals are incorporated by this reference.

**Section 2 Prohibited Acts of Discrimination** It is hereby declared by the City that no person, corporation, partnership, company, or other individual or entity located within, or conducting business within, the City's corporate limits shall discriminate against any other person in the provision of and/or opportunity to participate in or enter into a place of business, obtain housing, use public accommodations, obtain an education, obtain and maintain employment, enter into a contract, and/or participate in or obtain any program, service, or amenity provided to the general public on the basis of the latter's race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age, veteran status, and familial status.

**Section 3 Interference with Rights** No person, corporation, partnership, company or other individual or entity located within, or conducting business within the City's corporate limits may coerce, intimidate, threaten or interfere with any other person:

- (a) In the exercise or enjoyment of any right granted or protected by this Ordinance; or
- (b) Because the person has exercised or enjoyed, or has aided or encouraged another person in the exercise or enjoyment of, any right granted or protected by this Ordinance.

**Section 4 Exceptions**

(a) Protections in this Ordinance against discriminatory activities shall not apply to:

1) any not-for-profit corporation or association organized for primarily religious purposes or for any school, educational or charitable institution owned, or conducted by, or affiliated with a church or religious institution, society or order: i) giving preference to members of such entities or, ii) in an educational setting, promoting the religious principles for which the entity is established or maintained.

2) Religious worship and clergy while engaged in religious duties or activities;

3) A not-for-profit membership club organized exclusively for fraternal or religious purposes and/or any not-for-profit social club that is not open to the general public, so long as the same is exempt from taxation under the Internal Revenue Code, as amended;

4) Any persons or property expressly exempted under Indiana Code 22-9 *et seq.*, Indiana Code 22-9.5 *et seq.*, or any other applicable and binding law or court decision;

5) A private residence or private gathering not open to the general public;

6) The maintenance of separate restrooms or dressing rooms for the exclusive use of persons of one gender;

7) The hiring or referral for employment of a person for a job position on the basis of sex, religion, and/or age in those certain instances where the same are lawful bona fide occupational qualifications for the job position at issue; and,

8) In the limited case of the person's age, housing established and operated primarily for senior citizens and occupied solely by persons sixty-two years of age, or older.

(b) Notwithstanding anything contained in this Ordinance to the contrary, no act prohibited under federal, state or local law shall be permitted by this Ordinance, nor shall this Ordinance compel any person to act in a manner contrary to federal, state or local law.

## **Section 5 Committee**

(a) There shall be a standing committee established by the City Council known as the Investigation & Reconciliation ("IR") Committee. The IR Committee shall consist of five (5) members. One (1) member shall be appointed by the City Council; one (1) member shall be appointed by the Superintendent of the Valparaiso Community Schools; one (1) member shall be appointed by the President of Valparaiso University; one (1) member shall be appointed by the Mayor; and, and, one (1) member shall be appointed by the Valparaiso Human Relations Council from among its voting members. Each member of the IR Committee must be a resident of the City of Valparaiso. Members shall serve annual terms with their terms expiring on December 31 of each year and upon a replacement being appointed. Members may be reappointed to consecutive terms. The members of the IR Committee will not be compensated. Except as otherwise provided under Indiana law, the IR Committee will be subject to the requirements of Indiana's Open Door Law (Indiana Code § 5-14-1.5-1) and Access to Public Records Act (Indiana Code § 5-14-3-1). The City Attorney, or its designee, shall serve as legal counsel for the IR Committee.

(b) To the extent a member of the IR Committee determines a conflict exists so that the member cannot impartially perform his/her duties, the member shall notify the City Attorney. At that point the member shall have no further involvement with the particular matter. If more than two members have a conflict on a particular matter, which would result in the IR Committee lacking a quorum, then the Mayor shall appoint a sufficient number of new member(s) so that the IR Committee can address the specific matter. Except for a Complaint filed against the Mayor, it shall not be considered a conflict for the City Attorney to handle an investigation of a City employee.

## **Section 6 Enforcement**

(a) Included as part of this Ordinance is a Discrimination Complaint ("Complaint") form. A valid Complaint must be: i) complete; ii) allege a violation of the Ordinance that occurred within sixty (60) days of the filing of the Complaint with enough detail to allow for a meaningful investigation; iii) signed by the person alleging the violation under oath and subject to perjury for intentionally providing false and/or materially misleading information; and, iv) filed with the City's Clerk/Treasurer Office in a sealed envelope with following words conspicuously written: "Discrimination Complaint – City Attorney's Office". To the extent allowed by law, the Complaint shall be kept confidential. Upon receipt of the Complaint, the Clerk/Treasurer's Office shall notify the City Attorney and forward the sealed envelope to him/her.

(b) Upon receipt, the City Attorney shall review the Complaint and determine whether the requirements of Section 6(a) have been followed. If the requirements have not been followed, the City Attorney shall notify the party, at the address contained in the Complaint, of the deficiencies. The party shall have seven (7) days from the date of the City Attorney's letter to correct the deficiencies and file an amended Complaint consistent with Section 6(a).

(c) If the requirements of Section 6(a) have been followed, the City Attorney shall notify the IR Committee and investigate the Complaint. The City Attorney may contact any relevant party to discuss the allegations in the Complaint. The City Attorney shall keep the IR Committee apprised of his/her progress. Upon completion of the investigation, the City Attorney shall provide his/her written findings and all relevant material to the IR Committee. To the extent allowed by law, such written findings shall be kept confidential. The IR Committee shall review the findings and may request additional investigation and/or legal guidance from the City Attorney.

(d) Upon completion of the investigatory work, the IR Committee shall meet, and by majority vote, conclude as follows:

1) The Complaint does not allege facts that form the basis of an Ordinance violation or the evidence submitted does not support the allegations in the Complaint. In addition, if the Commission believes that the party filing the Complaint provided false or materially misleading information and filed a Complaint for the purpose of harassment or other reasons inconsistent with this Ordinance, the IR Committee may assess a fine in an amount not to exceed \$500 and/or direct the City Attorney to refer the matter to the Porter County Prosecutor for review.

2) The Complaint alleges facts that would form the basis of an Ordinance violation and that by the preponderance of the evidence submitted, it is more likely than not that the acts(s) alleged in the Complaint took place. For the purpose of this provision, the term "preponderance of the evidence" shall mean that the evidence provided must support the conclusion that it is more probable than not that the alleged acts(s), as presented in the Complaint, took place. .

3) The Complaint alleges facts that would form the basis of an Ordinance violation and there is clear and convincing evidence to conclude that the alleged act(s) likely took place. For the purpose of this provision, the term "clear and convincing" shall mean that the evidence provided must establish that it is substantially more likely than not that the alleged acts(s), as presented in the Complaint, took place.

(e) Any member, within seven (7) days of the IR Committee's vote, may submit to the City Attorney a written statement providing their specific rationale for supporting or opposing the decision. Such statement shall be kept with the records of the proceeding.

(f) If the conclusion is a finding under Section 6(d)(1), the City Attorney shall notify the parties as to the decision and the matter shall be considered closed. If the conclusion is a finding under Section 6(d)(2), the City Attorney shall notify the parties as to the decision and offer the opportunities to participate in a Dispute Resolution process as provided in Section 7. If the conclusion is a finding under Section 6(d)(3), the Commission shall do one of the following:

- 1) Inform the parties of the finding and take no further action.
- 2) Inform the parties and offer nonbinding mediation or other dispute resolution as provided in Section 7.
- 3) Inform the parties and assess a fine in an amount not to exceed \$500. If a fine is assessed, the party shall have the right, within 30 days of receiving notice, to request a hearing before the IR Committee at a public meeting and contest the fine. The IR Committee may affirm or reduce the fine.

**Section 7 Dispute Resolution** Consistent with the goals of this Ordinance as articulated in the Recitals, the City Council wants to encourage parties to resolve disagreements and misunderstanding, and move towards reconciliation. In the case of a finding under Section 6(d)(2), the parties will be offered an opportunity to meet with a trained facilitator and discuss factors that may have resulted in the Complaint being filed. In the case of a finding under Section 6(d)(3), the parties will be offered an opportunity to meet with a trained mediator in an attempt to resolve the dispute. The IR Committee and City Attorney shall establish the specific process and procedures for the facilitator and mediator. The primary goals of any procedure shall be to foster a better understanding between the parties; encourage face-to-face conversations; and, promote reconciliation. To the extent funds are budgeted, the cost of such services shall be borne by the City.

**Section 8 Discrimination in performance of City contracts** Every contract to which the City is a party shall contain a provision requiring the contractor and his subcontractor to abide by the terms of this Ordinance and not to discriminate against any employee or applicant for employment who is to be employed in the performance of such contracts with respect to his hire, tenure, terms, conditions or privileges of employment, because of his/her race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, age, or veteran status . Breach of this covenant may be considered a material breach of the contract. Notwithstanding the preceding, failure of the City to request this provision be added to a City contract shall not render the contract void or voidable.

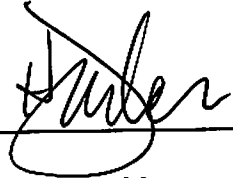
**Section 9 Valparaiso Police Department** If a Complaint names an employee of the Valparaiso Police Department, the City Attorney shall immediately forward the Complaint to the Valparaiso Chief of Police and notify the IR Committee. The Complaint shall be handled consistent with the Valparaiso Police Department General Order 1.2.9, as amended. The Valparaiso Police Chief shall provide the City Attorney with periodic updates of its investigation as well as the final resolution. That information shall be conveyed to the IR Committee members.

**Section 10 Private Enforcement** To the extent allowed by law, this Ordinance may be enforced by a party through the commencement of a legal action in the Porter County circuit or superior court or any other court of proper jurisdiction within one (1) year after a finding under Section 6(d)(2) or (3). This provision does not extend any statute of limitations or filing deadlines provided in any federal, state or local law/regulation.

**Section 11 Severability** If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

**Section 12** Effective Date This Ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED BY THE Common Council of the City of Valparaiso, Indiana, this 23<sup>rd</sup> day of May, 2016, by a vote of 5 ayes and 2 nays.

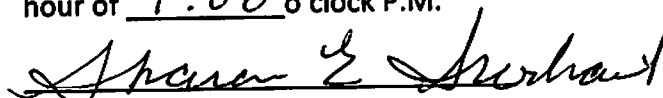
  
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Jon Costas, Mayor

ATTEST:

  
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Sharon E. Swihart, Clerk-Treasurer

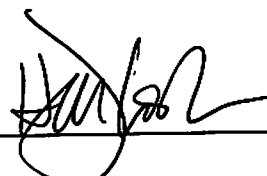
Sharon E. Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 25<sup>th</sup> day of May, 2016 at the hour of 1:00 o'clock P.M.

  
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Sharon E. Swihart, Clerk-Treasurer

Sharon E. Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 25<sup>th</sup> day of May, 2016 at the hour of 1.00 o'clock P. M.

  
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Jon Costas, Mayor