

## Chapter 5.12

### FAIR AND OPEN HOUSING

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#### **5.12.010 Policy.**

It is the policy of the city that there shall be no discrimination in the acquisition, ownership, possession lease or enjoyment of housing throughout the city. (Ord. 363 § 1, 2002: prior code § 4.0401)

#### **5.12.020 Definitions.**

As used in this chapter, unless the context otherwise requires:

"Council" means the city council of the city of North Sioux City.

"Discriminatory housing practice" means an act that is unlawful under Sections 5.12.030 through 5.12.050.

"Dwelling" means any building, structure, or portions thereof which is occupied as, or designed or intended for occupancy as, a residence for one or more families, and any vacant land which is offered for sale or lease for the construction or location of any such building, structure, or portion thereof.

"Family" means one or more persons occupying a single dwelling for residential purposes and living as a single housekeeping unit.

"Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.

"Restrictive covenant" means any specification limiting the transfer, rental or lease or any housing because of race, creed, color, religion, sex, handicap, national origin or ancestry.

"To rent" includes to lease, to sublease, to let and otherwise to grant for consideration the right to occupy the premises not owned by the occupant. (Ord. 363 § 2, 2002: prior code § 4.0402)

**5.12.030 Discriminatory housing practice.**

Except as exempted by Section 5.12.060, it is unlawful to:

A. Refuse to sell or rent after making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, or to refuse to show, or to refuse to receive and transmit an offer for a dwelling to any person because of race, creed, color, religion, sex, handicap, national origin or ancestry;

B. Discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in a connection therewith, because of race, creed, color, religion, sex, handicap, national origin or ancestry;

C. 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 upon race, creed, color, religion, sex, handicap, national origin or ancestry;

D. Represent to any person because of race, creed, color, religion, sex, handicap, national origin or ancestry that any dwelling is in fact so available;

E. Cause to be made any written, or oral inquiry or record concerning the race, creed, color, religion, sex, handicap, national origin or ancestry of a person seeking to purchase, rent or lease any housing;

F. Include in any transfer, sale, rental, or lease of housing any restrictive covenants, or to honor or exercise or attempt to honor or exercise any restrictive covenant pertaining to race, creed, color, religion, sex, handicap, national origin or ancestry;

G. Discharge or demote an employee or agent or discriminate in the compensation or such employee or agent because of such employee's or agent's obedience to the provisions of this act; and

H. Induce or attempt to induce, for profit, 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, creed, color, religion, sex, handicap, national origin or ancestry. (Ord. 363 § 3, 2002: prior code § 4.0403)

**5.12.040 Discriminatory loan or financial assistance practice.**

It is unlawful for any bank, savings 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 deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him or her the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of race, creed, color, religion, sex, handicap, national origin or ancestry of such person or of any person associated with him or her in connection with such load or other financial assistance, or of the

present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which each loan or other financial assistance is to be made or given; provided that nothing contained in this section shall impair the scope of effectiveness of the exceptions contained in Section 5.12.060. (Ord. 363 § 4, 2002: prior code § 4.0404)

**5.12.050 Unlawful.**

It is unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization or facility relating to the business of selling or renting dwellings, or to participate or discriminate against him or her in the terms or conditions of such access, membership, or participation, on account of race, color, creed, religion, sex, handicap, national origin or ancestry. (Ord. 363 § 5, 2002: prior code § 4.0405)

**5.12.060 Exceptions.**

A. Nothing in this chapter shall prohibit a religious organization, or society, or any non-profit 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 commercial purposes to persons of the same religion or from given preferences to such persons unless membership in such religion is restricted on account of race, color, creed, national origin or ancestry. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which is an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members,

B. Nothing in this chapter shall prohibit or limit the right of any person or his or her authorized representative to refuse to rent a room or rooms in his or her own home for any reason, or for no reason, or to change tenants in his or her home as often as he or she may desire; provided that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or family within his or her own home. (Ord. 363 § 6, 2002: prior code § 4.0406)

**5.12.070 Administration and enforcement.**

Provisions of this chapter shall be administered by the city council. The city attorney is granted the authority to enforce this chapter and shall possess the same powers and duties of the council. If a complaint is filed with the city attorney, then no complaint shall be filed with the council. In carrying out the provision of this chapter, the council shall have the power to:

A. Designate one or more members of the council, or a member of the city staff to conduct investigation or any complaint and to attempt to resolve such complaint by conference, conciliation, or persuasion;

B. Determine that probable cause exists for crediting the allegations of a complaint;

C. Determine that a complaint cannot be resolved by conference, conciliation, or persuasion;

D. Dismiss complaints when it is determined there is not probable cause to credit the allegations of a complaint;

- E. Adopt rules and regulations to carry out the powers granted by this chapter;
- F. Compel the attendance and examination of witness under oath or affirmation, and require the production of documents relevant to a complaint by a subpoena issued by the mayor at the request of a majority of the council if the mayor deems the issuance of a subpoena is necessary;
- G. Conduct such educational and conciliatory activities as will in the council's judgment further the purposes of this chapter; and
- H. Conduct such conciliation meetings and conferences as are deemed necessary to resolve a particular complaint. (Ord. 363 § 7, 2002: prior code § 4.0407)

**5.12.080 Educational and conciliatory activities.**

On the effective date of the ordinance codified in this chapter, the council shall commence such educational and conciliatory activities as in the council's judgment will further the purposes of this chapter. These may include, but shall not be limited to, conference of person in the housing industry and other interested persons to acquaint them with the provisions of this chapter and suggested means of implementing them, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. The council shall consult with local individuals and groups to learn the extent, if any, to which housing discrimination exists within the community, and whether and how private enforcement programs might be utilized to combat such discrimination in conjunction with or in place of the council's enforcement of this chapter. The council shall issue reports to the citizens on such conferences and consultation as it deems appropriate. (Ord. 363 § 8, 2002: prior code § 4.0408)

**5.12.090 Discriminatory housing practice procedure.**

A. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the city council. The complaint shall be in writing and be in such form as the council requires. Upon the receipt of such complaint, the council shall furnish a copy of the same to the person or persons who allegedly committed the alleged discriminatory housing practice.

B. After receiving the complaint, or after receiving reference of a complaint pursuant to Section 810(c) of the Federal Fair Housing Act of 1968, the council shall investigate the complaint and determine whether probable cause exists to credit the allegation of the complaint. If the council determines that probable cause does exist, it 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 said act without the written consent of all persons concerned. Any council member or designated person or representative or employee of the city who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than two hundred dollars (\$200.00).

C. A complaint shall be filed within one hundred eighty (180) days after the alleged discriminatory housing practice occurred or the same shall be waived. The complaint shall state the facts upon which the allegations of the discriminatory housing practice are based. Complaints may

be reasonably and fairly amended at any time. Both complaints and answers shall be verified under oath.

D. In any proceeding brought pursuant to this chapter, the burden of proof shall be on the complainant.

E. In conducting an investigation, the council 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, that such evidence shall not be made public. The council may issue subpoenas to compel access to or the production of such materials or for the appearance of such persons, subject, to the limitations contained in Section 5.12.070(F), and may issue interrogatories to the parties, 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 district court. The council may also administer oaths.

F. Upon written application to the council, a complainant or respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the council to the same extent and subject to the further limitations contained in Section 5.12.070(F). Subpoenas issued at the request of a complainant shall show on their face the name and address of such party and shall state that they were issued at his or her request.

G. 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 or her power to do so, in obedience to the subpoena issued in accordance with the provisions of this chapter or lawful order of the council, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than two hundred dollars (\$200.00). Any person who with the intent to thereby mislead the council, shall make or cause to be made any false entry or statement of fact in complaint, report, account, record, or other documents submitted to the council pursuant to a subpoena issued in accordance with the provisions of this chapter 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 any other means, falsify any documentary evidence, shall be guilty of a misdemeanor and, upon conviction thereof shall be fined not more than two hundred dollars (\$200.00). (Ord. 363 § 9, 2002: prior code § 4.0409)

#### **5.12.100 Injunctive relief.**

When the council determines it advisable for the proper determination of a complaint, it may file a petition in the District Court of Union County seeking appropriate injunctive relief. Such injunctive relief may include orders or decrees restraining or enjoining the respondent from selling, renting, or otherwise making unavailable to the complainant any housing which is the subject of the complaint, pending the final determination of proceedings before the council. No such injunctive relief shall be granted unless the complainant provides security in such amount as the court deems proper for the payment of such costs and damages as may be incurred or suffered by any person who is found to have been wrongfully enjoined or restrained. All such petitions for injunctive relief shall be subject to the applicable rules of procedure for the district courts. (Ord. 363 § 10, 2002: prior code § 4.0410)

**5.12.110 Failure to show housing.**

If the complaint is based on an alleged failure to show the housing involved, the council, after investigation and determination that probable cause exists for crediting the allegation, may issue its order that housing involved be shown without hearing and if the respondent refuses without good reason to comply with such order within three days, the council may file a petition for injunctive relief pursuant to Section 5.12.100. In such cases, the court may waive the requirement for security, and if the court finds that the refusal to show is based on an unfair housing practice it shall order the respondent to immediately show such housing and to make full disclosure of all information then being given to the public concerning such housing. (Ord. 363 § 11, 2002: prior code § 4.0411)

**5.12.120 Civil action--When.**

If the complaint has been investigated and the council has determined that there is probable cause to credit the allegations of the complaint and has been unable to obtain voluntary compliance with this chapter, the council shall commence a civil action in the District Court of Union County. Such civil action shall be commenced within thirty (30) days after the determination by the council that it is unable to obtain voluntary compliance. Such civil action shall be brought by the council on behalf of the complainant and against the respondent named in the complaint to enforce the rights granted or protected by this chapter. (Ord. 363 § 12, 2002: prior code § 4.0412)

**5.12.130 Civil action procedure.**

Actions brought pursuant to Section 5.12.120, shall be subject to the rules of procedure for other civil actions in the district courts, except that such actions shall be given priority on the docket of the court in which they are brought. In considering and determining such actions, the court shall have the authority to:

- A. Appoint the council as a special referee to make findings of fact and conclusions of law;
- B. Grant temporary or permanent injunctions or restraining orders or other orders which will effectuate the purposes of this chapter;
- C. Revoke the deeds, conveyances, mortgages, and contracts of sale, rental, or lease, or order specific performance of any contract or agreement, or order the respondent to sell, rent, lease, or transfer to the complainant the dwelling which was the subject of the complaint or a similar dwelling; provided, any sale, encumbrance, lease, or rental consummated prior to the issue of any court order pursuant to this chapter and involving a bona fide purchases, encumbrances, or tenant without actual notice of the existence of the complaint or court action shall not be affected;
- D. Continue or dismiss the action, when deemed appropriate, at the request of the complainant;
- E. Award costs to successful complainants in all cases, and reasonable attorney fees where the complainant is represented by his or her own attorney;
- F. Tax costs, including reasonable attorney fees, to the council when it is determined that there was no discriminatory housing practice; and
- G. Take such other action as is within the general power of the court to insure justice and carry out the purposes of this chapter. (Ord. 363 § 13, 2002: prior code § 4.0413)

**5.12.140 Individual's right to file civil action.**

Any person entitled to file a complaint with the council pursuant to this chapter may file on his or her own behalf, a civil action in the District Court of Union County in which discriminatory housing is alleged to have occurred. Such action shall be commenced within one hundred eighty (180) days after the complaint arose or it shall be waived. The action authorized by this section shall be considered an alternative to the other procedures provided by this chapter, and shall be prohibited while the complainant has a complaint under consideration by the council until such complaint is withdrawn, and no action pursuant to this section shall be permitted if an action on behalf of the complainant has been initiated pursuant to Section 5.12.120. Actions initiated pursuant to this section shall be subject to the provisions of Section 5.12.130. (Ord. 363 § 14, 2002: prior code § 4.0414)

**5.12.150 City attorney's authority.**

A. The city attorney shall conduct all litigation in which the council participates as a party pursuant to this ordinance.

B. Whenever the city attorney has reasonable cause to believe that any person or group or persons is engaged in a continuous pattern or practice of resistance to the full enjoyment of any rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance he or she may bring a civil action in the Union County District Court by filing with it a petition setting forth the facts and requesting such preventive relief, including an application for permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he or she deems necessary to insure the full enjoyment of the rights granted by this chapter. (Ord. 363 § 15, 2002: prior code § 4.0415)

**5.12.160 Coerce, intimidate or threaten--Penalty.**

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of his or her enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided and encouraged any other person in the exercise of benefits and rights guaranteed by this chapter. Any person who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). (Ord. 363 § 16, 2002: prior code § 4.0416) (Amended 2007)