

CHAPTER 6

DISCRIMINATION IN HOUSING

6.1 Construction of chapter.

6.1(1) Limitation of chapter. All the rules contained herein apply only to:

a. Complaints which allege a violation of the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5;

b. Complaints which allege a violation of Dubuque Code of Ordinances Section 8-3-1 arising out of alleged violations of the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5 and the interpretation of the provisions of the Act which relate to such complaints or to unfair or discriminatory practices in the area of housing.

6.1(2) Conflicting rules. The rules of the commission contained other than in this chapter still apply to complaints alleging a violation of Dubuque Code of Ordinances Title 8, Chapter 5, except that where a provision of this chapter applies under the terms of subrule 6.1(1) and that provision conflicts with a rule of the commission not contained within Chapter 6, then the provision contained within Chapter 6 shall prevail.

6.2 Definitions. As used in this chapter, the following definitions shall apply:

“*Party*” means any complainants and respondents involved in the complaint of discrimination under investigation.

6.3 Interpretation of various housing provisions.

“*Aggrieved person.*” As used in the Dubuque Code of Ordinances provisions relating to discrimination in housing, the term “aggrieved person” includes any person who claims to have been injured by a discriminatory housing practice, or any person who believes that that person will be injured by a discriminatory housing practice that is about to occur.

“*Discriminatory housing or real estate practice.*” A person who violates the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5, commits an “unfair or discriminatory practice” in the area of housing or real estate. A person who commits a violation of Dubuque Code of Ordinances Section 8-3-1 arising out of alleged violations of the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5 commits an “unfair or discriminatory practice” in the area of housing or real estate.

“*Dwelling.*” As used in the Dubuque Code of Ordinances, the term “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, or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

“*Exceptions.*” The exceptions found in Dubuque Code of Ordinances Section 8-5-3 do not apply to Section 8-5-2(c) relating to advertising.

“*Disability.*” As used in the Dubuque Code of Ordinances, the term “disability” with respect to a person means:

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.

Such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802).

“Housing accommodation.” As used in Dubuque Code of Ordinances Title 8, the term “housing accommodation” has the same meaning as is given the term “dwelling” in this rule.

“Housing for older persons.” The exception found in Dubuque Code of Ordinances Section 8-5-3D is limited to discrimination based upon “familial status.”

Dubuque Code of Ordinances section 8-5-9A Election to proceed in court. The election to have the charges of a complaint decided in a civil action as provided in *Dubuque Code of Ordinances section 8-5-9A* is only available where:

1. It is alleged that there has been a violation of some portion of Dubuque Code of Ordinances Title 8, Chapter 5, or
2. It is alleged that there has been a violation of Dubuque Code of Ordinances Section 8-3-1 arising out of alleged violations of the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5.

“Person.” As used in the Dubuque Code of Ordinances provisions relating to discrimination in housing, the term “person” includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries. The specific inclusion of an individual or entity within this definition of “person” does not imply that that individual or entity is excluded from the definition of “person” in Dubuque Code of Ordinances 8-1-1.

6.4 Aggrieved person’s direct action in district court.

6.4(1) Aggrieved person’s direct action in district court.

a. *Filing of complaint not necessary.* A complaint which alleges either (1) a violation of the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5, or (2) a violation of Dubuque Code of Ordinances 8-3-1 arising out of alleged violations of the prohibitions contained in Dubuque Code of Ordinances Title 8, Chapter 5 need not be filed with the commission in order for an aggrieved person to seek judicial remedies for that alleged violation. An aggrieved person may file an action alleging such violations directly in district court pursuant to Dubuque Code of Ordinances 8-5-12.

b. *Effect of commission processing.*

(1) In general. The status of commission processing of a complaint alleging a discriminatory housing or real estate practice does not affect the rights of an aggrieved party to file a civil action under Dubuque Code of Ordinances 8-5-12 based on that same or any other alleged discriminatory housing or real estate practice.

(2) Exceptions. Commission processing will bar an aggrieved person from filing a civil action under Dubuque Code of Ordinances 8-5-12 based on an alleged discriminatory housing or real estate practice only where either:

1. The commission has obtained a mediation agreement with the consent of that aggrieved person regarding that alleged discriminatory housing or real estate practice, or
2. The commission has begun a contested case hearing on the record regarding that same alleged discriminatory housing or real estate practice.

c. *Notification of commission.* If a person has filed a complaint alleging a

discriminatory housing or real estate practice with the commission and that person subsequently commences a civil action under Dubuque Code of Ordinances 8-5-12 based on that same alleged discriminatory housing or real estate practice, the aggrieved person is encouraged to immediately notify the commission of the filing of the civil action.

d. Remedies. In an action filed directly in district court pursuant to Dubuque Code of Ordinances 8-5-12, the court may, upon a finding of discrimination, order any of the remedies provided for in the Dubuque Code of Ordinances Title 8.

6.4(2) *Election to proceed in district court.*

a. In general. An aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may, pursuant to Dubuque Code of Ordinances Section 8-5-7, elect to have the allegations asserted in the complaint decided in a civil action in district court. An election is made by filing a written notice of election with the commission. The date of filing of an election is the date the election is received by the commission. If such an election is made, the commission shall authorize and, within 30 days of the election, the City attorney shall file a civil action in district court on behalf of the aggrieved person. Failure to file within the 30-day period shall not, by itself, prejudice the rights of any of the parties.

b. Limitation. An election made under the previous paragraph must be made within 20 days of the receipt by the electing person of the determination of probable cause. The date of election is the date that the written notice of election is filed with the commission.

c. Probable cause determination a prerequisite. No person may make an election pursuant to Dubuque Code of Ordinances Section 8-5-7 until the commission has found probable cause regarding the complaint which is the subject of the election.

d. Notice required. An election to proceed in district court made under Dubuque Code of Ordinances Section 8-5-7 is effective only if the electing person gives notice of the election to the commission and all other complainants and respondents to whom the election relates. Such notice shall be in writing, shall be delivered at the time the election is made, and may be made by regular mail.

e. Intervention. Once the commission commences an action in district court pursuant to Dubuque Code of Ordinances Section 8-5-7 an aggrieved person may intervene in the action.

6.4(3) *Right-to-sue letter inapplicable.* A complainant need not, and should not, request a right-to-sue letter in order to file a civil action under Dubuque Code of Ordinances Title 8, Chapter 5.

6.4(4) *Appointment of attorney by court.* Upon application by a person alleging a discriminatory housing practice or a person against whom such a practice is alleged, the court may:

- a. Appoint an attorney for the person, or*
- b. Authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the person is financially unable to bear the costs of such action.*

6.5 *Administrative Complaints*

6.5(1) *Time limit for administrative complaint.* A complaint which alleges a discriminatory housing or real estate practice is governed by the 300-day time limit

provided in the Dubuque Code of Ordinances Title 8.

6.5(2) Processing of complaint.

a. *Service.* Upon the filing of a complaint:

(1) The commission shall, not later than ten days after such filing or the identification of an additional respondent, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of respondents under the applicable sections of Dubuque Code of Ordinances Title 8, together with a copy of the original complaint; and

(2) Each respondent may file, not later than ten days after receipt of notice from the commission, an answer to the complaint.

(3) The commission shall, not later than ten days after the filing of a complaint, serve the complainant a notice acknowledging receipt of the complaint.

b. *Timely investigation.* The commission will begin the investigation within 30 days of filing. If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

c. *Amendments.* Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

d. *Additional respondents.*

(1) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice to such person from the commission.

(2) Such notice, in addition to meeting the requirements above, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as respondent.

e. *Closure within one year.* Within one year of the date of receipt of a complaint alleging a discriminatory housing or real estate practice, the commission shall take final administrative action with respect to that complaint unless it is impracticable to do so. If the commission is unable to make final disposition of the case within the one-year period, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

6.5(3) Probable cause determination.

a. *Final investigative report.* After the completion of the commission's investigation, the investigator shall prepare a final investigative report. This final investigative report shall include:

(1) The names and dates of contacts with witnesses excepting those witnesses who request to remain anonymous. The commission, however, may be required to disclose the names of such witnesses in the course of an administrative hearing or a civil action conducted pursuant to the Dubuque Code of Ordinances;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

b. *Determination procedure.* If, after the completion of investigation, a mediation agreement has not been executed by the complainant and the respondent and

approved by the commission, the commission shall conduct a review of the factual circumstances revealed as part of the investigation.

(1) If the commission determines that, based on the totality of the factual circumstances known at the time of the commission's review, no probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall: issue a short and plain written statement of the facts upon which the no probable cause determination was based; dismiss the complaint; notify the aggrieved person(s) and the respondent(s) of the dismissal (including the written statement of facts) by regular or certified mail or personal service; and make public disclosure of the dismissal.

Respondent(s) may request that no public disclosure be made. Notwithstanding such request, the fact of dismissal, including the names of the parties, shall be public information available on request.

The commission's determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent(s) and otherwise disclosed during the investigation.

(2) If the commission believes, based on the totality of the factual circumstances known at the time of the decision, that probable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall issue a determination of probable cause. The determination shall be based solely on the facts concerning the alleged discriminatory housing practice provided by complainant and respondent and otherwise disclosed during the investigation.

c. *Determination of probable cause.* A determination of probable cause shall be followed by the issuance of a probable cause order. A probable cause order:

(1) Shall consist of a short and plain written statement of the facts upon which the commission has found probable cause to believe that a discriminatory housing practice has occurred or is about to occur;

(2) Shall be based on the final investigative report; and

(3) Need not be limited to facts or grounds that are alleged in the complaint. If the probable cause order is based on grounds that are not alleged in the complaint, the commission will not issue the probable cause order with regard to those grounds unless the record of the investigation demonstrates that the respondent has been given an opportunity to respond to the allegation.

d. *Timely determination.* The commission shall make the probable cause determination within 100 days after the filing of the complaint unless it is impracticable to do so. If the commission is unable to make the determination within this 100-day period, the commission will notify the aggrieved person and the respondent by regular mail or personal service of the reasons for the delay.

e. *Effect of probable cause determination.* A finding of probable cause regarding a complaint alleging a discriminatory housing or real estate practice commences the running of the period during which an aggrieved person on whose behalf a complaint was filed, a complainant, or a respondent may elect to have the charges asserted in the complaint decided in a civil action in district court. If an election is made, the commission shall authorize the City attorney to file a civil action on behalf of the aggrieved person seeking relief. If no election is made, then the commission must schedule a hearing on the charges in the complaint.

f. Effect of no probable cause determination. A finding of “no probable cause” regarding a complaint alleging a discriminatory housing or real estate practice results in prompt dismissal of the complaint. If the finding is not reconsidered, the commission may take no further action to process that complaint except as may be necessary to carry out the commission’s administrative functions.

g. Standard. The standard to determine whether a complaint alleging a discriminatory housing or real estate practice is supported by probable cause shall include consideration of whether the facts are sufficient to warrant initiation of litigation against the respondent.

6.5(4) Hearing.

a. Conduct. A contested case hearing regarding a complaint alleging a discriminatory housing or real estate practice is conducted on the same terms and in the same manner as any other contested case hearing conducted by the commission.

b. Hearing time frames.

(1) Trial date. The administrative law judge shall commence the hearing regarding a complaint alleging a discriminatory housing or real estate practice no later than 120 days following the issuance of the finding of probable cause, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the probable cause order, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

(2) Decision date. The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing regarding a complaint alleging a discriminatory housing or real estate practice unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within this period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the executive director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing, of the reasons for not doing so.

6.5(5) Access to file information in housing cases.

a. Nothing that is said or done in the course of mediation of a complaint of housing or real estate discrimination may be made public or used as evidence in a subsequent administrative hearing or in civil actions under Dubuque Code of Ordinances Title 8, without the written consent of the persons concerned.

b. Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in paragraph 6.5(5)“a” the commission will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following completion of the investigation, the commission shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.

c. Where the commission has made a finding of no probable cause regarding a complaint alleging a discriminatory housing or real estate practice, the aggrieved person and the respondent may obtain information derived from the investigation and the final investigative report.

d. Prior to a finding of either probable cause or no probable cause regarding a complaint alleging a discriminatory housing or real estate practice no access may be had to the information contained within the commission investigatory file except that:

(1) Any witness may request a copy of the witness's own statement made to the commission as part of the commission's investigation of the complaint,

(2) Any person may request copies of any information that that person sent to the commission in the course of processing the complaint,

(3) Any person may request copies of any information that the commission had previously sent to that person in the course of processing the complaint.

6.6 Scope of investigation. The scope of investigation is as follows:

6.6(1) *In general.* The commission may obtain information regarding any matter, not privileged, which is relevant to the subject matter involved in the pending investigation, whether it relates to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at a trial or contested case hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

6.6(2) *Supplementation of responses.* A party who has responded to a commission request for information is under a duty to supplement or amend the response to include information thereafter acquired as follows:

a. A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

(1) The identity and location of persons having knowledge of discoverable matters; and

(2) Any matter that bears materially upon a claim or defense asserted by any party.

b. A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(1) The party knows that the response was incorrect when made; or

(2) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

6.7 Protective orders. A party or person from whom information is sought may, for good cause shown, seek an order to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense.

6.8 Production of documents and things and entry upon land for inspection and other purposes. The commission may serve on any party a request:

6.8(1) To produce and permit the commission, or someone acting on the commission's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained, translated, if necessary, by the party upon whom the request is served through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of the investigation and which are in the possession, custody or control of the party upon whom the request is served; or

6.8(2) Except as otherwise provided by statute, to permit entry upon designated land or other property in the possession or control of the party upon whom the request is

served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of the investigation.

6.9 Procedures for documents and inspections. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 10 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

6.10 Witness Interviews.

6.10(1) Timing of interviews. The commission may interview witnesses in an investigation of a complaint of housing discrimination at any time during the pendency of that investigation.

6.10(2) Recording. The commission may record interviews.

6.10(3) Submission to witness; changes; signing. No oral interview that has been recorded and transcribed need be submitted to, read or signed by the witness, unless such recording is not retained by the commission. In other cases, interview notes shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered upon the interview notes with a statement of the reasons given by the witness for making them. The interview notes shall then be signed by the witness, unless the witness is ill or dead or cannot be found or refuses to sign. If the interview notes are not signed by the witness within 30 days of their submission, the investigator shall sign them and state on the record the fact of the waiver or of the illness, death, or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor.