

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1648

Short Title: Fayetteville Fair Housing Amendments.

(Local)

Sponsors: Senators Tally and Edwards.

Referred to: Local Government and Regional Affairs.

June 1, 1994

A BILL TO BE ENTITLED
AN ACT TO MODIFY THE PROVISIONS OF THE CHARTER OF THE CITY OF
FAYETTEVILLE CONCERNING FAIR HOUSING.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of the Charter of the City of Fayetteville, being Chapter 557, Session Laws of 1979, as enacted by Chapter 355 of the Session Laws of 1989, reads as rewritten:

"ARTICLE 8. FAIR HOUSING.

"Sec. 8.30. **Equal housing.** The City Council shall have the power to adopt ordinances prohibiting discrimination in real estate transactions on the basis of race, color, sex, religion, handicap, familial status, or national origin. ~~Such ordinances may~~

- ~~(1) Regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons;~~
- ~~(2) Provide that violations constitute a criminal offense;~~
- ~~(3) Subject the offender to civil penalties;~~
- ~~(4) Provide that the City may enforce the ordinances by application to the Superior General Court of Justice for appropriate legal and equitable remedies, including but not limited to mandatory and prohibitory injunctions and orders of abatement, attorney's fees and punitive damages, and the court shall have jurisdiction to grant such remedies.~~

origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate related transactions. Such

1 ordinances may regulate or prohibit any act, practice, activity, or procedure related
2 directly or indirectly, to the sale, financing, or rental of public or private housing, that
3 affects or may tend to affect the availability or desirability of housing on an equal basis
4 to all persons, and may:

5 (1) Provide that discrimination includes:

6 a. A refusal to permit, at the expense of a handicapped person,
7 reasonable modifications of existing premises occupied or to be
8 occupied by such person if such modification may be necessary
9 to afford such person full enjoyment of the premises, except
10 that, in the case of a rental, the landlord may, where it is
11 reasonable to do so, condition permission for a modification on
12 the renter agreeing to restore the interior of the premises to the
13 condition that existed before the modification, reasonable wear
14 and tear excepted;

15 b. A refusal to make reasonable accommodations in rules,
16 policies, practices, or services when such accommodations may
17 be necessary to afford such handicapped person equal
18 opportunity to use and enjoy a dwelling; or

19 c. Failure to design and construct those covered multifamily
20 dwellings available for first occupancy after March 13, 1991, in
21 such a manner that:

22 1. The public use and common use portions of such
23 dwelling are readily accessible to and usable by
24 handicapped persons;

25 2. All the doors designed to allow passage into and within
26 all premises within such dwelling are sufficiently wide to
27 allow passage by handicapped persons in wheelchairs;
28 and

29 3. All premises within such dwellings contain the following
30 features of adaptive design:

31 I. An accessible route into and through the dwelling;

32 II. Light switches, electrical outlets, thermostats, and
33 other environmental controls in accessible
34 locations;

35 III. Reinforcements in the bathroom wall to allow
36 later installation of grab bars; and

37 IV. Usable kitchen and bathrooms such that an
38 individual in a wheelchair can maneuver about the
39 space.

40 Compliance with the appropriate requirements of the American
41 National Standard for Buildings and Facilities Providing Accessibility
42 and Usability for Physically Handicapped People (commonly cited as
43 'ANSI A117.1-1968') suffices to satisfy the requirements of
44 subdivision c.3. of this subdivision.

- 1 (2) Provide that Fayetteville Human Relations Commission shall have the
2 power to:
- 3 a. Receive, initiate, investigate, seek to conciliate, hold hearings,
4 and make recommendations to parties named in complaints
5 alleging violations of this Article, approve or disapprove plans
6 to eliminate or reduce discriminatory practices or the effects of
7 discriminatory practices, and monitor compliance with the
8 terms of such plans.
- 9 b. Apply, upon an affirmative vote of a majority, a quorum being
10 present and voting, to the Cumberland County Superior Court
11 upon the failure of any person to respond to or comply with a
12 lawful interrogatory, subpoena, or request for the production of
13 relevant evidence or possible sources of evidence for an order
14 requiring such person to respond or comply. The court shall
15 have jurisdiction to issue such order after notice to all proper
16 parties. On petition of the person to whom the subpoena is
17 directed, the court may vacate or modify the subpoena.
- 18 c. Petition the court, with the approval of the Fayetteville City
19 Council, for any appropriate relief, if the Commission
20 determines, following a hearing as provided in this ordinance,
21 that there is a reasonable cause to believe that a violation of this
22 Article has occurred, and if efforts at conciliation have not been
23 concluded to the satisfaction of the Commission, or if the terms
24 of any conciliation agreement negotiated by the Commission
25 under the provision of this Article or said ordinance are not
26 being complied with by respondent(s).
- 27 d. Adopt, promulgate, amend, and rescind such rules and
28 regulations to effectuate the purposes and policies of this
29 Article or said ordinance and the policies and practices of the
30 Commission in connection therewith, including regulations
31 requiring the posting or inclusion in advertising material of
32 notices prepared or approved by the Commission, and
33 regulations as to filing, approval, or disapproval of plans to
34 eliminate or reduce the effects of discriminatory practices. The
35 Commission may authorize its staff to receive, initiate, seek to
36 conciliate, or carry out investigative duties as specified in this
37 Article and the rules and regulations adopted by the
38 Commission. Such rules and regulations shall be approved by
39 the City Council and shall only be adopted, amended, or
40 rescinded after the Commission holds a public hearing. A copy
41 of the text of the proposed rule, amendment, or decision shall be
42 available for public inspection and copying at the office of the
43 Commission.

- 1 e. Impanel a hearing board appointed by the City Council to hear
2 complaints, which board shall consist of five hearing officers
3 who shall not be members of the Commission. No member of
4 the hearing board shall have a part in the investigation of a
5 complaint, except as to the issuance of subpoenas or
6 interrogatories and other appropriate legal processes.
- 7 f. Authorize its hearing board appointed by the City Council
8 impaneled at any time after a complaint is filed with the
9 Commission, and upon a majority vote of said board, to issue
10 subpoenas and subpoenas **duces tecum** compelling witnesses to
11 attend and testify at the hearing and compelling witnesses to
12 bring with them at the hearing certain specified evidence and to
13 require, by summons, subpoena, or other appropriate legal
14 process, answers to interrogatories, to administer oaths, and to
15 examine witnesses under oath or affirmation in person or by
16 deposition. If any person refuses to obey a subpoena issued
17 pursuant to this ordinance, answer interrogatories or other
18 appropriate legal process, the Commission may apply to the
19 Superior Court for an order requiring such person to obey the
20 subpoena, answer the interrogatories, or other appropriate legal
21 process. The court may take any appropriate legal action to
22 compel compliance. Witnesses whose depositions are taken or
23 who are summoned before the Commission or its agents shall
24 be entitled to the same witness and mileage fees as are paid to
25 witnesses in the courts of this State.
- 26 g. Authorize the hearing board, upon receipt of a written
27 application to said board, to grant a respondent a reasonable
28 number of subpoenas and interrogatories by and in the name of
29 the Commission to the same extent and subject to the same
30 limitations as the Commission itself.
- 31 h. Petition the Superior Court for injunctive relief, including
32 temporary restraining orders, after the filing of a complaint and
33 upon a majority vote of the Commission, a quorum being
34 present and voting.
- 35 (3) Provide that an aggrieved person, his agent, or a member of the
36 Commission may file a written complaint with the Commission within
37 one year after the alleged violation occurred, setting forth the facts
38 upon which the complaint is based, and setting forth facts sufficient to
39 enable the hearing board to identify the person charged (hereinafter the
40 respondent). Upon the filing of a complaint, the Commission shall
41 serve notice upon the complainant acknowledging such filing and
42 advising the complainant of the time limits and choice of forums
43 provided under this Article. No later than 10 days after the filing of a
44 complaint, the commission shall serve on the respondent a notice

1 identifying the alleged discriminatory housing practice and advising
2 such respondent of the procedural rights and obligations of
3 respondents under this Article, together with a copy of the original
4 complaint.

5 (4) Provide that the Commission shall investigate complaints filed herein,
6 make determinations of probable cause, and seek to conciliate apparent
7 violations of this Article. Investigations shall commence within 30
8 days after the filing of a complaint. The investigation shall be
9 completed in 100 days. If for any reason, the 100-day period must be
10 extended, or delayed, the Commission shall write to the parties
11 explaining the reasons for said extension or delay. Conciliation efforts
12 may be initiated by any party, aggrieved person, the Commission, staff
13 or hearing board.

14 (5) Provide that a conciliation agreement negotiated herein may include,
15 but is not limited to:

16 a. Sale, exchange, lease, rental, assignment, or sublease of real
17 property to a person.

18 b. Extension to all persons of the full and equal enjoyment of the
19 advantages, facilities, privileges, and services of the respondent.

20 c. Reporting as to the manner of compliance.

21 d. Posting of notices in conspicuous places in the respondent's
22 place of business in a form prescribed by the court to the
23 commission.

24 e. Payment to the complainant of actual damages, including
25 compensation for humiliation and embarrassment, and
26 reasonable attorneys' fees.

27 f. At any time, but not later than one year from the date of a
28 conciliation agreement, the Commission or Director shall
29 investigate whether the terms of the agreement are being
30 complied with by the respondent. Upon deciding that the terms
31 of the agreement are not being complied with by the
32 respondent, the Commission or staff shall informally seek
33 voluntary compliance with the conciliation agreement. If
34 informal methods fail, the Commission, with the approval of the
35 City Council, shall file a civil action seeking enforcement of the
36 terms of the conciliation agreement.

37 g. At any time after a complaint is filed, the Commission may file
38 a petition in the Superior Court, seeking appropriate temporary
39 injunctive relief, against the respondent, pending final
40 determination of proceedings under the ordinance.

41 h. Each conciliation agreement shall be made public unless the
42 complainant and respondent otherwise agree and the
43 commission determines that disclosure is not required to further
44 the purposes of this Article.

- 1 (6) Provide that the City Council shall establish a hearing board consisting
2 of five members, one of whom shall be a representative of the real
3 estate industry, and one of whom shall be a licensed attorney, to hear
4 complaints and make appropriate findings. The Fair Housing Board
5 heretofore appointed shall continue in existence for purposes of
6 carrying out the powers, duties, and responsibilities authorized in this
7 Article and said ordinance. All appointments shall be for two-year
8 terms, with no member eligible to serve more than two consecutive
9 terms. The Fair Housing Board so appointed shall commence
10 whenever the Commission determines there is probable cause to
11 believe the Article has been violated and a conciliation failure has
12 occurred. Hearings open to the public may be initiated by the
13 respondent at any time during the conciliation process. If the hearing
14 board determines:
15 a. That the respondent has not engaged in an unlawful practice,
16 the board shall state its findings of fact and conclusions of law
17 and shall issue an order dismissing the complaint; or
18 b. That the respondent has engaged in an unlawful practice, it shall
19 state its findings of fact and conclusions of law.
20 (7) Provide that final administrative disposition of the complaint shall be
21 made within one year of the date the complaint is filed, unless it is
22 impracticable to do so. If final administrative disposition is not able to
23 be made within one year, the Commission shall notify the complainant
24 and the respondent in writing of the reasons for not doing so.
25 (8) Provide that an action alleging a violation of the ordinance may be
26 filed in the Cumberland County Superior Court (hereinafter known as
27 the court) by the city attorney or his designee on behalf of the
28 Commission, the complainant, or aggrieved person, with the approval
29 of the Fayetteville City Council, upon the recommendation of the
30 Commission that there is reasonable cause to be believe a violation of
31 the ordinance has occurred or is about to occur and if the City Council
32 finds that:
33 a. There is reasonable cause to believe that a person or group of
34 persons is engaged in a pattern or practice of resistance of the
35 full enjoyment of any rights granted by the ordinance;
36 b. There is reasonable cause to believe that any person or group of
37 persons has been denied any of the rights granted by the
38 ordinance and such denial raises an issue of general public
39 importance; or
40 c. There is reasonable cause to believe that the violation affects an
41 individual's rights under this Article.
42 (9) Provide that if the Commission determines that (i) there is reasonable
43 cause to believe that a violation of the ordinance has occurred; (ii) a
44 lawsuit has not been authorized by the City Council; and (iii) if

1 conciliation attempts are unsuccessful, the Commission shall notify the
2 parties of its findings, and the individual complainant may bring a
3 private action in court.

4 (10) Provide that if it shall be determined by the court that a discriminatory
5 practice has occurred, an order may issue granting relief to those
6 persons who have suffered the effects of such discrimination. Before
7 relief may be granted, it shall not be necessary for the court to find that
8 intentional discrimination has occurred. It shall be sufficient that the
9 respondent's action or failure to act resulted in unlawful
10 discrimination.

11 (11) Provide that the court may grant any relief it deems appropriate,
12 including any permanent or preliminary injunction, temporary
13 restraining orders, or other orders, including an order enjoining the
14 defendant from engaging in such practice or ordering such affirmative
15 action as may be appropriate, and may award to the plaintiff actual and
16 punitive damages, may assess civil penalties and may award court
17 costs and reasonable attorneys' fees to a prevailing party. Provided,
18 however, that a prevailing respondent may be awarded court costs and
19 reasonable attorneys' fees only upon a showing that the case is
20 frivolous, unreasonable, or without foundation. The judge may assess
21 a civil penalty against the respondent in an amount not:

22 a. Exceeding ten thousand dollars (\$10,000) if the respondent has
23 not been adjudged to have committed any prior discriminatory
24 housing practice;

25 b. Exceeding twenty-five thousand dollars (\$25,000) if the
26 respondent has been adjudged to have committed one other
27 discriminatory housing practice during the five-year period
28 ending on the date of the filing of the charge; and

29 c. Exceeding fifty thousand dollars (\$50,000) if the respondent has
30 been adjudged to have committed two or more discriminatory
31 practices during the seven-year period ending on the date of the
32 filing of this charge.

33 However, if the present and previous discriminatory practices were
34 acts, committed by the same natural person, the judge may impose
35 penalties without regard to the time limitations set forth above.

36 (12) Provide that all civil actions brought pursuant to the ordinance shall be
37 heard by the court, **de novo**.

38 (13) Provide that in conducting an investigation, the Commission shall
39 have access at all reasonable times to premises, records, documents,
40 individuals, and other evidence or possible sources of evidence and
41 may examine, record, and copy such materials and take and record the
42 testimony or statements of such persons as are reasonably necessary
43 for the furtherance of the investigation. In aid of an investigation the
44 Commission and the hearing board may issue subpoenas and order

1 discovery. Such subpoenas and discovery may be ordered to the same
2 extent and subject to the same limitations as would apply if the
3 subpoenas or discovery were ordered or served in aid of a civil action
4 in the general court of justice.

5 (14) Provide that after the Director of the Human Relations Department
6 makes a finding of reasonable cause, the aggrieved person or
7 respondent has the right to elect to proceed immediately to the
8 Cumberland County Superior Court rather than proceed through the
9 administrative hearing process. Such decision must be submitted in
10 writing to the Human Relations Department within 20 working days of
11 receipt of the Director's decision. If the right of election is exercised,
12 upon approval of the City Council and findings consistent with
13 subdivision (8) of this section of this Charter, the City will commence
14 and maintain such action on behalf of the complainant(s) or aggrieved
15 person and the Commission.

16 (15) Provide that an aggrieved person may commence a civil action in
17 Cumberland County Superior Court not later than two years after the
18 occurrence or the termination of an alleged discriminatory housing
19 practice; the computation of such two-year period shall not include any
20 time during which a complaint was being processed by the
21 Commission or hearing board under this Article with respect to such
22 discriminatory housing practice; an aggrieved person may commence a
23 civil action under this section whether or not a complaint has been
24 filed and without regard to the status of any such complaint, but if the
25 aggrieved person has signed a conciliation no action may be filed
26 under this section by such aggrieved person with respect to the alleged
27 discriminatory housing practice which forms the basis for such
28 complaint.

29 (16) Provide that in a civil action commenced pursuant to this section, the
30 court may award, in addition to the relief specified in subdivision (11)
31 of this section, reasonable attorneys' fees and court costs to the
32 prevailing party.

33 "Sec. 8.31. **Exemptions.** Any ordinance enacted pursuant to this Article may
34 provide for exemption from its coverage:

35 (1) The rental of housing accommodations in a building ~~which contains~~
36 containing housing accommodations for not more than four families
37 living independently of each other, if the owner or a member of his
38 family resides in one of the housing accommodations;

39 (2) The rental of ~~one room or one rooming unit in a housing accommodation~~
40 by an individual if he or a member of his family resides therein; a room or
41 rooms in a private house, not a boarding house, if the lessor or a
42 member of his family resides therein;

43 (3) A landlord who refuses to rent to an unmarried couple;

- 1 (4) ~~Discrimination by a religious organization, association or society, or~~
2 ~~any nonprofit institution or organization operated, supervised, or~~
3 ~~controlled by or in conjunction with a religious organization,~~
4 ~~association, or society, in limiting the sale, rental, or occupancy of~~
5 ~~dwelling which it owns or operates for other than a commercial~~
6 ~~purpose to persons of the same religion, or in giving preference to such~~
7 ~~persons, unless membership in such religion is restricted on account of~~
8 ~~race, color, sex, or national origin.~~
- 9 (3) With respect to discrimination based upon sex, the rental or leasing of
10 housing accommodations in single-sex dormitory property;
- 11 (4) The sale or rental of any single-family house by an owner provided
12 such private individual owner does not own or have any interest in
13 more than three such single-family houses at any one time; provided
14 further, that in the case of the sale of any such single-family house by a
15 private individual owner not residing in such house at the time of such
16 sale or who was not the most recent resident of such house prior to
17 such sale, the exemption granted may only apply with respect to one
18 such sale within any 24-month period; provided further, that any
19 single-family house under this exemption may not be sold or rented (i)
20 with the use in any manner of the sales or rental facilities of any real
21 estate broker, agent, salesman, or of any employee of any such broker,
22 agent, or salesman; or (ii) with the publication or posting of any
23 advertisement in violation of this Article. Nothing in this provision
24 shall prohibit the use of attorneys, escrow agents, abstractors, title
25 companies, and other such provisional assistance as necessary to
26 perfect or transfer the title;
- 27 (5) Housing accommodations owned and operated for other than a
28 commercial purpose by a religious organization, association or society,
29 or any nonprofit institution or organization; operated, supervised, or
30 controlled by or in conjunction with a religious organization,
31 association or society shall not be prohibited by this Article from
32 limiting the sale, rental, or occupancy of dwellings which it owns or
33 operates to persons of the same religion, or from giving preference to
34 such persons unless membership in such religion is restricted on
35 account of race, color, or national origin;
- 36 (6) The sale, rental, exchange, or lease of commercial real estate, which is
37 not real estate intended for residential use;
- 38 (7) A private club not, in fact, open to the public which as an incident to
39 its primary purpose or purposes, provides lodging which it owns or
40 operates for other than commercial purposes limiting the rental or
41 occupancy of such lodging to its members or gives preference to its
42 members;
- 43 (8) The provisions in this Article regarding familial status shall not apply
44 with respect to housing for older persons;

- 1 a. As used in this section 'housing for older persons' means,
2 housing:
- 3 1. Provided under any State or federal program that is
4 specifically designed and operated to assist elderly
5 persons (as defined in the State or federal program);
- 6 2. Intended for, and solely occupied by, persons 62 years of
7 age or older; or
- 8 3. Intended and operated for occupancy by at least one
9 person 55 years of age or older as shown by the
10 following factors:
- 11 I. The existence of significant facilities and services
12 specifically designed to meet the physical or
13 social needs of older persons, or if the provision
14 of such facilities and services is not practicable,
15 that such housing is necessary to provide
16 important housing opportunities for older persons;
17 and
- 18 II. That at least eighty percent (80%) of the
19 dwellings are occupied by at least one person 55
20 years of age or older per unit; and
- 21 III. The publication of, and adherence to, policies and
22 procedures which demonstrate an intent by the
23 owner or manager to provide housing for persons
24 55 years of age or older.
- 25 b. Housing shall not fail to meet the requirements for 'housing for
26 older persons' by reason of:
- 27 1. Persons residing in such housing as of the date of
28 enactment of this Article who do not meet the
29 requirements of subdivision (8)a.2. and 3. of this section.
- 30 2. Unoccupied units, provided that such units are reserved
31 for occupancy by persons who meet the age
32 requirements of subdivision (8)a.2. and 3. of this section.
- 33 c. Housing facilities newly constructed for first occupancy after
34 the date of enactment of this Article shall satisfy the
35 requirements of subdivision (8)a.2. and 3. of this section, if:
- 36 1. When twenty-five percent (25%) of the units are
37 occupied, eighty percent (80%) of the occupied units are
38 occupied by at least one person 55 years of age or older
39 thereafter; and
- 40 2. Eighty percent (80%) of all newly occupied units are
41 occupied by at least one person 55 years of age or older
42 until such time as eighty percent (80%) of all units in the
43 housing facility are occupied by at least one person 55
44 years of age or older.

1 ~~Single sex dormitory rental property shall be excluded from the provisions of this~~
2 ~~Article which relate to discrimination based on sex.~~

3 "Sec. 8.32. **Complaints and other records.** The City Council may provide that
4 neither complaints filed pursuant to the ordinance nor the results of any investigations,
5 discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be
6 subject to inspection, examination, or copying under the provisions of ~~what is now~~
7 Chapter 132 of the General Statutes.

8 "Sec. 8.33. **Board meetings.** The City Council may provide that the statutory
9 provisions relating to meetings of government bodies, presently embodied in Article
10 33C of Chapter 143 of the General Statutes, shall not apply to the activity of the board
11 authorized to enforce the ordinance, to the extent that said board is receiving a
12 complaint or conducting an investigation, discovery, or conciliation pertaining to a
13 complaint filed pursuant to the ordinance.

14 "Sec. 8.34. **Conforming amendments.** The City Council may amend any ordinance
15 adopted pursuant to the provisions of this Article to ensure that the ordinance remains
16 substantially equivalent to Title VIII of the Civil Rights Act of 1968, as amended by the
17 Fair Housing Amendments Act of 1988, or any amendment thereafter."

18 Sec. 2. This act becomes effective October 1, 1994, and ordinances under it
19 may be adopted prior to that date, but such ordinances do not become effective prior to
20 October 1, 1994.