

COMMISSION ON HUMAN RELATIONS
CITY OF URBANA, ILLINOIS

In re [REDACTED] Human Rights)	
Ordinance Complaint Dated May 5, 2010)	
)	Matter No. 001-05-20
[REDACTED], Complainant,)	Public Accommodations
[REDACTED], Respondent.)	Race

INITIAL DETERMINATION AND ORDER

Pursuant to Section 12-82 of the City’s Human Rights Ordinance and by designation by Diane Wolfe Marlin, Mayor, James L. Simon, City Attorney conducted the investigation into the Complaint [REDACTED] submitted to the City’s Commission on Human Relations on May 6, 2020. Pursuant to Section 12-82 and the findings of the investigation, the City Attorney makes initial determinations on the issues (i) whether the Commission has jurisdiction over [REDACTED]’s Complaint; and (ii) whether there is probable cause to believe that Respondent [REDACTED] violated the Human Rights Ordinance.¹ The Complaint is submitted herewith.

PURSUANT TO THE INVESTIGATION provided for in UCC Sec. 12-82(b), the City Attorney makes the following initial determinations:

- A. the Commission on Human Relations lacks jurisdiction over [REDACTED]’s Complaint; and

- B. Since the Commission on Human Relations lacks jurisdiction over [REDACTED]’s Complaint, there is no need to conduct any investigation into whether probable cause exists that Respondent [REDACTED] violated any section or subsection of the HR Ordinance.

Pursuant to Urbana City Code Section 12-82(c), it is hereby ORDERED that [REDACTED]’s Complaint shall be and hereby is dismissed. [REDACTED] shall be afforded the appeal rights provided for in HR Ordinance Section 12-82 (UCC Sec. 12-82). Nothing in this initial determination and order shall be deemed or construed as barring [REDACTED] from pursuing such action, claim or charge as he believes he has under any state or federal statute, rule or regulation.

¹ Reference to the Human Rights Ordinance, the Commission on Human Relations, the City of Urbana, and [REDACTED]’s Complaint will be “HR Ordinance, the “Commission”, the “City”, and the “Complaint.” Citations to pages in the Complaint will be, e.g., “Cmplt p. 2.” Citations to the HR Ordinance will be, e.g., “UCC Sec. 12-16.”

INITIAL DETERMINATION FINDINGS

A. ██████████'s Complaint.

At approximately 2:15 a.m. on May 6, 2020, ██████████ sent a Complaint to the City of Urbana's Commission on Human Relations. The Complaint essentially alleges that a City employee, ██████████, while serving as the City's Human Relations Officer "violated, and is actively violating, the Urbana Human Rights Ordinance in regards to a citizen's right to access the public accommodations without suffering discrimination, and a citizen's right to 'fair and equal treatment under the law.'" Cmplt p. 1.

At the outset, the Complaint refers to a communication that allegedly occurred between ██████████ and the Commission's chairperson, Frances Rigberg. ██████████ asserts that Ms. Rigberg "suggested that Sec. 12-105(d) of the [HR Ordinance] may exempt ██████████ from² being named in a complaint ..." Cmplt p. 1, brackets supplied. The Complaint challenges Ms. Rigberg's "suggestion."

The Complaint, thereafter, alleges that ██████████ has discriminated against ██████████ and others on the basis of his "skin color." Cmplt. p. 1. Essentially, he asserts that ██████████ has improperly denied him and others access to the City's processes afforded under the City's HR Ordinance (UCC Secs. 12-16 *et seq.*) and Civilian Police Review Board Ordinance (UCC Secs. 19-20 *et seq.*) on the basis of their "skin color." Cmplt pp. 1-3. (██████████ is ██████████ and ██████████ is ██████████.) He specifically contends:

The only viable explanation for the years of behavior by ██████████ is that she is choosing who is allowed access to City services based on the skin color of the person involved, and perhaps by other mechanisms of discrimination or retaliation. There is a years-long history of this picking and choosing and it violates everything the Human Rights Ordinance stands for. There simply is not any valid excuse for the behavior I have been observing for so long. I believe ██████████ needs to be removed from the position of Human Relations Officer, and replaced with someone of integrity.

Cmplt p. 2-3. ██████████ also refers to a number of communications he has had with ██████████.

██████████ has been snubbing and gatekeeping access to City services to certain residents for at least the past two years. In any attempt I've made to contact her (the first dated item I could locate was June 4, 2018), I was never able to fetch a response. I have more examples during 2019. This includes both email and phone

² The Complaint does not identify any other individual that has allegedly been discriminated against by ██████████. Further, he does not claim to represent any other person regarding any alleged discrimination by ██████████. Thus, the City Attorney discounts such assertions in the Complaint.

calls, and were efforts to seek help on either unlawful discrimination, or more recently, Urbana Police complaints.

* * *

It should be noted that [REDACTED] is listed as the primary point of contact for both the Urbana Civilian Police Review Board, and the Human Relations Commission. She is employed by Urbana as the Human Relations Officer. It is her job to be responsive to inquiries and complaints. To a minimal extent, she is responsive, but only for certain people, and only in regards to the types of issues that suit her personally.

Cmpt p. 1. Thereafter he describes complaints he has filed with the Commission and the City's Civilian Police Review Board. He complains about [REDACTED]'s purported involvement dealing with those complaints. Cmplt pp. 2-3.

B. Authority of City Attorney to Undertake Investigation.

The HR Ordinance defines "Officer" as the City's Human Relations Officer or that person's designee. UCC Sec. 12-39. The Officer is charged with undertaking initial investigations of complaints brought under the HR Ordinance. UCC Sec. 12-82(a). [REDACTED] was appointed by Mayor Diane Wolfe Marlin and confirmed by the City Council to serve as the City's Human Relations Officer. Since [REDACTED] is the subject of [REDACTED]'s Complaint, it would be improper for her to investigate her own conduct. Therefore, on May 11, 2020, the Mayor designated the City Attorney, to conduct the investigation required by UCC Sec. 12-82(a).

C. Whether The Commission Have Jurisdiction Over Complaint.

HR Ordinance Sections 12-82 (c) state:

If the officer finds, with respect to any respondent, that the commission lacks jurisdiction or that probable cause does not exist, the officer shall issue and cause to be served on the respondent and the complainant an order dismissing the allegations of the complaint, along with a copy of this section explaining the complainant's right to appeal.

UCC Sec. 12-82(c). Thus, the investigator (in this instance, the City Attorney) must determine whether the Commission has jurisdiction over [REDACTED]'s Complaint. If jurisdiction is lacking, there is no need to investigate whether "probable cause" exists.

For the reasons discussed below, the City Attorney concludes that the Commission lacks jurisdiction over [REDACTED]'s Complaint because the HR Ordinance was not intended to be applied to the City itself and/or any of its employees when they are performing their employment duties.

1. The Commission Lacks Jurisdictions When the City and/or One of Its Employees is a Respondent to an HR Ordinance Complaint.

██████████'s Complaint clearly acknowledges that ██████████ is an employee of the City. Cmplt p. 1. Further, he complains that ██████████ committed discriminatory acts when Human Relations Officer responsibilities as provided in the HR Ordinance. The HR Ordinance, however, clearly contemplates that it was not intended to be applicable to matters where the City and/or one of its employees is a respondent. ██████████ has other avenues available to him if he believes that the City and/or one of its employees discriminated against him. The findings in this investigation report are not intended to preclude ██████████ from pursuing those other avenues for addressing his grievances against the City and ██████████.

HR Ordinance Section 12-105 provides four exceptions to the applicability of the HR Ordinance. UCC Sec. 12-105. Subsection (d) states:

The provisions of this article shall not apply to other units of government, including the Federal government or any of its agencies, the State of Illinois and any other political subdivision, municipal corporation or their agencies.

The City is a "political subdivision" of the State of Illinois. *Littell v. City of Peoria*, 374 Ill. 344, 347 (1940); *People v. Valentine*, 50 Ill.App.3d 447, 452-453 (5th Dist. 1977). The City is also a "municipal corporation."

A review of the HR Ordinance demonstrates that it was not intended to apply to complaints where the City and/or its employees are named as respondents in HR Ordinance proceedings. The HR Ordinance's penalty provision, UCC Sec, 12-101, does not contemplate ordinance violation fines being imposed against the City. HR Ordinance Section 12-101 states:

Any person found in violation of any provision of this article by the commission, or in subsequent judicial proceedings in a court of law, shall be fined not more than five hundred dollars (\$500.00) for each violation.

UCC Sec. 12-101. Thus, if a violation were found, the Commission could only order the City to pay a fine to itself.

To accept ██████████'s contentions that the Commission has jurisdiction over matters in which the City or one of its employees is the intended respondent would place the Commission in an untenable conflict of interest with the City and its employees. First, the Mayor, with the advice and consent of the City Council, appoints the members of the Commission. UCC Sec. 12-17. Second, the City provides staff support to the Commission. UCC Sec. 12-22(e). Indeed, the Human Relations Officer is an employee of the City assigned as staff to the Commission. Third, the Commission is charged with cooperating with "the mayor, city council, city departments, agencies and officials in securing the furnishings of equal services to all residents." UCC Sec. 12-22(a). Fourth, the services of "all city departments and agencies shall be made available ... to the commission at its request." UCC Sec. 12-22(e). Clearly, the Commission cannot take jurisdiction over a matter involving the City or one of its employees as respondent while cooperating at the same time.

For the reasons stated above, this investigator has determined that the Commission does not have jurisdiction where the City and/or a City employee is joined as a respondent in a complaint brought under the HR Ordinance.

2. The Complaint Does Not Allege Conduct That Falls Within the Ordinance Section on Discrimination in Public Accommodations.

██████████'s Complaint asserts that ██████████'s allegedly discriminatory conduct violates the "public accommodations" section of the HR Ordinance. (UCC Sec. 12-63). Cmplt p. 1. However, there is nothing in Section 12-63 which supports ██████████'s notion that proceedings afforded under the HR Ordinance and/or the Civilian Police Review Board Ordinance constitute "public accommodations."

The HR Ordinance defines "public accommodations" as "places, businesses or individuals offering goods, services or accommodations to the general public." UCC Sec. 12-39. Section 12-63(a)(1) states:

It shall be an unlawful practice to do any of the following acts wholly or partially for a reason based on discrimination: To deny, directly or indirectly, or charge a higher price than the regular rate, for the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation; to print, circulate, post, mail, or otherwise cause, directly or indirectly, to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation will be refused, withheld from or denied an individual; or that an individual's patronage of, or presence at, a place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.

* * *

... A party providing goods or services to the public shall not be required to take any action under this section that would fundamentally alter the nature of such goods and services being offered or would result in an undue burden.

UCC Sec. 12-63(a).³

Black's Law Dictionary defines "public accommodations" as:

The provision of lodging, food, entertainment, or other services to the public; esp. (as defined by the Civil Rights Act of 1964), one that affects interstate commerce or is supported by state action. 2. A business that provides such amenities to people in general.

Black's Law Dictionary (11th ed. 2019).

³ UCC Sec.12-63 also deals with placing discriminatory impediments to access by disabled persons and matters involving credit-related discrimination. ██████████ has not alleged any discrimination in connection with any disability or credit applications or transactions.

There is nothing in Section 12-63 that suggests that access to the process provided in the City's HR Ordinance and/or the Civilian Police Review Board Ordinance constitute "public accommodations.

CONCLUSION

For the reasons stated above, the City Attorney has initially determined that the Commission does not have jurisdiction over ██████████'s Complaint and, lacking jurisdiction, there is no reason to undertake the "probable cause" inquiry provided in UCC Section 12-82(b).

For the reasons stated above, the City Attorney, as investigator, enters the above-stated order dismissing ██████████'s Complaint.

DATED: MAY 13, 2020.

/s/ James L. Simon

James L. Simon, City Attorney
City of Urbana
400 S. Vine Street
Urbana, IL 61801

**NOTICE OF COMPLAINANT'S RIGHT TO APPEAL AN INITIAL
DETERMINATION TO THE COMMISSION ON HUMAN RELATIONS**

Sec. 12-82. - Notice and response to complaint, preliminary investigation, initial determination.

(a) The officer shall promptly investigate allegations of discrimination set forth in any complaint and shall furnish the respondent with a copy of said complaint by certified mail or personal service within seven (7) days of filing of the complaint.

(1) The respondent shall file a verified response to the allegations set forth in the complaint within twenty-eight (28) days of the date respondent receives the complaint. All allegations contained in the complaint not timely denied by the respondent shall be deemed admitted, unless the respondent states that it is without sufficient information to form a belief with respect to such allegation. The officer shall issue a notice of default directed to any respondent who fails to file a verified response to a complaint within twenty-eight (28) days of the date on which the complaint was received by the respondent, unless the respondent can demonstrate good cause as to why such notice should not be issued.

(2) The respondent shall, at the request of the officer, permit the officer to inspect and copy such records as may be relevant to the investigation. Should the respondent refuse to permit such inspection and copying, the commission may issue a subpoena for such records.

(b) An initial determination in writing shall be made by the investigator, stating whether or not there is probable cause to believe that this article has been violated, and on what facts such determination is based. Notice of the initial determination shall be furnished to the respondent and complainant within forty-two (42) days of the date the respondent files its verified response to the complaint.

(c) If the officer finds, with respect to any respondent, that the commission lacks jurisdiction or that probable cause does not exist, the officer shall issue and cause to be served on the respondent and the complainant an order dismissing the allegations of the complaint, along with a copy of this section explaining the complainant's right to appeal.

(d) An order dismissing the allegations of the complaint for lack of jurisdiction or lack of probable cause may be appealed to the commission by the complainant within twenty-eight (28) days of the date on which the order was served, by mailing to the chair of the commission a written request for an informal public hearing.

(1) The chair shall appoint one (1) member of the commission and two (2) other persons familiar with this chapter to hear the appeal.

(2) The informal hearing shall be held within twenty-eight (28) days of the date a written request is received by the chair of the commission.

(3) Notice of the informal hearing date shall be served upon the complainant and the respondent no less than seven (7) days in advance of the hearing date.

(4) The commissioner appointed to hear the appeal shall preside at the informal hearing at which time the officer will state the reasons for his/her initial determination of no probable cause and the complainant will state his/her objections to the determination. The respondent shall have the opportunity, but shall be under no obligation, to comment in support of the officer's determination.

(e) After hearing from all parties, a decision shall be made by majority vote of the body hearing the appeal to either:

(1) Issue an order in concurrence with the officer's finding of no probable cause; or

(2) Issue an order determining probable cause, stating on what basis such determination is made. Notice of the order determining probable cause shall be served upon the respondent within seven (7) days, after which the officer shall attempt conciliation in accordance with the procedures set forth herein.