

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 902
HOUSE BILL 1475

AN ACT TO ALLOW THE CITY OF GASTONIA TO ENACT LOCAL FAIR
HOUSING ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. The City Council of Gastonia may adopt ordinances to prohibit discrimination in housing based on race, color, national origin, religion, sex, handicap, or attained age between 40 and 70 years, inclusive. To assist in the enforcement of the ordinances, the Council may authorize or create an agency or commission of the City of Gastonia, hereinafter referred to as "the agency," to take such actions and to have such powers as might be appropriate and necessary to implement the ordinances, including the power to:

- (1) receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints;
- (2) mediate alleged violations of the ordinances;
- (3) issue orders against persons it finds, after notice and hearing, to have violated the ordinances; and
- (4) seek court enforcement of its orders.

Sec. 2. As used in this act, the word "person" includes individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations (except a bona fide private membership club, other than a labor organization, that is exempt from taxation under 501(c) of the Internal Revenue Code of 1954), trustees, trustees-in-bankruptcy, and receivers.

Sec. 3. Judicial review of agency orders shall be in accordance with Article 4 of Chapter 150B of the General Statutes provided, however, that the provisions of G.S. 150B-45 notwithstanding, petitions for judicial review shall be filed in the Superior Court of Gaston County. The term "agency," whenever used in Article 4 of Chapter 150B of the North Carolina General Statutes, shall mean the agency as authorized or created by the City Council of Gastonia under the authority of this act.

Sec. 4. The agency's orders shall be enforced as follows:

(a) If within 60 days after entry of an order of the agency, a respondent has neither complied with nor sought review of the order, any aggrieved person or the agency may apply to the Superior Court of Gaston County for an order of the court enforcing the order of the agency.

(b) Within 30 days after the court's receipt of the petition for enforcement of the agency's order or within such additional time as the court may allow, the agency shall

transmit to the court the original or a certified copy of the entire record of the proceedings leading to the order. With the permission of the court, the record may be shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for any additional costs attributable to the refusal. The court may require or permit subsequent corrections or additions to the record in its discretion.

(c) The hearing on the petition for enforcement of the agency's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but may take no evidence not offered at the agency hearing; except that in cases of alleged irregularities in procedure before the agency not shown in the record, testimony on the alleged irregularities may be taken by the court; and except that where no record was made of the proceeding or the record is inadequate, the court in its discretion may hear all or part of the matter de novo.

(d) The court shall issue an order requiring compliance with the agency's order unless it finds that enforcement of the agency's order would prejudice substantial rights of the party against whom enforcement is sought because the agency's findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

(e) If the court declines to enforce the agency's order for one of the reasons specified in paragraph (d) of this section, it shall either:

- (1) dismiss the petition;
- (2) modify the agency's order and enforce it as modified; or
- (3) remand the case to the agency for further proceedings.

(f) Any party to the hearing on the petition for enforcement of the agency's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.

Sec. 5. An ordinance adopted pursuant to this act may permit a complainant dissatisfied with the agency's final disposition of a matter to bring a civil action in the Superior Court Division of the General Court of Justice of Gaston County against the person allegedly engaging in the unlawful practice. A civil action for an unlawful housing practice may not be brought more than one year after the charge was filed with the agency or more than 60 days after the complainant's receipt of notification of the agency's final disposition of the matter, whichever is later.

If the court finds that the respondent has engaged in or is engaging in an unlawful housing practice charged in the complaint, the court may enjoin the respondent from engaging in the unlawful housing practice, and order any other action that may be appropriate.

In an action or proceeding under an ordinance adopted pursuant to this act, the court may in its discretion allow the prevailing party, other than the agency, a reasonable attorney's fee as part of the costs, and the agency shall be liable for costs the same as a private person.

Sec. 6. To assist in enforcement of ordinances authorized by this act, and investigate violations of the ordinances, the agency may subpoena witnesses, administer oaths, and compel the production of evidence. If a person fails or refuses to obey a subpoena issued by the agency, the agency may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue such orders after notice to all proper parties. The testimony of a witness before the agency pursuant to a subpoena authorized by this section may not be used against the witness on the trial of any criminal action other than a prosecution for false swearing committed on the examination. A person who, while under oath administered pursuant to this section, willfully swears falsely is guilty of a misdemeanor.

Sec. 7. The agency may at all reasonable times, have access to and copy any evidence of a person being investigated that relates to an unlawful housing practice under an ordinance adopted pursuant to this act and relevant to the charge under investigation. Information discovered during such an investigation may not be made public by the agency until offered into evidence in an administrative hearing or judicial proceeding.

Sec. 8. A public record concerning the investigation, conciliation, or mediation of an alleged violation of an ordinance authorized by this act is not subject to the provisions of G.S. 132-6 and G.S. 132-9.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 7th day of July, 1986.