

**ORDINANCE NO. \_\_ 2021**

**TO ENACT CHAPTER 565 OF THE CODIFIED ORDINANCES  
TO PROHIBIT UNLAWFUL DISCRIMINATION WITHIN THE  
VILLAGE OF ST. BERNARD.**

**WHEREAS**, it is the policy of the Village of St. Bernard, Ohio (hereinafter “Village of St. Bernard”), to safeguard the right and opportunity of all persons to be free from all forms of discrimination and to provide for an inclusive community for all residents, businesses, and visitors; and

**WHEREAS**, prejudice, intolerance, bigotry, and the discrimination occasioned thereby threaten the rights and proper privileges of the inhabitants of the Village of St. Bernard and menace the institutions and foundation of a free and democratic society; and

**WHEREAS**, the Village of St. Bernard is proud of its diverse community of individuals from various backgrounds, religions, ethnicities, nationalities, and ideologies including, without limitation, person with a different sexual orientation or gender identity or expression who are classes of persons who are currently not explicitly and fully protected under existing Ohio or federal anti-discrimination laws; and

**WHEREAS**, the Village of St. Bernard, in enacting this Ordinance encourages all persons to be fully engaged in protecting and supporting each person’s civil rights, to be free from discrimination, and to enjoy the liberties afforded to every citizen; and

**WHEREAS**, the intent of this Ordinance is not to penalize any religious organization or religious institution from exercising its constitutionally protected rights nor to burden any religious organization or religious institution in exercising its rights, but the purpose of this Ordinance is to recognize that all persons, including those with different sexual orientation, gender identity, or gender expression, should also enjoy certain rights which are equally protected to all persons by the Constitution of the United States and the Constitution of the State of Ohio; and

**WHEREAS**, it is the goal of the Village of St. Bernard and the purpose of this Ordinance to create a vehicle by which the Village and its residents can educate and create opportunities to support and protect the civil liberties and freedoms of every person who lives or works in the Village.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:**

**Section 1.** That Chapter 565, entitled “Civil Rights and Unlawful Discrimination,” is hereby enacted to read as follows:

**CHAPTER 565  
Civil Rights and Unlawful Discrimination**

**565.01 DEFINITIONS.**

As used in this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) "Age" means at least forty (40) years old, except as otherwise provided in this chapter.
- (b) "Aggrieved individual" means an individual who claims to have been injured by an unlawful discrimination act or practice described in this Chapter.
- (c) "Burial lot" means any lot for the burial of deceased persons within any public burial ground or cemetery, including but not limited to, cemeteries owned and operated by the Village of St. Bernard or companies or associations incorporated for cemetery purposes.
- (d) "Disability" or “Disabled” means an individual with:

- (1) a physical or mental impairment that substantially limits one or more of a natural person's major life activities, including the functions of caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
  - (2) a record of such a physical or mental impairment; or
  - (3) being regarded as having such a physical or mental impairment (whether or not true).
- (e) "Discriminate" and "discrimination" means, without limitation, any act, policy or practice, regardless of intent, which, because of age, ancestry, color, disability, ethnicity, familial status, gender expression, gender identity, height, marital status, national origin, military status, natural hair types and natural hair styles commonly associated with race, religion, sex, sexual orientation, physical characteristics, or weight, results in the unequal treatment or separation of any person, or denies, prevents, limits, or adversely affects the benefit or enjoyment of any person, or employment, ownership, or occupancy of real property, or public accommodations and public services.
- (f) "Employee" means an individual employed by any employer but does not include any individual employed in the domestic service of any natural person.
- (g) "Employer" means any person who regularly employs for compensation four (4) or more individuals, excluding the employer's parents, spouse, and children, including any person acting directly or indirectly in the interest of an employer, provided "employer" does not include an agency of government other than the Village of St. Bernard.
- (h) "Employment agency" means any persons regularly undertaking with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.
- (i) "Familial status" means either of the following:
- (1) One (1) or more individuals who are under eighteen (18) years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, or with a designee of the parent or guardian;
  - (2) Any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen (18) years of age.
  - (3) "Family" includes a single individual.
- (j) "Gender expression" means the actual or perceived external manifestations of gender, expressed through behavior or appearance, that may or may not be those traditionally associated with the individual's assigned sex at birth.
- (k) "Gender identity" means the actual or perceived gender-related identity, expression, appearance, mannerism, or other related characteristics, regardless of the individual's identity at birth.
- (l) "Housing accommodations" including any buildings or structure or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as a home residence or sleeping place of one (1) or more individuals, groups or families, whether or not living independently of each other; and any vacant land offered for sale or lease. It also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesman, or agent, or by any other person pursuant to authorization of the owner, by the owner, or by such person's legal representative.
- (m) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or for other mutual aid or protection in relation to employment.
- (n) "Marital status" means the legal status of being single, married, divorced, separated, or widowed.

(o) "Military status" means a person's status in "Service in the uniformed services" as defined in Section 5923.05 of the Ohio Revised Code.

(p) "National origin" means an individual's, or the individual's ancestor's, place of origin.

(q) "Natural hair types and natural hair styles commonly associated with race" includes, but is not limited to, hair style, type, and texture, treated or untreated, as well as protective hairstyles such as natural hair, afros, braids, twists, cornrows, and locks, which hair types and hair styles are commonly associated with African-Americans and their racial, ethnic, and cultural identities.

(r) "Person" includes one (1) or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, and trustees in bankruptcy, receivers, and other organized groups of persons. It also includes, but is not limited to, any owner, lesser, assignor, builder, manager, broker, salesman, agent, employee, lending institution, and the Village of St. Bernard and all political subdivisions, authorities, agencies, boards and commissions thereof.

(s) "Physical or mental impairment"

(1) "Physical or mental impairment" means any of the following except as provided in division (2) of this subsection:

- A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine;
- B. Any mental or psychological disorder, including, but not limited to, intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- C. Any mental or psychological disorder, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, sickle cell, human immunodeficiency virus infection, drug addiction, and alcoholism.

(2) "Physical or mental impairment" does not include any of the following:

- A. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;
- B. Compulsive gambling, kleptomania, or pyromania;
- C. Psychoactive substance use disorders resulting from current illegal use of controlled substance or the current use of alcoholic beverages.

(t) "Place of public accommodation" means any inn, tavern, restaurant, eating house, barbershop, bank or other financial services institution, public conveyance by air, land or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodation advantages, facilities, or privileges thereof are available to the public.

(u) "Protected Class" means a classification of individuals based on one or more the following characteristics: age, ancestry, color, disability, education, ethnicity, familial status, gender expression, gender identity, height, marital status, national origin, military status, natural hair types and natural hair styles commonly associated with race, religion, sex, sexual orientation, physical characteristics, or weight.

(v) "Racial profiling" means to stop, detain, investigate, search, seize or arrest an individual based on the racial or ethnic status of such individual except when based upon a physical description of a suspect in a criminal or traffic offense. The use of race or ethnicity as a factor for determining the existence of reasonable suspicion and/or probable cause in the

absence of actual physical evidence or observations linking that individual to a crime constitutes a violation of Section [565.07](#) of this chapter.

(w) "Religion" means aspects of religious belief, observance, and practice.

(x) "Restrictive covenant" means any specification in a deed, land contract or lease limiting the use of any housing because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status or any limitation based upon affiliation with or approval by any person, directly or indirectly, employing race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status as a condition of affiliation or approval.

(y) "Service in the uniformed services" means the performance of duty, on a voluntary or involuntary basis, in a uniformed service, under competent authority, and includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, and performance of duty or training by a member of the Ohio organized militia pursuant to Chapter 5923 of the Ohio Revised Code. "Service in the uniformed services" includes also the period of time for which a person is absent from a position of public or private employment for the purpose of an examination to determine the fitness of the person to perform any duty described in this division.

(z) "Sex," "because of sex," and "on the basis of sex," include pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth, or related medical conditions.

(aa) "Sexual orientation" means a person's actual or perceived heterosexuality, homosexuality, or bisexuality.

(bb) "Uniformed services" means the Armed Forces, the Ohio organized militia when engaged in active duty for training, inactive duty training, or full-time national guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency.

(cc) "Unlawful discriminatory practice" means any act prohibited by Chapter [565](#) of the Codified Ordinances of the Village of St. Bernard.

## **565.02 HOUSING DISCRIMINATION PROHIBITED**

(a) It shall be an unlawful discriminatory practice for a person to discriminate:

(1) In the sale, transfer, assignment, rental, lease, sublease, or financing of housing accommodations or otherwise deny or withhold housing accommodations from any prospective owner, occupant, or user of such housing accommodations.

(2) By representing to any person that housing accommodations are not available for inspection when they are available.

(3) By refusing to lend money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations or otherwise withhold financing of housing accommodations from any present or prospective owner, occupant, or user of such housing accommodations, provided such person lends money as one of the principal aspects of that person's business or incident to that principal business and not only as a part of the purchase price of an owner-occupied residence the owner is selling nor merely casually or occasionally to a relative or friend.

(4) In the terms or conditions of sale, transfer, assignment, rental, lease, or sublease of any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy or use of any housing accommodations of any present or prospective owner, occupant, or user of such housing accommodations.

(5) In the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of any housing accommodations of any present or prospective owner, occupant, or user of such housing accommodations.

(6) By printing, publishing, or circulating any statement or advertisement relating to the sale, transfer, assignment, rental lease, sublease, or acquisition of any housing accommodations or the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations which indicates any discrimination or preference, limitation, or specification based on the groups designated in this chapter.

(7) By making any inquiry, eliciting any information, making or keeping any record, or using any form of application containing questions or entries concerning race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin, except as may be otherwise required by or for compliance with state, federal, or local laws, rules and regulations, or other legal requirements or any other stipulation set forth by the U.S. Department of Housing and Urban Development in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by a mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations.

(8) By including in any deed, land contract, or lease of accommodations any restrictive covenant, or honoring or exercising, or attempting to honor or exercise, any such restrictive covenant, provided that the prior inclusion of a restrictive covenant in the chain of title shall not be deemed a violation of this provision.

(9) By inducing or soliciting or attempting to induce or solicit housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the ethnic composition of the block, neighborhood, or area in which the property is located, or inducing or soliciting or attempting to induce or solicit such sale or listing by representing that the presence or anticipated presence of persons of any race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin, in the area will or may have results such as the following:

(A) The lowering of property values;

(B) A change in the racial, religious, sexual or ethnic composition of the block, neighborhood, or area in which the property is located;

(C) An increase in criminal or antisocial behavior in the area;

(D) A decline in the quality of schools serving the area.

(10) By discouraging or attempting to discourage the purchase by prospective purchasers of any housing accommodations by representing that any block, neighborhood, or area has or might undergo a change with respect to the race, natural hair types and hair styles commonly associated with race, religion, sexual, or ethnic composition of the block, neighborhood, or area.

(11) By denying any otherwise qualified person access to or membership or participation in any real estate, brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or to discriminate against them in the terms or conditions of such access, membership, or participation.

(12) By coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, any right protected by this section.

(13) By force or threat of force, willfully injuring, intimidating or interfering with, or attempting to injure, intimidate, or interfere with:

(A) Any person because of their race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin

and because that person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting housing accommodations.

(B) Any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from:

(1) Participating, without discrimination in any of the activities, services, organizations, or facilities described in division (A)(13)(a) of this section.

(2) Affording another person or class of persons opportunity or protection so to participate.

(C) Any person because that person is or has been, or in order to discourage such person or any other person from lawfully aiding or encouraging other persons to participate, without discrimination in any of the activities, services, organizations, or facilities described in division (a)(13)(A) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.

(14) In any manner against any other person because that person has opposed any unlawful practice defined in this chapter, or because that person has made a charge, testified, assisted, or participated in any manner, in any investigation, proceeding, or hearing under the provisions of this chapter.

(b) No person shall discriminate in the sale, transfer, assignment, rental or lease, sublease, finance, or otherwise deny or withhold a burial lot from any prospective owner or user of such lot.

### **565.03 EMPLOYMENT DISCRIMINATION PROHIBITED**

(1) It shall be an unlawful discriminatory practice, except where based upon applicable national security regulations established by the United States:

(A) For any employer to discriminate by refusing to hire any person or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment.

(B) For any employer, employment agency, or labor organization to discriminate in the establishment, announcement or to follow a policy of discrimination by denying or limiting, through a quota system or otherwise, the employment or membership opportunities of any person or group of persons.

(C) For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person in the admission to employment in any program established to provide apprentice training.

(D) For any employer, employment agency, or labor organization to publish or circulate or to cause to be published or circulated any notice or advertisement relating to employment or membership which indicates any preference, limitation, specifications or discrimination based upon race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin.

(E) For any employment agency to discriminate by refusing or failing to accept register, classify properly, or refer for employment or otherwise to discriminate against any person.

(F) For any employer, employment agency, or labor organization to utilize in the recruitment or hiring of persons, any employment agency, placement service, labor organization, training school or center or any other employee-referring source known to discriminate.

(G) For any labor organization to discriminate against any person by limiting their employment opportunities or otherwise adversely affect their status as an employee, or their wages, hours, or employment conditions.

(H) For an employment agency to discriminate by complying with a request from an employer for the referral of applicants for employment if the request indicates, directly or indirectly, that the employer fails to comply with this chapter.

(I) For any labor organization to discriminate by limiting or classifying its membership.

(J) For any employer, employment agency or labor organization to:

(1) Elicit or attempt to elicit any information concerning the race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin of an applicant for employment or membership, except as may otherwise be required by or for compliance with state, federal, or local laws, rules and regulations.

(2) Make or keep a record of the race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin, of any applicant for employment or membership, except as may otherwise be required by or for compliance with state, federal, or local laws, rules and regulations.

(3) Use any form of application for employment or personnel or membership blank seeking to elicit information regarding race, natural hair types and hair styles commonly associated with race, gender, age, color, religion, disability status, marital status, sex, sexual orientation or gender identity, or ethnic, national or Appalachian regional origin, except as may otherwise be required by or for compliance with state, federal, or local laws, rules and regulations; but an employer holding a contract containing a nondiscrimination clause with the government of the United States or any department or agency thereof, may require an employee or applicant for employment to furnish documentary proof of United States citizenship and may retain such proof in the employer's personnel records and may use photographic or fingerprint identification for security purposes.

(K) For any employer, employment agency or labor organization to discriminate against any person because that person has opposed any practice forbidden by this chapter, or because that person has made a complaint or testified or assisted in any manner any investigation or proceeding under this chapter.

(L) For any person, whether or not an employer, employment agency or labor organization, to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice by this chapter or to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt directly or indirectly to commit any act declared by this chapter to be an unlawful discriminatory practice.

(2) This section does not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities.

#### **565.04 PUBLIC ACCOMMODATIONS DISCRIMINATION PROHIBITED**

It shall be an unlawful discriminatory practice:

(A) For any proprietor or that person's employee, keeper, or manager of a place of public accommodation to discriminate by denying any person except for reasons applicable alike to all persons the full enjoyment of the accommodations, advantages, facilities, or privileges thereof.

(B) For any person to aid, incite, compel, coerce, or participate in the doing of any act declared to be an unlawful discriminatory practice under this section.

#### **565.05 HUMAN RIGHTS COMMISSION**

A non-partisan Human Rights Commission is hereby established to be known as the Village of St. Bernard Human Rights Commission (the "Commission"). The purpose of the Commission is not to penalize, but to encourage and endeavor to bring about mutual understanding and respect among all persons, and to safeguard the right and opportunity of all persons to be free from all forms of discrimination.

(a) HUMAN RIGHTS COMMISSION; MEMBERS.

- (1) The Commission shall be comprised of three (3) members who, upon the recommendation of the Mayor and the members of the Council's Laws, Contracts and Claims Committee (the "Committee"), shall be appointed by a majority vote of Village Council. An individual interested in serving as a member of the Commission shall submit a resume or statement of interest to the Mayor for review by the Mayor and the Committee. The Mayor and Commission may forward to Council for Council's consideration up to five (5) applicants for each Commission Member position. At least one (1) of the Commission Members shall be a resident of the Village. Council may also appoint one (1) non-resident of the Village who has subject matter experience in investigating or addressing claims of discrimination or harassment. Council may also appoint one (1) member to the Commission who is a non-resident of the Village, but who is the owner, operator or official in a business located within the Village.
- (2) No Member shall be a current employee, officer, elected official, agent, or contractor with the Village. No member shall be a family member of a current employee, officer, elected official, agent, or contractor with the Village.
- (3) Members of the Commission shall serve voluntarily and without compensation, except for reimbursement of any reasonable and necessary expenses incurred in performance of duties for the Commission.
- (4) Except for Members' initial terms which shall be staggered, each Member shall serve a term of three years. Of the initial appointments after enactment of this Ordinance, one (1) Member shall be appointed to an initial term of three (3) years, one (1) Member shall be appointed to an initial term of two (2) years, and one (1) Member shall be appointed to an initial term of one (1) year. Members shall be eligible for reappointment however no Member shall serve more than three terms. Members may serve beyond the end of a term until a replacement is appointed by the respective authority. A Member shall be deemed to have abandoned the position and resigned upon missing three consecutive regular meetings of the Commission without being excused by the Commission as reflected in the Minutes. Any vacancy shall be filled by Council. Members appointed to fill a vacancy shall serve the remainder of the term of the vacant position.

(B) HUMAN RIGHTS COMMISSION; ORGANIZATION.

The Commission is a non-legislative public body of the Village. The Commission shall convene the initial organizational meeting of appointed Members at its earliest opportunity. The Commission shall organize at its initial meeting by electing one Member as Chair, one Member as Vice-Chair, and one Member as Secretary to record the Minutes of proceedings. Each officer shall serve for a term of one year or until a successor officer is duly elected.

(C) HUMAN RIGHTS COMMISSION; MEETINGS.

The Commission shall convene at least once each year to elect officers and as otherwise requested by a Member of the Commission, the Village Mayor, or the Village Council. Any two Members of the Commission shall constitute a quorum for the transaction of business. The Commission may act upon a majority vote of Members present at a meeting. The Commission shall report to the Village Council at least twice every calendar year.

- (1) Meetings of the Commission shall be open to the public except that Executive Sessions shall be allowed as permitted by the Charter and Ohio law. Public notice of any meetings must be provided at least 24 hours in advance, and Minutes must be maintained. Any documents, evidence, and other records maintained or created by the

Commission or submitted to the Commission, are public records subject to the Ohio Public Records Act and any recognized exceptions.

- (2) The Village shall provide appropriate orientation and training to the Commission at its annual organization meeting to help them fully understand their duties and responsibilities, the requirements for Open Meetings and Public Records, and the importance of confidentiality in the performance of their tasks.

(D) HUMAN RIGHTS COMMISSION; POWERS AND DUTIES.

The Commission is hereby authorized and empowered as follows:

- (1) The Commission may create and modify rules regarding its meetings, hearings, and procedures to carry out its functions. The adoption and modification of such rules shall be voted upon by Commission after a 30-day notice period. The Commission will forward copies of all such rules and procedures to the Committee. At its discretion, the Commission may accept volunteer services, including volunteer services of private legal counsel.
- (2) The Commission may create committees and sub-committees comprised of Members and other volunteers, which in its judgment will aid in effectuating the purposes of the Commission, including, but not limited to: a committee formed to study the problem of discrimination; a committee formed to foster good will, cooperation and conciliation among the diverse groups and population of the Village; and a committee formed to make recommendations to the Commission for the development and implementation of programs of formal and informal education and public awareness.
- (3) The Commission may, with the consent and approval of the Village Mayor, call upon other officers, departments and agencies of the Village government to assist in its programs and projects. The Commission may recommend to Village Council policies, procedures, practices and legislation in all relevant matters.
- (4) The Commission may enlist the cooperation of racial, religious, ethnic, community and civic organizations, and other identifiable groups of the Village, in its programs and campaigns devoted to the education and advancement of tolerance, understanding and equal protection of the law for all groups and individuals regardless of membership in a Protected Class.
- (5) The Commission may formulate and develop programs and opportunities (e.g., forums, workshops, research, and publications) to collect and disseminate information regarding the work of the Commission, to minimize or eliminate discrimination, and to promote good will among all persons who live in, work in, or visit the Village.
- (6) In the enforcement of this chapter, the Commission shall have the following powers:
  - (i) To receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints alleging violations of this Chapter;
  - (ii) To cooperate with relevant federal and state authorities;
  - (iii) To present an annual report to the mayor and Village council setting forth the number of complaints received during the prior year, as well as the disposition of the complaints, and the number of convictions for violation. The Commission shall publish this report and make it available in some format to the general public;
  - (iv) To require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation in person by deposition and require the production of documents relevant to the complaint. The Commission may make rules authorizing or designating any member or individual to exercise these powers in the performance of official duties;
  - (v) To cooperate with community, professional, civic and religious organizations, as well as state and federal agencies, in the development of public education programs regarding compliance with the provisions of this chapter and equal opportunity and treatment of all individuals;
  - (vi) As part of an investigation or in response to a triggering Complaint, to conduct tests to ascertain the availability of housing, both in sales and also in rentals of real property;

(vii) To make available for the Village's website information on this chapter, grievance procedures, the Commission's annual report and any other information that would further the purposes and intentions of this chapter.

(7) The Village Council may fund the establishment of the Commission and expenses related to its activities, in such amounts as Council determines, but it is anticipated and intended that the Commission's expenses will be funded by payments of fines and penalties for violations of this Ordinance and from donations received by the Commission (hereinafter the "Fund"). The Commission may seek and accept contributions, financial or otherwise, on behalf of the Village from any person including but not limited to any private, public, governmental, charitable, religious, labor, civic or benevolent organizations, in furtherance of its mission. Only those monetary donations specifically designated by the donor for educational purposes will be kept separate from the Fund and retained by the Commission for expenditures of an educational nature. All initial funds expended by the Village Council to establish and advance the duties and missions of the Commission are to be reimbursed from the Fund before the Commission expends any monies on educational efforts, other than those specifically designated by the donor as for education.

#### **565.06 COMPLAINTS – CONSIDERATION BY THE COMMISSION.**

(a) A person claiming to be aggrieved by a discriminatory practice, or a member of the Commission, may file with the Commission a written sworn complaint stating that a discriminatory practice has been committed, setting forth the facts sufficient to enable the Commission to identify the persons charged (hereinafter the Respondent). Within 15 business days after receipt of the complaint, the Commission shall serve on the Complainant a notice acknowledging the filing of the complaint and informing the Complainant of the Respondent's time limits.

(b) The Commission shall, within 15 business days of the Commission acknowledging receipt of filing of the complaint, furnish the Respondent with a copy of the complaint and a notice advising the Respondent of the Respondent's procedural rights and obligations under this chapter.

(c) The complaint must be filed within 180 days after the commission of the alleged discriminatory practice.

(d) The Commission shall commence an investigation of the complaint within 30 days after the filing of the complaint. The Commission, or designee, shall promptly investigate the matter to determine whether the discriminatory practice exists.

(e) If it is determined that there is no reasonable cause to believe that the Respondent has engaged in a discriminatory practice, the Commission shall furnish a copy of the order to the Complainant, the Respondent and such public officers and persons as the Commission deems proper.

(f) The Complainant, within 30 days after receiving a copy of the order dismissing the complaint, may file with the Commission an application for reconsideration of the order.

(g) Upon such application, the Commission shall review the original investigation and make a determination within 30 days whether there is reasonable cause to believe that the Respondent has engaged in a discriminatory practice.

(h) If it is determined that there is no reasonable cause to believe that the Respondent has engaged in a discriminatory practice, the Commission shall issue an order dismissing the complaint after reconsideration and furnish a copy of the order to the Complainant, the Respondent and such public officers and persons as the Commission deems proper.

#### **565.07 CONCILIATION AGREEMENTS.**

(a) If the Commission determines after investigation that there is reasonable cause to believe that the Respondent has engaged in a discriminatory practice, the Commission shall endeavor to eliminate the alleged discriminatory practices by conference, conciliation and persuasion.

(b) The terms of a conciliation agreement reached with a Respondent shall require the Respondent to refrain from discriminatory practices in the future and shall make such further provisions as may be agreed upon between the Commission or its assigned staff and the Respondent.

(c) If a conciliation agreement is entered into, the Commission shall issue and serve on the Complainant an order stating its terms. A copy of the order shall be delivered to the Respondent and such public officers and persons as the Commission deems proper.

(d) Except for the terms of the conciliation agreement, the Commission shall not make public, without the written consent of the Complainant and the Respondent, information concerning efforts in a particular case to eliminate discriminatory practice by conference, conciliation or persuasion, whether or not there is a determination of reasonable cause or a conciliation agreement. The conciliation agreement itself shall not be made public unless the Complainant and the Respondent otherwise agree and the Commission also determines that disclosure is not required to further the purposes of this chapter.

(e) At the expiration of one year from the date of a conciliation agreement, and at other times in its reasonable discretion, the Commission or its staff may investigate whether the Respondent is following the terms of the agreement.

(f) If a finding is made that the Respondent is not complying with the terms of the agreement, the Commission shall take such action as it deems appropriate to assure compliance.

#### **565.08 HEARINGS.**

(a) If a conciliation agreement has not been reached within 90 days after an administrative determination of reasonable cause to believe that discrimination took place, the Commission shall serve on the Respondent by mail or in person a written notice, together with a copy of the complaint as it may have been amended, or a copy of the letter of determination, requiring the Respondent to answer the allegation(s) of the complaint at a hearing before the Commission or another individual pursuant to its rules, at a time and place specified by the hearing examiner or examiners after conference with the parties or their attorneys. A copy of the notice shall be furnished to the Complainant and such public officers and persons as the Commission deems proper.

(b) A member of the Commission who filed the complaint or endeavored to eliminate the alleged discriminatory practice by conference, conciliation or persuasion shall not participate in the hearing or in the subsequent deliberation of the Commission. In the case where a member of the Commission filed a complaint and a hearing or subsequent deliberation of the Commission is required, a temporary Commissioner shall be appointed by the Village Mayor.

(c) The Respondent may file an answer with the Commission by registered or certified mail in accordance with the rules of the Commission before the hearing date. The Respondent may amend an answer at any time prior to the issuance of an order based on the complaint, but no order shall be issued unless the Respondent has had an opportunity of a hearing on the complaint or amendment on which the order is based.

(d) A Respondent, who has filed an answer or whose default in answering has been set aside for good cause shown, may appear at the hearing with or without representation, may examine and cross-examine witnesses and the Complainant and may offer evidence.

(e) The Complainant, and, in the discretion of the Commission, any person may intervene, examine and cross-examine witnesses and present evidence.

(f) If the Respondent fails to answer the complaint, the Commission may find the Respondent in default. Unless the default is set aside for good cause shown, the hearing may proceed on the evidence in support of the complaint.

(g) Efforts at conference, conciliation and persuasion shall not be received in evidence.

(h) Testimony taken at the hearing shall be under oath and recorded. If the testimony is not taken before the Commission, the record shall be transmitted to the Commission.

(i) In a proceeding under this chapter, the production of a written, printed or visual communication, advertisement or other form of publication, or a written inquiry, or record, or other document purporting to have been made by a person shall be prima facie evidence that it was authorized by the person.

(j) All hearings conducted under this section shall be conducted in accordance with Chapter 119 of the Ohio Revised Code.

#### **565.09 FINDINGS AND ORDERS.**

(a) If the Commission determines that Respondent has not engaged in a discriminatory practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the Complainant, the Respondent and such public officers and persons as the Commission deems proper.

(b) If the Commission determines that Respondent has engaged in a discriminatory practice, the Commission shall state its findings of fact and conclusions of law and shall issue an order requiring the Respondent to cease and desist from the discriminatory practice and to take such affirmative action as in the judgment of the Commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the Respondent, the Complainant and to such public officers and persons as the Commission deems proper.

(c) No person shall knowingly file a Complaint including a false or fraudulent information, submitted in bad faith with the intent to defame or cause other reputational or material harm to an individual, entity or organization (for purposes of this chapter, a "False Complaint"). A determination or finding by the Commission that a Complaint is unsubstantiated is, alone, insufficient to prove the existence of a False Complaint. If the Commission determines that Complainant has filed a False Complaint, the Commission may impose a civil penalty on the Complainant, as reference in Section 565.10 of this Chapter.

#### **565.10 REMEDIES.**

(a) Affirmative action ordered under this section may include, but is not limited to:

(1) Hiring, reinstatement or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;

(2) Admission or restoration of individuals to union membership, admission to or participation in, a guidance program, apprenticeship, training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;

(3) Admission of individuals to a place of public accommodation;

(4) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges and services of the Respondent;

(5) Reporting as to the manner of compliance;

(6) Posting notices in conspicuous places in the Respondent's place of business in the form prescribed by the Commission and inclusion of such notices in advertising material;

(7) Payment to the Complainant of damages for an injury, including humiliation and embarrassment, caused by the discriminatory practice, and costs, including reasonable attorney fees;

(8) The Commission may impose civil penalties and may issue a cease and desist order for a Complainant's or Respondent's failure to appear at an agreed

upon conciliation, for a violation or breach of a conciliation agreement, and/or for any other violation of this chapter in the following amounts:

A. Two hundred fifty dollars (\$250) for a Complainant's or Respondent's failure to appear at an agreed upon conciliation without a showing of good cause, or Complainant's or Respondent's first breach of a conciliation agreement, or any other violation of this chapter, as determined by the Commission.

B. Five hundred dollars (\$500) for a Complainant's or Respondent's second breach of a conciliation agreement or a second violation of any other provision of this chapter, as determined by the Commission.

C. One thousand dollars (\$1,000) for a Complainant's or Respondent's third or any subsequent breaches of a conciliation agreement, or a third or subsequent violation of any other provision of this chapter, as determined by the Commission.

(9) Upon the failure or refusal of a person to pay the foregoing civil penalties, a civil penalty may be enforced and collected through a civil action brought in the Hamilton County Municipal Court and the court costs shall be charged to the defending party. The civil fines shall be used to offset the costs of administering this Chapter.

(10) If the Complainant fails to appear at an agreed upon conciliation without a showing of good cause, the Complaint may be dismissed at the discretion of the Commission.

(11) A civil penalty for the filing of a False Complaint under Section 565.09(c) of this Chapter may be enforced and collected through a civil action brought in the Hamilton County Municipal Court and the court costs shall be charged to the defending party. The civil penalties for the filing of a False Complaint may be imposed on a Complainant as follows:

A. Two hundred fifty dollars (\$250) for the filing of the first False Complaint.

B. Five hundred dollars (\$500) for the filing of a second False Complaint.

C. One thousand dollars (\$1,000) for the filing of a third and any subsequent False Complaint.

(12) Such other remedies as shall be necessary and proper to eliminate all the discrimination identified by the evidence submitted at the hearing or in the record.

#### **565.11 JUDICIAL REVIEW.**

A Complainant or Respondent aggrieved by an order of the Commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, may obtain judicial review in accordance with applicable law.

#### **565.12 SUBPOENAS.**

(a) Upon written application to the Commission, a party to a proceeding is entitled as of right to the issuance of subpoenas for deposition or hearing in the name of the Commission by an individual designated pursuant to its rules requiring attendance and the giving of testimony by witnesses and the production of documents.

(b) A subpoena so issued shall show on its face the name and address of the party at whose request the subpoena is directed.

(c) On petition of the person to whom the subpoena is directed and notice to the requesting party, the Commission or an individual designated pursuant to its rules may vacate or modify the subpoena.

(d) Any depositions of witnesses shall be taken as prescribed by the Ohio Rules of Civil Procedure.

(e) Witnesses whose depositions are taken, or who are summoned before the Commission or its agents, will be entitled to the same witness and mileage fees as are paid to the witnesses subpoenaed in municipal court.

(f) If a person fails to comply with a subpoena issued by the Commission, the municipal court may issue an order requiring compliance. In any proceeding brought under this section, the court may modify or set aside the subpoena.

#### **565.13 RESISTANCE TO, OBSTRUCTION, ETC., OF COMMISSION.**

Any person who willfully resists, prevents, impedes or interferes with the Commission, its members, agents or agencies in the performance of duties pursuant to this Act, or violates any order of the Commission shall be subject to a fine of not more than five hundred dollars in addition to such order or decree that may be issued.

#### **565.14 STATE/FEDERAL REMEDIES.**

(a) The remedies provided for in this chapter are in addition to, not in lieu of, those provided for by state and federal law. This chapter shall therefore not be construed so as to limit a person's right to file complaint with any state or federal agency, board, tribunal or court vested with jurisdiction to receive, review and act upon complaints of discrimination. This chapter shall not be construed as limiting the right of any person to seek remedies in courts of competent jurisdiction pursuant to state or federal law which grant private rights of action to persons aggrieved by discriminatory acts of the type prohibited by this chapter. There is no requirement that an aggrieved person file a complaint with the Village pursuant to this chapter before seeking any other federal, state or other remedy available to the person.

(b) A person's election to seek remedies provided for in this chapter shall not operate to toll any statute of limitation set forth in state or federal law for pursuing remedies under state or federal law for acts of discrimination of the type prohibited by this chapter.

#### **565.15 EXCEPTIONS**

Unless otherwise provided by law, nothing in this section shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for a non-commercial purpose, from limiting the rental or occupancy for the lodgings to its members or from giving preference to its members.

The application and enforcement of the protections created herein are limited solely to the terms of this chapter and such terms shall not create nor enhance protected class status for any other purpose including public and private affirmative action program eligibility. The term "affirmative action program" shall include any program administered by any private or public entity for the purpose of providing preferential treatment for those in a protected class.

Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice is not intentionally devised or operated to contravene the prohibitions of this chapter and can be justified by business necessity. Under this chapter, a "business necessity" exception is applicable only in each individual case where it can be proved by a Respondent that, without such exception, such business cannot be conducted; a "business necessity" exemption cannot be justified by the factors of increased costs to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterizations of one group as opposed to another, and the preferences of co-workers, employers, customers or any other person.

The provisions of Chapter 565 shall not apply to any act or charge of discrimination that is currently or was previously the subject of any state or federal civil, criminal or administrative proceeding.

#### **565.16 SEVERABILITY**

Chapter 565 and each section and provision of said chapter thereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such provision to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is

hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

**565.17 PROSPECTIVE APPLICATION**

Chapter 565 and each section and provision of said chapter thereunder are not to be give retroactive effect but are prospective in their application. No Complaint may be filed hereunder for allegedly discriminatory behavior occurring prior to the effective date of this Ordinance.

\_\_\_\_\_  
President of Council

ATTEST:

\_\_\_\_\_  
Clerk of Council

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. \_\_, 2021, was made by posting true copies of the same in the most public places designated by Council: St. Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertus Street Park; Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15) days or more commencing \_\_\_\_\_, 2021.

ATTEST: \_\_\_\_\_ DATE \_\_\_\_\_  
Clerk of Council

Approved as to form \_\_\_\_\_ Date \_\_\_\_\_  
Director of Law