August 10, 2010

Kenneth J. Carroll, J.D., M.P.A.

Director, Fair Housing Assistance Program Division

Office of Enforcement - Office of Fair Housing and Equal Opportunity

U.S. Department of Housing and Urban Development

451 7th Street SW, Room 5206

Washington, DC 20410

RE: Substantial Equivalency Review

Cedar Rapids Civil Rights Ordinance, Municipal Code Chapter 69

Dear Mr. Carroll:

As promised, I am writing to provide you with a copy of the proposed revisions to the Cedar Rapids Civil Rights Ordinance (the Ordinance), endorsed by the Civil Rights Commission on July 21, 2010, that addresses the concerns and incorporates the recommendations noted in your correspondence dated December 1, 2009. By this letter, the Commission is requesting that your office certify that the Ordinance is substantially equivalent to the Fair Housing Act, 42 U.S.C. §§ 3601-18.

The revised document now emphasizes substantial equivalency, among other ways, by requiring the Commission and Courts to interpret Section 69.19 as providing at least the same rights that complainants have under the Fair Housing Act. Section 69.19(t) notes also that the Ordinance provides *greater* or different rights and remedies than bestowed by federal or state fair housing law.

**Issues Noted in the December 1, 2009 Letter:** Many of your original concerns relate to possible confusion that might arise from the Ordinance’s organization, some of its definitions and the cross-references to or interplay between fair housing and non-housing provisions. As we discussed, the Ordinance is based upon and largely derived from the Iowa Civil Rights Act (ICRA), which requires local agencies to provide at least the same protections afforded under state law. In many instances the City of Cedar Rapids is not at liberty to depart from the ICRA. Nevertheless, we have incorporated your recommendations; updates to the enforcement and powers and duties sections are straightforward responses to your letter and do not need further elaboration. Moreover, we incorporated language, definitions and provisions directly from the Fair Housing Act and its implementing regulations into Section 69.19 to eliminate confusion.

**Issues Relating to Disability and Animals Used by Persons with Disabilities***:* Additional changes have been made that do merit your attention, which were discussed at great length during your July 7, 2010 conference call with Assistant City Attorney Elizabeth Jacobi and University of Iowa Legal Clinic representatives Len Sandler and Jessica Susie. The Ordinance has been revised to define the term “disability” in the broadest, most inclusive manner possible for housing, public accommodations, and other purposes. It now defines terms and clarifies the rights and responsibilities of housing providers and persons with disabilities who use animals to assist, support or perform services for them. These provisions are explained in greater detail below.

Definition of “Disability”: Section 69.03 contains the vast majority of the definitions used throughout the Ordinance. Fair Housing Section 69.19.03 adopts by reference these definitions as well as terms that apply exclusively to housing, such as “dwelling” and “Secretary.” As you know, the Fair Housing Act, the Americans with Disabilities Act (ADA) and ICRA differ with regard to who qualifies as an individual with a disability (or handicap). The Ordinance adopts a single comprehensive definition of disability that is drawn from the ADA Amendments Act and modified slightly to incorporate FHAA- and retain ICRA-required language. The definition requires that disability be construed in favor of broad coverage; by doing so, we shift the focus from whether a person is protected by law, to whether the respondent is meeting its obligations under law. The core FHAA and ADA definitions are otherwise virtually identical, and the single all-inclusive definition, used across-the-board, preserves the intent and integrity of both laws.

Animals Used by Individuals with Disabilities: The definition of service animal in the April 15, 2009 proposal was derived from the ADA. It was intended to apply only to public accommodations and employment. We agree that, left uncorrected, that definition could erroneously be applied to housing, too, even though it required that animals be trained. To remedy the situation and to distinguish and clarify how animals are classified and treated in different circumstances, Section 69.03 now includes definitions of “service animal” for non-housing complaints and “assistance animal” for fair housing complaints.

The new approach retains the reasonable accommodation framework laid out by the FHAA, the ICRA and the current Ordinance. In contrast to these laws, the July 21, 2010 revision furnishes definitions, guidance and dos and don’ts for housing providers, applicants and tenants. As Ms. Jacobi, Prof. Sandler and Ms. Susie made clear during the teleconference, the law in Iowa regarding animals is unclear *precisely* because the existing laws and regulations lack specifics. To fill that void, courts have improperly imported the ADA definition of service animal into the FHAA and ICRA, or used the definition of service animal or assistance animal from Iowa Code Chapter 216C’s “white cane laws” that require animals to have specific training or certification. Both approaches undermine enforcement and violate federal and state law.

The Commission hosted its annual Fair Housing Conference this past June with HUD Assistant Secretary John Trasviña as the keynote speaker. Many landlords, business owners, realtors, officials and advocates said they were confused about how to respond when approached by a person with a disability accompanied by a dog, cat, snake, chimp or other animal. Audience members expressed concern about liability, despite the multitude of resources, brochures, Internet sites and support centers available to them. The situation was made even more problematic recently when the Department of Justice published new ADA Title II and Title III regulations that limit reasonable accommodations to trained dogs and miniature horses.

The definition of “assistance animal” in Section 69.03 reflects the language used by HUD in litigation, agency proceedings, published guidance, pet rules, formal response to proposed rulemaking for ADA Titles II and III, HUD/DOJ reasonable accommodations guidance, settlements and multifamily housing handbooks. It includes any animal that assists, supports, or provides a service to a person with a disability, and includes a) support animals whose mere presence, without training, provide therapeutic benefits, and b) assistive animals that perform a disability-related service, task, or function for an individual with a disability, whether or not the animal is trained. No certification, emblem or other credentials are necessary, and the Ordinance makes clear that assistance animals are not pets.

**The Ordinance Honors the Letter, Spirit and Integrity of the Fair Housing Act**: We understand that your office is reluctant to allow local agencies to depart from the FHAA’s reasonable accommodation approach and would prefer that the state civil rights commission take the lead on this topic. Earlier this year, Professor Sandler advised the state commission to incorporate similar provisions into the ICRA. Unfortunately, there are no plans to file a corrective bill in the next General Assembly. In the session that ended in March, the legislature amended Chapter 216C, but did not take the opportunity to remove the mandate that assistance animals undergo specialized training and certification.

The Commission believes it is absolutely necessary for Cedar Rapids or another local agency to take the lead on these matters in light of the inability or unwillingness of others to file or pass remedial legislation in any reasonable time frame. And as you know, the Mayor and City Council cannot act on the proposal until your office certifies the Ordinance as being substantially equivalent to the Fair Housing Act.

On behalf of the Commission members and staff, I extend my thanks to you and to your office for conducting a comprehensive and thorough review. We are certain that the Ordinance honors the letter, spirit, and integrity of the Fair Housing Act and will protect Cedar Rapidians from unlawful discrimination to the maximum extent possible. Please do not hesitate to contact me or Elizabeth Jacobi if you have questions or concerns.

In anticipation of a prompt and favorable response, I remain,

Sincerely yours,

Karl Cassell

Executive Director

Enc: Proposed Revisions to Municipal Code Chapter 69 as Endorsed by the Cedar Rapids Civil Rights Commission on July 21, 2010

Cc: Elizabeth Jacobi, Assistant City Attorney

Leonard A. Sandler, Clinical Professor of Law

Senator Tom Harkin

Senator Chuck Grassley

Assistant Secretary of Fair Housing and Equal Opportunity John Trasviña.