

BILL NO.: 4914

ORDINANCE NO.: _____

Introduced by: City Manager Nathan Mai-Lombardo

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE THE ATTACHED CONCILIATION AGREEMENT BETWEEN THE CITY OF BERKELEY AND SHIRLEY BROWN (THE COUNCIL FINDS THAT AN EMERGENCY EXISTS AND DECLARES THAT PASSAGE OF THIS ORDINANCE IS NECESSARY FOR THE PRESERVATION OF THE WELFARE OF THE CITIZENS OF THE CITY OF BERKELEY.)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:

- Section 1.** The City Council of the City of Berkley hereby authorizes the Mayor to enter into and execute the attached Conciliation Agreement and Voluntary Compliance Agreement with Shirley Brown.
- Section 2.** The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its passage.
- Section 4.** The Council does hereby find and declare that an emergency exists, which requires the immediate passage of this ordinance for the preservation of the welfare of the citizens of the City of Berkeley.

1st Reading this _____ day of _____ 2023

2nd Reading this _____ day of _____ 2023

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2023

Babatunde Deinbo, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved as to Form:
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Williams	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Anthony	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman Hindeleh	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman-at-Large Crawford-Graham	Aye	___	Nay	___	Absent	___	Abstain	___
Mayor Deinbo	Aye	___	Nay	___	Absent	___	Abstain	___

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**CONCILIATION AGREEMENT
AND VOLUNTARY COMPLIANCE AGREEMENT**

**Pursuant to Section 109 of Title I of the Housing and Community Development Act
of 1974, as amended; and Title VIII of the Civil Rights Act of 1968, as amended**

between

Shirley Brown
6115 Jackson Avenue
Berkeley, MO 63134

(Complainant)

and

City of Berkeley, Missouri
8425 Airport Road
Berkeley, MO 63134

(Respondent)

Approved by the FHEO Region VII Director on behalf of the
United States Department of Housing and Urban Development

FHEO CASE NUMBER: 07-21-7942-8
FHEO CASE NUMBER: 07-21-7942-9

A. PARTIES AND SUBJECT PROPERTY

- Shirley Brown (Disabled) (Complainant)
- City of Berkeley, Missouri (Respondent)
- The subject property is located at 8111 January Avenue, Berkeley (St. Louis County), Missouri 63134.

B. STATEMENT OF FACTS

A complaint was filed on August 25, 2021, with the United States Department of Housing and Urban Development (hereinafter “the Department”) alleging that the Respondent violated § 804(f)(1)(A) and 804(f)(2)(A) of the Fair Housing Act as amended in 1988, 42 U.S.C. 3601 *et seq.* (the Act); and Section 109 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 *et seq.* (Section 109), on the basis of disability by Respondent’s implementation of City of Berkeley, Missouri’s Ordinance No. 4320 §§ 1 *et seq.*, and by Respondent’s targeting Complainant, including demanding that she vacate the subject property, thus making housing unavailable to her.

Respondent denies: (i) having discriminated against Complainant, and (ii) having violated any federal laws or regulations, but agrees to settle the claims in the underlying action and to ensure compliance with its responsibilities under Section 109 by entering into this Conciliation Agreement and Voluntary Compliance Agreement.

The Department has not investigated Complainant’s allegations to determine their validity, and therefore has not concluded in any manner that Respondent has violated any federal laws or regulations, as Complainant has alleged.

C. TERM OF AGREEMENT

1. This Conciliation Agreement and Voluntary Compliance Agreement (hereinafter “Agreement”) shall govern the conduct of the parties to it for a period of one year from the Effective Date of the Agreement. However, it is expressly agreed that the one-year period described in the preceding sentence shall not apply to Section E, paragraphs 12 and 13 of this Agreement. It is the intention of the parties to this Agreement that the terms set forth in Section E, paragraphs 12 and 13 never expire.

D. EFFECTIVE DATE

2. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act nor a Voluntary Compliance Agreement pursuant to Section 109, unless and until such time as it is approved by the U.S. Department of Housing and Urban Development, through the FHEO Region VII Director, or his or her designee.
3. This Agreement shall become effective on the date on which it is approved by the FHEO Region VII Director, Office of Fair Housing and Equal Opportunity (FHEO), Region VII, Kansas City, Kansas, of the United States Department of Housing and Urban Development (HUD), which shall be known herein as the "Effective Date."

E. GENERAL PROVISIONS

4. The parties acknowledge that this Agreement is a voluntary and full settlement of the disputed complaint and alleged violations. The parties affirm that they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
5. The Respondent acknowledges that it has an affirmative duty not to discriminate under the Act and Section 109 and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under either statute. Respondent further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and statutory and regulatory violations of the Act and Section 109.
6. This Agreement does not affect the obligation of the City of Berkeley, Missouri, recipient of Federal funds, to have all programs, facilities, activities and policies in compliance with Section 109; nor does it address whether the entirety of the Recipient's operations are in compliance.
7. This Agreement, after it has been approved by the FHEO Region VII Director, or his or her designee, is binding upon Respondent, its employees, heirs, successors and assigns.
8. It is understood that, pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the FHEO Region VII Director, or his or her designee, it is a public document.
9. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondent made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction. The Department retains the right to conduct a compliance review under Section 109.

10. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the FHEO Region VII Director.
11. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, the original executed signature pages to be attached to the body of the Agreement to constitute one document. A copy of an original signature, including, but not limited to an original signature transmitted by facsimile, a scanned copy of an original signature transmitted by electronic mail, e.g. via a "pdf" file, or an electronically signed document will be deemed to be an original and shall be admissible into evidence in any proceeding as though it were an original. Likewise, a copy or a "pdf" copy of the fully executed Agreement shall have the same effect as an original of the fully executed Agreement and shall be admissible into evidence in any proceeding as though the same were an original.
12. Shirley Brown, Complainant, hereby forever covenants not to sue, forever waives, and forever releases the Department and Respondent City of Berkeley, Missouri; their heirs, executors, assigns, agents, members, managers, owners, officers, employees and attorneys regarding (and from) any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 07-21-7942-8 and 07-21-7942-9, or which could have been filed in any action or suit arising from said subject matter.
13. Respondent City of Berkeley, Missouri, hereby forever covenants not to sue, forever waive, and forever release the Department and Complainant Shirley Brown and their heirs, executors, assigns, agents, officers, employees and attorneys regarding (and from) any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 07-21-7942-8 and 07-21-7942-9.

F. RELIEF FOR COMPLAINANT

14. Respondent agrees to take the following actions, and, as set forth in this Agreement, shall provide the Department with written certification that these requirements have been met:
 - (a) Within fourteen (14) calendar days of the effective date of this Agreement, Respondent City of Berkeley, Missouri shall pay to Complainant Shirley Brown the total sum of Fifteen Thousand Dollars (\$15,000.00) in the form of a Cashier's Check.

- (b) The check shall be made payable to Shirley Brown and mailed to her by certified mail at the following address:

6115 Jackson Avenue
Berkeley, MO 63134

G. RELIEF IN THE PUBLIC INTEREST

15. Within one hundred and eighty (180) calendar days from the effective date of this Agreement, Respondent agrees to the following:
- (a) All members of the City Council of the City of Berkeley, Missouri shall attend a minimum of two hours of fair housing training that focuses on the Respondent's obligations under the Act.
 - (b) The Respondent understands and acknowledges its right to choose any appropriate, qualified third-party agency or facility to conduct the training. If the Respondent chooses to use a qualified third-party agency or facility, the Respondent agrees to submit a written request to the FHEO Enforcement Branch Chief for review of the qualified third-party that includes the proposed course outline, syllabus, agenda, and training materials, or website that contains such information, etc., at least thirty (30) days before the scheduled training date. Upon receipt of the Respondent's written request, FHEO will review and respond with either a comment or reject the trainer based on the qualifications of the third-party and the content of the training.
 - (c) The Respondent, after receipt of FHEO's review, may retain and use the services of a qualified third party to prepare and conduct the training consistent with the materials submitted by the Respondent and in compliance with this Agreement.
 - (d) Respondent also agrees to repeal the City of Berkeley, Missouri's City Ordinance No. 4320 §§ 1 *et seq.*, agrees to certify that the ordinance has been repealed, and agrees that the City of Berkeley, Missouri will not reinstate the ordinance unless ordered to by a court of law.

H. MONITORING

16. The Department shall determine compliance with the terms of this Agreement. During the term of this Agreement, HUD may review compliance with this Agreement. Should HUD reasonably believe that the Respondent has violated this Agreement, HUD may examine witnesses, inspect Respondent's property identified in Section A of this Agreement, and copy pertinent records of the Respondent. Respondent agrees to provide their full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

I. REPORTING AND RECORDKEEPING

17. Within ninety (90) calendar days from the effective date of this Agreement, Respondent City of Berkeley, Missouri shall certify and provide documentation to support compliance with Section F, paragraph 14 of this Agreement to FHEO Region VII Enforcement Branch Chief, Kellie Paris Asaka.

Examples of said documentation for Section F, paragraphs 14(a) and (b) may include copies of the checks, receipts of payment by Complainant, etc.

18. Within thirty (30) calendar days of the completion of the training as set out in Section G, paragraph 15(a), (b), and (c) of this Agreement, Respondent shall submit attendance rosters that contain a printed or otherwise legible name and personal signature of each person who attended the training referenced in Section G, paragraph 15(a), (b), and (c) of this Agreement.

19. Within ninety (90) calendar days from the effective date of this Agreement, Respondent City of Berkeley, Missouri shall certify and provide documentation to support compliance with Section G, paragraph 15 (d) of this Agreement to FHEO Region VII Enforcement Branch Chief, Kellie Paris Asaka.

Examples of said documentation for Section G, paragraph 15(d) shall include official records certifying that the ordinance has been repealed, and the effective date of the repeal of the ordinance.

20. Respondent agrees to reference HUD Case Numbers 07-21-7942-8 and 07-21-7942-9 on all correspondence to the Department, and submit or deliver all required certifications and documentation of compliance with this Agreement to: kellie.paris.asaka@hud.gov.

J. CONSEQUENCES OF BREACH

21. Whenever the Department has reasonable cause to believe that the Respondent has breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act and pursuant to 24 C.F.R. § 8.57(a)(1) of the regulations implementing Section 109.
22. The parties understand further that failure to carry out the terms of this Agreement may result in suspension or termination of, or refusal to grant or to continue federal financial assistance, or other actions authorized by law pursuant to the Act or any other authority within the Department's jurisdiction.

K. SIGNATURES (1 of 2)

Shirley Brown, Complainant

Date

K. SIGNATURES (2 of 2)

City of Berkeley, Missouri
By:

Date

L. APPROVAL

Natasha Watson, FHEO Region VII Director,
Office of Fair Housing and Equal Opportunity (FHEO)

Date