

**CITY OF ATLANTIC BEACH  
CITY COMMISSION  
AMENDED AGENDA  
FEBRUARY 24, 2014**

**WORKSHOP  
(IMMEDIATELY FOLLOWING 6:30 PM SPECIAL CALLED MEETING)**

**for  
DISCUSSION OF AGENDA ITEMS ON MARCH 10, 2014 COMMISSION  
MEETING**

Call to order.

**WORKSHOP-ONLY ITEMS:**

1. Discussion on process for City Attorney.
2. Discussion on process for City Manager Search Firm.
- \*3. Guest Speaker- Affiliate Attorney for the Liberty Counsel to speak on the HRO. (Commissioner Hill)
- \*4. Discussion on HRO memo and proposed ordinance. (Commissioner Mark) (Note: The memo and proposed ordinance is available in the electronic packet only.)

**DISCUSSION OF AGENDA ITEMS ON MARCH 10, 2014 COMMISSION MEETING:**

1.
  - A. Approve the minutes of the Regular Commission meeting of February 10, 2014.
  - B. Approve the minutes of the Commission Workshop of January 27, 2014.
  - C. Approve the minutes of the Beaches Habitat for Humanity Community Meeting of January 22, 2014.
2. **Courtesy of Floor to Visitors**
  - A. Presentation from Purvis Gray regarding the Audited Financial Statement of FY2012-2013.
3. **Unfinished Business from Previous Meetings**
  - A. City Manager's Follow-up Report.

**4. Consent Agenda**

ALL MATTERS LISTED UNDER THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE BY THE CITY COMMISSION AND WILL BE ENACTED BY ONE MOTION IN THE FORM LISTED BELOW. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED SEPARATELY. SUPPORTING DOCUMENTATION AND STAFF RECOMMENDATIONS HAVE BEEN PREVIOUSLY SUBMITTED TO THE CITY COMMISSION ON THESE ITEMS.

- A. Acknowledge receipt of the Building Department Monthly Activity Report, Code Enforcement Report, List of New Business Taxes, Financial Report and Utility Sales

Report for January 2014.

- \*\*B. Accept the FY 2012-2013 Audit Report.
- C. Award Bid for East Coast Drive Drainage and Streetscape Improvements to J.B. Coxwell Contracting and authorize the City Manager to execute the contract documents on the City's behalf (Bid No. 14-1213-12R).
- D. Extend the contract for small asphalt paving repairs with Tom's Asphalt Repairs, Inc. for one year at the current prices.
- E. Approve the Interlocal Agreement Amendment for the Distribution of 911 Funds for Call-Taker Salaries and authorize for the Mayor and City Manager to sign the paperwork.

**5. Committee Reports**

- A. Actuarial Valuation Reports for General Employees' Retirement System for Fiscal Year ending September 30, 2013.
- B. Actuarial Valuation Reports for Police Employees' Retirement System for Fiscal Year ending September 30, 2013.

**6. Action on Resolutions**

- \*A. ATTACHMENT E-6, **RESOLUTION NO. 14-03** FOR ASSISTANCE 2014 UNDER THE FLORIDA INLAND NAVIGATION DISTRICT WATERWAYS ASSISTANCE PROGRAM.

**7. Action on Ordinances**

- A. **ORDINANCE NO. 90-14-221, Public Hearing and Final Reading**  
AN ORDINANCE OF THE CITY OF ATLANTIC BEACH, DUVAL COUNTY, FLORIDA, REZONING PARCEL IDENTIFICATION NUMBER 177649-0000 FROM COMMERCIAL LIMITED (CL) AND RESIDENTIAL MULTI-FAMILY (RG-M) TO A SPECIAL PLANNED AREA (SPA) AS PERMITTED BY SECTIONS 24-116 THROUGH 24-126 OF THE CODE OF ORDINANCES TO ALLOW A MAXIMUM OF EIGHTY (80) RESIDENTIAL UNITS, PROVIDING FOR SPECIAL CONDITIONS; PROVIDING FINDINGS OF FACT; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE AND RECORDING.

- B. **ORDINANCE NO. 90-14-222, Introduction and First Reading**  
AN ORDINANCE OF THE CITY OF ATLANTIC BEACH, FLORIDA, AMENDING CHAPTER 24, ARTICLE III, DIVISION 4, SECTION 24-84 OF THE CODE OF ORDINANCES, LAND DEVELOPMENT REGULATIONS, TO REPEAL CONDITIONS OF LOTS EXTENDING BETWEEN BEACH AVENUE AND OCEAN BOULEVARD; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

**8. Miscellaneous Business**

- A. Public Hearing- Request for Use-by-Exception (UBEX-13-00100077) to allow for a drive-thru service lane associated with a restaurant (Panera Bread) within the Commercial General (CG) Zoning District and located at 1021 Atlantic Boulevard.
- B. Tree Ordinance Revisions.
- C. Sign Code Amortization Update.
- D. Request for a Waiver from City Code Section 19-7 Driveway Limitations to Allow a Circular Driveway on a Lot with Less Than 100 Foot Frontage (149 Oceanwalk Dr. S.)
- E. Robert Street Ditch – Approval of Design Proposal.
- F. Rose Park Improvements – Dog Park Completion.
- G. Options for City Sanitation Contract.
- H. Donner Park Baseball Field Improvements CDBG 2014.

- I. Public Works Building Canopy Replacement.
- \*\*J. Engineering Design of Stormwater Improvements for the Saltair Neighborhood (RFP #14-02).
- \*\*K. Engineering Design of Stormwater Improvements for the Seminole Road South of City Hall (RFP #14-03).
- L. Crosswalk Enhancements.
- M. Police Department Annual Report for 2013.

**9. City Manager**

- A. City Manager's Report.

**10. Reports and/or requests from City Commissioners and City Attorney**

**Adjourn**

Formal action (if needed) will be taken at the Commission Meeting of March 10, 2014.

Any person wishing to speak to the City Commission on any matter at this meeting should submit a request to the City Clerk prior to the meeting. For your convenience, forms for this purpose are available at the entrance to the Commission Chambers.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk by 5:00 PM, Friday, March 7, 2014.

Workshop only items:

- \* Items 3 and 4 were added.

March 10, 2014 meeting:

- \* Item 6A was added.
- \*\* Attachments were amended as follows:
  - 4B- Added the backup material to the electronic packet only.
  - 8J- Revised Staff Report
  - 8K- Revised Staff Report

**CITY OF ATLANTIC BEACH**

**RFP 14-05 TIMELINE**

**LEGAL SERVICES FOR CITY ATTORNEY-FIRM**

<b>1</b>	<b>March 3</b>	<b>Proposals due to HR Director by 11:00 a.m.</b>
<b>2</b>	<b>March 3</b>	<b>Proposals publicly opened at 2:00 p.m. in Chambers</b>
<b>3</b>	<b>March 4</b>	<b>HR Director will distribute proposals to Commissioners</b>
<b>4</b>		<b>Commissioners will individually conduct reference checks and interviews with proposers</b>
<b>5</b>	<b>March 20</b>	<b>Commissioners will submit individual evaluations to HR Director for tabulation</b>
<b>6</b>	<b>March 24 Special Called Mtg</b>	<b>HR Director will report tabulations Commission will discuss and rank proposals</b>
<b>7</b>		<b>HR Director will schedule the top-ranked Proposers for interviews at TBD Commission meeting</b>
<b>8</b>	<b>TBD ** Special Called Mtg</b>	<b>Oral presentations by top-ranked proposers Commission will conduct final ranking</b>
<b>9</b>		<b>City Manager or his designee will initiate negotiations with the top-ranked Attorney-Firm</b>

**\*\* Date of Special Called Meeting to hear oral presentations will be determined at the February 24, 2014 Commission Workshop Meeting**

**CITY OF ATLANTIC BEACH**

**RFP 14-06 TIMELINE**

**EXECUTIVE SEARCH FIRM FOR CITY MANAGER**

<b>1</b>	<b>February 28</b>	<b>Proposals due to HR Director by 11:00 a.m. – No public opening</b>
<b>2</b>	<b>March 4</b>	<b>HR Director will distribute proposals to Commissioners along with a ranking sheet based on RFP criteria</b>
<b>3</b>	<b>March 20 By 5:00 pm</b>	<b>Commissioners will submit individual evaluations to HR Director</b>
<b>4</b>	<b>March 24  Special Called Mtg</b>	<b>HR Director will report tabulations – Commissioners will discuss and compile final ranking  Commission to direct City Manager or designee to initiate negotiations OR direct HR Director to gather more information – schedule interviews</b>
<b>5</b>	<b>March +</b>	<b>Selected firm meets with Commissioners in one-on-one sessions to develop profile</b>
<b>6</b>	<b>April-May +</b>	<b>Resumes received and reviewed</b>
<b>7</b>	<b>June +</b>	<b>Short list of candidates generated</b>
<b>8</b>	<b>July +</b>	<b>Interviews/Selection</b>
<b>9</b>	<b>August</b>	<b>Negotiate contract</b>
<b>10</b>	<b>September</b>	<b>Notice given by selected candidate</b>
<b>11</b>	<b>October</b>	<b>Chosen candidate begins work as permanent City Manager</b>

## MEMORANDUM

**To:** City of Atlantic Beach Commissioners  
**From:** Richard Komando  
**Date:** February 20<sup>th</sup>, 2014  
**Re:** Status of Human Rights Laws Relating to Sexual Orientation

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### Description by Jurisdiction:

- Federal: The federal Fair Housing Act prohibits housing discrimination based on race, color, national origin, religion, sex, disability, and familial status (e.g. the presence of children in the household). The Fair Housing Act does not specifically include sexual orientation and gender identity as prohibited bases. However, a lesbian, gay, bisexual, or transgender (LGBT) person's experience with sexual orientation or gender identity housing discrimination may still be covered by the Fair Housing Act. In addition, housing providers that receive HUD funding, have loans insured by the Federal Housing Administration (FHA), as well as lenders insured by FHA, may be subject to HUD program regulations intended to ensure equal access of LGBT persons. Through this rule, HUD implements policy to ensure that its core programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. This rule follows a January 24, 2011, proposed rule, which noted evidence suggesting that lesbian, gay, bisexual, and transgender (LGBT) individuals and families are being arbitrarily excluded from housing opportunities in the private sector.
- State of Florida: Senate Bill 348 and House Bill 239 commonly referred to as the, "Florida Competitive Workforce Act," were filed in the 2014 Florida Legislature. Similar bills were filed in prior years, but have not received majority support. According to Representative Saunders, this is the first time the issues is receiving bi-partisan support, however, the added support is not indicative that the legislation will be adopted this year.
- Municipalities in Florida: 14 jurisdictions in Florida have passed local laws similar to the concepts being discussed by the City Commission. The texts of the ordinances outlined below are appended to this memorandum for your review. The summaries below describe in more detail the provisions of the respective ordinances:

#### Alachua County:

- o *Protections Afforded*
  - Protection in the areas of employment and public accommodations discrimination
  - Marital status: includes domestic partnership, but does not include a domestic partnership registry

- *Resolution and Enforcement Procedures*
  - Enforcement by the Human Rights Board and Manager
  - An aggrieved party may file a complaint, there is a process for conciliation which is heard by a hearing officer
  - The court may issue order prohibiting discriminatory practice and provide affirmative relief

*Broward County:*

- *Protections Afforded & Exemptions*
  - Exemptions - Employment - Religious purposes, bona fide occupational qualifications reasonably necessary for normal operation of that particular business/enterprise, different standards of compensation or terms based on bona fide merit systems and seniority, and for an employer to give and act upon the results of a professionally-developed ability test. Provisions concerning employment discriminatory practices that relate to sexual orientation, or gender identity or expression, shall not apply to any religious schools, institutions, associations or organizations
  - Public Accommodations - Restrooms, shower rooms, bathhouses, and similar facilities and lodging facilities.
  - Real Estate Transactions - The provisions of this Act concerns residential real estate transactions and does not apply to any religious school, religious institution, religious association, or religious organization when an allegation(s) of a discriminatory housing practice(s) based upon sexual orientation or gender identity or expression.
  - Marital status: does not include domestic partnership, no domestic partnership registry
- *Resolution and Enforcement Procedures*
  - An internal resolution procedure through the local Human Rights Board
  - An aggrieved party may file a complaint, engage in conciliation, penalties determined by Board

*City of Gainesville:*

- *Protections Afforded & Exemptions*
  - Essentially follows Human Rights Act in Section 23.161, Florida Statutes
  - Equal right of access to full/equal enjoyment of places of public accommodation, adequate housing, employment practices, advertising practices, building facilities, extension of credit all without discrimination
  - Exemptions - employment - religious institutions, organizations, corporations, associations or societies, bona fide occupational qualifications, compensation/different terms or standards based on bona fide seniority or merit system, ability tests, sharing the shower
  - Extension of Credit - Inquiry of marital status is the purpose is of ascertaining the credit, consideration or application of state property laws
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint, utilize conciliation and mediation or informal adjustment of grievances

- Unlawful and punishable to commit, aid, abet, compel, coerce, participate in an act in Chapter 8 as well as engage in reprisal against complainant person
- Punished provided in Gainesville’s ordinance Section 1-9 (general penalty of fine not exceeding \$500 or incarceration up to 60 days)
- Internal resolution procedure with an Equal Opportunity Office who has an Equal Opportunity Director and a Human Rights Board
- Human Rights Board does not have jurisdiction over the local government or any other government entity (officers, employees, or agents) if related to their official capacity

City of Gulfport:

- *Protections Afforded & Exemptions*
  - Protection in the areas of Discrimination in Employment, Housing, and Public Accommodations
  - Has a Domestic Partnership Registry
  - Marital Status is defined in human rights or human relations ordinance of the County
  - Exemptions – employment - religious entities, institutions, organizations, corporations, associations or society; Housing; General Public Accommodations. Religious organizations, association, or society or any non-profit institution or org operated or supervised by a religious organization, basis of sex in restrooms, shower rooms, and similar facilities, any private club, giving of special discounts on goods and services by a place of public accommodation if those discounts are available to all.
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint in writing, conciliation may commence, and if the efforts or conciliation are unsuccessful then the case proceeds to formal a Hearing Procedure utilizing hearing officers
  - The complaint filed can be referred to the appropriate county or other government agency if applicable
  - Any final order of the hearing officer is appealable
  - Enforcement is conducted internally by the city manager and hearing officer

City of Key West:

- *Protections Afforded*
  - Protection in the areas of Fair Housing, General Discrimination and AIDS
  - Includes domestic partnerships
- *Resolution and Enforcement Procedures*
  - The City Commission is responsible for enforcement, but the Executive Director of Fair Housing Board also reviews
  - Internal decision making and enforcement completed by the Fair Housing Director and Fair Housing Board

- An aggrieved party may file a complaint, but there is no option for conciliation
- General discrimination has penalties enforced by civil action

City of Lake Worth:

- *Protections Afforded*
  - *Basic anti-discrimination and housing protection*

City of Miami Beach

- *Protections Afforded & Exemptions*
  - Anti-discrimination in housing, public services, use of municipal facilities, employment, public accommodations
  - Exemptions – employment - bona fide occupational classification, bona fide merit system/seniority, developed ability test for employment purposes, religious affiliation; housing; religious affiliation, lease and sales rules; public accommodations such as restrooms, shower rooms, spas, etc.
  - Provides for registration for Domestic Partnership
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint, the process first requires an attempt to resolve through mediation
  - Internal decision making process related to penalties for first finding and subsequent findings
  - Hearing examiner makes decision based upon case factors

City of Tampa:

- *Protections Afforded & Exemptions*
  - Protection in the areas of Employment, Public Accommodations, and Housing Discrimination
  - Exemptions – employment - bona fide occupational qualification, lack of requirements for an employment positions or excess occupancy, application of different standards of compensations/terms/conditions based on bona fide merit or seniority, conduct an ability test, religious affiliation;
  - Public Accommodations: basis of sexual identity related to restrooms, shower rooms, spas, etc.
  - Housing: religious affiliations, “The provisions in this article relating to sexual orientation and gender identity or expression shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.”
  - Maintains a Domestic Partnership Registry
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint, mediation may be conducted, conciliation may occur, civil action by aggrieved person, city attorney, administration, administrator, private persons, city attorney
  - Internal decisions made by the Human Rights Board

City of West Palm Beach

- *Protections Afforded & Exemptions*
  - Protection in the areas of Employment, Public Accommodations, Housing Discrimination
  - Exemptions – employment - bona fide occupational qualification, religious affiliations, bona fide seniority or merit system, actions upon an ability test
  - Public Accommodations: basis of sexual identity related to restrooms, shower rooms, spas, etc.
  - Domestic Partnership Registry
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint, participate in mediation, and then administrative hearings
  - Penalties are decided by an administrative panel and can which may include a fine up to \$500 per day for each day of non-compliance

Monroe County:

- *Protections Afforded*
  - Protection in the areas of Employment, Credit, Public Accommodations, and Housing Discrimination
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint, make efforts toward conciliation, and a hearing before Fair Housing Board
  - Enforcement is performed internally by Fair Housing Director and Fair Housing Board and by Board of County Commissioners and by civil action, which includes action for equitable relief, and by aggrieved person in a court of competent jurisdiction
  - Penalties are subject to written penalties in the Monroe County Code book

Palm Beach County:

- *Protections Afforded*
  - Protection in the areas of Housing, financing in housing, provision of brokerage services, public accommodations, real estate related transactions discrimination
- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint, conciliation procedure
  - Allows enforcement by private persons
  - Office of equal opportunity, fair housing board and director

Pinellas County

- *Protections Afforded & Exemptions*
  - Protection in the areas of Employment, public accommodations, employment discrimination
  - Exemptions - religious organizations and affiliations
  - Provides a Domestic Partnership Registration with reciprocity

- *Resolution and Enforcement Procedures*
  - An aggrieved party may file a complaint
  - Enforcement by administrative law judge

Volusia County

- *Protections Afforded & Exemptions*
    - Protection in the areas of Employment, Public Accommodations and Housing discrimination
    - Exemptions are afforded to private clubs and religious organizations
  - *Resolution and Enforcement Procedures*
    - An aggrieved party may file a complaint, conciliation efforts are part of the process
    - Enforcement mechanisms through an administrative law judge, county attorney and civil action
- Throughout the United States: Separate from the 14 Florida jurisdictions, there are another approximately 173 jurisdictions around the United States which afford some level of protection against discrimination on the basis of sexual orientation or expression. Research is ongoing relating to jurisdictions outside of Florida.

**Considerations Raised by the Commission:**

- Should this issue be handled on a Local, State or Federal level?
- Referendum / Straw Ballot: An ordinance could be passed by the Commission placing a “Straw Ballot” referenda on the ballot in the next general election, asking the citizens of the City of Atlantic Beach about support of expanding the groups of protected individuals to include sexual orientation, gender identity or expression. The Duval County Supervisor of Elections deadlines to receive ballot language are: a.) May 19<sup>th</sup>, 2014 for the August 26<sup>th</sup> Primary Election; or b.) August 27<sup>th</sup> for the November 4<sup>th</sup> General Election.
- Appoint an Ad Hoc Committee to rewrite COAB Ordinances, specifically Chapter 9:
- Use of Human Rights Commissions: While other local governments have established rights based boards and commissions related to addressing discrimination concerns, some jurisdictions also use the local Fair Housing Boards.
- Definition of Gender Identity or Expression: There have been comments related to the meaning of gender identity or expression. The ordinances included with this memorandum contain definitions such as: “an individual's physical appearance, presentation or representation of being a male or a female, regardless of that individual's assigned sex at birth;” and, “the gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth,” and, “having or being perceived as having a gender-related self-identity, self-image,

appearance, expression or behavior whether or not such gender-related characteristics differ from those associated with the person's assigned sex at birth.”

- Domestic Partnership Registry: Although not discussed at length, a notable component of other jurisdictions include a domestic partnership registry. If addressed locally, the provision may consider reciprocity.

### **Concerns Stated by the Opposition to a Local Human Rights Ordinance:**

- Business Owners:
  - o The Hands on Children’s Museum – issue of denying family membership for same sex couples.  
[http://www.salon.com/2013/06/10/childrens\\_museum\\_excludes\\_gay\\_families\\_from\\_its\\_membership\\_policy/](http://www.salon.com/2013/06/10/childrens_museum_excludes_gay_families_from_its_membership_policy/)
    - Boycott Facebook page  
<https://www.facebook.com/BoycottTheHandsOnChildrensMuseumJacksonville?fref=ts>  
<https://www.facebook.com/BoycottTheHandsOnChildrensMuseumJacksonville?fref=ts>
- Discrimination against Religious Organizations: This area is addressed in each of the ordinances in place around the State of Florida. Please see the attachments for further clarification.
- Public Accommodations: Other jurisdictions have also addressed this concern. Please see the attachments for further clarification.
- Stepping Stone to legalization of Gay Marriage:

## Appendix of Existing Ordinances:

### Alachua County:

Sec. 111.01. Legislative findings.

It is hereby declared by the Alachua County Board of County Commissioners that:

- (a) It is a matter of concern to the board to protect and safeguard the right and opportunity of all individuals to be free from discrimination, including discrimination based on race, color, national origin, religion, sex, marital status, familial status, age, disability, sexual orientation, gender identity or expression; and
- (b) The board's purpose in enacting this ordinance is to promote the personal dignity, public safety, health and general welfare of all individuals who live in, visit and work in Alachua County; and
- (c) Discriminatory practices are contrary to the public policy of Alachua County and are a menace to the personal dignity, public safety, health and general welfare of our citizens and, as such, the board shall direct its efforts toward eliminating discriminatory practices within Alachua County in the areas of employment, housing and public accommodations.

Sec. 111.02. Title of chapter.

Chapter 111, Articles I-IV shall be known and cited as the "Human Rights Ordinance" of Alachua County.

Sec. 111.03. Intent of chapter.

It is the intent of this chapter to secure for all individuals within Alachua County freedom from discrimination because of race, color, national origin, religion, sex, marital status, age, disability, sexual orientation, gender identity or expression in connection with employment, housing or public accommodations and familial status in housing.

Sec. 111.04. Territorial jurisdiction.

This chapter shall be applicable to incidents of alleged discriminatory practices within the geographic boundaries of Alachua County. If any municipality in Alachua County has in force or adopts its own human rights ordinance, such municipal ordinance shall prevail over the Human Rights Ordinance of Alachua County to the extent of any conflict between the two ordinances.

Sec. 111.05. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Age.* Person(s) who are 18 years of age or older.

*Aggrieved person.* Any person who claims to have been injured by a discriminatory practice or believes that he or she will be injured by a discriminatory practice that is about to occur.

*Because of sex or on the basis of sex* includes but is not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions.

*Board* means the Alachua County Human Rights Board created by this chapter.

*Complainant.* A person who files a complaint with the county pursuant to this chapter.

*Covered multifamily dwelling:*

- (1) A building which consists of four or more units and has an elevator; or
- (2) Ground floor units of a building which consists of four or more units and does not have an elevator.

*Disability* means, as the term pertains to an individual:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) A record of such impairment; or
- (3) Being regarded as having such an impairment.

For purposes of the sections of this chapter as they relate to employment, such term does not include any individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or safety of others.

*Discriminatory practice* means an act that is unlawful under this chapter.

*Domestic partner* means a person in a legal or personal relationship between two individuals (not related by blood) who live together and share a common domestic life but are neither joined by marriage nor a civil union, pursuant to a state or municipal domestic partner registry.

(1) Domestic partnership as recognized under this chapter shall not be construed to rise to the level of marriage as defined under state or federal law.

*Employee* means any individual employed by or seeking employment from an employer.

*Employer* means any person employing five or more employees for each working day in each of four or more consecutive calendar weeks in the current or preceding calendar year, and any agent of such person. Such term shall include Alachua County Board of County Commissioners, but shall not include:

(1) The United States or a corporation wholly owned by the government of the United States; the State of Florida, any municipal government within Alachua County, or other governmental entity within Alachua County;

(2) An Indian tribe; or

(3) A bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, United States Code.

*Employment agency* means any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

*Familial status* is established when an individual who has not attained the age of 18 years is domiciled with:

(1) A parent or other person having legal custody of such individual; or

(2) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

*Family*. Includes a single individual.

*Genetic information*. Includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members (i.e. family medical history).

*Gender identity or expression* shall mean an individual's physical appearance, presentation or representation of being a male or a female, regardless of that individual's assigned sex at birth.

*Housing, or housing accommodation*. Any building, structure, or portion thereof, mobile home, or trailer, or other facility which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home or trailer, or other facility.

*Labor organization* means:

(1) An organization of any kind representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(2) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization; or

(3) An agent of a labor organization.

*Lending institution*. Any bank, insurance company, savings and loan association, mortgage company, or any other person or organization regularly engaged in the business of lending money or guaranteeing loans, or sources of credit information, including, but not limited to, credit bureaus.

*Major life activities* mean basic activities that the average person in the general population can perform with little or no difficulty including, but not limited to, caring for oneself, performing manual tasks, walking, sitting, standing, lifting, seeing, hearing, speaking, breathing, learning, thinking, concentrating, working and interacting with other people. Major life activities also includes major bodily functions including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

*Manager* means the manager of the Alachua County Equal Opportunity Office.

*Marital status* means an individual's status of being married, separated, or unmarried, including being single, divorced, widowed or a domestic partner.

*National origin* means to be from a particular country or part of the world by ancestry, naturally, by marriage, or by adoption.

*Owner*. Any person, including, but not limited to, a lessee, sub-lessee, assignee, manager, or agent, and also including Alachua County government, having the right of ownership or possession, or the authority to sell or lease any housing accommodation.

*Person* includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, or unincorporated organization, any other legal or commercial entity, the state, or any other governmental entity or agency.

*Place of public accommodation* means an establishment which serves or holds itself out to serve the public, including where a member of the public would go to seek the goods, services and facilities which are held out as being open to the public.

*Private membership club*. A private organization which is exempt from taxation under section 501 (c) of title 26, United States Code; has meaningful conditions on limited membership and eligibility requirements; is controlled or owned by club members and restricts facilities and services to members and their guests.

*Protected status or characteristic*. Race, color, national origin, religion, sex, marital status, age, disability, sexual orientation, gender identity or expression, and familial status with regard to housing.

*Real estate broker or salesperson*. A person, whether licensed or not, who lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself or herself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these.

*Real estate transaction*. The sale, purchase, exchange, rental, or lease of real property, and any contract pertaining thereto.

*Readily achievable* means easily accomplishable and able to be carried out without much difficulty or expense.

*Rent*. Lease, sublease, assignment, and/or rental, including any contract to do any of the foregoing, or otherwise granting for a consideration the right to occupy premises that are not owned by the occupant.

*Respondent*. Any person against whom a complaint is filed pursuant to this chapter.

*Sale*. Any contract to sell, exchange, or to convey, transfer, or assign legal or equitable title to, or a beneficial interest in, real property.

*Sexual orientation* means an individual's actual or perceived heterosexuality, homosexuality or bisexuality.

*Substantially limits* means how an impairment affects the ability to perform a major life activity and is to be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of federal or state anti-discrimination laws and regulations.

*Transgender* means an individual whose gender identity or expression differs from his or her assigned sex at birth.

*Transitioning* means the process of permanently changing one's gender.

Sec. 111.06. Generally.

It is a violation of this chapter for a person who owns or operates a place of employment, housing or public accommodation, either personally or through the actions of an employee or independent contractor, to:

- (a) Discriminate against a person in employment, housing or public accommodations because of that individual's protected status or characteristic; or
- (b) Display or publish any written communication which is to the effect that a person is unwelcome, objectionable or unacceptable because of that individual's protected status or characteristic.

Sec. 111.07. Incorporation of federal and state regulations.

With respect to the provisions of this chapter which relate to the prohibition of discrimination in employment, housing or public accommodations, the applicable provisions of federal and state anti-discrimination laws and regulations promulgated pursuant thereto are hereby incorporated by reference as if set out in full herein.

Sec. 111.08. Retaliation, coercion, interference, obstruction, or prevention of compliance with this chapter.

It is an unlawful discriminatory practice for a person to conspire to:

- (a) Retaliate or discriminate against a person because he or she has opposed a discriminatory practice, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter.
- (b) Aid, abet, incite, or coerce a person to engage in an unlawful discriminatory practice.
- (c) Willfully interfere with the performance of a duty or the exercise of a power by the board or manager, or one of their staff members or representatives.
- (d) Willfully obstruct or prevent a person from complying with the provisions of this chapter or an order issued hereunder.

Sec. 111.09. Human rights manager.

- (a) The manager of the Alachua County Equal Opportunity Office is hereby designated and authorized to serve as the human rights manager and to administer the provisions of this chapter.
- (b) The duties, functions, powers, and responsibilities of the human rights manager are as follows:

- (1) Implement the provisions of this chapter and the rules and regulations promulgated hereunder, and all Alachua County ordinances, codes, rules, and regulations pertaining to discrimination in employment, housing and public accommodations, and advise the board of county commissioners when changes in the federal or state human rights laws require revisions to the county's human rights ordinance.
- (2) Receive and investigate or refer written complaints, as provided by this chapter, of unlawful practices in violation of this chapter. Refer any written complaints received by the manager that allege unlawful practices in employment, housing or public accommodations by the federal government, the State of Florida, any municipality within Alachua County, or any other governmental entity within Alachua County, to the appropriate agency with authority to investigate such complaints. Refer any written complaints received by the manager that allege unlawful discrimination in county programs and services, or by a vendor doing business with Alachua County to the appropriate federal or state agency for investigation or, at the option of the complainant, have such complaints investigated internally by the county's equal opportunity office in accordance with the policies and procedures adopted by the board of county commissioners for internal investigations.
- (3) Upon receiving a written complaint, make such investigations as the manager deems appropriate to ascertain facts and issues.
- (4) Utilize methods of persuasion, conciliation and mediation or informal resolution of grievances.
- (5) Provide assistance in all matters relating to discrimination in equal employment, housing and public accommodations within Alachua County.
- (6) Publish and disseminate public information and educational materials relating to discrimination in employment, housing and public accommodations.
- (7) Keep the human rights board fully and currently informed of all complaints alleging violations of this chapter and actions taken thereon, and of other actions taken by the manager under the provisions of this chapter, and attend all meetings of the human rights board, or send a designee.
- (8) Implement recommendations received from the human rights board concerning this chapter and the carrying out of its intent. When, in the opinion of the manager, effectuating any such recommendation would be undesirable or unfeasible, the manager shall promptly so report to the board, with his or her reasons. Any differences of judgment not able to be resolved between the board and the manager shall be referred to the county manager for his or her determination, and the board may, if it feels the matter warrants, further carry any such unresolved differences to the board of county commissioners for decision.
- (9) Make annual reports to the board of county commissioners, through the county manager, and to the human rights board, of activities under the provisions of this chapter, and make recommendations concerning methods by which to reduce discrimination, and such other comments and recommendations as the manager may choose to make.
- (10) Conduct educational and public information activities that are designed to promote the policy of this chapter.
- (11) Bring to the attention of the board of county commissioners, through the county manager, those items that may require the board of county commissioners' notice or action to resolve.

Sec. 111.10. Human rights board.

- (a) The board shall be composed of seven members plus one alternate member appointed by the board of county commissioners. The membership shall consist, whenever possible, of the following: a member of the Alachua County Citizens Disability Advisory Committee, an attorney eligible to practice in the State of Florida, a residential rental manager, a representative of a lending institution, and four citizens-at-large. Membership shall be representative of the county's population and, whenever possible, should reflect racial, ethnic, and religious minorities, as well as geographic, economic, and gender considerations.
- (b) Members of the board shall serve terms of three years each; provided, however, that three of the initial appointments shall be for a term of one year, two of the initial appointments shall be for a term of two years, and the remaining two initial appointments shall be for a term of three years. Thereafter, all appointments shall be for three-year terms.
- (c) The members of the board shall receive no compensation.
- (d) The board shall annually elect one of its members as chair and one as vice-chair. Elections shall be held at the first regularly scheduled meeting after appointment of the board. The chair shall preside and conduct meetings of the board. The vice-chair shall act in the absence of the chair. A quorum for the conduct of lawful business of the board shall be a majority of the current members. Unless otherwise stated in this chapter, all actions and decisions of the board may be by a simple majority vote of those members present at a lawful meeting of the board.
- (e) The attendance policy for the board shall be in accordance with the attendance policy for boards and committees as set forth in the Alachua County Board of County Commissioners Rules of Procedure. The attendance policy shall apply to the alternate member.

- (f) The board shall have the power and authority to promulgate such procedures and rules as necessary to conduct the business of the board, provided such rules are not inconsistent with this chapter and provided that such rules may be subject to review and repeal by and at the discretion of the board of county commissioners.
- (g) The board shall meet as often as necessary. The manager shall schedule each meeting and give notice of the time and place of the meetings to all board members, all parties to be heard, and the public. Special meetings of the board may be convened by the chair, with the concurrence of the manager, upon giving notice thereof to the members of the board, or may be called by written notice signed by three members of the board and the manager. The notice of a special meeting shall be given, whenever possible, at least 24 hours prior thereto. All meetings shall be public.
- (h) The county manager shall provide clerical and administrative support, through the county's equal opportunity office, to the board as may be reasonably required by the board to discharge its duties and responsibilities. The county manager shall provide a regular meeting place for the board.

Sec. 111.11. Powers and duties.

The board shall have the following duties, powers, functions, and responsibilities:

- (a) Adopt rules and procedures necessary to conduct the business of the board.
- (b) Make recommendations to the manager for the enforcement of this chapter and the carrying out of its intent.
- (c) Subpoena and compel the production of evidence necessary for investigation of complaints filed for any alleged violation of this chapter. Administer oaths and compel the attendance of witnesses and production of evidence by subpoenas issued by the chair of the board.
- (d) Review the manager's actions and decisions on all complaints of discrimination as provided for in this chapter.
- (e) Review and comment on the manager's annual report, and forward such comments to the board of county commissioners.
- (f) In coordination with the manager, take other informational, educational, or persuasive actions to implement the intent of this chapter.
- (g) Apply to the circuit court for enforcement of any subpoena upon the refusal to answer or produce the requested document or information, wherein the circuit court shall determine the matter.
- (h) Recommend that the county seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the board determines that such action is necessary to carry out the intent of this chapter.
- (i) Any other powers and duties provided elsewhere in this chapter.

Sec. 111.12. Filing of complaints.

- (a) Any person claiming to be aggrieved by an unlawful practice prohibited by this chapter may file a written, verified complaint with the manager, or his or her designated representative. The complaint shall state the name and address of the complainant and the person or persons against whom the complaint is made (hereinafter referred to as the "respondent"). The complaint shall set forth the facts upon which the complaint is made, and such other information as the manager requires. The complaint must be filed within 180 days after the date the alleged unlawful practice has most recently occurred. The complaint may be withdrawn by the complainant at any time.
- (b) When it is determined that a complaint has been timely filed, the manager shall serve notice of the filing and a copy of the complaint upon the respondent. Notice should be served within ten business days of the date of filing. An amendment likewise shall be served upon the respondent. The notice shall advise the respondent of relevant procedural rights and obligations.
- (c) The manager shall serve notice upon the complainant acknowledging the filing of the complaint and advising the complainant of relevant procedural rights and remedies. The notice shall advise the complainant of remedies and choice of forums and inform the complainant that the administrative procedure provided for in this chapter is neither an obstacle nor a prerequisite to the complainant commencing a separate civil action on his or her own.
- (d) Once a complaint has been served on the respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.
- (e) The respondent shall file an answer to the complaint not later than ten business days after receipt of the notice of the filing. The answer shall be sworn to or affirmed before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.
- (f) A complaint or answer may be amended at any time when it would be fair and reasonable to do so, and the manager shall furnish a copy of each amended complaint or answer to the respondent or the complainant, respectively, as promptly as practicable. With respect to any complaint filed pursuant to this chapter, the burden of proof is on the complainant.

Sec. 111.13. Processing of complaints.

(a) Within 30 days after the filing of a complaint, the manager shall commence such investigation as deemed appropriate to ascertain facts and issues. The manager may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws.

(b) The following investigation procedures shall be followed:

(1) *Complaint verification.* As part of the investigation process, the complaining party may be required to provide an additional sworn written statement which shall include:

a. A statement of each particular harm or potential harm which the aggrieved person has suffered or will suffer and the date on which each harm occurred or will occur.

b. For each harm, a statement specifying the act, policy, or practice which is alleged to be unlawful.

c. For each act, policy, or practice alleged to have harmed the aggrieved person, a statement of the facts which led the complainant to believe that the act, policy, or practice is discriminatory.

(2) *Requests for information.* In investigating a complaint, the manager and/or the manager's designee may obtain information by:

a. Oral interview; and/or

b. Requests for written statement or affidavit; and/or

c. Any discovery methods set forth in the Florida Rules of Civil Procedure.

(3) *Investigations.* The investigations will seek the voluntary cooperation of all persons in obtaining information. If, however, the manager is unable to obtain the voluntary cooperation of persons, he or she shall request the board to issue subpoenas. The board shall have the power to issue subpoenas or subpoenas duces tecum. Any subpoena issued by the board must be approved by the county attorney as to the subpoena's legality before it is issued.

(4) *Complaining party's failure to cooperate.* Where the complainant fails to provide a necessary information statement; fails or refuses to appear or be available for interviews or conferences; fails or refuses to provide necessary information requested by the manager pursuant to this section; or otherwise refuses to cooperate to the extent that impedes the investigation, the manager shall dismiss the complaint after providing 20 days' notice to the complainant unless the manager, with board approval, determines there is sufficient grounds and sufficient evidence to proceed with the complaint.

(5) *Access to files during investigation.* Information obtained during the investigation of a complaint shall be disclosed only to the complainant, the respondent, or their authorized representatives, or to witnesses, only when disclosure is deemed necessary by the manager for the investigation or for securing appropriate disposition of the complaint. The manager may direct that a particular record, document, or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret, and only in accordance with the provisions of the Florida Public Records Law.

(c) The manager shall, within 100 days after the filing of a complaint, complete the investigation of the alleged unlawful discriminatory practice, unless it is impracticable to do so. If the manager is unable to complete the investigation within 100 days after the filing of a complaint, the manager shall notify, by certified mail or by personal service, the complainant and the respondent in writing of the reasons for not so doing. The manager shall notify the aggrieved person and the respondent if administrative disposition of the complaint pursuant to this chapter cannot be accomplished within one year of the filing of the complaint.

(d) Beginning with the filing of the complaint and ending with the filing of a reasonable cause charge, as provided for in subsection (g) herein, the manager shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Such conciliation conferences may be by whatever method the manager determines to be most appropriate. The manager shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief. Except as provided in subsection (e) herein, nothing that is said or done in the course of conciliation or such informal endeavors may be made public or used as evidence in a subsequent proceeding without the written consent of the persons concerned.

(e) Where conciliation attempts are successful, the terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The agreement must be executed by the respondent and the complainant, and is subject to the approval of the manager. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. Confidentiality of conciliation agreements shall be maintained in accordance with Florida public records law.

(f) A duly executed conciliation agreement shall operate as a dismissal of the complaint.

(g) If conciliation has not been reached within 100 days of the filing of the complaint and the complaint has not been withdrawn, the manager shall make a recommendation as to whether or not reasonable cause exists to believe that an unlawful discriminatory practice has occurred or is about to occur. Reasonable cause shall be based upon

sufficiently trustworthy information which would lead an impartial observer to believe that a discriminatory practice has occurred or is likely to occur. The manager and/or the manager's designee shall report the results of the investigation and his or her recommendation to the board. The board shall receive a copy of the manager's report and shall have the opportunity to review the report and submit comments to the manager. If the board determines that reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur, it shall issue a notice of determination of reasonable cause. A copy of the notice shall be served upon the respondent, the complainant, and the aggrieved person within 20 days after the notice has been issued; along with the notice, the parties shall be advised of the options available under this section.

(h) When the board has issued a notice of determination of reasonable cause, the aggrieved person may either:

(1) Bring a civil action against the person named in the complaint in any court of competent jurisdiction no later than one year after the date of determination of reasonable cause by the board; or

(2) Request an administrative hearing as provided for in subsection (j) herein. The request for an administrative hearing must be in writing and must be made no later than 35 days after the date of determination of reasonable cause by the board. The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this chapter.

(i) If the manager determines that the complaint lacks reasonable grounds upon which to base a violation of this chapter, the manager shall dismiss the complaint, then shall inform the board of his or her findings through a written report. The board, in its discretion, may order that the matter be closed or may order, by a three-fourths majority vote, such further investigation as may be deemed necessary. If further investigation is ordered, the results thereof shall be presented to the board in the form of a written report within 60 days and shall be acted upon by the board within an additional 30 days.

(j) If a request for an administrative hearing is timely made under subsection (h), an administrative hearing shall be held and shall be conducted according to the procedures provided in F.S. § 120.57(1). Any conciliation agreement reached prior to a scheduled hearing may result in such hearing being cancelled. The county, through the county manager's office, shall arrange for the services of a hearing officer to conduct the administrative hearing.

(k) In conducting any administrative hearing to determine whether or not there has occurred a failure to comply with the provisions of this chapter, the hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. In interpreting the provisions of this chapter, the hearing officer may consider administrative and judicial interpretations of substantially equivalent provisions of federal or state laws.

(l) The hearing officer shall transmit the recommended order conforming to the requirements of Chapter 120, F.S. § 120.59 to the board. The manager and the board shall review such order and, in an addendum to such order, the board may set forth its findings and recommendations with respect to the order. In reviewing such recommended order, the board shall not have the power to receive or consider additional evidence. The board shall have no power to reject or modify the findings of fact contained in the recommended order, unless the board first determines from a review of the complete record, and states with particularity in its addendum to the recommended order, that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings in the recommended order were based did not comply with the essential requirements of law. The recommended order together with the addendum of the board shall be considered as the final order of the board. The final order shall be served upon the complainant and respondent within ten business days of adoption by the board. If the hearing officer finds that a discriminatory practice has occurred or is about to occur, he or she shall issue a recommended order to the board prohibiting the practice and recommending affirmative relief from the effects of the practice, including actual damages and reasonable attorneys' fees and costs and other injunctive or equitable relief. Judgment for the amount of damages and costs assessed pursuant to a final order by the board may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(m) Final orders of the board are subject to judicial review pursuant to F.S. § 120.68. Unless specifically ordered by the court, the commencement of any appeal does not suspend or stay an order of the board. In the event the aggrieved person is the prevailing party on any appeal, he or she shall be entitled to reasonable attorneys' fees and costs.

(n) Either party to the administrative proceeding or the county shall have authority to bring an action in equity in the circuit court to enforce the final administrative order to ensure compliance with this chapter. The court of equity shall be empowered to issue mandatory or prohibitive injunctions to implement such administrative order.

(o) Should any party fail or refuse to comply with the final order issued by the board or breach a conciliation agreement as provided herein, then, following the expiration of the appeal time as provided herein, the board shall forward such order or conciliation agreement to the board of county commissioners with a request that the board of

county commissioners authorize the county attorney to bring such action or actions as necessary to obtain compliance with this chapter.

Sec. 111.14. Civil action and penalties.

In any civil action commenced under subsection (h) of section 111.13, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. The court may also award compensatory damages, punitive damages, and other relief in accordance with federal and state anti-discrimination laws. A civil action brought under this chapter shall be commenced no later than one year after the date of determination of reasonable cause by the board. The commencement of a civil action shall divest the board of jurisdiction of the complaint.

Sec. 111.15. Implementation date.

The amendments made by Ordinance No. 2013-10 shall be implemented on January 1, 2014.

Secs. 111.16—111.24. Reserved.

Sec. 111.25. Discrimination in employment.

(a) *Employers*. It is an unlawful discriminatory practice for an employer, on the basis of a protected status or characteristic, to:

- (1) Fail or refuse to hire, discharge, or otherwise discriminate against a person with respect to compensation or the terms, conditions, or privileges of employment.
- (2) Limit, segregate, or classify an employee in any way which would deprive or tend to deprive a person of employment opportunities or otherwise adversely affect the status of an employee.
- (3) Discriminate against any person because of a physical or mental disability except with respect to a bona fide occupational qualification.

(b) *Employment agencies*. It is an unlawful discriminatory practice for an employment agency, on the basis of a protected status or characteristic, to:

- (1) Fail or refuse to refer for employment or otherwise discriminate against an individual; or
- (2) Classify or refer for employment an individual on such a discriminatory basis.

(c) *Labor organizations*. It is an unlawful discriminatory practice for a labor organization, on the basis of a protected status or characteristic, to:

- (1) Exclude or to expel from membership or otherwise discriminate against any individual.
- (2) Limit, segregate, classify membership or applicants for membership, or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities.
- (3) Discriminate against any person because of a physical or mental disability except with respect to a bona fide occupational qualification.

(4) Cause, assist, or attempt to cause or assist an employer to violate this article.

(d) *Training programs*. It is an unlawful discriminatory practice for an employer, labor organization, or training committee, on the basis of a protected status or characteristic, to discriminate against an individual in a training program providing apprenticeship or other training.

(e) *Genetic information discrimination*. It is an unlawful discriminatory practice for an employer, employment agency, labor organization or training/apprenticeship program to use genetic information to make employment decisions or to disclose genetic information about applicants, employees or members. Employers and agencies referenced above are restricted from requesting, requiring or purchasing genetic information except as allowed under federal law.

(f) *Pregnancy Discrimination*. It is unlawful and discriminatory for an employer, employment agency, labor organization or training/apprenticeship program, to fail to treat women affected by pregnancy, childbirth or related medical conditions the same for all employment-related purposes including receipt of benefits under fringe benefit programs, as other persons are treated who are not so affected but similar in their ability or inability to work.

(g) *Advertising*. It is an unlawful and discriminatory practice for an employer, labor organization, or employment agency to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination on the basis of a protected status or characteristic.

(h) *Discriminatory information gathering*. Except as permitted and required by regulations of the county, or by applicable federal or state law, or bona fide occupation qualifications, it is a discriminatory practice for an employer

or employment agency to elicit information about an employee, because of a protected status or characteristic, to keep or disclose a record of such information for the purpose of effecting discrimination.

Sec. 111.26. Exceptions.

(a) It is not a discriminatory practice under this chapter for:

- (1) An employer to hire and employ employees;
- (2) An employment agency to classify or refer for employment any individual;
- (3) A labor organization to classify its membership or to classify or refer for employment any individual; or
- (4) A joint labor/management committee controlling apprenticeship or other training or retraining program to admit or employ any programs to admit any person in any such program;

on the basis of an individual's protected status or characteristic in those certain instances where race, color, national origin, religion, sex, marital status, age, or disability, sexual orientation or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

(b) It is not a discriminatory practice for a religious corporation, association, educational institution, or society to employ or give preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(c) It is not a discriminatory practice to observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designated, intended, or used to evade the purposes of this article. However, no such employee benefit plan or system which measures earnings shall be excused the failure to hire, and no such seniority system, employee benefit plan or system which measures earnings shall execute the involuntary retirement of any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in any bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, nor shall this article preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position held.

(d) It is not a discriminatory practice to take or fail to take any action on the basis of age pursuant to law or regulation governing any employment or training program designed to benefit persons of a particular age group.

(e) Inadvertent acquisitions of genetic information, such as in situations where a manager or supervisor overhears someone talking about a family member's illness or an employee voluntarily discloses such information, shall not be construed as a violation of this article.

(f) This article shall not be construed to require an employer to provide an accommodation on the basis of disability, religion or gender-identity, that creates an undue burden or hardship on the employer. In determining whether an accommodation is readily achievable or creates an undue burden or hardship, factors to be considered include:

- (1) The nature and cost of the action;
- (2) The overall financial resources of the employer, the effect on expenses and resources and the impact on operations.

(g) The domestic partner provision shall not be construed to require an employer to provide employee benefit plans that violate state or federal law, such as the Employment Retirement Income Security Act (ERISA).

(h) This article shall not be construed to prohibit an employer from requiring an employee to adhere to reasonable dress or grooming standards at work, provided the employer permits an employee who is undergoing gender transition to adhere to the same dress or grooming standards for the gender to which the employee is transitioning.

Secs. 111.27—111.39. Reserved.

Sec. 111.40. Discrimination in housing.

Except as provided in section 111.41, the following shall be unlawful and discriminatory housing practices, by an owner, real estate broker, as defined in this chapter, or any other person engaging in a real estate transaction, on the basis of a protected status or characteristic:

(a) *Sale or rental; advertising.*

- (1) *Refusal.* To refuse to engage in a real estate transaction or otherwise make unavailable or deny housing to any person;

- (2) *Terms; free association.* To discriminate against a person in the terms, conditions, or privileges of a real estate transaction, or in the furnishing of facilities or services in connection therewith, or because of such person's exercise of his right to free association;
- (3) *Offer.* To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from any person;
- (4) *Negotiation.* To refuse to negotiate for a real estate transaction with a person;
- (5) *Availability; inspection.* To represent to a person that housing is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to such person's attention, or to refuse to permit him or her to inspect the housing;
- (6) *Leading.* To steer any person away from or to any housing;
- (7) *Notice; record.* To make, print, publish, circulate, post, or mail, or cause to be made, printed, published, or circulated, any notice, statement, advertisement, or sign, or to use a form of application or photograph for a real estate transaction or, except in connection with a written affirmative action plan, to make a record or oral or written inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly an intent to make a limitation, specification, or discrimination with respect thereto;
- (8) *Listing.* To offer, solicit, accept, use, or retain a listing of housing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (9) *Proximity of certain housing.* To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of housing owned, used, or occupied by any person protected by the terms of this article;
- (10) *Misrepresentation of listing.* To make any misrepresentation concerning the listing for sale or rental, or the anticipated listing for sale or rental, or the sale or rental of any housing for the purpose of inducing or attempting to induce any such listing or any of the above transactions;
- (11) *Retaliation.* To retaliate or discriminate in any manner against any person because of their opposition to a practice declared unlawful by this article, or because he or she has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or conference under this article;
- (12) *Opposition.* To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by the provisions of this article, or to obstruct or prevent any person from complying with the provisions of this article, or any conciliation agreement entered into hereunder;
- (13) *Causing violation.* By causing any person to compel any practice prohibited by the provisions of this article;
- (14) *Denying accommodation.* Otherwise to deny to, or withhold, any housing accommodations from a person;
- (15) *Inciting unrest.* To promote, incite, influence, or attempt to promote, induce, or influence by the use of postal cards, letters, circulars, telephone, visitation, or any other means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, transfer, or otherwise dispose of any housing by referring, as a part of a process or pattern of inciting neighborhood unrest, community tension based on a protected status or characteristic of actual or anticipated neighbors, tenants, or other prospective buyers of any housing;
- (16) *False information to obtain listing.* To cause to be made any untrue or intentionally misleading statement or advertisement or, in any other manner, attempt, as a part of a process or pattern of inciting neighborhood unrest, community tension in any street, block, neighborhood, or any other area, to obtain a listing of any housing for sale, rental, assignment, transfer, or other disposition, where such statement or other representation is false or materially misleading, or where there is insufficient basis to judge its truth or falsity to warrant making the statement, or to make any other material misrepresentation in order to obtain such listing, sale, removal from, lease, assignment, transfer, or other disposition of said housing; or
- (17) *Signs.* To place a sign or display any other device, either purporting to offer to sell, lease, assign, transfer, or make other disposition or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer, or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer, or other disposition.

(b) *Financing and residential real estate transactions.*

- (1) It shall be unlawful and a discriminatory housing practice for any lending institution, as defined in this chapter, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining housing, or to discriminate against such person in the fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of a protected status or characteristic of such person or of any person associated with such person in connection with such loan or other financial assistance, or for purposes of such loan or other assistance, or of the present or prospective owners, lessees, tenants, or occupants of the housing in relation to which such loan or other financial assistance is to be made

or given; provided that nothing contained in this subsection shall impair the scope or effectiveness of the exceptions contained in section 111.41

(2) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a protected status or characteristic. The term "residential real estate transaction" means any of the following:

a. The making or purchasing of loans or providing other financial assistance:

1. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
2. Secured by residential real estate.

b. The selling, brokering, or appraising of residential real property.

(c) *Brokerage services*. It shall be unlawful and a discriminatory housing practice to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service organization, or facility related to the business of selling or renting housing, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of a protected status or characteristic.

(d) *Familial status*. The protection afforded under subsections (a), (b), and (c) of this section against discrimination on the basis of familial status applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(e) *Discrimination against persons with disabilities in sale or rental*. It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

- (1) That buyer or renter;
- (2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) Any person associated with the buyer or renter.

(f) *Same—Discrimination in terms or conditions*. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

- (1) That buyer or renter;
- (2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) Any person associated with the buyer or renter.

(g) *Same—Person acting as agent*. The prohibitions on discrimination because of a disability, as provided for in subsections (e) and (f), are applicable although another person who may be acting as agent or representative for the disabled person in the real estate transaction.

(h) *Same—Accessibility standards*. For purposes of subsections (e) and (f), discrimination includes:

- (1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;
- (2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
- (3) In connection with the design and construction of covered multifamily dwellings for first occupancy on or after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

a. The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities.

b. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.

c. All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling.
2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
3. Reinforcements in bathroom walls to allow later installation of grab bars.
4. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the Florida Accessible Building Code, providing accessibility and usability for persons with physical disabilities, suffices to satisfy the requirements of subsection (h)(3)c. State agencies with building construction regulation responsibility or local governments, as appropriate, shall review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this subsection.

(5) For the purposes of subsection (h)(1) above, in the case of a rental, a landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for

persons with disabilities any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money, not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications, as well as reasonable assurances that the work will be done in accordance with applicable building codes and that any required building permits will be obtained.

Sec. 111.41. Exceptions.

(a) *Religious societies.* Nothing contained in section 111.40 shall prohibit a religious organization, association, or society, or any nonprofit charitable or educational institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting or from advertising the sale, rental, or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on the basis of a protected status or characteristic.

(b) *Single-family houses.* Nothing in section 111.40, other than subsection (a)(7) thereof, shall apply to:

(1) Any single-family house sold or rented by its owner, provided that such private individual owner does not own more than three such single-family houses at any one time; provided further that, in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24-month period; provided further that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on such owner's behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time; provided further that the owner sells or rents such housing:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agent of any such broker, agent, salesperson, or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection 111.40(a)(7); however, nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(2) Rooms or units in housing containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains and occupies one of such living quarters as such owner's residence, provided that the owner sells or rents such rooms or units:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson, or of such facilities or services of any person in the business of selling or renting housing, or of any employee or agency of any such broker, agent, salesperson, or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of subsection 111.40(a)(7).

(3) Nothing in this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title. For the purpose of this section, a person shall be deemed to be in the business of selling or renting housing if:

a. Within the preceding 12 months, a person participated as principal in three or more transactions involving the sale or rental of any housing or any interest therein; or

b. Within the preceding 12 months, a person participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any housing or any interest therein; or

c. A person is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(c) *Physical accessibility.* Nothing in section 111.40 requires any person renting or selling a dwelling constructed for first occupancy before March 13, 1991, to modify, alter, or adjust the dwelling in order to provide physical accessibility, except as otherwise required by law.

(d) *Housing for older persons—Definition.* Any provision of this article regarding familial status or age does not apply with respect to housing for older persons. As used in this subsection, the term "housing for older persons" means housing:

- (1) Provided under any local, state, or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the local, state, or federal program;
- (2) Intended for, and solely occupied by, persons 62 years of age or older; or
- (3) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subparagraph, the manager shall consider at least the following factors:
  - a. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons; or, if providing such facilities and services is not practicable, such housing is necessary to provide important housing opportunities for older persons;
  - b. At least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and
  - c. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (e) *Same—Additional criteria.* Housing shall not fail to be considered housing for older persons if:
  - (1) A person who resides in such housing on or after September 13, 1988, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or
  - (2) One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.
- (f) *Miscellaneous exceptions.* Nothing in section 111.40
  - (1) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than a protected status or characteristic.
  - (2) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.
  - (3) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
  - (4) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under F.S. ch. 893.

Secs. 111.42—111.59. Reserved.

Sec. 111.60. Discrimination in public accommodations.

It is an unlawful discriminatory practice for any person to deny, withhold, or refuse a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of a protected status or characteristic.

Sec. 111.61. Places of public accommodation.

The following words, terms and phrases, when used in this article, shall have the following meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

*Operator* shall mean and include any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of accommodation or an employee or independent contractor of any such person.

*Public accommodation* shall mean a place open to the public which serves or holds itself out as serving the public, including, but not limited to, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments which serve the public is a place of public accommodation within the meaning of this section:

- (1) Any inn, hotel, motel, resort or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence.
- (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, buffet or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station.
- (3) Any tavern, bar, liquor lounge, package store or other facility holding a license for the sale of alcoholic beverages issued by the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state, and which serves or which holds itself out as serving the general public.

- (4) Any pool or billiard hall, bowling alley, motion picture house, theater, concert hall, sports arena, place of amusement, skating rink, amusement park, golf courses, swimming pool, or other place of exhibition or entertainment.
- (5) Any gasoline station, retail establishment, convenience store, beauty parlor, barbershop, styling salon, or laundry establishment.
- (6) Facilities, or portions of facilities, when open to the general public, including, but not limited to: hospitals, nurseries, schools, libraries or educational facilities supported in part or whole by public funds, kindergartens, day care centers.
- (7) Any transportation conveyance open to the general public, including, but not limited to: taxis, limousines, trains, and buses.
- (8) Any professional office, generally open to the public, such as those of attorneys, physicians, dentists, architects, or accountants.
- (9) Any establishment which is physically located within the premises of any establishment otherwise covered by this section, or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

Sec. 111.62. Prohibition of discrimination in public accommodations.

- (a) It is a violation of this article for a person who owns or operates a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another individual the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that individual's protected status or characteristic.
- (b) It is a violation of this article for a person who owns or operates a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any individual or that any such individual is unwelcome, objectionable or unacceptable because of that individual's protected status or characteristic.
- (c) All people have an equal right to the access and safe use of restrooms or other facilities that are segregated by sex (gender), consistent with their gender identity as presented.
  - (1) In gender-specific facilities where nudity in the presence of other people may be unavoidable, such as shared showers or changing areas, a transgender individual who has completed the transitioning process shall be allowed access and safe use of the facility that is consistent with the individual's gender identity as presented.
  - (2) This provision shall not be construed to require the construction of new or additional facilities.
- (d) In gender-specific facilities or programs where identification is required for membership or participation, such as a women's only gym, exercise class or other gender-based program, membership or participation may not be denied to any individual with an identification that designates the gender they are asserting. Alternative forms of gender identification, such as a letter from a healthcare provider or counselor, are acceptable.

Sec. 111.63. Exceptions.

- (a) The provisions of this article shall not prohibit a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation which it owns or operates, other than for a commercial purpose, to individuals of the same religion, or to individuals who subscribe to its tenets or beliefs, or from giving preference to such individuals.
- (b) The provisions of this article shall not apply to lodge halls or other similar facilities of private organizations which are available for public use occasionally or periodically.
- (c) The provisions of this article shall not apply to any private membership club or other establishment which is not, in fact, open to the public, except to the extent that the facilities of the club or establishment are made available to the customers or patrons of another establishment which is a place of public accommodation. However, any institution, club or place of public accommodation which provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from, or on behalf of, nonmembers for the furtherance of the trade or business, shall not receive an exemption as a private club under this article.
- (d) The provisions of this article shall not be construed to require an establishment to provide an accommodation on the basis of disability, religion or gender-identity, that creates an undue burden or hardship on the business. In determining whether an accommodation is readily achievable or creates an undue burden or hardship, factors to be considered include:

- (1) The nature and cost of the action;
- (2) The overall financial resources of the facility, the effect on expenses and resources and the impact on the operations of the facility.
- (e) The domestic partner provision shall not be construed to require an establishment to treat unmarried couples in the same manner as married couples for the purposes of membership benefits or discounts, but does not prohibit the extending of such benefits to domestic partners.
- (f) The provisions of this article shall not be construed to prohibit the separation on the basis of gender in transient shelters or dormitory-lodging facilities.
- (g) The provisions of this article shall not be construed as prohibiting the giving of special discounts or promotions on goods and services on the basis of gender or age by a place of public accommodation, provided such goods and services, at other than such special discount rates or promotions, are not denied to individuals on the basis of race, color, national origin, religion, sex, marital status, age, disability, sexual orientation, gender identity or expression, unless such denial is pursuant to federal or state laws. Examples of such special discounts or promotions include senior citizen discounts or ladies' night promotions.

## Appendix of Existing Ordinances:

### Broward County:

#### Sec. 16½-1. Title.

Articles I-IV shall be collectively referred to as the "Broward County Human Rights Act," the "Human Rights Act," or the "Act."

#### Sec. 16½-2. Purposes; construction.

- (a) The general purposes of the Broward County Human Rights Act are:
- (1) To express support within Broward County for the policies embodied in Titles II, III, and VII of the Federal Civil Rights Act of 1964, as amended; Title VIII of the Federal Civil Rights Act of 1968, as amended; Section 504 of the Federal Rehabilitation Act of 1973, as amended; the Civil Rights Act of 1991, as amended; the Age Discrimination and Employment Act of 1967, as amended; the Americans with Disabilities Act of 1990, as amended; and other federal and state anti-discrimination laws; and
  - (2) To secure for all individuals within the County freedom from discrimination because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, in connection with employment, public accommodations, and real estate transactions, and thereby to promote the interests, rights, and privileges of individuals within the County.
- (b) The Broward County Human Rights Act shall be liberally construed to further the general purposes stated in this chapter. The provisions of this Act shall be construed consistent with similar federal and state statutes.

#### Sec. 16½-3. Definitions.

As used in this chapter:

- (a) *Age* means a person being at least eighteen (18) years of age.
- (b) *Aggrieved person* means any person who claims to have been injured by a discriminatory practice.
- (c) *Auxiliary aids and services* includes qualified interpreters or other effective methods of making aurally-delivered materials available to individuals with hearing impairments; qualified readers, taped texts, or other effective methods of making visually-delivered materials available to individuals with visual impairments; acquisition or modification of equipment devices; and other similar services and actions.
- (d) *Board* means the Broward County Human Rights Board.
- (e) *Chair* means the chair of the Human Rights Board or chair of a hearing panel, as the context may indicate.
- (f) *Charge* means a formal administrative complaint filed with the Board subsequent to a finding by the Human Rights Section that there is reasonable cause to believe that a discriminatory practice in violation of this Act has occurred.
- (g) *Clerk* means the person designated by the Director as the clerk of the Human Rights Board.
- (h) *Complainant* means a person filing a complaint.
- (i) *Complaint* means a written statement that alleges the occurrence of a discriminatory practice under this Act.
- (j) *Conciliation* means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, complainant, respondent, and, as applicable, the Human Rights Section or the Board.
- (k) *Conciliation agreement* means a written agreement entered into between the parties to a conciliation resolving the issues raised in, or otherwise resulting from, a complaint or charge.
- (l) *Covered multifamily dwelling* means:
  - (1) A building that consists of four (4) or more dwelling units and has an elevator; or
  - (2) The ground-floor dwelling units of a building that consists of four (4) or more dwelling units and does not have an elevator.
- (m) *Director* means the Director of the Office of Intergovernmental Affairs and Professional Standards or his or her designee.
- (n) *Disabled person* means a person who has a disability.
- (o) *Disability* means:
  - (1) with respect to an individual -
    - a. A physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual;
    - b. A record of such impairment;

- c. Being regarded as having such impairment;
  - d. Having a developmental disability as defined in Subsection 393.063(9), Florida Statutes; or
  - e. Having human immunodeficiency virus (HIV).
- (2) However, the current illegal use of, or addiction to, any drug or federally controlled substance is not a disability.
  - (3) For complaints of discrimination that allege discriminatory acts occurring on or after January 1, 2009, the definition of disability shall be construed in favor of broad coverage of individuals under the ADA Amendments Act of 2008 (ADAAA).
  - (4) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADAAA.
  - (5) An impairment that substantially limits one (1) major life activity need not limit other major life activities in order to be considered a disability.
  - (6) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.
  - (7) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; or learned behavioral or adaptive neurological modifications.
  - (8) The ameliorative effects of the mitigating measures of ordinary glasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity. As used in this subparagraph:
    - a. the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
    - b. the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.
- (p) *Discriminatory classification* means a classification on the basis of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression. Familial status shall only be included in this definition for the purpose of claims alleging a discriminatory housing practice under this Act.
  - (q) *Discriminatory employment practice* means an act that is unlawful under Article III, Division 1 of this chapter and Article III, Division 4 as it relates to acts made unlawful under Article III, Division 1 of this chapter.
  - (r) *Discriminatory housing practice* means an act that is unlawful under Article III, Division 3 of this chapter and Article III, Division 4 as it relates to acts made unlawful under Article III, Division 3 of this chapter.
  - (s) *Discriminatory practice* means an act or practice designated as unlawful under the terms of this chapter.
  - (t) *Discriminatory public accommodations practice* means an act that is unlawful under Article III, Division 2 of this chapter and Article III, Division 4 as it relates to acts made unlawful under Article III, Division 2 of this chapter.
  - (u) *Dwelling unit* means a single unit of residence for a family of one (1) or more persons.
  - (v) *Document* includes, but is not limited to, writings, drawings, graphs, charts, photographs, sound recordings, and other data or compilations from which information can be obtained.
  - (w) *Employee* means any individual employed by an employer, or any applicant for such employment.
  - (x) *Employer* means a person, or any agent of such person, who employs five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year. The weeks need not be consecutive. The term does not include:
    - (1) The United States or a corporation wholly owned by the Government of the United States;
    - (2) An Indian tribe;
    - (3) The State of Florida and its agencies; or
    - (4) Broward County and its agencies, excluding independent authorities, independent boards, and constitutional county officers.
  - (y) *Employment agency* means any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees the opportunity to work for an employer, and includes an agent of such a person.
  - (z) *Familial status* means:

- (1) One (1) or more individuals who have not attained the age of eighteen (18) years and who are domiciled with:
  - a. A parent or another person who has legal custody of such individual or individuals; or
  - b. The designee of such parent, or other person having such custody, with the written permission of such parent or other person.
- (2) The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.
- (aa) *Family* includes a single individual.
- (bb) *Gender identity or expression* means gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.
- (cc) *Hearing panel* means three (3) Board members appointed pursuant to this chapter to hold an evidentiary hearing.
- (dd) *Housing accommodation* includes any real property, building, mobile home or trailer, structures, or part thereof, that is intended, arranged, or designed to be used or occupied as the home or residence of one (1) or more individuals.
- (ee) *Housing for older persons* means housing:
  - (1) Provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development (HUD) determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;
  - (2) Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or
  - (3) Intended for occupancy by at least one (1) person fifty-five (55) years of age or older per unit, and at least eighty percent (80%) of the occupied units are occupied by at least one (1) person who is fifty-five (55) years of age or older, and which housing complies with the provisions set forth in Section 16½-35.5.
- (ff) *HRA classification* means a classification on the basis of gender identity or expression, marital status, political affiliation, or sexual orientation.
- (gg) *Human Rights Section* means the Human Rights Section of the Broward County Office of Intergovernmental Affairs and Professional Standards.
- (hh) *Labor organization* includes:
  - (1) An organization of any kind representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;
  - (2) A conference, general committee, system board, or council that is subordinate to a national or international labor organization; and
  - (3) An agent of a labor organization.
- (ii) *Marital status* means the state of being unmarried, married, or separated, as defined by state law. The term "unmarried" includes people who are single, divorced, or widowed.
- (jj) *Major life activities* means those basic activities that the average person in the general population can perform with little or no difficulty including, but not limited to, functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also includes the operation of a *major bodily function* including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- (kk) *National origin* means the national origin of an ancestor or the country of origin of a person's forebears naturally, by marriage, or by adoption.
- (ll) *Office of the County Attorney* means the Office of the County Attorney as established by Section 2.10 of the Broward County Charter.
- (mm) *Owner* includes a lessee, sublessee, co-tenant, assignee, agent, or other person who has the right of ownership or possession, or the right to sell, rent, or lease any housing accommodation.
- (nn) *Party* means the Human Rights Section, complainant, aggrieved person, respondent, and any person designated as a party to a proceeding before a three-member hearing panel or the Board.
- (oo) *Person* includes an individual, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, or any other legal or commercial entity not otherwise excluded pursuant to this subsection.

- (pp) *Place of public accommodations* means any establishment, either licensed or unlicensed, that supplies goods or services to the public or that is supported directly or indirectly by government funds; however, such term shall not include any institution or place of accommodation that is in its nature distinctly private.
- (qq) *Political affiliation* means belonging to or endorsing any political party.
- (rr) *Qualified individual* means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.
- (ss) *Real estate broker, salesperson, or agent* includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations, or contracts, and the administration of matters regarding such offers, solicitations, or contracts, or any real estate-related transactions.
- (tt) *Real property* includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.
- (uu) *Reasonable accommodation* may include: making existing facilities readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations; training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- (vv) *Reasonable modification* means a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.
- (ww) *Reasonable cause* means that a preponderance of credible evidence supports a conclusion that unlawful discrimination has been committed or is being committed.
- (xx) *Record of impairment* means, with respect to employment, an individual who:
  - (1) Has a history of a substantially limiting impairment; or
  - (2) Has been misclassified as having a substantially limiting impairment.
- (yy) *Regarded as having such an impairment* means that an individual has established that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. This term shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of six (6) months or less.
- (zz) *Religion* means all aspects of religious observance and practice, as well as religious belief.
- (aaa) *To rent* includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- (bbb) *Respondent* means:
  - (1) In the case of a complaint or charge, the employer, employment agency, labor organization, joint labor-management committee, or person designated in the complaint or charge as responsible for the alleged unlawful discriminatory practice of whatever kind;
  - (2) The person or other entity accused in a complaint or charge of a discriminatory housing practice, and any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified in Article III of this Act; or
  - (3) The person against whom relief is requested.
- (ccc) *Sexual orientation* means being heterosexual, bisexual, or homosexual, or the perception that an individual is heterosexual, bisexual, or homosexual, or the perception that an individual is associated with individuals who are heterosexual, bisexual, or homosexual.
- (ddd) *Training program* means any plan containing terms and conditions for qualification, recruitment, employment, or training of employees to:
  - (1) Enter a specific trade or occupation after completion of a specified training program; or
  - (2) Offer a person, already either partially or wholly trained in a specified trade or occupation, an opportunity to advance himself or herself after completion of a specified training program.
 A training program may be managed and supervised by representatives of labor and management ("joint"), or unilateral ("non-joint").
- (eee) *Undue hardship* means an action requiring significant difficulty or expense, when considered in light of the following factors: (i) the nature and cost of the accommodation needed; and (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources, or the impact otherwise, of such accommodation upon the operation of the facility.

Secs. 16½-4—16½-20. Reserved.

## **ARTICLE II. HUMAN RIGHTS BOARD**

Sec. 16½-21. Human rights board created; composition; terms; authorities.

- (a) There is hereby created the Human Rights Board, which shall be composed of eighteen (18) members appointed by the Broward County Board of County Commissioners ("County Commission").
- (b) Each County Commissioner shall make two (2) nominations to the Board. In appointing members to the Board, the County Commission shall consider and should balance its appointments so the Board is representative of the County's population and reflective of the County's racial, ethnic, and religious make-up. In addition to appointing members, the County Commission shall also seek geographic and economic balance. The Director, or his or her designee, shall be the ex officio clerk of the Board. The membership of the Board must include: an attorney who is a member in good standing of The Florida Bar; a member of the business community; a representative of the real estate industry; a member of a non-profit civil rights organization; a member who is sixty (60) years of age or older; a small business owner; a representative of municipal government; a representative of an employee organization; and a representative of the banking industry.
- (c) The members of the Board shall receive no compensation. At the discretion of and within annual appropriations made by the County Commission, Board members may qualify for reimbursement, in accordance with County policy, for actual and necessary expenses incurred in the performance of their Board duties.
- (d) Board members shall serve at the pleasure of the nominating County Commissioner and for terms in accordance with the policies set by the County Commission.
- (e) A majority of the appointed members shall constitute a quorum. The Board may, by rule, establish committees of not less than a quorum of its members to exercise Board powers; except that the Board may not delegate any of the quasi-judicial powers and authority provided in Subsection 16½-22(b).
- (f) The Board shall elect a Chair and Vice-Chair and such other officers, and shall promulgate rules, as necessary to conduct the business of the Board. No Board member shall be elected to, or serve in, the same Board office for more than two (2) consecutive one (1) year terms.
- (g) Except to the extent inconsistent with the provisions of this Act, the Board shall be governed by the provisions of Section 1-233 of the Broward County Code of Ordinances.

Sec. 16½-22. Powers of the board.

- (a) The Board is authorized to exercise the following general powers:
  - (1) To serve as a Board with administrative support provided by the Human Rights Section;
  - (2) To meet and exercise its powers at a designated place;
  - (3) To adopt, modify, and repeal rules of procedure for the conduct of the Board's business; and
  - (4) To accept gifts, bequests, grants, or other consideration subject to the approval of the County Commission.
- (b) The Board is authorized to exercise the following quasi-judicial powers:
  - (1) To receive charges alleging any discriminatory practice; to seek to conciliate with the parties; to hold hearings in order to determine and adjudicate the facts; to issue binding orders; to act upon charges alleging violations of this Act; and to grant relief from discriminatory practices;
  - (2) To administer oaths, subpoena witnesses, and compel production of evidence. This authority may be delegated by the Board for hearings to the chair of a hearing panel and for investigations to the Director;
  - (3) To apply to the county or circuit court for the enforcement of any subpoena upon the refusal of the witness to answer, appear, or produce the requested document or information;
  - (4) To petition the county or circuit court for enforcement of the final order of the Board; and
  - (5) To exercise such other authority as provided in this Act or as necessary to afford aggrieved persons, complainants, respondents, and other parties due process in accordance with the procedures set forth in this Act or adopted by Board rule pursuant to this Act.
- (c) The Board shall have the authority to advise the Director, the County Administrator or his or her designee, the Human Rights Section, and the County Commission on matters relating to the following:
  - (1) Funding for the employment of investigators, clerks, attorneys, and other employees and agents to assist in effecting the purposes and provisions of this Act;
  - (2) Encouraging equality of treatment, and prevention of discrimination against any racial, religious, ethnic, or other minority group or its members;
  - (3) Providing technical assistance to further compliance with the Act or any final order issued pursuant hereto;

- (4) The development, preparation, and conduct of studies to effectuate the purposes and policies of this Act and to make the results of such studies available to the public;
  - (5) Rendering assistance to various community groups and agencies in connection with educational campaigns devoted to the elimination of group prejudices, racial tension, intolerance, and discrimination; and
  - (6) Review of quarterly statistical compilations of cases prepared by the Human Rights Section concerning the number of complaints received and processed by the Human Rights Section, the nature of the discriminatory practices alleged, and any resulting decisions.
- (d) In exercising its advisory powers, the Board may make such reports and recommendations as are necessary to effectuate the purposes and policies of this Act.
- (e) Any member of the Board having knowledge that a discriminatory practice prohibited by this Act has occurred, or that a discriminatory practice is about to occur, may file a complaint with the Human Rights Section. Any complaint filed shall be in writing, signed by the Board member, verified, and shall otherwise comply with the applicable requirements of this Act. Any Board member who files a complaint pursuant to this section shall:
- (1) Make available all information known about the matter to the Human Rights Section and its investigators;
  - (2) Abstain from discussing the matter at any Board meeting, with other members of the Board, or any member of the public, until after the investigation is complete and a determination is made by the Human Rights Section concerning whether or not reasonable cause exists that the alleged discriminatory practice occurred or is about to occur, or until an action is filed in a court of competent jurisdiction, as applicable; and
  - (3) Abstain from voting on any matter before the Board that is directly related to the investigation of the charge or complaint filed by the Board member, during the same time period described in paragraph (2) above.

Sec. 16½-23. Assignment of hearing panels.

- (a) All hearing panels under this Act shall be assigned on a random basis based upon rules adopted by the Board, so that the Board's work is fairly and equally distributed among the members of the Board; provided, however, that whenever necessary in the interest of justice and expediency, the Board may modify the assignments made to any Board member. The adopted rules shall comply with the requirements of this section and other applicable requirements of this Act.
- (b) The Director shall not have any power or discretion in determining the Board member to whom any administrative hearing is assigned. The Director's duties pursuant to this section are ministerial only. However, nothing herein is intended to prohibit the Board, by rule, from authorizing the Director to assign members to serve on a hearing panel where a conflict of interest arises or a member is unavailable.
- (c) The assignment schedule shall be designed to prevent any litigant from choosing the members who will serve on a hearing panel in any particular administrative hearing. All parties to an investigation or proceeding under this Act, and all attorneys appearing before the Human Rights Section or Board, shall conscientiously refrain from attempting to vary the assignment schedule or otherwise violate this subsection.

Secs. 16½-24—16½-32. Reserved.

**ARTICLE III. DISCRIMINATORY PRACTICES**

***DIVISION I. DISCRIMINATION IN EMPLOYMENT***

Sec. 16½-33. Discriminatory practices in employment.

- (a) *Employers.* It is a discriminatory practice for an employer:
  - (1) To fail or refuse to hire, to discharge, or to otherwise discriminate against an individual, with respect to compensation or the terms, conditions, or privileges of employment, because of a discriminatory classification; or
  - (2) To limit, segregate, or classify an employee in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of a discriminatory classification.
- (b) *Employment Agencies.* It is a discriminatory practice for an employment agency on the basis of a discriminatory classification:
  - (1) To fail or refuse to refer for employment, or to otherwise discriminate against an individual; or
  - (2) To classify or refer for employment an individual on such a discriminatory basis.
- (c) *Labor Organizations.* It is a discriminatory practice for a labor organization:

- (1) To exclude or to expel from membership or otherwise discriminate against any individual on the basis of a discriminatory classification;
  - (2) To limit, segregate, or classify membership or applicants for a membership, or to classify or to fail or refuse to refer an individual for employment in a way that would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of a discriminatory classification; or
  - (3) To cause or attempt to cause an employer to violate this Act.
- (d) *Training Programs.* It is a discriminatory practice for an employer, labor organization, or training committee, whether joint or unilateral, to discriminate against an individual on the basis of a discriminatory classification in admission or employment in a training program providing apprenticeship or other training.
- (e) *Advertising.* It is a discriminatory practice for an employer, labor organization, or employment agency, to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination, based on a discriminatory classification; but a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on such a classification when religion, sex, pregnancy, gender identity or expression, national origin, age, marital status, political affiliation, or absence of disability is a bona fide occupational qualification for employment.
- (f) *Discriminatory Information Gathering.* Except as permitted by ordinance or rule of the Board, by applicable federal or state law, or by bona fide occupational qualifications, it is a discriminatory practice for an employer or employment agency:
- (1) To elicit information about an employee's race, color, religion, sex, national origin, age, marital status, political affiliation, disability, sexual orientation, pregnancy, or gender identity or expression; or
  - (2) To keep a record of, or to disclose, such information.

The Board shall not adopt any rule that authorizes an employer to disclose information that is otherwise prohibited from disclosure pursuant to federal or state law or ordinance or regulation of the County Commission.

(g) *Other Employment-Related Protections.*

- (1) *Disability Discrimination Based Upon Association.* It is a discriminatory employment practice for an employer, employment agency, or labor organization to fail or refuse to hire, to discharge, to deny advancement, or to otherwise exclude or deny equal job opportunities, benefits, or other terms, conditions, and privileges of employment to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association. This subparagraph shall not be construed to require an employer to make or otherwise provide a reasonable accommodation to a non-disabled individual.
- (2) *Harassment Prohibited.* It is a discriminatory employment practice for an employer, employment agency, or labor organization to subject an individual to harassment because of a discriminatory classification. Conduct constitutes harassment under this subsection when:
  - a. Submission to the conduct is expressly or implicitly used as a condition of employment;
  - b. Submission or rejection of the conduct is used as a basis for making employment decisions; or
  - c. The conduct is sufficiently severe or pervasive so as to alter the terms and conditions of a person's employment, thus creating a hostile working environment.
- (3) *Pregnancy Discrimination.* It is a discriminatory employment practice for an employer, employment agency, or labor organization to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual because of, or on the basis of, pregnancy, childbirth, or a medical condition relating to pregnancy or childbirth. Women affected by pregnancy, childbirth, or related medical conditions, must be treated the same for all employment-related purposes as other persons not so affected but who are similar in their ability or inability to work.

Sec. 16½-33.1. Employment; exemptions.

(a) It is not a discriminatory practice:

- (1) For a religious corporation, association, or society to employ individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities.
- (2) For a religious education institution or organization owned, operated, supervised, or controlled by a religious institution or organization to limit employment or give preference to members of the same religion.
- (3) For an employer to employ, an employment agency or a labor organization to classify or refer for employment, or a training committee controlling apprenticeship or other training to admit or employ, an

individual on the basis of religion, sex, national origin, age, marital status, political affiliation, absence of disability, sexual orientation, pregnancy, or gender identity or expression, where these qualifications are bona fide occupational qualifications reasonably necessary to the normal operation of that particular business or enterprise.

- (4) For an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, to a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that such differences are not the result of an intent to discriminate because of race, color, religion, sex, national origin, age, disability, marital status, political affiliation, sexual orientation, pregnancy, or gender identity or expression.
  - (5) For an employer to give and to act upon the results of any professionally-developed ability test, provided that such test, its administration, or action upon the results, is not designed, intended, or used to discriminate because of race, color, religion, sex, national origin, age, disability, marital status, political affiliation, sexual orientation, pregnancy, or gender identity or expression.
- (b) The provisions concerning employment discriminatory practices that relate to sexual orientation, or gender identity or expression, shall not apply to any religious school, religious institution, religious association, or religious organization.

## ***DIVISION 2. DISCRIMINATION IN PUBLIC ACCOMMODATIONS***

Sec. 16½-34. Discriminatory practices in public accommodations.

- (a) It is unlawful for a person:
- (1) To deny, withhold, or refuse an individual or group the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of a discriminatory classification;
  - (2) To interfere with the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis that an individual's patronage or presence is objectionable, unwelcome, unacceptable, or undesirable because of a discriminatory classification;
  - (3) To deny an individual or group the full and equal enjoyment of a place of public accommodation by creating architectural barriers or limiting accessible parking; or
  - (4) To discriminate against any individual because of a discriminatory classification in evaluating an application for membership in a club that has more than four hundred (400) members, that provides regular meal service, and that regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from nonmembers for business purposes. It is unlawful for a person, on behalf of such a club, to publish, circulate, issue, display, post, or mail any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because of a discriminatory classification. This subsection does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.
- (b) The provisions of this section concerning discrimination in public accommodations that relate to sexual orientation or gender identity or expression shall not apply to any religious school, religious institution, religious association, or religious organization.

Sec. 16½-34.1. Exemptions; public accommodations.

The prohibitions in Section 16½-34 do not prohibit discrimination on the basis of sex in:

- (a) Restrooms, shower rooms, bathhouses, and similar facilities which are by their nature distinctly private;  
or
- (b) YMCA, YWCA, and similar type dormitory lodging facilities

## ***DIVISION 3. DISCRIMINATION IN REAL ESTATE TRANSACTIONS***

Sec. 16½-35. Discriminatory practices in real estate transactions.

It is unlawful for any person, including but not limited to any owner, lessee, lessor, sublessee, sublessor, assignee, assignor, manager, real estate broker, salesperson, condominium association, homeowners' association, cooperative association, or any representative of any of the foregoing:

- (a) To refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny, a dwelling to any person because of a discriminatory classification.
- (b) To discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of a discriminatory classification.
- (c) To represent to any person because of a discriminatory classification that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (d) To make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on a discriminatory classification, or an intention to make any such preference, limitation, or discrimination.
- (e) To induce or attempt to induce, for profit, any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, marital status, age, familial status, political affiliation, disability, sexual orientation, gender identity or expression, or pregnant women.
- (f) To discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
  - (1) That buyer or renter;
  - (2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
  - (3) Any person associated with the buyer or renter.
- (g) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection with such dwelling, because of a disability of:
  - (1) That buyer or renter;
  - (2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
  - (3) Any person associated with the buyer or renter.
- (h) For purposes of subsections (f) and (g), discrimination includes:
  - (1) Refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before modification, reasonable wear and tear excepted.
  - (2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
- (i) Covered multifamily dwellings as defined herein that are intended for first occupancy after March 13, 1991, shall be designed and constructed to have at least one (1) building entrance on an accessible route. Such buildings shall also be designed and constructed in such a manner that:
  - (1) The public use and common use portions of such dwellings are readily accessible and usable by disabled persons.
  - (2) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.
  - (3) All premises within such dwellings contain the following features of adaptive design:
    - a. An accessible route into and through the dwelling.
    - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.
    - c. Reinforcements in bathroom walls to allow later installation of grab bars.
    - d. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.
- (j) Compliance with the appropriate requirements of the American National Standard Institute for buildings and facilities providing accessibility and usability for physically disabled people, commonly cited as ANSI A117.1-1986, shall satisfy the requirements of Subsection 16½-35(i).

- (k) State agencies with building construction regulation responsibility or local governments, as appropriate, may review the plans and specifications for the construction of covered multifamily dwellings to determine consistency with the requirements of this section. However, determinations of compliance or non-compliance by a state agency or unit of local government, under this subsection, are not conclusive in enforcement proceedings brought pursuant to this Act.
- (l) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 16½-35.1. Discriminatory financial practices.

- (a) It is unlawful for any person or entity, whose business consists, in whole or in part, of the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying for a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling because of a discriminatory classification. It is also unlawful to discriminate against a person in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the discriminatory classification of such person or of any person associated with such person in connection with such loan or other financial assistance, or because of the discriminatory classification of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.
- (b) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of a discriminatory classification.

Sec. 16½-35.2. Blockbusting.

It is unlawful for a person, for the purpose of inducing a real estate transaction from which such person may benefit financially:

- (a) To represent that a change has occurred, or may or will occur, in the composition, with respect to a discriminatory classification of the owners or occupants, in the block, neighborhood, or area in which the real estate is located;
- (b) To represent that such change will or may result in the increase or decrease of property values, have an adverse or positive impact on the neighborhood, increase or decrease criminal or antisocial behavior, or raise or diminish the quality of the schools, neighborhood, or area in which the real property is located; or
- (c) To induce or attempt to induce, for profit, any person to sell or rent any dwelling by representations regarding the entry or exit or prospective entry or exit into or from the neighborhood of a person or persons of a particular race, color, religion, sex, national origin, marital status, age, familial status, political affiliation, disability, sexual orientation, pregnancy, or gender identity or expression.

Sec. 16½-35.3. Brokerage services.

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on the basis of a discriminatory classification.

Sec. 16½-35.4. Exemptions; real estate transactions.

- (a) Except for the provisions of Subsection 16½-35(d), and Sections 16½-35.1 and 16½-35.3, this article shall not apply to:
  - (1) Any single-family house sold or rented by its private, individual owner, provided that such owner does not:
    - a. Own more than three (3) such single-family houses at any one time; or
    - b. Own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three (3) single-family houses at any one time.
  - (2) The sale or rental of any such single-family house shall be exempted only if the house is sold or rented without:

- a. The use of the sales or rental facilities, or services for sale or rental, of any real estate broker, agent, or salesperson or any person in the business of selling or renting a dwelling, or of any employee or agent of such; and
- b. The making, printing, publication, posting, or mailing of any advertisement or written notice in violation of this section.

Nothing in this section prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer title to real property.

- (3) The sale or rental of rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies any such living quarters as his or her residence. For the purposes of this section, a person is deemed to be in the business of selling or renting dwellings if:
  - a. He or she has, within the preceding twelve (12) months, participated as a principal in three (3) or more transactions involving the sale or rental of any dwelling or interest therein;
  - b. He or she has, within the preceding twelve (12) months, participated as an agent, other than in the sale or rental of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or interest therein; or
  - c. He or she is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.
- (4) A private club not open to the public that, as an incident to its primary purpose or purposes, provides lodging that it owns or operates for other than a commercial purpose and that limits or gives preference in the rental or occupancy of such lodgings to its members, unless membership is restricted on account of a discriminatory classification as set forth in Section 16½-34.
- (5) A religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by, or in conjunction with, a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling that it owns or operates for other than a commercial purpose, to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of a discriminatory classification.
- (6) The exemption in paragraph (a)(1) above applies only to one (1) such sale in any twenty-four (24) month period.
- (b) Nothing in this section:
  - (1) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, religion, sex, age, marital status, political affiliation, disability, familial status, sexual orientation, pregnancy, gender identity or expression, or other discriminatory classification.
  - (2) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.
  - (3) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
  - (4) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the unlawful manufacture or distribution of a controlled substance as defined under Chapter 893, Florida Statutes.
- (c) The provisions of this Act concerning residential real estate transactions shall not apply to any religious school, religious institution, religious association, or religious organization when an allegation(s) of a discriminatory housing practice(s) is based upon sexual orientation or gender identity or expression.

Sec. 16½-35.5. Exemptions; housing for older persons.

- (a) The provisions regarding discrimination based on familial status in this Division shall not apply to housing intended and operated for older persons as defined in Subsection 16½-3(ee).
- (b) Housing, as defined in Subsection 16½-3(ee), qualifies for this exemption if the housing community or facility complies with:
  - a. Section 807(b)(2)(C) (42 U.S.C. § 3607(b)) of the Fair Housing Act as amended; and
  - b. Title 24 CFR Sections 100.305, 100.306, and 100.307.
- (c) For purposes of this subpart, housing facility or community means any dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions. A portion or portions of a single building shall

not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

- (1) A condominium association;
  - (2) A cooperative;
  - (3) A property governed by a homeowners' or resident association;
  - (4) A municipally zoned area;
  - (5) Leased property under common private ownership;
  - (6) A mobile home park; or
  - (7) A manufactured housing community.
- (d) For purposes of this subpart, older person means a person fifty-five (55) years of age or older.
- (e) A housing facility or community qualifies as housing for older persons under this section if at least eighty percent (80%) of its occupied units are occupied by at least one (1) person fifty-five (55) years of age or older.
- (f) For purposes of this subpart, occupied unit means:
- (1) A dwelling unit that is actually occupied by one (1) or more persons on the date that the exemption is claimed; or
  - (2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.
- (g) For purposes of this subpart, occupied by at least one (1) person fifty-five (55) years of age or older means that on the date the exemption for housing intended and operated for persons who are fifty-five (55) years of age or older is claimed:
- (1) At least one (1) occupant of the dwelling unit is fifty-five (55) years of age or older; or
  - (2) If the dwelling unit is temporarily vacant, at least one (1) of the occupants immediately prior to the date on which the unit was temporarily vacated was fifty-five (55) years of age or older.
- (h) Newly-constructed housing for first occupancy after March 12, 1989, need not comply with the requirements of this section until at least twenty-five percent (25%) of the units are occupied. For purposes of this section, newly-constructed housing includes a facility or community that has been wholly unoccupied for at least ninety (90) days prior to re-occupancy due to renovation or rehabilitation.
- (i) Housing satisfies the requirements of this section even though:
- (1) On September 13, 1988, less than eighty percent (80%) of the occupied units in the housing facility or community were occupied by at least one (1) person fifty-five (55) years of age or older, provided that at least eighty percent (80%) of the units occupied by new occupants after September 13, 1988, are occupied by at least one (1) person fifty-five (55) years of age or older.
  - (2) There are unoccupied units, provided that at least eighty percent (80%) of the occupied units are occupied by at least one (1) person fifty-five (55) years of age or older.
  - (3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under fifty-five (55) years of age, provided the employees perform substantial duties related to the management or maintenance of the facility or community.
  - (4) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by 24 CFR Section 100.204 and who are under the age of fifty-five (55).
- (j) Where application of the eighty percent (80%) rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one (1) person fifty-five (55) years of age or older.
- (k) Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one (1) person fifty-five (55) years of age or older, so long as the housing facility or community complies with the provisions of this section.
- (l) In order for a housing facility or community to qualify as housing intended or operated for persons who are fifty-five (55) years of age or older, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons fifty-five (55) years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:
- (1) The manner in which the housing facility or community is described to prospective residents;
  - (2) Any advertising designed to attract prospective residents;
  - (3) Lease provisions;
  - (4) Written rules, regulations, covenants, deeds, or other restrictions;
  - (5) The maintenance and consistent application of relevant procedures;
  - (6) Actual practices of the housing facility or community; and

- (7) Public posting in common areas of statements describing the facility or community as housing for persons fifty-five (55) years of age or older.
- (m) Phrases such as "adult living," "adult community," or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons fifty-five (55) years of age or older.
- (n) If there is language in deeds or other community or facility documents that is inconsistent with the intent to provide housing for persons who are fifty-five (55) years of age or older, the Human Rights Section shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.
- (o) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of this section.
- (p) In order for a housing facility or community to qualify as housing for persons fifty-five (55) years of age or older, it must be able to produce, in response to a complaint filed under this Act, verification of compliance with this section through reliable surveys and affidavits.
- (q) A facility or community shall develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one (1) occupant of each unit is fifty-five (55) years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.
- (r) The procedures described in subsection (l) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two (2) years. A survey may include information regarding whether any units are occupied by persons described in this section.
- (s) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:
- (1) Driver's license;
  - (2) Birth certificate;
  - (3) Passport;
  - (4) Immigration card;
  - (5) Military identification;
  - (6) Any other state, local, national, or international official documents containing a birth date of comparable reliability; or
  - (7) A certification in a lease, application, affidavit, or other document signed by any member of the household age eighteen (18) or older asserting that at least one (1) person in the unit is fifty-five (55) years of age or older.
- (t) A facility or community shall consider any one (1) of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.
- (u) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.
- (1) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one (1) person fifty-five (55) years of age or older. Such evidence may include:
    - a. Government records or documents, such as a local household census;
    - b. Prior forms or applications; or
    - c. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.
  - (2) Surveys and verification procedures that comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.
  - (3) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.
- (v) A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.
- (1) A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

- (2) Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing, and under oath or affirmation, to the person subsequently claiming the defense, that it complies with the requirements for such an exemption as housing for persons fifty-five (55) years of age or older in order for such person to claim the defense.
- (3) For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established in this subpart.
- (4) For the purposes of this section, a person means a natural person.
- (5) A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons fifty-five (55) years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph (1) of this subsection.

Sec. 16½-35.6. Required notices in connection with application to purchase or rent a dwelling.

- (a) Within fifteen (15) days after receipt of any incomplete or incorrectly completed application (or amended application) to purchase or rent a dwelling, the condominium association, homeowners' association, or cooperative association shall provide the applicant with written notice specifically identifying any and all items in the application that need to be completed or corrected.
- (b) Within forty-five (45) days after receipt of a correctly completed application, the association shall either reject or approve the application and shall provide the applicant with written notice of same. If the application is rejected, the written notice must state with specificity each reason for the rejection.
- (c) If the condominium association, homeowners' association, or cooperative association fails to comply with the provisions of Sec. 16½-35.6(a) or (b), the Human Rights Section may send a demand letter requesting that the condominium association, homeowners' association, or cooperative association, within ten (10) days after the date of the demand letter, provide to the applicant and the Human Rights Section a written acknowledgement of application receipt, notice of approval or rejection of the application, and notice specifying each reason for the rejection (if applicable). The failure of the condominium association, homeowners' association, or cooperative association to timely comply with this provision may be considered in determining whether reasonable cause exists to believe the association's decision or action was discriminatory.

#### ***DIVISION 4. INTERFERENCE, COERCION, INTIMIDATION OR RETALIATION***

Sec. 16½-36. Prohibition of inference, coercion, intimidation, or retaliation.

- (a) It is unlawful for a person, or for two (2) or more persons to conspire:
  - (1) To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, or on account of that person engaging in activities designed to make other persons aware of, any right granted or protected by this Act;
  - (2) To retaliate or discriminate against a person because he or she has opposed a discriminatory practice, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or any other proceeding under this Act;
  - (3) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;
  - (4) Willfully to interfere with the performance of a duty or the exercise of a power by the Human Rights Section or its employees, the Board, or one of its members or representatives; or
  - (5) Willfully to obstruct or prevent a person from complying with the provisions of this Act or any order issued pursuant to this Act.
- (b) Conduct made unlawful under this section includes, but is not limited to, the following:
  - (1) Coercing a person by any means to deny or limit the benefits provided to that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of a discriminatory classification.
  - (2) Threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of a discriminatory classification of such persons, or of visitors or associates of such persons.
  - (3) Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, in response to any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of a discriminatory classification of that person or of any person associated with that person.

Secs. 16½-37—16½-42. Reserved.

#### ARTICLE IV. ENFORCEMENT OF PROHIBITION AGAINST DISCRIMINATORY AND OTHER PROHIBITED PRACTICES

Sec. 16½-43. Cooperation with other entities.

The Human Rights Section shall cooperate with and, as appropriate, may provide technical and other assistance to federal, state, local, and other public or private entities in formulating or operating programs to prevent or eliminate discriminatory practices. In carrying out this section, the Human Rights Section may enter into contracts with local, state, and federal agencies to investigate complaints of discriminatory practices and render determinations thereon in accordance with the provisions of this Act. All contracts and amendments thereto shall be subject to approval by the County Commission, except that any contract or amendment with a revenue value of less than one hundred fifty thousand dollars (\$150,000) may be executed by the County Administrator after review and approval by the Office of the County Attorney. Nothing in this section shall be construed to authorize the Human Rights Section to enter into any contract that delegates the Human Rights Section's investigative and enforcement authority to a non-governmental entity, including private not-for-profit entities.

Sec. 16½-44. Complaints and answers.

- (a) An aggrieved person may, not later than one (1) year after an alleged discriminatory practice has occurred or terminated, file a complaint with the Human Rights Section alleging a discriminatory employment practice based on a Human Rights Act classification, any discriminatory employment practice committed by an employer who employs between five (5) and fourteen (14) employees, any discriminatory public accommodations practice, or any discriminatory housing practice, including any violation of federal and state fair housing laws. All complaints shall be in writing and must contain such information and be in the form required by the Human Rights Section. All complaints and answers submitted to the Human Rights Section shall be under oath or affirmation, and may be reasonably amended at any time.
- (b) The Human Rights Section may also investigate housing practices to determine whether a complaint should be brought by the Human Rights Section alleging one (1) or more discriminatory housing practices or violations of federal or state fair housing anti-discrimination laws.
- (c) Upon the filing of a complaint:
  - (1) The Human Rights Section shall serve notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of the time limits and choice of forums provided under this Act;
  - (2) The Human Rights Section shall, not later than ten (10) calendar days after a complaint is filed or an additional respondent is identified, serve on the respondent a notice identifying the alleged discriminatory practice and advising each respondent of his or her procedural rights and obligations under this Act, together with a copy of the original complaint;
  - (3) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of an investigation, may be joined as an additional or substitute respondent upon written notice to such person by the Human Rights Section. Such notice, in addition to meeting the requirements of this section, shall contain a statement regarding why the person to whom the notice is addressed has been joined as a respondent.
  - (4) Each respondent may file, not later than ten (10) calendar days after receipt of notice from the Human Rights Section, an answer to the complaint; and
  - (5) Within thirty (30) calendar days after a complaint is filed, the Human Rights Section shall begin an investigation of the alleged discriminatory practice.
- (d) The Human Rights Section shall complete its investigation within one hundred (100) calendar days after the filing of the complaint. If the Human Rights Section is unable to complete its investigation within such time, the Human Rights Section shall notify the complainant, aggrieved person, and respondent, in writing, of the circumstance(s) prohibiting the timely completion of the investigation. Under that circumstance, the Human Rights Section shall complete its investigation and any administrative proceedings related to the investigation not later than one (1) year after the date the complaint is filed.

Sec. 16½-44.1. Investigation of complaint.

- (a) The purposes of an investigation conducted under this section are:
  - (1) To obtain information concerning the events or transactions that relate to the alleged discriminatory practice identified in the complaint;
  - (2) To document the policies or practices of the respondent involved in the alleged discriminatory practice raised by the complaint; and

- (3) To develop the factual data necessary for the Human Rights Section to make a determination under this Act concerning whether reasonable cause, or no reasonable cause, exists to believe that a discriminatory practice has occurred or is about to occur, and to take other actions as provided in this Act.
- (b) Investigative Powers of the Human Rights Section.
  - (1) In connection with an investigation of a complaint filed under this Act, the Human Rights Section, or its authorized agents, will seek the cooperation of all persons to obtain, among other things, access to premises, records, documents, individuals, and other possible sources of information, to examine, record, and copy necessary materials, and to take and record statements of persons reasonably necessary for the investigation.
  - (2) During the course of an investigation, the Director may issue subpoenas and order discovery to aid the Human Rights Section in its investigation. Discovery may be undertaken to the same extent permitted in civil actions before the federal and state courts within Broward County, and requests for information may be made by the following methods:
    - a. Oral interview;
    - b. Written interrogatories;
    - c. Requests for production of documents;
    - d. Request for entry upon land;
    - e. Requests for written statements or affidavits; or
    - f. Such other methods permitted under federal and state anti-discrimination laws.
  - (3) If a person fails to cooperate with the Human Rights Section or its agents in the conduct of the investigation, the Human Rights Section may apply to the Board for an order requiring compliance with the Human Rights Section's request for information or access.

Sec. 16½-44.2. Investigation determination.

- (a) Unless the Human Rights Section has approved a conciliation agreement with respect to the complaint, the Human Rights Section shall determine, based on the totality of the factual circumstances gathered in its investigation of the complaint, whether reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur. In making this determination, the Human Rights Section shall consider whether the facts concerning the alleged discriminatory practice are sufficient to warrant the initiation of a civil action in federal or state court.
- (b) *Notice of Determination.* After completion of the investigation conducted pursuant to this Act, the Human Rights Section shall issue to the complainant, aggrieved person, and respondent, a notice of determination. The notice of determination shall inform the parties of the Human Rights Section's decision as to whether there is reasonable cause to believe that an unlawful discriminatory practice has occurred or was about to occur, along with the Human Rights Section's findings and reasons for its determinations.
- (c) *Final Investigative Report.* At the end of each investigation under this Act, the Human Rights Section shall prepare a final investigative report containing:
  - (1) The names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. However, the Human Rights Section shall, upon request of any party, disclose the names of such witnesses if the aggrieved person requests an administrative proceeding before the Board or files a civil action;
  - (2) A summary and the dates of correspondence and other contacts with the complainant, aggrieved person, and respondent;
  - (3) A summary description of other pertinent records;
  - (4) A summary of witness statements; and
  - (5) Answers to interrogatories.
- (d) *Reasonable Cause Finding and Charge.*
  - (1) If the Human Rights Section determines that reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur, the Director shall request that the Office of the County Attorney file a charge on behalf of the aggrieved person for further proceedings before the Human Rights Board.
  - (2) If the Human Rights Section determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, it shall notify the Broward County Permitting, Licensing and Consumer Protection Division, or other appropriate local governmental authority, for appropriate action.
- (e) *No Reasonable Cause Finding.* If the Human Rights Section determines that no reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur, the Human Rights Section shall issue a

Dismissal and Notice of Rights to the complainant, aggrieved person, and respondent informing the parties of their rights, if any, to proceed in a court of competent jurisdiction.

- (f) Any dismissal made pursuant to this section shall be subject to public disclosure consistent with the provisions of Section 16½-52, 42 U.S.C. Section 3610(g)(3), Title VIII of the Civil Rights Act of 1968, as amended, 24 CFR Section 103.400, and Section 119.0713, Florida Statutes, as amended. If, at any time, the public disclosure subsections within Section 16½-52 conflict with federal or state law, the provisions of federal and state law shall prevail.

Sec. 16½-45. Conciliation.

- (a) During the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal of the complaint by the Human Rights Section, the Human Rights Section shall, to the extent feasible and appropriate, engage in conciliation with respect to such complaint.
- (b) In the event that the Human Rights Section determines there is reasonable cause to believe that an alleged discriminatory practice has occurred, an attempt to conciliate shall be made by the Human Rights Section. The conciliation process shall be completed within thirty (30) calendar days after the date of the determination of reasonable cause, unless the Director extends this time period for a reasonable time based on a belief by the Director that such extension will result in a conciliation agreement.
- (c) The terms of a settlement of a complaint will be reduced to a written conciliation agreement executed by the respondent and the complainant. The agreement shall be subject to approval by the Human Rights Section, which approval will be reflected by the Director's execution of the agreement. The Director shall approve the agreement, only if:
  - (1) The complainant and respondent agree to the relief accorded the aggrieved person;
  - (2) The provisions of the agreement will adequately vindicate the public interest; and
  - (3) All aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.
- (d) In any settlement of a complaint where the Human Rights Section is the complainant, the Director shall present the conciliation agreement to the Board for approval. The Board shall approve any such conciliation agreement by a majority vote of those Board members present and voting at the Board meeting, unless the Board determines that the conciliation agreement fails to vindicate the public interest.
- (e) The types of relief that may be sought for aggrieved persons and for the public interest shall comply with the provisions of this section.
  - (1) The following types of relief may be sought for aggrieved persons in conciliation:
    - a. Monetary relief for actual damages incurred by the aggrieved person and reasonable court costs and attorney's fees;
    - b. Equitable relief. In housing discrimination cases, this includes access to the dwelling at issue, or to a comparable dwelling, and the provision of services or facilities in connection with a dwelling. In employment cases, such relief includes reinstatement, or front pay if reinstatement is not available; and
    - c. Injunctive relief appropriate to the elimination of discriminatory practices affecting the aggrieved person or other persons, which shall be enforceable through an order of a court of competent jurisdiction.
  - (2) The following types of provisions may be sought for vindication of the public interest:
    - a. Elimination of discriminatory practices;
    - b. Prevention of future discriminatory practices;
    - c. Remedial affirmative activities to overcome discriminatory practices;
    - d. Reporting requirements; and
    - e. Monitoring and enforcement activities.
- (f) Except as provided in subsection (g) of this section, nothing that is said or done in the course of conciliation under this part shall be made public or used as evidence in any subsequent administrative proceeding before the Board, or in any civil action filed pursuant to this Act, or Title VIII of the Civil Rights Act of 1968, as amended, without the express written consent of each person involved in the conciliation.
- (g) Consistent with federal fair housing laws and Florida Statutes, a conciliation agreement shall be made public.
- (h) The Human Rights Section may terminate its effort to conciliate a complaint if the respondent or aggrieved person fails or refuses to confer with the Human Rights Section; the aggrieved person or respondent fails to make a good faith effort to resolve any dispute; or the Human Rights Section finds, for any reason, that a voluntary agreement is not likely to result from conciliation.

- (i) Where the aggrieved person has commenced a civil action pursuant to state or federal law or this Act seeking relief with respect to the alleged discriminatory practice, and the trial in such action has commenced, the Human Rights Section shall terminate conciliation efforts unless the court specifically requests assistance from the Human Rights Section.

Sec. 16½-45.1. Compliance with conciliation agreement.

- (a) Whenever the Human Rights Section has reasonable cause to believe that a respondent has breached a conciliation agreement, the Human Rights Section shall refer the matter to the Office of the County Attorney with a recommendation that a civil action be filed for the enforcement of such agreement. The County Commission shall decide whether to file such action, after receiving a recommendation from the Office of the County Attorney. The respondent shall be obligated to pay attorney's fees and costs incurred by the County and/or the Office of the County Attorney in any civil action commenced to enforce a conciliation agreement.

Sec. 16½-46. Prompt judicial action.

- (a) If the Director, or a majority of the Human Rights Board, at any time following the filing of a complaint, believes that prompt judicial action is necessary to carry out the purposes of this Act, the Director or the Chair of the Human Rights Board may recommend that the Office of the County Attorney file a civil action for appropriate injunctive relief pending final disposition of the complaint. The Office of the County Attorney shall retain the final discretion as to whether to file such action, including seeking authorization from the County Commission to file such action. Any civil action that is commenced by the Office of the County Attorney under this section shall not affect the investigation of the complaint, or the initiation or continuation of administrative proceedings before the Board.
- (b) Whenever the Human Rights Section has reason to believe that a basis may exist for the commencement of proceedings against any respondent, or for proceedings by any governmental licensing or supervisory authorities, the Human Rights Section shall immediately transmit the information upon which that belief is based to the Office of the County Attorney, or to other appropriate authorities, for appropriate action.

Sec. 16½-47. Formal administrative proceeding; general rules.

- (a) *Applicability.*
  - (1) Except as otherwise provided, the rules set forth in this section apply to all administrative proceedings of the Board. The Board may adopt additional rules governing procedure, except that such rules shall not conflict with the provisions of this Act or with state or federal law.
  - (2) When the context requires, the terms "Board" and "hearing panel" shall be substituted for the other to effectuate the purposes of this Act.
- (b) *Timing for Filing a Formal Charge.* Within thirty (30) calendar days of a finding of reasonable cause under Section 16½-44.2 or the date on which the Director determines that conciliation efforts have failed under Section 16½-45, whichever is later, the Office of the County Attorney shall file a formal charge against the respondent with the Board.
- (c) *Charge.* A written charge shall contain:
  - (1) The style of the proceeding, in the following or similar form:  
"Broward County Human Rights Board  
[Name(s)],  
BCHRB No \_\_\_\_\_  
Complainant,  
Complaint for  
v.  
[category of action]  
[Name(s)],  
Respondent";
  - (2) The name, address, and telephone number of the complainant and aggrieved person;
  - (3) The name, address, and telephone number of the respondent;
  - (4) A statement of the ultimate facts alleged, and the rules and statutory provisions which entitle the complainant or aggrieved person to relief;
  - (5) All disputed issues of material fact, or a statement that there are none;
  - (6) Other information which the complainant or aggrieved person contends is material; and
  - (7) A demand for the relief requested by the complainant or aggrieved person.

- (d) *Service of Formal Charge.* A copy of the charge filed under this section, together with a notice of the opportunity for a hearing at a time and place specified in the notice, and a notice of the election option pursuant to Section 16½-53, where applicable, shall be served upon (1) each respondent, (2) each complainant, and (3) each aggrieved person on whose behalf the complaint was filed.
- (e) *Notice of Assignment and Initial Matters; Case Management Conference.*
  - (1) After the filing of the charge or the expiration of the election period in Section 16½-53, whichever is later, the Human Rights Section, in consultation with the Chair of the Board, and the Office of the County Attorney shall issue to the parties a Notice of Assignment and Initial Matters which shall:
    - a. Notice the dates of the final administrative hearing, which shall be scheduled not less than sixty (60) calendar days nor more than one hundred and twenty (120) calendar days after the filing of the charge with the Board. Alternatively, the notice may require the parties to provide available days for hearing during the time period prescribed in this paragraph;
    - b. Inform the parties of their right to engage in discovery as permitted under the Florida Rules of Civil Procedure;
    - c. Inform the parties that continuances shall not be granted except for good cause shown;
    - d. Inform the parties that hearings conducted by the hearing panel shall be subject to the procedures prescribed in this Article IV;
    - e. Inform the parties that all parties may be represented by counsel or an authorized representative;
    - f. Inform the parties that they will be given a fair and reasonable opportunity to present relevant and material testimony and evidence; and
    - g. Address any other items considered necessary by the Human Rights Section, after consultation with the Chair of the Board, and the Office of the County Attorney.
  - (2) At the discretion of the Director, the Human Rights Section may schedule a case management conference with the parties at which the Notice of Assignment and Initial Matters may be issued.
- (f) *Assignment of Hearing Panel.* No later than thirty (30) days prior to the date of the final administrative hearing, the Director, in consultation with the Chair of the Board, shall assign a hearing panel in accordance with Section 16½-23, Broward County Code of Ordinances.
- (g) *Hearing Procedure.* The hearing panel shall conduct the final administrative hearing according to the hearing procedure prescribed in this section and Section 16½-48, Broward County Code of Ordinances.
- (h) *Effect of Initiation of Civil Action.* No administrative hearing shall be held pursuant to this section after the commencement of a civil action, under federal or state anti-discrimination laws, brought by the complainant or aggrieved party seeking relief, with respect to the discriminatory practice claims asserted in a charge issued pursuant to Section 16½-44.2, Broward County Code of Ordinances.
- (i) *Consolidation.* If separate complaints have been filed with the Human Rights Section that involve similar issues of law, fact, or identity of a party, such matters may be consolidated for hearing by the Board or hearing panel on its own accord or upon petition by the complainant, respondent, or any aggrieved person
- (j) *Answers.* Each respondent may file an answer not later than twenty (20) calendar days after service of the charge. Such answer shall admit, deny, or state lack of sufficient knowledge as to each allegation in the charge or complaint. An answer may contain other information which the respondent contends is material. A respondent may obtain an enlargement of time to file an answer upon consent of the complainant to such enlargement, with notice of such consent provided to the Board, or upon petition to the Board, which shall grant such enlargement upon good cause shown.
- (k) *Form of Documents.*
  - (1) All documents filed with the hearing panel shall contain the following:
    - a. The title of the proceeding involved;
    - b. The docket, case, or file number, if any;
    - c. The name, address, and telephone number of the person filing the document;
    - d. The signature of the person filing the document; and
    - e. The name of the party on whose behalf the document is filed.
  - (2) All documents filed under these rules should be printed, typewritten, or otherwise duplicated in legible form on white paper of standard size. The impression should be on one (1) side of the paper only and lines should be double-spaced, except quotations of two (2) or more lines, which should be single-spaced and indented.
- (l) *Representation.*

- (1) Any party shall have the right to appear in person, by counsel, or by other authorized representative. A person does not have to be represented by an attorney to file a charge, or to have any such charge adjudicated through a final order of the Board.
  - (2) An attorney or authorized representative for any party to a proceeding must file a notice of appearance. An attorney or authorized representative who has filed an initial pleading shall remain the attorney or authorized representative of record and shall receive pleadings until notice of withdrawal is filed with the Human Rights Section by the represented party or a motion to withdraw has been served on the represented party and approved by the Human Rights Section or Chair of the Board or hearing panel, where applicable.
  - (3) Notice of appearance by any successor or associated attorney or authorized representative shall be filed prior to, or concurrently with, the filing of any pleading with, or appearance before, the Human Rights Section, the Board, or a hearing panel.
- (m) *Prehearing Conference.* The hearing panel may order a prehearing conference to simplify issues and promote possible settlement by order that the parties hold a settlement conference or mediation before any mediator certified in the state of Florida, with such settlement conference or mediation to be held by a date certain. The hearing panel may also enter prehearing orders which may include a requirement that the parties exchange lists of witnesses and exhibits. All matters settled, stipulated, or ordered at a prehearing conference shall be reduced to writing and made a part of the record. Prior to appearing at a conference, the parties may be ordered to provide a joint statement of relevant issues of law and fact, on which there is agreement and on which there is dispute, and to submit memoranda of law on those issues of law which are disputed. Upon request of any party, the hearing panel may, at any time prior to the issuance of a recommended order, assist the parties in reaching an amicable settlement of the issues raised by the charge. Any agreement produced from such efforts shall comply with the provisions of Section 16½-45, Broward County Code of Ordinances, except any such agreement shall be signed by the chair of the hearing panel and shall be presented to the Board for approval.
- (n) *Motions.*
- (1) After a charge is filed, a request for specific action shall be by motion.
  - (2) Written motions may be filed in the style provided in paragraph (k) above. Oral motions made during a hearing and rulings thereon shall be made on the record. Motions shall specifically state the relief sought, and the grounds therefor, and may be accompanied by legal memoranda or affidavits.
  - (3) Any answering memoranda or affidavits shall be filed within ten (10) calendar days of service of the motion papers, unless the hearing panel directs otherwise.
  - (4) When a hearing is to be conducted by a hearing panel, all motions will be ruled upon by the designated chair of the hearing panel. However, if a hearing panel has not yet been assigned, the motion will be determined by the chair of the Board.
  - (5) All motions, rulings, and orders thereon shall be part of the record of the proceeding.
  - (6) The hearing panel shall not consider any motions made after issuance of a recommended order, including motions for rehearing or reconsideration.
- (o) *Discovery.*
- (1) Any party to a pending action shall be entitled to obtain discovery pursuant to and in accordance with the Florida Rules of Civil Procedure, but discovery may be limited in time, scope, and method by the hearing panel.
  - (2) If a complainant or aggrieved person fails to comply with a demand for discovery or fails to make a good faith effort to comply with the demand, the complainant's or aggrieved person's case shall be subject to dismissal. If a respondent fails to comply with a demand for discovery or fails to make a good faith effort to comply with the demand, such respondent's defenses are subject to being stricken in accordance with the Florida Rules of Civil Procedure.
- (p) *Subpoenas.*
- (1) A party to an administrative proceeding involving an evidentiary hearing may file a written application for issuance of a subpoena. The application may be made ex parte and must state the name and address of the person whose attendance is requested and must describe with particularity any material to be produced. The application shall also specify the time and place that the witness is to appear. Discovery subpoenas shall not be issued in the absence of a motion and order permitting discovery. A subpoena pursuant to this subsection may be issued by the chair of the hearing panel or the Director.
  - (2) The requesting party is responsible for service of any issued subpoena. Service may be made by certified mail or in person by any person who is not a party and who is at least eighteen (18) years of age.

- (3) A person served with a subpoena who opposes the issuance thereof may promptly, but in no event later than the time specified in the subpoena for compliance, file a motion, in writing, to quash or limit the subpoena, stating the grounds for the motion. Upon the filing of such motion, the subpoena shall be stayed pending a ruling on the motion.
- (q) *Witness Fees.* Witness fees necessary and incident to a hearing shall be paid by the party upon whose request the witness is summoned. If the hearing panel directs that a witness be summoned, that witness's fees shall be paid by the Human Rights Section. Witness fees shall be tendered, or a voucher submitted, at the time of attendance. The fees allowed shall be the same as those allowed by the circuit courts of this state.
- (r) *Intervention.*
- (1) The Director or a person whose substantial interests may be affected by the determination of a charge may, by motion, request leave to intervene in a proceeding.
  - (2) Motions to intervene must state, with particularity, the interests of the intervenor that are subject to determination in the proceeding. A motion to intervene must fully set forth the movant's interest and must be signed by the movant.
- (s) *Joinder of Parties.* If it appears that the determination of the rights of parties in a proceeding before the Board will necessarily involve a determination of the substantial interests of persons who are not parties, the hearing panel may, upon motion of a party, or upon its own motion, enter an order requiring that notice of the proceeding be given to the absent person(s), who may elect to join in the proceeding as a party complainant, a party respondent, or as an intervenor, within the time required in the notice.
- (t) *Ex Parte Communications.* Except for ex parte applications for subpoenas pursuant to this Act, no party to any proceeding, person who has a direct interest in any proceeding, or authorized representative or counsel of such person or party shall make any ex parte communication to any Board member relative to any pending case before the Human Rights Section or the Board. Any violation of this section shall be reported, in writing, by the Board member affected; and the report, which shall include a description of the substance of the communication, any response, and a copy of any written communication, shall be part of the record. Unauthorized ex parte communication may result in removal of a hearing panel member by the Chair of the Board, or sanctions against the party making ex parte communication as deemed appropriate by the hearing panel.
- (u) *Filing and Copies.*
- (1) "Filing" or "file" with the hearing panel means actual receipt of a document by the clerk at the Human Rights Section's office; except that during the course of a hearing, a hearing panel may accept a document for filing, in which event the filing date shall be noted thereon by the chair of the hearing panel, and it shall be transmitted to the clerk.
  - (2) Where any document other than a document pertaining to discovery is filed, the original document and four (4) copies shall be furnished to the Board or hearing panel. Only the original of documents pertaining to discovery shall be filed with the clerk.
- (v) *Proof of Simultaneous Service upon Other Parties.* Whenever any party files a document, that party shall simultaneously serve copies of such document upon the other parties to the proceeding. A signed certificate attesting to such service by email, mail, facsimile, or personal delivery shall be provided to the Board with the document at the time it is filed. The certificate shall be taken as prima facie proof that such service was made in compliance with this section.
- (w) *Service by Board.* Notices, decisions, orders, declaratory statements, and other substantive process and papers of the Board may be served personally or by mail. A return made and verified by the individual making such service and setting forth the manner of such service is proof of service, and a returned post office receipt, when certified mail is used, is proof of service.
- (x) *Computation of Time Periods.*
- (1) In computing any period of time referred to in this Act, the rules of the Board, or rules contained in any order of the Board, the day of the act, event, or occurrence from which the designated time period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday observed by the state of Florida, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday observed by the state of Florida. All time periods are measured by calendar days except where business days are expressly indicated.
  - (2) Whenever a party has a right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon that party, and such notice or paper is served by mail, three (3) calendar days shall be added to the prescribed period.

- (y) *Transcript of Hearing.*
  - (1) The official transcript of a hearing shall be preserved by tape recording, shorthand, court reporter's notes, or other device.
  - (2) A party may, at his or her own expense, provide a court reporter for a hearing if the Human Rights Section has not elected to do so. The original transcript prepared by the court reporter shall be filed with the Human Rights Section.
  - (3) Any party may request from the Human Rights Section a copy of the recording of the hearing in order to transcribe the hearing into verbatim, written form. In such case, the requesting party shall be responsible for the cost of production of the transcription.
- (z) *Legal Advisor.* The Office of the County Attorney shall be the legal advisor to the Board, all hearing panels, and the Human Rights Section, pursuant to this Act and Section 2.10 of the Broward County Charter. In the event there arises a difference between the Human Rights Section and the Board relating to the application, interpretation, or enforcement of any power, duty, or procedural provision of this Act, the Office of the County Attorney shall not be prohibited from advising both the Human Rights Section and the Board as to such matter, or from issuing any opinion resolving such matter. Any opinion of the Office of the County Attorney concerning the application, interpretation, and enforcement of the various provisions of this Act shall be binding on the Human Rights Section and the Board.

Sec. 16½-48. Hearing procedure.

- (a) *Assignment of Hearings.*
  - (1) Consistent with the provisions of Section 16½-23, Broward County Code of Ordinances, the chair of the hearing panel shall be selected by majority vote of the hearing panel.
  - (2) The chair of an assigned hearing panel shall preside over and conduct all hearings on the charges and complaints before it.
- (b) The final administrative hearing concerning a charge assigned to a hearing panel shall be held during the period provided in Subsection 16½-47(e)(1).
- (c) If the complainant or the aggrieved person fails to appear at the hearing, the hearing panel shall enter an order dismissing the charge. The order may be set aside by the hearing panel for good cause upon motion of the complainant or aggrieved person if filed within ten (10) calendar days after the date of the hearing. If the respondent fails to appear at the hearing, the hearing panel may enter an order providing relief to the complainant or aggrieved person after presentation of evidence or testimony in support of the charge by the complainant or the aggrieved person at the hearing. The order may be set aside by the hearing panel for good cause upon motion of the respondent filed within ten (10) calendar days after the date of the hearing.
- (d) Testimony taken at the hearing shall be under oath or affirmation and recorded. The hearing panel shall keep a full record of the hearing, which record shall be kept by the Human Rights Section and shall be public and open to inspection.
- (e) The general procedure for hearings shall provide all parties the following rights:
  - (1) To subpoena and examine witnesses;
  - (2) To introduce exhibits;
  - (3) To cross-examine opposing witnesses on any relevant matter, including those matters not covered during direct examination;
  - (4) To impeach any witness; and
  - (5) To rebut the evidence.
- (f) *Evidence.*
  - (1) In any hearing before the hearing panel, irrelevant material shall be excluded, but other evidence, of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs, shall be admissible whether or not such evidence would be admissible in a trial in the courts of the state of Florida. Any part of the evidence may be received in written form. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
  - (2) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy to the original.
  - (3) The rules of privilege shall be effective to the same extent that they are applicable in civil actions in the courts of the state of Florida.

- (4) A written, printed, or visual communication, advertisement, or other form of publication, written inquiry, or record, or other document purporting to have been made by a person is prima facie evidence that it was authorized by that person.
  - (5) In any hearing conducted pursuant to a complaint of employment discrimination or housing discrimination, the burden of proof and rebuttal will be determined in the same manner as that established for Title VII of the Civil Rights Act of 1964, as amended, and Title VIII of the Civil Rights Act of 1968, as amended, respectively.
  - (6) In all administrative hearings before a hearing panel, rulings relating to the introduction of evidence and objections raised by the parties shall be made by the panel chair in consultation with the Office of the County Attorney. Any party may appeal the chair's ruling to the panel, which shall decide the matter by majority vote.
- (g) *Introduction of Evidence; Rights of Parties at Hearing.*
- (1) In any hearing involving a disputed issue of material fact, any party or any member of the hearing panel may call and examine and cross-examine witnesses and introduce documentary and other evidence into the record. A party shall, upon offering an exhibit into evidence at a hearing, simultaneously furnish copies to all other parties unless copies have been previously furnished.
  - (2) In any hearing not involving a disputed issue of material fact, any party may present written or oral evidence, if material, and may submit written statements.
- (h) *Recommended Orders.*
- (1) When a hearing is conducted by a hearing panel, the chair of the hearing panel shall set a reasonable time for filing of the proposed recommended order. The prevailing party shall submit a proposed recommended order to the hearing panel. If a transcript of the hearing is in the process of being prepared for filing with the Human Rights Section, with copies of such transcripts thereafter provided to the hearing panel, then the time for filing proposed recommended orders shall be set for a reasonable time after the transcript has been provided to the hearing panel. The chair shall, thereafter, prepare a recommended order and file it, together with the record of the hearing, with the clerk. A copy of the recommended order shall be served upon each of the parties.
  - (2) The proposed recommended order as well as the recommended order shall contain the time and place of the hearing; appearances entered at the hearing; issues involved in the case and presented by the parties; and proposed findings of fact, conclusions of law, interpretations of rules, and disposition. The proposed conclusions of law and interpretations of rules shall include reference, where appropriate, to prior relevant Board, state court, and federal court decisions, and if the proposed conclusions of law or interpretations of rules substantially diverge from such prior decisions, the rationale for the divergence shall be stated.
  - (3) Filing of a recommended order by a hearing panel shall have the effect of denying all pending motions except those resolved in the recommended order.
  - (4) If the hearing panel determines that the respondent has engaged in a discriminatory practice, the hearing panel shall state the findings of fact and conclusions of law and shall issue a recommended order recommending affirmative relief from the discriminatory practice as permitted by this Act.
  - (5) Remedial measures which may be ordered under this Act, as long as they are consistent with state and federal law, may include but are not limited to:
    - a. Hiring, reinstatement, or upgrading of employees with or without back pay;
    - b. 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, with the utilization of objective criteria in the admission of individuals to such programs;
    - c. Admission of individuals to a public accommodation;
    - d. Sale, exchange, lease, rental, assignment, or sublease of housing accommodations to an individual;
    - e. Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;
    - f. Reporting as to the manner of compliance; and
    - g. Posting of notices in conspicuous places in the respondent's place of business indicating compliance with equal opportunity rules and regulations in the form prescribed by the Board and inclusion of such notices in advertising materials.

- (6) In addition to any remedial measure ordered under paragraph (5), the hearing panel may order the payment to the complainant of actual damages for injury suffered as a direct result of a discriminatory practice, and any expense incurred by the complainant as a direct result of such discriminatory practice.
- (7) The prevailing charging party may also be entitled to reasonable attorney's fees and costs to be paid by the respondent. The complainant or aggrieved person shall not be required to pay attorney's fees or costs to a prevailing respondent, nor shall any award be made by a hearing panel or the Board requiring such payment. The hearing panel shall determine whether the prevailing charging party is entitled to an award of attorney's fees and costs. However, such fees and costs shall only be awarded upon filing of an appropriate motion by the prevailing party after the final order has been issued and, if necessary, after a hearing on such motion to consider the amount of fees and costs to which the prevailing party is entitled.
- (8) If a respondent is found by the Board to have engaged in a discriminatory practice while performing under a contract or subcontract with the County or another governmental entity within Broward County, or any agency thereof, and if the discriminatory practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the Board of Directors of the respondent or by an officer or executive agent acting within the scope of his or her employment, the Board shall so inform the contracting agency of the Board's finding regarding such conduct. Unless the Board's finding of a discriminatory practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.
- (i) Upon the filing of the recommended order by the hearing panel, the hearing panel shall no longer have jurisdiction to rule on any matter related to the charge, unless a reinstatement of such jurisdiction is ordered by the Board.
- (j) *Exceptions.*
  - (1) Any party may file written exceptions in response to a recommended order.
  - (2) Exceptions shall be filed within twenty (20) calendar days after service of the recommended order, unless otherwise allowed by the Board.
  - (3) Where exceptions have been filed by a party, any other party may file a written response within fifteen (15) calendar days after service of the exceptions. No other papers or documents may be filed unless ordered by the Board.

Sec. 16½-49. Final orders, determination of discriminatory practice, relief.

- (a) After the issuance of the hearing panel's recommended order, and following the filing of exceptions and responses thereto, if any, the Board shall consider the record and issue a written decision resolving the issues before it. This proceeding shall not be a de novo review but shall be confined to the record of the hearing, the recommended order, written exceptions, and written responses to exceptions.
- (b) After receipt of the recommended order, and any exceptions and responses to exceptions, the Board may:
  - (1) Adopt the recommended order as its final order;
  - (2) Reject or modify the conclusions of law and interpretation of rules but may not reject or modify the proposed findings of fact unless the Board first determines from a review of the complete record that the proposed findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. If the proposed findings of fact are rejected or modified, the basis for such rejections or modifications shall be stated with particularity in the final order;
  - (3) Accept the recommended relief in a recommended order; or modify the recommended relief in the recommended order after reviewing the complete record and stating with particularity its reasons for such modifications in the final order; or
  - (4) Remand the proceeding to the hearing panel with specific instructions.
- (c) A final order issued by the Board under this section shall not affect a contract, sale, encumbrance, or lease that was consummated before the Board issued the final order and which involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this Act.
- (d) If the respondent does not comply with the final order, then a majority of the Board, or the Human Rights Section, may recommend that the Office of the County Attorney file a civil action in the circuit court, for enforcement of the Board's final order. However, the County Commission shall decide whether to file such action, after receiving a recommendation from the Office of the County Attorney.
- (e) Thirty (30) calendar days after a final order is issued under this section, unless a petition by the respondent for judicial review is pending, the Board or the Human Rights Section may publish, or cause to be published, the name of a person who has been determined to have engaged in a discriminatory practice.

- (f) The Board shall comply with the certification required pursuant to Subsection 16½-48(i)(8), Broward County Code of Ordinances, by providing the contracting agency with a copy of the Board's final order.

Sec. 16½-50. Penalties.

- (a) *Penalties, in general.* If the Board renders a final order adjudging that a respondent has engaged in, or is about to engage in, a discriminatory practice, the Board may order the appropriate relief, including actual damages, reasonable attorney's fees, costs, and other injunctive or equitable relief.
- (b) *Penalties for Interference.* A person who impedes or interferes with the performance of a duty, or the exercise of a power, authorized or granted pursuant to this Act, by the Human Rights Section or the Board, may be punished as provided by law.
- (c) *Administrative Penalties.* To vindicate the public interest in cases alleging a discriminatory housing practice, the Board, to the extent permitted under applicable law, may assess a civil penalty against the respondent in an amount that does not exceed:
  - (1) Eleven thousand dollars (\$11,000) if the respondent has been adjudged by order of the Board to have committed a prior discriminatory housing practice;
  - (2) Except as provided in subparagraph (d) below, twenty-seven thousand five hundred dollars (\$27,500) if the respondent has been adjudged by order of the Board to have committed one (1) other discriminatory housing practice during the five-year period ending on the date of the filing of the charge; and
  - (3) Except as provided by subparagraph (d) below, fifty-five thousand dollars (\$55,000) if the respondent has been adjudged by order of the Board to have committed two (2) or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.
- (d) If the act constituting the discriminatory housing practice that is the object of the charge is committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, whether adjudged by the Board or other agencies, the civil penalties in paragraphs (b)(2) and (b)(3) above may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
- (e) At the recommendation of the Board, the Office of the County Attorney may sue to recover a civil penalty due under this section. The County Commission shall decide whether to file any civil action after receiving a recommendation from the Office of the County Attorney. Any funds collected under this section shall be paid to the General Fund of the Board of County Commissioners of Broward County, Florida.
- (f) The penalties provided for under this section are applicable regardless of whether the Human Rights Section or aggrieved person initiated the complaint alleging a discriminatory housing practice in violation of this article.

Sec. 16½-50.1. Penalties, licensed or regulated business.

- (a) If the Board issues a final order with respect to a discriminatory practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the Human Rights Section shall, not later than the thirtieth (30th) day after the date of the issuance of the order:
  - (1) Send copies of the final order to the governmental agency; and
  - (2) Recommend to the governmental agency that appropriate disciplinary action be taken against the licensed or regulated business entity consistent with the recommendation adopted by the Board.
- (b) Upon receiving a final order issued by the Board determining that a respondent has engaged in a discriminatory practice prohibited by this Act, the licensing agency may take appropriate action to revoke or suspend the license of the respondent.
- (c) Upon receiving a final order issued by the Board determining that a respondent has engaged in a discriminatory practice prohibited by this Act, a contracting agency may take appropriate action to refrain from entering into further contracts, extensions, or other modifications of existing contracts with the respondent until the Board is satisfied that the respondent will carry out policies in compliance with the provisions of this Act.

Sec. 16½-51. Judicial review of final orders.

Any party to an administrative hearing before the Board shall have the right to petition for judicial review of the Board's final order by filing a writ of certiorari to the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida. The time frame for filing the petition for judicial review will be governed by the applicable Florida Rules of Appellate Procedure. The party filing the petition shall serve a copy of the petition to all other parties to the hearing, including the Human Rights Section and the Board.

Sec. 16½-52. Confidentiality; public disclosure.

- (a) Any charge or complaint filed and investigated by the Human Rights Section, because of its federally-granted status, and pursuant to federal law including, but not limited to, 42 U.S.C. Section 3610(g)(3), Title VIII of the Civil Rights Act of 1968 as amended, 24 CFR Section 103.400, and any agreements entered into by Broward County with appropriate federal agencies, which relates to and identifies a particular complainant, aggrieved person, or respondent, or any other record or document which relates to an investigation of a charge of discrimination on the basis of a discriminatory classification as provided by this Act, shall not be disclosed, either directly or indirectly, by the Board, any Board member, or the Human Rights Section, except as follows:
  - (1) To the parties, when necessary for the Board or the Human Rights Section to carry out its responsibilities under this Act;
  - (2) After a finding of reasonable cause is made pursuant to this Act; or
  - (3) Subsequent to a dismissal of a complaint, or the issuance by a hearing panel or the Board of a decision finding that no alleged discriminatory practice has occurred or is about to occur, and the time frame for requesting review pursuant to this Act has expired.
- (b) Any charge or complaint filed with or investigated by the Human Rights Section that is covered only under the provisions of this Act shall be confidential and exempt from public inspection, consistent with Subsection 119.0713(1), Florida Statutes, and other applicable federal and state law. Neither the Board, any Board member, nor the Human Rights Section shall disclose any information regarding the charge or complaint, or any documents, evidence, or other materials gathered through the investigation of such charge or complaint, except as permitted by this section.
- (c) The disclosure restrictions of this section shall not apply to any record or documents that are part of the record of any hearing or court proceeding, or in response to subpoenas, demands, or orders of the court; or when disclosure is mandated by the requirements of applicable federal or state laws.

Sec. 16½-53. Discriminatory housing practices; enforcement by private persons; administrative procedures; civil actions and relief.

- (a) In cases alleging a discriminatory housing practice in violation of Title VIII of the Civil Rights Act of 1968, as amended, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, or the County Commission upon request of the Human Rights Section, or the Board, for complaints filed pursuant to Subsection 16½-44(b), Broward County Code of Ordinances, may elect to have the claims alleged in the charge decided in a civil action brought under paragraph (b) of this section in lieu of an administrative hearing. The election under this subsection must be made not later than twenty (20) calendar days after receipt by the electing person of the charge and notice under Section 16½-47(d), Broward County Code of Ordinances, or in the case of the County Commission, not later than twenty (20) calendar days after the date the notice was issued. The person making an election under this subsection shall give notice to the Human Rights Section and all other complainants and respondents to whom the charge relates.
- (b) If an election is made under paragraph (a), the Human Rights Section shall recommend that the County Commission authorize the Office of the County Attorney to commence and maintain a civil action on behalf of the complainant in a court of competent jurisdiction. The representation provided by the Office of the County Attorney under this paragraph shall be at no cost to the complainant. However, nothing in this subsection shall be construed to require that a complainant utilize the legal services of the Office of the County Attorney, or to prohibit a complainant from retaining and utilizing his or her own private attorney.
- (c) A civil action shall be commenced no later than two (2) years after an alleged discriminatory housing practice prohibited by this Act has occurred. An aggrieved person may commence a civil action pursuant to the federal and state fair housing laws, and for an alleged discriminatory housing practice prohibited by this Act, in an appropriate court of competent jurisdiction not later than two (2) years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach. The computation of the two (2) year period shall not include any time during which an administrative proceeding under this Act was pending. Any ruling made pursuant to this Act shall not affect any sale, encumbrance, or rental consummated prior to the issuance of any order under the authority of this Act and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint or civil action under the provisions of this Act.
- (d) An aggrieved person may file a civil action alleging a discriminatory housing practice regardless of whether the person has filed a complaint alleging such discriminatory housing practice under this Act, and regardless of the status of any complaint alleging a discriminatory housing practice under this Act. However, an aggrieved person may not commence a civil action for private enforcement if a hearing panel has been assigned to

commence a hearing with respect to the charge. However, the Human Rights Section may not issue a charge under this section regarding an alleged discriminatory housing practice after the commencement of a civil action by the complainant or aggrieved party seeking relief with respect to that discriminatory housing practice under federal or state fair housing laws.

- (e) Upon application by a person alleging a discriminatory housing practice or a person against whom such practice is alleged, the court may appoint an attorney for such person or authorize the commencement or continuation of a civil action under this section without the payment of fees, costs, or security if, in the opinion of the court, such person is financially unable to bear the costs of such action.
- (f) In a civil action commenced pursuant to this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court shall issue an order prohibiting the practice and the court may grant such affirmative relief from the effects of the practice, including injunctive and other equitable relief, an award of compensatory and punitive damages, and reasonable attorney's fees and costs.

Sec. 16½-54. Intervention by the Office of the County Attorney.

A majority of the members of the Board or the Human Rights Section may recommend to the County Commission that the Office of the County Attorney intervene, in the name of Broward County, in a civil action brought by an aggrieved person pursuant to the provisions of this Act, if the Board or the Human Rights Section certifies that the case is of significant public importance to the citizens of Broward County and intervention is necessary to vindicate the public interest consistent with the provision of this Act.

Secs. 16½-55—16½-72. Reserved.

Sec. 16½-73. Penalties.

A person who impedes or interferes with the performance of a duty, or the exercise of a power, authorized or granted pursuant to this act, by the Division or the Board, may be punished as provided by law.

Secs. 16½-74—16½-80. Reserved.

#### **ARTICLE V. RESERVED**

Secs. 16½-81—16½-86. Reserved

#### **ARTICLE VI. ADVISORY BOARD FOR INDIVIDUALS WITH DISABILITIES <sup>[2]</sup>**

Sec. 16½-87. Established.

There is hereby created and established the Advisory Board for Individuals With Disabilities of Broward County, Florida, hereinafter referred to as the "Advisory Board."

Sec. 16½-88. Duties.

The Advisory Board for Individuals With Disabilities shall:

- (1) Serve in an advisory capacity to the Board of County Commissioners of Broward County regarding matters which pertain to the status and welfare of disabled individuals in Broward County, Florida.
- (2) Prepare and submit reports and recommendations to the Board of County Commissioners relating to matters which include, but are not limited to, discrimination, employment, and vocational training, as well as the present and future needs for public transportation, services, facilities, and programs for the disabled individuals in Broward County.
- (3) Formulate and recommend plans, programs, and policies for the coordination of governmental and nongovernmental activities which directly affect disabled individuals.
- (4) Help to solicit, but not accept, appropriations, grants, and funds to be used for the advancement and general welfare of the disabled individuals in Broward County.
- (5) Prepare and submit an annual report of the Advisory Board to the County Commission.
- (6) Perform other related activities as may from time to time be requested by resolution or ordinance of the Board of County Commissioners.
- (7) Create, and amend as needed, by-laws by which the Advisory Board shall conduct its business.

Sec. 16½-89. Membership.

The Broward County Advisory Board for Individuals With Disabilities shall be made up of eighteen (18) members. The eighteen (18) members shall be appointed by the Board of County Commissioners for terms complying with the requirements of Section 1-233, Broward County Code of Ordinances. All individuals appointed to the advisory board shall meet the qualifications of section 16½-90 of this article.

Sec. 16½-90. Qualifications of members.

- (a) Members of the Advisory Board shall be representatives of organizations or agencies dedicated to the advancement of disabled individuals, or individuals who have demonstrated their dedication to the advancement of the disabled. Fifty percent (50%) plus one (1) of the members of the Advisory Board shall either be disabled or be representatives of an agency or organization dedicated to the advancement of the physically, mentally, or emotionally disabled. The remaining members of the board may or may not be disabled.
- (b) For the purposes of this article, an "individual with a disability" is a person who, pursuant to the Americans with Disabilities Act of 1990:
  - (1) Has a physical or mental impairment that substantially limits a "major life activity"; or
  - (2) Has a record of such an impairment; or
  - (3) Is regarded as having such an impairment.
- (c) Examples of physical or mental impairments may include, but are not limited to:
  - (1) Contagious diseases, such as HIV (whether symptomatic or asymptomatic) and tuberculosis;
  - (2) Conditions such as orthopedic, visual, speech, and hearing impairments;
  - (3) Noncontagious diseases and conditions such as cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism.
- (d) "Major life activities" may include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (e) Members of the Advisory Board shall be permanent residents and registered voters of Broward County during the time they serve on the Advisory Board.

Sec. 16½-91. Vacancies.

Vacancies shall be filled in the same manner as provided in section 16½-90(a).

Sec. 16½-92. Organization and activity.

- (a) The members of the Advisory Board shall elect a chair, two (2) vice-chairs, a secretary, and one (1) member to be elected at large. A majority of the total board members appointed shall constitute a quorum necessary to hold meetings and take action. The chair shall set the time, date, and place of the meetings of the Advisory Board. Special meetings may be called upon written notice to the membership signed by one-third (1/3) of the members of the Advisory Board.
- (b) The chair, both vice-chairs, the secretary, and the member who was elected at large shall constitute and serve as the executive committee.
- (c) The Advisory Board shall meet quarterly each year. Minutes shall be kept of all meetings and shall be under the supervision of the secretary. All meetings shall be open to the public. All members shall serve without compensation.

Sec. 16½-93. Supporting staff.

Administrative and staff support for the Advisory Board shall be provided by the Broward County Human Rights Division of Broward County, Florida, and shall include the Office of Equal Opportunity ADA Coordinator.

(Ord. No. 79-20, § 7, 3-21-79; Ord. No. 2001-51, § 5, 10-9-01)

Sec. 16½-94. Limitation of powers.

The powers and jurisdiction of the advisory board shall be advisory only.

Secs. 16½-95—16½-100. Reserved.

**ARTICLE VII. RESERVED.**

Secs. 16½-101—16½-149. Reserved.

**ARTICLE VIII. DOMESTIC PARTNERSHIP ACT** <sup>[B]</sup>

Sec. 16½-150. Title.

Article VI of this chapter may be cited as the "Broward County Domestic Partnership Act of 1999."

Sec. 16½-151. Findings; construction.

- (a) The Broward County Board of County Commissioners finds that there are many individuals who establish and maintain a significant personal, emotional, and economic relationship with another individual. Individuals

forming such domestic partnerships often live in a committed family relationship. Domestic partners are often denied public and private sector benefits because there is no established system for such relationships to be registered and/or recognized. In addition, because of the status of their relationship, domestic partners in many cases are not extended certain employment benefits that are otherwise made available to other employees.

- (b) The Broward County Board of County Commissioners finds that employment benefits form an essential portion of the compensation provided to employees. In fact, the U.S. Census Bureau has estimated that over 30 percent of all compensation paid to employees is provided in the form of benefits. The importance of benefits to employees has been underscored by a 1994 Employee Benefit Research which survey found that 67 percent of employees would prefer to return a portion of their cash salary rather than any portion of their benefit program.
- (c) The Broward County Board of County Commissioners acknowledges that in 1994 over 3 million Americans identified themselves as living in a domestic partnership. As a result, employers have begun to provide domestic partner benefits in greater numbers.
- (d) The Broward County Board of County Commissioners finds that the provision of domestic partner benefits promotes employee recruitment, employee retention, and employee loyalty. Furthermore, the provision of such benefits promotes fairness and serves to address the discriminatory effect of practices which deny such benefits solely upon the basis of an employee's familial or marital status.
- (e) The provisions of this act shall be liberally construed to promote the public safety, health, and general welfare of the residents of Broward County and to further the general policies and purposes stated in this act. However, this act shall not be construed to supersede any federal, or state, or county laws or regulations, nor shall this act be interpreted in a manner as to bring it into conflict with federal, or state, or county laws. The rules developed to implement the provisions of this act shall be liberally construed to accomplish the policies and purposes stated in this act.

#### Sec. 16½-152. Definitions.

For purposes of this Act:

- (a) *Business* means any corporation, partnership, sole proprietorship, firm, joint stock company, joint venture, or other private legal entity, except governmental entities, not-for-profit corporations, or charitable organizations.
- (b) *Competitive solicitation* means any bid, request for proposal, request for letters of interest, or any other method of procurement utilized by Broward County.
- (c) *Contract* means all types of binding agreements between Broward County and a Contractor for goods or services valued at over \$100,000.
- (d) *Contractor* means any business that has five (5) or more employees and is awarded one or more contracts by Broward County.
- (e) *County employee* means active or retired employees of Broward County, Florida, who are eligible for benefits pursuant to federal, state, or county laws, county administrative rules, or collective bargaining agreements.
- (f) *Declaration of Domestic Partnership* means a sworn form under penalty of perjury, which certifies that said individuals meet the requirements of a domestic partnership relationship as described in section 16½-153.
- (g) *Domestic Partners* means only two adults who are parties to a valid domestic partnership relationship and who meet the requisites for a valid domestic partnership relationship as established pursuant to section 16½-153.
- (h) *Dependent*, as used with regard to domestic partnership benefits, pursuant to section 16½-156, means the domestic partner of a County employee.

Any determination relating to whether a person identified above qualifies as a dependent of the County employee shall be based solely on whether such person is supported, in whole or in part, by the County employee's earnings and relies on such support. Dependency is not determined by whether the dependent could support himself or herself without the County employee's earnings or whether the dependent could so reduce his or her expenses such that he or she could live independently of the County employee's earnings. Dependency is not determined by whether the dependent is employed or earns a substantial part of his or her own support.

- (i) *Dependent of domestic partner or dependent of employee*, as used with regard to domestic partnership benefits, pursuant to section 16½-156, means a person who is eligible for coverage under the County's insurance plans.
- (j) *Jointly Responsible* means each domestic partner mutually agrees to provide for the other partner's basic food and shelter living expenses while the domestic partnership relationship is in effect, except that partners need not contribute equally or jointly to said basic food and shelter.

#### Sec. 16½-153. Registration of a domestic partnership relationship.

- (a) A valid domestic partnership relationship may be registered by two persons, who are domiciled in Broward County or are, otherwise, subject to the provisions of this article, by filing a declaration of domestic partnership with the Broward County Records, Taxes, and Treasury Division, which declaration shall comply with all requirements for establishing such domestic partnership. Upon payment of any required fees, the county clerk shall file the declaration of domestic partnership and issue a certificate reflecting the registration of the domestic partnership relationship in Broward County.
- (b) A declaration of domestic partnership shall contain the name and address of each domestic partner, the signature of each partner, and each partner shall swear or affirm under penalty of perjury that:
  - (1) Each person is at least 18 years old and competent to contract;
  - (2) Neither person is married nor a partner to another domestic partnership relationship;
  - (3) They are not related by blood;
  - (4) Consent of either person to the domestic partnership relationship has not been obtained by force, duress, or fraud; and
  - (5) Each person agrees to be jointly responsible for each other's basic food and shelter.
- (c) Any partner to a domestic partnership may file an amendment to the domestic partnership certificate issued by the County Records, Taxes, and Treasury Division to reflect a change in his or her legal name.
- (d) No person who has entered into a domestic partnership relationship may enter into a new domestic partnership until 30 days after the termination of a previous domestic partnership relationship.

Sec. 16½-154. Termination of registered domestic partnership relationship.

- (a) Either partner to a registered domestic partnership relationship may terminate such relationship by filing a notarized declaration of termination of domestic partnership relationship with the County Records, Taxes, and Treasury Division. Upon the payment of the required fee, the county clerk shall file the declaration and issue a certificate of termination of domestic partnership relationship to each partner of the former relationship. The termination shall become effective thirty (30) days from the date the certificate of termination is issued.
- (b) If any partner to a domestic partnership relationship enters into a legal marriage, the domestic partnership relationship shall terminate automatically, and all rights, benefits, and entitlements thereunder shall cease as of the effective date of the marriage. The marrying domestic partner shall file a declaration terminating the domestic partnership relationship within 10 days after entering into a legal marriage.
- (c) The death of either domestic partner shall automatically terminate the domestic partnership relationship.

Sec. 16½-155. Maintenance of records; filing fees.

- (a) The Broward County Records, Taxes, and Treasury Division shall, by administrative rule, prescribe the form of all declarations, amendments, and certificates required to be filed under this act. The Records, Taxes, and Treasury Division shall maintain a record of all declarations, amendments, and certificates filed pursuant to this act. The records shall be maintained so that all declarations, amendments, and certificates shall be filed with the registered domestic partnership to which they apply.
- (b) Filing Fees. The County Administrator is authorized to establish fees for the filing of any declarations, amendments, and the issuance of any certificates required by this act, subject to the approval of the County Commission. The fees shall be included within the Broward County Administrative Code. Any fees established under this section shall be sufficient to cover costs of administering the provisions of this article.

Sec. 16½-156. County employees; extension of benefits.

- (a) Any County employee who is a party to a registered domestic partnership relationship, pursuant to section 16½-153 of this act, shall be entitled to elect insurance coverage for his or her domestic partner or a dependent of such domestic partner on the same basis in which any County employee may elect insurance coverage for his or her spouse or dependents. A County employee's right to elect insurance coverage for his or her domestic partner, or the partner's dependent, shall extend to all forms of insurance provided by the County to the spouses and dependents of County employees, unless such coverage is prohibited by state or federal law. All elections of coverage shall be made in accordance with the requirements of applicable county ordinances, administrative rules, and county policies. However, in no event shall an employee make an election for coverage of a domestic partner more than two times in a plan year.
- (b) Any County employee who is a party to a registered domestic partnership relationship, pursuant to section 16½-153 of this act, shall be entitled to use all forms of leave provided by the County including, but not limited to, sick leave, annual leave, family illness leave and bereavement leave to care for his or her domestic partner

or the dependent of the domestic partner as applicable. The use of leave authorized in this section shall be consistent with the applicable requirements in county ordinances, administrative rules, and county policies.

- (c) Unless prohibited by state or federal law, all other benefits available to the spouses and dependents of County employees shall be made available on the same basis to the domestic partner, or dependent of such domestic partner, of a County employee who is a party to a registered domestic partnership relationship pursuant to section 16½-153 of this act.
- (d) The County Administrator is authorized to take all actions necessary to implement the provisions of this section by no later than January 1, 2000.

Sec. 16½-157. County contractors providing equal benefits for domestic partners.

- (a) *Contractor Offering Benefits.* Except where federal or state law mandates to the contrary, a Contractor awarded a Contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to employees' spouses. Benefits include the types of benefits described in section 16½-156 of this Act.
- (b) *Certification of Contractor.* As part of the competitive solicitation and procurement process a Contractor seeking a Contract covered by paragraph (a) above shall certify that upon award of a Contract it will provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to employees' spouses. The certification shall be in writing and signed by an authorized officer of the Contractor. Failure to provide such certification shall result in a Contractor being deemed non-responsive.
- (c) *Exceptions to Contractor Offering Benefits.* The provisions of this section shall not apply where:
  - (1) The Contractor does not provide benefits to employees' spouses;
  - (2) The Contractor provides an employee the cash equivalent of benefits because the Contractor is unable to provide benefits to employees' Domestic Partners despite making reasonable efforts to provide them. To meet this exception, the Contractor shall provide a notarized affidavit that it has made reasonable efforts to provide such benefits. The affidavit shall state the efforts taken to provide such benefits and the amount of the cash equivalent. Cash equivalent means the amount of money paid to an employee with a Domestic Partner rather than providing benefits to the employee's Domestic Partner. The cash equivalent is equal to the employer's direct expense of providing benefits to an employee's spouse;
  - (3) The Contractor is a religious organization, association, society, or any non-profit charitable or educational institution or organization operated supervised or controlled by or in conjunction with a religious organization, association, or society;
  - (4) The Contractor is a governmental agency;
  - (5) More than one response to a competitive solicitation is received, but the responses indicates that none of the prospective vendors can comply with the requirements of this section;
  - (6) The provisions of this section would violate the laws, rules, or regulations of federal or state law (for example, section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act);
  - (7) The provisions of this section would violate or be inconsistent with the terms or conditions of a grant or contract with the United States or the State of Florida; or
  - (8) The Board waives the requirements of this section in the best interests of the County.
- (d) *Contracts.* Every Contract, unless otherwise exempt from this section, shall contain language that obligates the Contractor to comply with the applicable provisions of this section. The Contract shall include provisions for the following:
  - (i) The Contractor certifies and represents that it will comply with this section during the entire term of the Contract.
  - (ii) The failure of the Contractor to comply with this section shall be deemed to be a material breach of the contract, entitling the County to pursue any remedy stated below or any remedy provided under applicable law.
  - (iii) The County may terminate the Contract if the Contractor fails to comply with this section.
  - (iv) The County may retain all monies due or to become due until the Contractor complies with this section.
  - (v) The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Chapter 21 of the Broward County Administrative Code.
- (e) *Applicable Dates.* This section shall be applicable to Contracts awarded pursuant to competitive solicitations issued after the effective date of this ordinance.

Sec. 16½-158. Visitation to licensed facilities.

- (a) If a health care facility or any licensed residential facility restricts the visitors of a patient or resident, the facility shall permit the patient or resident to name those individuals whom he or she wishes to visit, including any domestic partner, or any children or family member of such domestic partner, unless:
  - (1) No visitors are allowed; or
  - (2) The facility, in its sole discretion, decides that the presence of a particular individual named by the patient or resident would endanger the health or safety of a patient or a resident, or would endanger the primary operations of the facility.
- (b) If a patient or resident has not made the designation provided for in paragraph (a), the facility shall permit the patient or resident's domestic partner, the children of the domestic partner, and any other family member of the patient or resident's domestic partner, to visit, unless one of the exceptions described in paragraph (a)(1) or (a)(2) applies.
- (c) A domestic partner of a patient or resident shall have the same rights as would a spouse or other family member with respect to visitation, and the making of health care decisions for the patient or resident, to the extent that a patient or resident has not executed a valid power of attorney for health care or a health care surrogate designation.

Sec. 16½-159. Health care surrogate designation.

Any person who is a party to a registered domestic partnership relationship, pursuant to section 16½-153 of this act, shall have the same right as any other individual to be designated as health care surrogate of his or her domestic partner pursuant to Chapter 765, pt. II, F.S. (§ 765.201, F.S. et seq.) and a person so designated shall have the right to make health care decisions on behalf of his or her domestic partner; to provide, withhold, or withdraw consent on behalf of his or her domestic partner; to apply for public benefits to defray the cost of health care; and to authorize the admission to, or transfer from, a health care facility. No person designated as a health care surrogate shall be denied or otherwise be defeated in serving as a health care surrogate based solely upon his or her status as the domestic partner of the partner on whose behalf health care decisions are to be made.

Sec. 16½-160. Preneed guardian designation.

Any person who is a party to a registered domestic partnership relationship, pursuant to section 16½-153 of this act, shall have the same right as any other individual to be designated as a preneed guardian pursuant to § 744.3045, F.S. and to serve in such capacity in the event of his or her declarant domestic partner's incapacity. A domestic partner shall not be denied or otherwise be defeated in serving as the plenary guardian of his or her domestic partner or the partner's property, under the provisions of Chapter 744, F.S. to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

Sec. 16½-161. Visitation rights at county correctional and juvenile detention facilities.

Any person who is a party to a registered domestic partnership relationship, pursuant to section 16½-153 of this act, shall be entitled to visit his or her domestic partner, or other family member of the domestic partner, who is an inmate at a county correctional facility or a juvenile detention facility, upon the same terms and conditions under which visitation is afforded to spouses, children, or parents of inmates. Visitation rights provided by this section shall extend to any children of the domestic partners, and the domestic partners of an inmate's parents or children.

Sec. 16½-162. Notification of family members.

In any situation providing for mandatory or permissible notification of family members, including notification of family members in an emergency, or when permission is granted to inmates to contact family members, "notification of family" shall include domestic partners.

## Appendix of Existing Ordinances:

### City of Gainesville:

#### **Chapter 8 DISCRIMINATION** <sup>11</sup>

##### Sec. 8-1. Declaration of findings and policy.

(a) The city commission hereby finds that:

- (1) The right of access to and the full and equal enjoyment of places of public accommodation as defined hereafter, without discrimination on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity is a matter of concern to the citizens of the city and more particularly of concern to the city in providing for the health, welfare, safety and morals of the citizens of the municipality;
- (2) The availability of adequate housing without discrimination on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity is a matter of concern to the citizens of the city and more particularly of concern to the city in providing for the health, welfare, safety and morals of the citizens of the municipality;
- (3) Employment practices without discrimination on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity is a matter of concern to the citizens of the city and more particularly of concern to the city in providing for the health, welfare, safety and morals of the citizens of the municipality.
- (4) The extension of credit without discrimination on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity is a matter of concern to the citizens of the city and more particularly of concern to the city in providing for the health, welfare, safety and morals of the citizens of the municipality; and
- (5) Employment discrimination against persons having physical or mental disabilities that do not constitute bona fide occupational qualifications is a matter of concern to the citizens of the city and more particularly of concern to the city in providing for the health, welfare, safety and morals of the citizens of the municipality.
- (6) Religious institutions, organizations, corporations, associations or societies (hereinafter "institutions") have long been important in this country's constitutional framework, and exempting out the application of sexual orientation and gender identity provisions in those institutions is rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious institutions to define and carry out their religious missions.

- (b) The above findings being made, the city commission hereby declares the policy of the city to be, for the protection of the public health, safety and general welfare, for the maintenance of business and good government, and for the promotion of the city's trade, commerce and manufacturing, to prohibit discrimination in the access to and equal enjoyment of places of public accommodation, to ensure equal opportunity to all persons to live in decent housing facilities, regardless of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity and to that end to prohibit discrimination in the extension of credit without regard to sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity and to prohibit employment discrimination against persons because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity that do not constitute bona fide occupational qualifications.

##### Sec. 8-2. Objective.

The objective of the provisions of this chapter is to provide a means for implementation of the above-declared policy and to discourage and eliminate discriminatory practices.

##### Sec. 8-3. "Person" defined.

As used in this chapter, the term "person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 U.S.C., receivers, fiduciaries, and the Gainesville-Alachua County Regional Airport Authority. Except as otherwise noted above, the term shall not include any federal, state or local government or any agency thereof, but shall include all natural persons whether or not acting as agents for such governmental entities.

Sec. 8-4. Violations; penalty.

- (a) It shall be unlawful and punishable as provided in this section for any person to commit any act in violation of this chapter.
- (b) It shall be unlawful and punishable as provided in this section for any person to aid, abet, compel, coerce or participate in the doing of any act declared to be unlawful by this chapter, or to obstruct or prevent enforcement of compliance with the provisions of this chapter.
- (c) It shall be unlawful and punishable as provided in this section for any person to engage in any reprisal against any person because that person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter.
- (d) Any person convicted of violating any of the provisions of this chapter shall upon conviction be punished as provided in section 1-9

Sec. 8-5. Cumulative effect of provisions.

Nothing in this chapter shall be deemed to exempt or relieve any person from any liability, duty, penalty or punishment provided by any applicable state or federal law or local ordinance.

Sec. 8-6. "Sexual orientation," and "gender identity" defined.

- (a) As used in this chapter, "sexual orientation" means the condition of being heterosexual, homosexual, or bisexual or having a history of such identification. This definition is not intended to permit any practice prohibited by federal, state or local law.
- (b) As used in this chapter, "gender identity" means an inner sense of being a specific gender, or the expression of a gender identity by verbal statement, appearance, or mannerisms, or other gender-related characteristics of an individual with or without regard to the individual's designated sex at birth.

Secs. 8-7—8-20. Reserved.

**ARTICLE II. HUMAN RIGHTS BOARD** <sup>[2]</sup>

Sec. 8-21. Equal opportunity director.

- (a) The director of the City of Gainesville Equal Opportunity Office is hereby designated to administer the provisions of this chapter.
- (b) The duties, functions, powers, and responsibilities authorized by this article are as follows:
  - (1) Implement the provisions of this chapter and the rules and regulations promulgated hereunder and all City of Gainesville ordinances, codes, rules and regulations pertaining to discrimination of the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity in employment, fair housing, fair credit, and public accommodations, and advise the city commissioners when changes in the federal or state human rights laws require revisions to this chapter.
  - (2) Receive and investigate written complaints, as provided by this chapter, of unlawful practices in violation of this chapter when a complainant seeks to file a complaint. Refer any written complaints received by the director that allege unlawful practices in employment, fair housing, fair credit, or public accommodations by the federal government or the State of Florida to the appropriate agency with authority to investigate such complaints.
  - (3) Upon receiving a written complaint, make such investigations as the director deems appropriate to ascertain facts and issues.
  - (4) Utilize methods of conciliation and mediation or informal adjustment of grievances.
  - (5) Provide assistance in all matters relating to equal employment, fair housing, equal credit opportunity and public accommodations opportunity relating to sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity within the City of Gainesville.
  - (6) Publish and disseminate public information and educational materials relating to discrimination in employment, fair housing, equal credit opportunity and public accommodations relating to sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
  - (7) Implement recommendations received from the human rights board concerning this chapter and the carrying out of its purpose. When, in the opinion of the director, effectuating any such recommendation would be undesirable or unfeasible, the director shall promptly so report to the board, with his or her reasons. Any differences of judgment not able to be resolved between the board and the director may, if the board feels the matter warrants, be carried to the city commission for decision.

- (8) Make annual reports to the city commission of activities under the provisions of this chapter, and make recommendations concerning methods by which to reduce discrimination, and such other comments and recommendations as the director may choose to make.
- (9) Conduct educational and public information activities that are designed to promote the policy of this chapter.
- (10) Bring to the attention of the city commission, those items that may require the city commission's notice or action to resolve.

Sec. 8-22. Human rights board—Established; membership; meetings.

There is hereby created the City of Gainesville Human Rights Board.

- (a) The board shall be composed of seven members appointed by the city commission. Membership should be representative of the city's population and whenever possible, should reflect racial, ethnic and religious minorities as well as geographic economic and sexual considerations.
- (b) Members of the boards shall serve terms of three years each; provided, however, that three of the initial appointments shall be for a term of one year, two of the initial appointments shall be for a term of two years, and the remaining two initial appointments shall be for a term of three years. Thereafter, all appointments shall be for three-year terms.
- (c) The members of the board shall receive no compensation.
- (d) The board shall annually elect one of its members as chair and one as vice-chair. Elections shall be held at the first regularly scheduled meeting after appointment of the board. The chair shall preside and conduct meetings of the board. The vice-chair shall act in the absence of the chair. Unless otherwise stated in this article, all actions and decisions of the board may be by a simple majority vote of those members present at a lawful meeting of the board.
- (e) The board shall have the power and authority to promulgate such procedures and rules as necessary to conduct the business of the board, provided such rules are not inconsistent with this chapter and provided that such rules are subject to approval by the city commission.
- (f) The board shall meet at least monthly, if there is business to come before the board, but may also meet as often as necessary. The director shall schedule each meeting and give notice of the time and place of the meetings to all board members, all parties to be heard, and the public. Special meeting of the board may be converted by the chair, with the concurrence of the director, upon giving notice thereof to the members of the board, or may be called by written notice signed by three members of the board. The notice of a special meeting shall be given at least 48 hours prior thereto. All meetings shall be public.
- (g) The city's equal opportunity director shall provide clerical and administrative support to the board as may be reasonably required by the board to discharge its duties and responsibilities. The city's equal opportunity director shall provide a regular meeting place for the board.

Sec. 8-23. Same—Powers and duties.

The board shall have the following duties, powers, functions, and responsibilities:

- (a) Adopt rules and procedures necessary to conduct the business of the board.
- (b) Subpoena and compel the production of evidence necessary for investigation of complaints filed for any alleged violation of this chapter. Administer oaths and compel the attendance of witnesses and production of evidence by subpoenas issued by the chair of the board.
- (c) In coordination with the director, take other informational or educational actions to enforce the purpose of this chapter.
- (d) Apply to a court of competent jurisdiction, subject to the approval of the city commission, for enforcement of any subpoena upon the refusal to answer or produce the requested document or information, wherein the court shall determine the matter.
- (e) Recommend that the city, subject to approval of the city commission, seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the board determines that such action is necessary to carry out the purposes of this chapter.
- (f) Any other powers and duties provided elsewhere in this chapter.

Sec. 8-24. Jurisdiction over governmental agencies.

Other than as set forth in section 8-3, the human rights board shall not have jurisdiction over the City of Gainesville or any other governmental entity, their officers, employees or agents when the complaint of discrimination arises from actions taken in their official capacity.

Secs. 8-25—8-45. Reserved.

### **ARTICLE III. EQUAL EMPLOYMENT OPPORTUNITY <sup>[3]</sup>**

Sec. 8-46. Reserved.

Sec. 8-47. Definitions.

As used in this article, the following words, terms and phrases shall have the following meanings ascribed to them in this section:

- (a) *Age* shall mean chronological age not less than 40 years and not more than 70 years.
- (b) *Because of sex* or *on the basis of sex* includes, but is not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 8-49(c) shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion, provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.
- (c) *Employer* shall mean any person who has five or more employees for each working day in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such a person.
- (d) *Employment agency* shall mean any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for any employer, and includes any agent of such a person.
- (e) *Labor organization* shall mean any person defined in this chapter and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization.
- (f) *Physical or mental disability* shall mean, for the purpose of this chapter, (i) an impairment which substantially limits one or more of a person's major life activities; (ii) a record of impairment which substantially limits one or more of a person's major life activities; or (iii) being regarded as having an impairment which substantially limits one or more of a person's major life activities. For purposes of the sections of this chapter as they relate to employment, such term does not include any individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to the property or the safety of others.

**Cross reference**— Definitions and rules of construction generally, § 1-2.

Sec. 8-48. Prohibition of discrimination in employment practices.

- (a) It shall be an unlawful employment practice for an employer to:
  - (1) Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his/her compensation, terms, conditions or privileges of employment because of the individual's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
  - (2) Limit, segregate or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee, because of such individual's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
  - (3) Discriminate against any person because of his/her physical or mental disability except in respect to a bona fide occupational qualification.
- (b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of his/her sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity or to classify or refer for employment any individual on the basis of his/her sexual orientation, race, color, gender, age, religion, national

origin, marital status, disability or gender identity, except where sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity is a bona fide occupational qualification.

- (c) It shall be an unlawful employment practice for a labor organization to:
- (1) Exclude or expel from its membership or otherwise to discriminate against any individual because of his/her sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (2) Limit, segregate or classify its membership, or applicants for membership, or to classify or fail or refuse to refer for employment, any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his/her status as an employee or as an applicant for employment, because of the individual's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (3) Discriminate against any person because of his/her disability except in respect to a bona fide occupational qualification;
  - (4) Cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his/her sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity in admission to, or employment in, any program established to provide apprenticeship or other training.
- (e) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee indicating any preference, limitation, specification or discrimination based on sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity, except that such a notice or advertisement may indicate a preference limitation, specification or discrimination based on sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity when sexual orientation, race, color, gender, age, religion, national origin, marital status or disability is a bona fide occupational qualification for employment.
- (f) It shall be an unlawful employment practice for an employer to discriminate against any of his/her employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he/she has made a charge, testified, assisted or participated in any matter in an investigation, proceeding or hearing under this article.

Sec. 8-49. Exceptions.

- (a) Section 8-48 shall not apply to an employer with respect to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, educational institution or society of its activities in those certain instances where sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration or action upon the results, is not designed, intended or used to discriminate because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
- (b) Notwithstanding any other provisions of this article, it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or to refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs, to admit or employ any individual in any such program on the basis of his/her sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity in those certain instances where sexual orientation, race, color, gender, age,

religion, national origin, marital status, disability or gender identity is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

- (c) Notwithstanding any other provisions of this article, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earning by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that the test, its administration or action upon the results, is not designed, intended or used to discriminate because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity. It shall not be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, or its administration or action upon the results, is not designed, intended or used to discriminate on the basis of physical or mental disability, except in respect to a bona fide occupational qualification. It shall not be an unlawful employment practice under this article for any employer to differentiate upon the basis of sex in determining the amount of wages; or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of Section 6(d) of the Fair Labor Standards Act of 1938, as amended (19 U.S.C. 206(d)).
- (d) Nothing in this chapter shall be construed to establish an unlawful employment practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen fully unclothed is unavoidable.
- (e) The provisions in this article relating to sexual orientation shall not apply to any religious institution, organization, corporation, association, society, or any nonprofit charitable or educational institution, or organization operated, supervised, or controlled by or in conjunction with a religious institution, organization, corporation, association, or society.

#### Sec. 8-50. Filing of complaints.

- (a) Any person claiming to be aggrieved by an unlawful practice prohibited by this article may file a written, verified complaint with the director, or his designated representative. The complaint shall state the name and address of the complainant and the person or persons against whom the complaint is made (hereinafter referred to as the "respondent"). The complaint shall set forth the facts upon which the complaint is made, and such other information as the director requires. The complaint must be filed within 180 days after the date the alleged unlawful practice has occurred. The complaint may be voluntarily withdrawn by the complainant at any time.
- (b) When it is determined that a complaint has been timely filed, the director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice shall be served within ten days of the date of filing. An amendment likewise shall be served upon the respondent. The notice shall advise the respondent of relevant procedural rights and obligations.
- (c) The director shall serve notice upon the complainant acknowledging the filing of the complaint and advising the complainant of relevant procedural rights and remedies. The notice shall advise the complainant of remedies and choice of forums and inform the complainant that the administrative procedure provided for in this article is neither an obstacle nor a prerequisite to the complainant commencing a separate civil action on his own.
- (d) Once a complaint has been served on the respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.
- (e) The respondent may file an answer to the complaint not later than ten days after receipt of the notice of the filing. The answer shall be sworn to or affirmed before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.
- (f) A complaint or answer may be amended at any time when it would be fair and reasonable to do so, and the director shall furnish a copy of each amended complaint or answer to the respondent or the complainant, respectively, as promptly as practicable. With respect to any complaint filed pursuant to this article, the initial burden of proof is on the complainant.

#### Sec. 8-51. Processing of complaints.

- (a) Within 30 days after the filing of a complaint, the director shall commence such investigation as deemed appropriate to ascertain facts and issues. The director may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws.
- (b) The following investigation procedures shall be followed:
  - (1) *Complaint verification.* As part of the investigation process, the complaining party may be required to provide an additional sworn written statement which shall include:
    - a. A statement of each particular harm or potential harm which the aggrieved person has suffered or will suffer and the date on which each harm occurred or will occur.
    - b. For each harm, a statement specifying the act, policy, or practice which is alleged to be unlawful.
    - c. For each act, policy, or practice alleged to have harmed the aggrieved person, a statement of the facts which led the complainant to believe that the act, policy, or practice is discriminatory.
  - (2) *Requests for information.* In investigating a complaint, the director and/or the director's designee may obtain information by:
    - a. Oral interview; and/or
    - b. Requests for written statement or affidavit; and/or
    - c. Any discovery methods set forth in the Florida Rules of Civil Procedure.
  - (3) *Investigations.* The investigations will seek the voluntary cooperation of all persons in obtaining information. If, however, the director is unable to obtain the voluntary cooperation of persons, the director shall request the board issue subpoenas. The board shall have the power to issue subpoenas or subpoenas duces tecum. Any subpoena issued by the board must be approved by the city attorney as to the subpoena's form and legality before it is issued.
  - (4) *Complaining party's failure to cooperate.* Where the complainant fails to provide a necessary information statement; fails or refuses to appear or be available for interviews or conferences; fails or refuses to provide necessary information requested by the director pursuant to this section; or otherwise refuses to cooperate to the extent that the director shall dismiss the complaint after providing 20 days' notice to the complainant unless the director, with board approval, determines there is sufficient grounds and sufficient evidence to proceed with the complaint.
  - (5) *Access to files during investigation.* Information obtained during the investigation of a complaint shall be disclosed only in accordance with the provisions of the Florida Public Records Law.
- (c) The director shall, within 100 days after the filing of a complaint, complete the investigation of the alleged unlawful discriminatory practice, unless it is impracticable to do so. If the director is unable to complete the investigation within 100 days after the filing of a complaint, the director shall notify, by certified mail or by personal service, the complainant and the respondent in writing of the reasons for not so doing. The director shall notify the aggrieved person and the respondent if administrative disposition of the complaint pursuant to this article cannot be accomplished within one year of the filing of the complaint.
- (d) Beginning with the filing of the complaint and ending with the filing of a reasonable cause charge, as provided for in subsection (g) herein, the director shall attempt to conciliate the matter by methods of initial conference and conciliation with all interested parties and such representatives as the parties may choose to assist them. Such conciliation conferences may be by whatever method the director determines to be most appropriate. The director shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief. Except as provided in subsection (e) of this section, nothing that is said or done in the course of conciliation or such informal endeavors may be made public or used as evidence in a subsequent proceeding without the written consent of the persons concerned.
- (e) Where conciliation attempts are successful, the terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The agreement must be executed by the respondent and the complainant, and is subject to the approval of the director. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. Notwithstanding the provisions of subsection (d) above, each conciliation agreement shall be made public in accordance with the public records law.
- (f) A duly executed conciliation agreement shall operate as a dismissal with prejudice of the complaint.
- (g) If conciliation has not been reached within 100 days of the filing of the complaint and the complaint has not been withdrawn, the director shall make a determination as to whether reasonable cause exists to believe that an unlawful discriminatory practice has occurred or is about to occur. Reasonable cause shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that a discriminatory practice has occurred or is likely to occur. The director and/or the director's designee shall report the results of

the investigation and his or her determination to the board. The board shall receive a copy of the director's report and shall have the opportunity to review the report and submit comments to the director. If the board determines that reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur, it shall issue a written notice of determination of reasonable cause. A copy of the notice shall be served upon the respondent, the complainant, and the aggrieved person within ten days of the date of the written notice; along with the notice, the parties shall be advised of the options available under this section.

- (h) When the board has issued a notice of determination of reasonable cause, the aggrieved person may either:
  - (1) Bring a civil action against the person named in the complaint in any court of competent jurisdiction no later than one year after the date of the written notice of reasonable cause by the board; or
  - (2) Request an administrative hearing as provided for in subsection (j) herein. The request for an administrative hearing must be in writing and must be made no later than 35 days after the date of the written notice of reasonable cause by the board. The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this article.
- (i) If the director determines that the complaint lacks reasonable grounds upon which to base a violation of this article, the director shall dismiss the complaint, then the director shall inform the board of his or her findings through a written report. The board, in its discretion, may order that the matter be closed or may order, by a three-fourths majority vote, such further investigation as may be deemed necessary. If further investigation is ordered, the results thereof shall be presented to the board in the form of a written report within ten days and shall be acted upon by the board within an additional 20 days.
- (j) If a request for an administrative hearing is timely made under subsection (h), an evidentiary hearing on the merits shall be held. The city, through the city attorney's office, shall arrange for the services of a hearing officer to conduct the administrative hearing. Any conciliation agreement reached prior to a scheduled hearing may result in such hearing being cancelled.
- (k) In conducting any administrative hearing to determine whether or not there has occurred a failure to comply with the provisions of this article, the hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the presiding officer's recommended order, and to be represented by counsel or other qualified representative. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. In interpreting the provisions of this article, the hearing officer may consider administrative and judicial interpretations of substantially equivalent provisions of state or federal laws.
- (l) The hearing officer shall prepare a recommended order consisting of findings of fact, conclusions of law and affirmative relief, if applicable. The hearing officer shall transmit the recommended order to the board and all parties. Each party shall have 15 days from the date of the hearing officer's order to submit written exceptions to the hearing officer's order to the board. The board shall review such order and any written exceptions and may set forth any deficiencies it finds with respect to the order. Said deficiencies shall be limited to determinations that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings were based did not comply with the essential requirements of law. In reviewing such recommended order, the board shall not have the power to receive or consider additional evidence. The board shall have no power to reject or modify the findings of fact contained in the recommended order. The board may either adopt the recommended order as the final order, or by a three-fourths majority vote, remand the recommended order along with the delineated deficiencies back to the hearing officer for consideration of the deficiencies. The hearing officer shall address the identified deficiencies in an addendum to the recommended order. The hearing officer's order along with the addendum addressing the concerns of the board shall be the final order of the board. The final order shall be served upon the complainant and respondent within ten days of adoption by the board. If the hearing officer finds that a discriminatory practice has occurred or is about to occur, the hearing officer may recommend affirmative relief from the effects of the practice, including actual damages, equitable and injunctive relief and reasonable attorneys fees and costs. Judgment for the amount of damages, equitable relief and costs assessed pursuant to a final order by the board may be entered in any court of competent jurisdiction thereof and may be enforced as any other judgment.
- (m) Final orders of the board are subject to certiorari review. Unless specifically ordered by a court of competent jurisdiction, the commencement of any appeal does not suspend or stay an order of the board.

- (n) Either party to the administrative proceeding or the city shall have authority to bring an action in equity in a court of competent jurisdiction to enforce the final administrative order to ensure compliance with this article. The court shall be empowered to issue mandatory or prohibitive injunctions to implement such administrative order.
- (o) Should any party fail or refuse to comply with the final order issued by the board or breach a conciliation agreement as provided herein, then, following the expiration of the appeal time as provided herein, the board shall forward such order or conciliation agreement to the city commission with a request that the city commission authorize the city attorney to bring such action or actions as necessary to obtain compliance with this article.

Sec. 8-52. Civil action and penalties.

In any civil action commenced under subsection (h) of section 8-51, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, including back pay. A civil action brought under this section shall be commenced no later than one year after the date of determination of reasonable cause by the board. The commencement of a civil action shall divest the board of jurisdiction of the complaint.

**ARTICLE IV. EQUAL ACCESS TO PLACES OF PUBLIC ACCOMMODATIONS <sup>[4]</sup>**

Sec. 8-66. Reserved.

Sec. 8-67. Prohibition of discrimination in places of public accommodation; equal access.

- (a) All persons shall be entitled to the full and equal enjoyment, of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
- (b) As used in this article, each of the following establishments which serves or holds itself out as serving the public is a place of public accommodation including any place where a member of the public would go seeking the services, goods, facilities, etc., which are held out as being public, including but not limited to:
  - (1) Any inn, hotel, motel, resort or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of the establishment as his/her residence;
  - (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, buffet or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;
  - (3) Any tavern, bar, liquor lounge, package store or other facility holding a license for the sale of alcoholic beverages issued by the division of alcoholic beverages and tobacco of the department of business regulation of the state and which serves or which holds itself out as serving the general public;
  - (4) Any pool or billiard hall, bowling alley, motion picture house, theater, concert hall, sports arena, stadium, place of amusement, skating rink, amusement park, golf courses, swimming pool or other places of exhibition or entertainment;
  - (5) Any gasoline station, retail establishment, convenience store, beauty parlor, barbershop, styling salon and laundries;
  - (6) Any hospital, nurseries, schools, library or educational facilities supported in part or whole by public funds, kindergartens, daycare centers, and any conveyance open to the general public, including taxis, limousines, trains and buses;
  - (7) Any professional office generally open to the public, such as those of attorneys, physicians, dentists, architects, accountants, etc.;
  - (8) Any establishment which is physically located within the premises of any establishment otherwise covered by this section or within the premises of which is physically located any such covered establishment and which holds itself out as serving patrons of the covered establishment.

Sec. 8-68. Prohibition against deprivation of, interfering with and punishment for exercising rights under this article. It shall be unlawful for any person to:

- (1) Withhold, deny or attempt to withhold or deny, or deprive or attempt to deprive, any other person of the right to full and equal enjoyment of places of public accommodation because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.

- (2) Intimidate, threaten or coerce, or attempt to intimidate, threaten or coerce any person with the purpose of interfering with the right to full and equal enjoyment of places of public accommodation because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity. Provided further that failure to provide reasonable access to, and use of, facilities as described in section 8-69(c) shall not be unlawful unless and until said provisions become effective as described therein and as provided in section 8-69(c)(1).
- (3) Punish or attempt to punish any person for exercising or attempting to exercise any right to full and equal enjoyment of places of public accommodation because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.

Sec. 8-69. Exceptions.

- (a) The provisions of sections 8-67 and 8-68 prohibiting discrimination on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity shall not apply to a private club or other establishment, not in fact open to the public, except to the extent that the facilities of the club or establishment are made available to the customers or patrons of an establishment within the scope of section 8-67(b).
- (b) The provisions of sections 8-67 and 8-68 prohibiting discrimination on the basis of sex or marital status shall not apply to:
  - (1) The refusal to rent any housing facility jointly to two or more unmarried persons of different sex.
  - (2) The refusal to rent or continue to rent any housing facility on the grounds that two or more unmarried persons of different sex are or would thereby be in joint occupancy thereof. "Joint occupancy" is hereby defined as two or more persons using a single housing facility or portion thereof which is used or occupied or intended, arranged or designed to be used or occupied as the home, residence or living quarters of such two or more persons.
  - (3) Bar any person from operating a housing facility for the exclusive occupancy of a single sex if the housing facility provides only communal bath or toilet facilities. "Communal bath or toilet facilities" is hereby defined as bath or toilet facilities provided for regular and ordinary use for occupants of more than one separate living unit.
- (c) Nothing in this chapter shall be construed to establish an unlawful discriminatory practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen fully unclothed in unavoidable.
- (d) The provisions in this article relating to sexual orientation and gender identity shall not apply to any religious institution, organization, corporation, association, society, or any nonprofit charitable or educational institution, or organization operated, supervised, or controlled by or in conjunction with a religious institution, organization, corporation, association, or society.

Sec. 8-70. Enforcement.

The provisions of this article relating to enforcement, filing, complaint procedure, orders and penalties shall follow in the same manner as in employment actions under article III of this chapter.

**ARTICLE V. FAIR HOUSING** <sup>[5]</sup>

Sec. 8-86. Declaration of policy.

It is hereby declared to be the policy of the city, in the exercise of its police power for the public safety, public health and general welfare, to assure equal opportunity for each person so desiring to obtain housing of the person's choice in the city regardless of sexual orientation, race, color, gender, age, religion, national origin, marital status or disability and, to that end, to prohibit discrimination in housing on basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity by any person.

Sec. 8-87. Definitions.

The following words and terms shall have the following meanings ascribed to them as used in this article:

- (1) *Discriminatory housing practice* means an act that is unlawful under the terms of this article.
- (2) *Age* means the chronological age of an individual who is 18 years old or older.
- (3) *Disability*:
  - a. "Disability," as used in this chapter, means, with respect to a person:
    1. A physical or mental impairment which substantially limits one or more of such person's major life activities;

2. A record of having such an impairment; or
  3. Being regarded as having such an impairment.
- b. The term "disability" excludes current, illegal use of or addiction to a controlled substance as defined by law. The term "disability" does not include the following sexual and behavioral disorders:
1. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
  2. Compulsive gambling, kleptomania, or pyromania; or
  3. Psychoactive substance use disorders resulting from current illegal use of drugs.
- (2) *Person* includes one or more human beings, individuals, governments, governmental agencies, governmental departments, governmental programs, political subdivisions, labor unions, mortgage companies, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.
  - (3) *Owner* includes the owner, lessee, sub lessee, assignee, manager, agent, or other person, firm, or corporation having the right to sell, rent, lease, or transfer any housing facility, real property, or interest therein, within the corporate limits of the city.
  - (4) *Building contractor* includes any person, partnership, association, organization, firm or corporation engaged in the designing, redesigning, constructing, reconstructing, repairing or remodeling of any housing facility within the corporate limits of the city.
  - (5) *Dwelling* or *housing facility* includes any facility, structure, mobile home, hotel, motel, or any other building, or portion thereof, which is used or occupied or intended, arranged or designed to be used or occupied as the home, residence or living quarters of one or more persons, or any parcel of land or portion thereof available or intended for the construction or location of such a facility, structure, mobile home, hotel, motel or other building.
  - (6) *Family* means one individual living alone or two or more individuals living together as a unit.
  - (7) *Lending institution* includes any bank, insurance company, savings and loan association, mortgage company or any other person or organization engaged in the business of lending money or guaranteeing loans.
  - (8) *Real estate broker* includes any person duly licensed as a real estate broker in accordance with the laws of the state.
  - (9) *Real estate salesperson or agent* includes any person, whether licensed or not, who, for a fee, commission, salary or other valuable consideration, or who, with the intention or expectation of receiving or collecting the same lists, sells, purchases, exchanges, rents, leases or otherwise transfers real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate such an activity, or who advertises or holds himself/herself out as engaged in such activities, or who negotiates or attempts to negotiate a loan secured by a mortgage or other encumbrance, upon a transfer of real estate, or who is engaged in the business of charging an advanced fee or contracting for collection of a fee in connection with a contract whereby he/she undertakes to promote the sale, purchase, exchange, rental, lease or other transfer of real estate through its listing in a publication issued primarily for such purpose; or a person employed by, or acting on behalf of any of these.
  - (10) *To rent* includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
  - (11) *Real property* includes building structures, lands, tenements, leaseholds, cooperatives and condominiums.
  - (12) *Familial status* means one or more individuals who have not attained the age of 18 years and are domiciled with:
    - a. A parent or another person having legal custody of such individual(s); or
    - b. The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.
  - (13) *Housing for older persons* means housing:
    - a. Provided under any state or federal program that is designed specifically and operated to assist elderly persons, as defined in the state or federal program;
    - b. Intended for, and solely occupied by, persons 62 years of age or older; or

- c. Intended and operated for occupancy by at least one person 55 years of age or older for each unit. In determining whether housing qualifies as housing intended and operated for occupancy by at least one person 55 years of age or older, the board shall look for at least the following factors:
    - 1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons;
    - 2. That at least 80 percent of the dwellings are occupied by at least one person 55 years of age or older for each unit; and
    - 3. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
  - d. Housing does not fail to meet the requirements for housing for older persons by reason of:
    - 1. Persons residing in this housing as of the date of enactment of the ordinance from which this subsection is derived [November 2, 1992] who do not meet the requirements of subsection b. or c.; or
    - 2. Unoccupied units, provided that these units are reserved for occupancy by persons who meet the new requirements of subsection b. or c.
- (14) *Covered multifamily dwelling* means:
- a. A building which consists of four or more units and has an elevator; or
  - b. The ground floor units of a building which consists of four or more units and does not have an elevator.

Sec. 8-88. Prohibition of discrimination in the sale or rental of housing.

- (a) Except as provided in section 8-94, it shall be unlawful and a discriminatory housing practice for an owner, or any other person engaging in a real estate transaction, or for a real estate broker, as defined in this chapter:
  - (1) To refuse to sell, purchase, rent or lease, or otherwise deny or withhold any housing accommodation from a person or to evict a person because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (2) To evict a person from or to refuse to negotiate with a person for the sale, purchase, rental, assignment or other transfer of the title, leasehold or other interest in any housing facility because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing facility from or to a person because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (4) To discriminate against any person in the terms, conditions or privileges of the sale, purchase, rental, assignment or other transfer of any housing facility, or in the furnishing of facilities or services in connection therewith, because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (5) To represent to any person that any housing facility is not available for inspection, sale, purchase, rental or lease, assignment or other transfer when in fact it is so available, or to refuse to permit a person to inspect any housing facility, because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity when such a dwelling is in fact available to persons who are financially qualified;
  - (6) To make, as part of a process or pattern of discouraging the purchase, sale, rental, occupancy or other use of any housing facility in a particular block, area or neighborhood of the city, any representation to a person known to be a prospective purchaser, seller or renter that such a block, area or neighborhood may undergo, is undergoing or has undergone a change in composition with respect to sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (7) To induce, or attempt to induce, a person to transfer any interest in a housing facility by representations regarding the existing or potential proximity of real property owned, used or occupied by a person of a particular sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
  - (8) To promote, induce or influence, or attempt to promote, induce or influence, by the use of postal cards, letters, circulars, telephone calls, visitation or any other means, directly or indirectly, a person to sell, list for sale, remove from listing, rent, assign, transfer or otherwise, any housing facility by referring, as a part of the pattern or process of inciting neighborhood unrest, community tension or fear of change in

composition in a block, street, neighborhood or area of the city by creating or playing upon fear, by representing that the presence or anticipated presence in that area of persons of any particular sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity will or may result in the lowering of property values in the area, the increase in criminal or anti-social behavior in the area, or a decline in the quality of the schools serving the area;

- (9) To engage in, or hire or conspire with others to engage in, acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause economic loss to a person who has provided or offered to provide housing facilities or services to any person, regardless of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity; or
  - (10) To engage in, or hire or conspire with others to engage in, acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause economic loss to a person who has purchased or leased, or contracted to purchase or lease, any housing facility or service because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
- (b) Except as provided in section 8-94
- (1) It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
    - a. That buyer or renter;
    - b. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
    - c. Any person associated with the buyer or renter.
  - (2) It is unlawful to discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling, because of a disability of:
    - a. That buyer or renter;
    - b. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
    - c. Any person associated with the buyer or renter.
  - (3) For purposes of subsections (1) and (2), discrimination includes:
    - a. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
    - b. A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
    - c. Covered multifamily dwellings as defined herein which are intended for first occupancy after the effective date of the ordinance from which this section is derived [November 2, 1992] shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. Such buildings shall also be designed and constructed in such a manner that:
      1. The public use and common use portions of such dwellings are readily accessible to and usable by disabled persons.
      2. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.
      3. All premises within such dwelling contain the following features of adaptive design:
        - (a) An accessible route into and through the dwelling.
        - (b) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
        - (c) Reinforcements in bathroom walls to allow later installation of grab bars.
        - (d) Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.
  - (4) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically disabled people, commonly cited as ANSI A117.1 1986, suffices to satisfy the requirements of subparagraph (3).

Sec. 8-89. Prohibition of discrimination in advertising practices.

Except as provided in section 8-94, it shall be unlawful and a discriminatory and advertising practice for an owner or any other person engaging in a real estate transaction or for a real estate broker, as defined in this chapter:

- (1) To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale, rental, assignment or other transfer of a housing facility, that indicates any preference, limitation or discrimination based on sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity, or any intention to make any such preference, limitation or discrimination;
- (2) To make or cause to be made an untrue or intentionally misleading statement or advertisement, or in any other manner, attempt as part of a process or pattern of inciting neighborhood unrest, community tension or fear of change in composition of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity in any street, block, neighborhood, or any other area, to obtain a listing of any housing facility for sale, rental, assignment, transfer or other disposition, where such statement, advertisement or other representation is false or materially misleading, or where there is insufficient basis to judge its truth or falsity to warrant making the statement, or to make any other material misrepresentations in order to obtain such listing, sale, removal from listing, rental, lease, assignment, transfer or other disposition of said housing facility;
- (3) To place a sign or display any other device either purporting to offer for sale, rental, assignment, transfer or other disposition or tending to lead to the belief that a bona fide offer is being made to sell, rent, assign, transfer or otherwise dispose of any housing facility that is not in fact available or offered for sale, rental, assignment, transfer or other disposition because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.

Sec. 8-90. Prohibition of discrimination in building practices.

It shall be an unfair and discriminatory building practice and shall be unlawful for any building contractor:

- (1) To refuse to design, redesign, construct, reconstruct, repair, remodel or otherwise maintain any housing facility because of the sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity of the owner, lessee, tenant, assignee or other occupant of such housing facility, or of the prospective owner, lessee, tenant, assignee or other occupant of such housing facility;
- (2) To include in the terms, conditions or privileges of any design or construction contract pertaining to a housing facility, any clause, condition or restriction which discriminates against any person, directly or indirectly, because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity;
- (3) To discriminate in the provision of facilities or services related to a design or construction contract pertaining to a housing facility because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.

Sec. 8-91. Prohibition of discrimination in financing of housing or in residential real estate transactions.

(a) *Discriminatory financing practices.* It shall be unlawful and a discriminatory financing practice for any bank, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or part in the making of commercial real estate loans, to which application is made for financial assistance for the purchase, acquisition, construction, reconstruction, rehabilitation, repair or maintenance of any dwelling or housing facility, or an officer, agent or employee thereof:

- (1) To discriminate against any such applicant or applicants because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity of such applicant or applicants or any member, stockholder, director, officer or employee of such applicant or applicants or of the prospective occupants or tenants of such housing facility, in the granting, withholding, extending or renewing, or in the fixing of the rates or other terms or conditions of any such loans or other financial assistance.
- (2) To use any form or application for such financial assistance or to make any record or inquiry in connection with application for such financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.

(b) *Residential real estate transactions.*

- (1) It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity.
- (2) As used in this subsection, the term "residential real estate transaction" means any of the following:
  - a. The making or purchasing of loans or providing other financial assistance:
    1. For purchasing, constructing, improving, repairing or maintaining a dwelling; or
    2. Secured by residential real estate.
  - b. The selling, brokering or appraising of residential real property.

Sec. 8-92. Prohibition of discrimination in provision of brokerage practices.

It shall be an unfair and discriminatory brokerage practice and shall be unlawful to deny any qualified person access to or membership or participation in any multiple listing service, real estate brokers' organization, or any other service, organization or facility relating to the business of selling or renting housing facilities or to discriminate against this person in the terms or conditions of such access, membership or participation because of sexual orientation, race, color, gender, age, religion, national origin, marital status or disability.

Sec. 8-93. Prohibition of other discriminatory housing practices.

It shall be unlawful and a discriminatory housing practice for any person:

- (1) To retaliate or discriminate in any manner against a person because he/she has opposed a practice declared unlawful by this article, or because he/she has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, hearing or conference under this article; or
- (2) To resist, prevent, impede, or interfere with the human relations advisory board, or any of its members or representatives in the lawful performance of its or their duty under this article; or
- (3) To commit by canvassing, any unlawful practices prohibited by this article; or
- (4) To otherwise deny to or withhold any housing accommodation from a person because of such person's sexual orientation, race, color, gender, age, religion, national origin, marital status or disability.

Sec. 8-94. Exceptions.

- (a) Nothing in sections 8-88 through 8-91 and 8-93(4) applies to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his/her residence.
- (b) Nothing in this article prohibits a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons. Nothing in this article prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (c) Nothing in this article requires any person renting or selling a dwelling constructed for first occupancy before the effective date of the ordinance from which this section is derived [November 2, 1992] to modify, alter or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.
- (d) Any provision of this article regarding familial status does not apply with respect to housing for older persons.
- (e) Nothing in this article:
  - (1) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than sexual orientation, race, color, gender, age, religion, national origin, marital status or disability.
  - (2) Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.
  - (3) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
  - (4) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under F.S. ch. 893.

- (f) The provisions in this article relating to sexual orientation shall not apply to any religious institution, organization, corporation, association, society, or any nonprofit charitable or educational institution, or organization operated, supervised, or controlled by or in conjunction with a religious institution, organization, corporation, association, or society.
- (g) Nothing in this chapter shall be construed to establish an unlawful housing practice based on actual or perceived gender identity due to the denial of access to shared shower or dressing facilities in which being seen full unclothed is unavoidable.

Sec. 8-95. Complaint procedure.

- (a) Any aggrieved person may file with the director, or his designated representative, a written complaint, which shall be verified. The complaint shall state the name and address of the complainant and the person or persons against whom the complaint is made (hereinafter referred to as the "respondent"). The complaint shall set forth the facts upon which the complaint is made and such other information as the director requires. The complaint must be filed within one year after the alleged unlawful practice has occurred. The complaint may be withdrawn by the complainant at any time.
- (b) When it is determined that a complaint has been timely filed, the director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice shall be served within ten days of the date of filing. An amendment likewise shall be served upon the respondent. The notice shall advise the respondent of relevant procedural rights and obligations. The notice shall advise the respondent of the complainant's rights to commence a civil action in a court of competent jurisdiction not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice shall state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under this article is pending. The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under this article is a discriminatory housing practice that is prohibited.
- (c) The director shall serve notice upon the aggrieved person acknowledging the filing of the complaint and advising the aggrieved person of relevant procedural rights and remedies. The notice shall advise the aggrieved person of remedies and choice of forums and inform the aggrieved person that the administrative procedure provided for in this article is neither an obstacle nor a prerequisite to the aggrieved person commencing a separate civil action on his own. The notice shall advise the aggrieved person of his right to commence a civil action in a court not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice shall also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under this article is pending. The notice shall advise the aggrieved person that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under this article is a discriminatory housing practice that is prohibited.
- (d) Once a complaint has been served on the respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.
- (e) The respondent may file an answer to the complaint not later than ten days after receipt of the notice of the filing. The answer shall be sworn to or affirmed before a notary public or other person duly authorized by law to administer oaths and take acknowledgments.
- (f) A complaint or answer may be amended at any time when it would be fair and reasonable to do so, and the director shall furnish a copy of each amended complaint or answer to the respondent or aggrieved person, respectively, as promptly as practicable. With respect to any complaint filed pursuant to this article, the initial burden of proof is on the complainant.
- (g) Within 30 days after the filing of a complaint, the director shall commence such investigation as deemed appropriate to ascertain facts and issues. The director may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws.
- (h) The following investigation procedures shall be followed:
  - (1) *Complaint verification.* As part of the investigation process, the complaining party may be required to provide an additional sworn written statement which shall include:

- a. A statement of each particular harm or potential harm which the aggrieved person has suffered or will suffer and the date on which each harm occurred or will occur.
  - b. For each harm, a statement specifying the act, policy, or practice which is alleged to be unlawful.
  - c. For each act, policy, or practice alleged to have harmed the aggrieved person, a statement of the facts which led the complainant to believe that the act, policy, or practice is discriminatory.
- (2) *Requests for information.* In investigating a complaint, the director and/or the director's designee may obtain information by:
  - a. Oral interview; and/or
  - b. Requests for written statement or affidavit; and/or
  - c. Any discovery methods set forth in the Florida Rules of Civil Procedure.
- (3) *Investigations.* The investigations will seek the voluntary cooperation of all persons in obtaining information. If, however, the director is unable to obtain the voluntary cooperation of persons, the director shall request the board issue subpoenas. The board shall have the power to issue subpoenas or subpoenas duces tecum. Any subpoena issued by the board must be approved by the city attorney as to the subpoena's form and legality before it is issued.
- (4) *Complaining party's failure to cooperate.* Where the complainant fails to provide a necessary information statement; fails or refuses to appear or be available for interviews or conferences; fails or refuses to provide necessary information requested by the director pursuant to this section; or otherwise refuses to cooperate to the extent that the director shall dismiss the complaint after providing 20 days' notice to the complainant unless the director, with board approval, determines there is sufficient grounds and sufficient evidence to proceed with the complaint.
- (5) *Access to files during investigation.* Access to files during investigation shall be in accordance with the provisions of the Florida Public Records Law.
- (i) The director shall, within 100 days after the filing of a complaint, complete the investigation of the alleged unlawful discriminatory practice, unless it is impracticable to do so. If the director is unable to complete the investigation within 100 days after the filing of a complaint, the director shall notify, by certified mail or by personal service, the complainant and the respondent in writing of the reasons for not so doing. The director shall notify the aggrieved person and the respondent if administrative disposition of the complaint pursuant to this article cannot be accomplished within one year of the filing of the complaint.
- (j) Beginning with the filing of the complaint and ending with the filing of a reasonable cause charge as provided for in subsection (n) herein, the director shall attempt to conciliate the matter by methods of initial conference and conciliation with all interested parties and such representatives as the parties may choose to assist them. Such conciliation conferences may be by whatever method the director determines to be most appropriate. The director shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief. Except as provided in subsection (k) of this section, nothing that is said or done in the course of conciliation or such informal endeavors may be made public or used as evidence in a subsequent proceeding without the written consent of the persons concerned.
- (k) Where conciliation attempts are successful, the terms of a settlement of a complaint shall be reduced to a written conciliation agreement. The agreement must be executed by the respondent and the complainant, and is subject to the approval of the director. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. Notwithstanding the provisions of subsection (j) above, each conciliation agreement shall be made public in accordance with the public records law.
- (l) A conciliation agreement negotiated under this article to resolve a discriminatory real estate transaction may include, but is not limited to:
  - (1) The sale, exchange, lease, rental, assignment, or sublease of real property to an individual;
  - (2) The extension to all persons the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;
  - (3) The reporting as to the manner of compliance;
  - (4) The posting of notice in conspicuous places in the respondent's place of business, indicating compliance with equal housing opportunity, and inclusion of such notices in advertising material;
  - (5) The payment to the complainant of damages for injury, expenses incurred by the complainant in securing alternate housing or facilities, and other costs actually incurred by the complainant as a direct result of such discriminatory practice.
- (m) A duly executed conciliation agreement shall operate as a dismissal of the complaint.

- (n) If conciliation has not been reached within 100 days of the filing of the complaint and if the complaint has not been withdrawn, the director shall make a determination as to whether reasonable cause exists to believe that an unlawful discriminatory practice has occurred or is about to occur. Reasonable cause shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that a discriminatory housing practice has occurred or is likely to occur. The director and/or the director's designee shall report the results of the investigation and his or her determination to the board. The board shall receive a copy of the director's report and shall have the opportunity to review the report and submit comments to the director. If the board determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, it shall issue a written notice of determination of reasonable cause. A copy of the notice shall be served upon the respondent, the complainant, and the aggrieved person within ten days of the date of the written notice. At the time the notice of determination of reasonable cause is served, notice shall be given that a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect, in lieu of an administrative hearing pursuant to this article, to have the claims asserted in the charge decided in a civil action and advise that such election must be made not later than 20 days after the date of receipt of the notice of determination of reasonable cause. The person making the election shall give notice to the board and all other parties.
- (o) If the director determines that the complaint lacks reasonable grounds upon which to base a violation of this article, the director shall dismiss the complaint, then the director shall inform the board of his or her findings through a written report. The board, in its discretion, may order that the matter be closed or may order, by a three-fourths majority vote, such further investigation as may be deemed necessary. If further investigation is ordered, the results thereof shall be presented to the board in the form of a written report within ten days and shall be acted upon by the board within an additional 20 days.
- (p) If timely election of a civil action is not made under subsection (n), the charge will proceed to an administrative hearing. An evidentiary hearing on the merits shall be held. Any conciliation agreement reached prior to a scheduled hearing may result in such hearing being cancelled. The city, through the city attorney's office, shall arrange for the services of a hearing officer to conduct the administrative hearing.
- (q) In conducting any administrative hearing to determine whether or not there has occurred a failure to comply with the provisions of this article, the hearing officer shall have the power to administer oaths, issue subpoenas, compel the production of books, paper, and other documents, and receive evidence. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to the hearing officer's recommended order, and to be represented by counsel or other qualified representative. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. In interpreting the provisions of this article, the hearing officer may consider administrative and judicial interpretations of substantially equivalent provisions of state or federal laws.
- (r) The hearing officer shall prepare a recommended order consisting of findings of fact, conclusions of law and affirmative relief, if applicable. The hearing officer shall transmit the recommended order to the board and all parties. Each party shall have 15 days from the date of the hearing officer's order to submit written exceptions to the hearing officer's order to the board. The board shall review such order and any written exceptions and may set forth any deficiencies it finds with respect to the order. Said deficiencies shall be limited to determinations that the findings were not based upon competent, substantial evidence, or that the proceedings on which the findings were based did not comply with the essential requirements of law. In reviewing such recommended order, the board shall not have the power to receive or consider additional evidence. The board shall have no power to reject or modify the findings of fact contained in the recommended order. The board may either adopt the recommended order as the final order, or by a three-fourths majority vote, remand the recommended order along with the delineated deficiencies back to the hearing officer for consideration of the deficiencies. The hearing officer shall address the identified deficiencies in an addendum to the recommended order. The hearing officer's order along with the addendum addressing the concerns of the board shall be the final order of the board. The final order shall be served upon the complainant and respondent within ten days of adoption by the board. If the hearing officer finds that a discriminatory practice has occurred or is about to occur, the hearing officer may recommend affirmative relief from the effects of the practice, including actual damages, equitable and injunctive relief and reasonable attorneys fees and costs. Judgment for the amount of damages, equitable relief and costs assessed pursuant to a final order by the board may be entered in any court of competent jurisdiction thereof and may be enforced as any other judgment.

- (s) Any sale, encumbrance, or rental consummated prior to the issuance of an order by the board issued under the authority of this article and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this article shall not be affected.
- (t) Either party to such administrative proceedings shall have the right to appeal the final administrative order described herein by certiorari review. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the board. Costs or fees may not be assessed against the board in any appeal from a final order issued by the board under this article. Either party to the administrative proceeding or the city shall have authority to bring an action in equity in a court of competent jurisdiction to enforce the final administrative order to ensure compliance with this article. The court shall be empowered to issue mandatory or prohibitive injunction to implement such administrative order.
- (u) Should any party fail or refuse to comply with the final order issued by the board or breach a conciliation agreement as provided herein, then, following the expiration of the appeal time as provided herein, the board shall forward such order or conciliation agreement to the city commission with a request that the city commission authorize the city attorney to bring such action or actions as necessary to obtain compliance with this article.

Sec. 8-96. Civil action and penalties.

- (a) In addition to the election of remedies provisions if, as a result of investigation under this article, the director finds there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, at the request of the person aggrieved, the board may recommend to the city commission that the matter be referred to the state attorney's office for appropriate proceedings to enforce the provisions of this article. The board may also recommend to the city commissioners that the city attorney bring a civil action in a court of competent jurisdiction if the director is unable to conciliate a complaint or if the city is unable to obtain voluntary compliance with this article. The city and/or the board need not have requested or petitioned for an administrative hearing or exhausted any administrative remedies prior to bringing a civil action.
- (b) If an aggrieved person wishes to bring a civil action, such action shall be commenced no later than two years after an alleged discriminatory practice has occurred. The aggrieved person need not have requested or petitioned for an administrative hearing or exhausted his or her administrative remedies prior to bringing a civil action. Such two-year period does not include any time during which conciliation efforts or an administrative hearing action was pending with respect to such complaint.
- (c) Whenever an action filed in a court of competent jurisdiction pursuant to this article comes to trial, the director shall immediately terminate all efforts to obtain conciliation.
- (d) In a civil action brought under this article, if a court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual damages, and reasonable attorneys' fees and costs. If the city has brought the civil action, the court shall award reasonable attorneys' fees and costs to the city in any action in which the city prevails.
- (e) It is hereby found and declared that a violation of any provision of this article constitutes an irreparable injury to the citizens of the City of Gainesville.

Sec. 8-97. Additional remedies.

The procedures prescribed by this article do not constitute an administrative prerequisite to another action or remedy available under other law. Nothing in this article shall be deemed to modify, impair, or otherwise affect any right or remedy conferred by the constitution or laws of the United States or the State of Florida, and the provisions of this article shall be in addition to those provided by such other laws. Nothing herein shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled, or from filing any complaint with any other agency or any court having proper jurisdiction.

**ARTICLE VI. EQUAL CREDIT OPPORTUNITY <sup>161</sup>**

Sec. 8-111. Rules of construction.

The provisions of this article are adopted by the city commission with the knowledge of a similar federal law contained in 15 U.S.C. Section 1691a, et seq. The commission has specifically patterned this article after that law and except where the two (2) are clearly different, hereby adopts relevant judicial and administrative constructions of that federal law as applicable hereto.

(Code 1960, § 10B-23)

Sec. 8-112. Definitions.

As used in this article, the following words shall have the following meanings ascribed to them in this section:  
*Applicant* or *credit applicant* shall mean any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

*Credit* shall mean the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

*Creditor* shall mean any person who regularly extends, renews or continues credit; any person who regularly arranges for the extension, renewal or continuation of credit; or any assignees of an original creditor who participates in the decision to extend, renew or continue credit.

(Code 1960, § 10B-24)

Sec. 8-113. Prohibition of discrimination in credit extension practices.

It shall be unlawful for any creditor to discriminate against any applicant on the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity with respect to any aspect of a credit transaction.

Sec. 8-114. Exceptions.

Section 8-113 shall not apply to:

- (1) Any inquiry of marital status if the inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit, and not to discriminate in a determination of credit worthiness;
- (2) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings; provided, however, this subsection shall not be construed to permit a creditor to take sex or marital status into account in connection with the evaluation of the credit worthiness of any applicant;
- (3) Consideration or application of state property laws which directly or indirectly affect credit worthiness of the applicant.
- (4) The provisions in this article relating to sexual orientation and gender identity shall not apply to any religious institution, organization, corporation, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious institution, organization, corporation, association or society.

Sec. 8-115. Enforcement.

The provisions of this article relating to enforcement, filing, complaint procedure, orders and penalties shall follow in the same manner as in employment actions under article III of this chapter.

## Appendix of Existing Ordinances:

### City of Gulfport:

## Chapter 26 CIVIL RIGHTS

### ARTICLE I. GENERAL

#### Sec. 26-1. Declaration of policy.

- (a) It is the intent of the city council, in enacting this chapter, to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic. The council's purpose in enacting this chapter is to promote the public health and welfare of all persons who live in, visit and work in the city. It is important for the city to ensure that all persons within the city have equal access to employment, housing, public accommodations, and education. It is the city's intent to work cooperatively, to the maximum extent possible, with other government entities that may provide similar protections and to avoid unnecessary duplication of services. It is the desire of the city council to foster and encourage the growth and development of the city in a manner that will assure all persons an equal opportunity to live free of discrimination imposed by age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic. Discriminatory practices are contrary to the public policy of the city and are a menace to the public peace and welfare of our citizens. The city shall direct its efforts and resources toward eliminating discriminatory practices within the city in the areas of employment, housing, public accommodations, and education where they exist.
- (b) The general purpose of this chapter is to secure for all individuals within the city freedom from discrimination because of age, color, disability, gender, marital status, familial status, national origin, race, religion, gender identity or expression, sexual orientation, and physical characteristics and thereby to protect their interest in personal dignity, to make available to the city their full productive capacities, to secure the city against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the city.

#### Sec. 26-2. Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

*Age* shall be as defined in the human rights or human relations ordinance of the county.

*Aggrieved person* means any person who claims to have been injured by a discriminatory practice, who files a complaint with the city.

*Complainant* means a person who files a complaint under this chapter.

*Conciliation* means the attempted resolution of issues raised by a complaint, or by the investigator of such complaint, through informal negotiations involving the aggrieved person, the respondent, and a conciliator.

*Conciliation agreement* means a written agreement setting forth the resolution of the issues in conciliation.

*Conciliator* means an attorney at law certified to practice in the state, a circuit court civil mediator certified by the Florida Supreme Court, or a third year law student who is under the direct supervision of a law professor or circuit court civil mediator certified by the Florida Supreme Court.

*Disability* shall be as defined in the human rights or human relations ordinance of the county.

*Discriminatory practice* means any practice made unlawful by this chapter.

*Entity* means employee, employer, employment agency, financial institution, labor organization, mortgage broker, owner, person, real estate broker, real estate sales agent, or joint labor-management committee as used or defined in this chapter.

*Gender* is used interchangeably with sex and means actual or perceived sex.

*Gender identity or expression* means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.

*Marital status* shall be as defined in the human rights or human relations ordinance of the county.

*National origin* shall be as defined in the human rights or human relations ordinance of the county.

*Person* includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, receivers and fiduciaries.

*Physical characteristic* means a bodily condition or bodily characteristic of any person that is from birth, accident, or disease, or from any natural physical development, including individual physical mannerisms including but not limited to height and weight. Physical characteristic shall not relate to those situations where a bodily condition or characteristic will present a danger to the health, welfare or safety of any individual.

*Prevailing party* shall have the same meaning as such term has in 42 U.S.C. Section 1988.

*Race* shall be as defined in the human rights or human relations ordinance of the county.

*Religion* means all aspects of religious observance, practice, and belief.

*Respondent* means the person or other entity accused in a complaint of an act of discrimination prohibited by this chapter.

*Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

*Unlawful discriminatory practice* means a practice prohibited under the provisions of this chapter.

#### Sec. 26-3. Hearing officer.

The city council shall designate one (1) or more hearing officers, who shall hear all complaints alleging that a violation of this chapter has occurred. The hearing officer shall be an attorney at law, licensed to practice in the state, and shall have the following powers and duties:

- (1) To hold hearings, require conciliation conferences and to compel the attendance of witnesses, administer oaths and take the testimony of any person under oath;
- (2) To issue subpoenas and order discovery in aid of hearings as required under the provisions of this chapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as subpoenas and discovery in a civil action under the Florida Rules of Civil Procedure;
- (3) To endeavor to resolve complaints, filed pursuant to this chapter, through conciliation;
- (4) Upon the failure of conciliation, to review whether the evidence supports a decision that an unlawful discriminatory practice has occurred and in the event of such finding, to issue an order to that effect; and
- (5) Any other powers and duties provided elsewhere in this chapter.

#### Sec. 26-4. Procedures; initiation of proceedings.

- (a) Any person subjected to an unlawful discriminatory practice may file with the city a complaint in writing, sworn to or affirmed, which shall state the name and address of the complainant and the person or persons against whom the complaint is made. It shall also state, in detail, the alleged facts surrounding the alleged unlawful discriminatory practice and be in a form as prescribed by the city. A complaint may be amended as authorized by the hearing officer. A complaint shall be filed with the city manager or his or her designee within one hundred eighty (180) days after the date of the alleged unlawful discriminatory practice in order to be received under this chapter. The city shall assist complainants or respondents where necessary in the preparation and filing of complaints and answers.
- (b) Within thirty (30) days after the filing of a complaint, the city manager, or his or her designee, shall determine whether the city has jurisdiction to consider the complaint. If a determination of no jurisdiction is made, the complainant may be referred to any other government agency that may have jurisdiction over the complaint. If a determination is made that the city has jurisdiction over the complaint, the city manager, or his or her designee, shall serve on the respondent a notice that a complaint has been filed, as well as a copy of the complaint. Not later than the twentieth day after receipt of the notice and a copy of the complaint, the respondent shall file an answer. The answer must be in writing, under oath and in a form prescribed by the city. An answer may be amended as authorized by the hearing officer.
- (c) All parties to a complaint may appear with counsel at all stages of the proceedings under this chapter.
- (d) Within thirty (30) days of receiving a complaint, the city manager, or his or her designee, shall commence such actions as may be necessary to investigate the allegations of the complaint. The city manager shall confer with the investigator, review the completed investigation, confer with the city attorney if necessary, and shall determine whether reasonable cause exists for the complaint. If the city manager finds reasonable cause that a violation of this chapter exists, and the city has jurisdiction over the complaint pursuant to this chapter, the complaint shall be subject to further proceedings hereunder; otherwise, the complaint shall be dismissed.
- (e) The complainant, within thirty (30) days after receiving a copy of the order dismissing the complaint, may file with the board of adjustment, an application for reconsideration of the order. The board of adjustment shall review the application and determine within sixty (60) days of receiving the application whether there is reasonable cause to believe that the respondent has engaged in a discriminatory practice. If it is determined that there is reasonable cause to believe a discriminatory practice has occurred, the matter shall be referred to conciliation in accordance with subsection (f) below. If it is determined that no reasonable cause exists, and the

time for appeal to the board of adjustment has expired or the board of adjustment has concurred that no reasonable cause exists, a final order dismissing the complaint shall be issued by the city manager or his or her designee.

- (f) Conciliation shall be commenced, as follows:
  - (1) Within thirty (30) days of a determination that reasonable cause for the complaint exists, the city shall issue an order to all parties to engage in conciliation, and a conciliator shall be designated to assist the parties in resolving the complaint. All parties shall be required to engage in such conciliation in good faith. All conciliation conferences shall be informal, and shall be scheduled by the city manager, or his or her designee.
  - (2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant.
  - (3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from the conciliation agreement may award appropriate relief, including monetary relief.
  - (4) Each conciliation agreement shall be made public pursuant to the requirements of Chapter 119, Florida Statutes.
  - (5) All conciliation proceedings shall be confidential, and nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this chapter or in any subsequent civil action without the written consent of all persons who participated in the conciliation.
  - (6) The provisions of this section notwithstanding, the complainant and the respondent may elect to engage in private settlement negotiations, with or without a mediator, and enter into a confidential settlement agreement which shall not become a public record unless it is filed with the city.
- (g) All documents filed with the city pursuant to this chapter, and all records and documents in the custody of the board shall be public records as provided for in F.S. ch. 119, unless otherwise exempted thereunder.
- (h) A complaint may be voluntarily dismissed by a complainant at any time. Upon the filing of a voluntary dismissal, the city's jurisdiction over the complaint shall terminate.

#### Sec. 26-5. Hearing procedures.

- (a) Once a determination has been made that reasonable cause exists for the complaint and conciliation efforts are unsuccessful, the hearing officer shall hold hearings as necessary to hear and dispose of pending matters. The hearing officer shall provide notice of the time and place of all hearings to all parties involved in complaints to be acted upon. The hearing officer shall be provided with such professional assistance and staff as may be deemed necessary by the city council to enable the hearing officer to perform his or her duties as assigned in this chapter.
- (b) The hearing officer shall hold a public hearing not earlier than sixty (60) days after the filing of a complaint nor later than one hundred eighty (180) days after the time of filing. The hearing officer shall serve upon all interested parties a notice of time and place of the hearing. The complainant and respondent or their respective counsel may file such statements with the hearing officer prior to the hearing as they deem necessary in support of their case. The hearing shall be open to the public and parties may appear with or without counsel. The parties may present testimony and the right to cross-examination shall be preserved. All testimony and evidence shall be under oath or by affirmation administered by the hearing officer. The hearing officer shall not be bound by strict rules of evidence. The city council may adopt such additional rules of procedure as it deems necessary.
- (c) Upon completion of the hearing, the hearing officer shall issue a final order determining whether a violation of this chapter has occurred. The hearing officer shall determine what relief, if any is appropriate or dismiss the complaint finding that no violation has occurred. The city manager, or his or her designee, shall promptly notify the complainant and respondent of the hearing officer's action. Upon dismissal or issuance of a final order, the complainant shall have no further remedy pursuant to this chapter.
- (d) The hearing officer shall make such findings of fact and conclusions of law following any hearing, as he or she deems necessary and issue a written decision.
- (e) When any act is required or allowed to be done at or within a specified time by this chapter, for cause shown, the city manager or hearing officer, at any time in their discretion, may order the period enlarged or may permit the act to be done when failure to act was the result of excusable neglect.

#### Sec. 26-6. Exclusivity.

- (a) If a complaint filed with the city is based upon an incident which is, has been or could be the basis of a charge of an unlawful discriminatory practice filed with a county, state or federal government or any of their agencies, and if the allegations contained in the complaint would be fully covered under a statute or ordinance applicable in the county, including the city, the city manager or his or her designee shall dismiss the complaint without prejudice and refer the complainant to the appropriate county or other government agency.
- (b) If at any time during the processing of a complaint, the complainant files an allegation of an unlawful discriminatory practice with a county, state or federal government, or any of their agencies, or a complaint alleging an unlawful discriminatory practice in any court, based upon the same incident that is the basis of a charge filed with the city, all proceedings concerning the processing of the complaint under this chapter shall be dismissed without prejudice and the hearing officer shall enter an order of dismissal accordingly.

Sec. 26-7. Violation of conciliation agreement.

It shall be an unlawful discriminatory practice for any party to a conciliation agreement entered into pursuant to this chapter to violate the terms of such agreement.

Sec. 26-8. Appeal.

Appeal from any final order of the hearing officer shall be by writ of certiorari to the circuit court, as provided by law.

Sec. 26-9. Enforcement.

- (a) Whenever a complaint is filed and the city manager or hearing officer concludes on the basis of an investigation or other inquiry that prompt judicial action is necessary to carry out the purpose of this chapter, the city manager or hearing officer may request the city attorney to immediately commence and maintain an action for appropriate temporary or preliminary relief pending final disposition of the complaint. The city attorney shall then exercise prosecutorial discretion to determine whether to initiate such proceedings on behalf of the city, and shall maintain such proceedings as deemed advisable, in accordance with said discretion.
- (b) Whenever the city manager or hearing officer has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this chapter, and that the pattern or practice is of such a nature as to deny the full exercise of the rights afforded by this chapter, or a person has been denied any right granted by this chapter and that denial raises an issue of general public importance, the city manager or hearing officer may request the city attorney bring an appropriate civil action in a court of competent jurisdiction. The city attorney shall then exercise prosecutorial discretion to determine whether to initiate such proceedings on behalf of the city, and shall maintain such proceedings as deemed advisable, in accordance with said discretion.
- (c) A final order of the hearing officer may be enforced by any court of competent jurisdiction.

Sec. 26-10. Remedies.

The same remedies available under the applicable human rights ordinance, in the county, as amended from time to time, shall be available under this chapter.

Sec. 26-11. Prohibited acts.

- (a) It shall be unlawful for a person to retaliate or discriminate in any manner against a person because such person opposed a practice prohibited by this chapter or prohibited by existing federal or state law prohibiting discrimination; or to retaliate or discriminate in any manner against a person because such person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceedings, hearing or conference under this chapter or under any federal or state law prohibiting discrimination.
- (b) It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

Secs. 26-12—26-19. Reserved.

**ARTICLE II. EMPLOYMENT DISCRIMINATION**

Sec. 26-20. Generally.

The general purpose of this article is to secure for all individuals within the city the freedom from discrimination because of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or

expression, sexual orientation, or physical characteristic in connection with employment, where said rights are not otherwise fully protected by any federal, state or county law, and thereby to promote the interests, rights and privileges of individuals within the city.

Sec. 26-21. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

*Compensation, terms, conditions, or privileges of employment* encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.

*Employee* means an individual employed by an employer, but shall not include an immediate family member of the employer.

*Employer* means any person employing five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

*Employment agency* means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

*Immediate family member* means a spouse, domestic partner, father, stepfather, mother, stepmother, son, stepson, daughter, stepdaughter, brother, stepbrother, sister, stepsister, grandparent, step grandparent, grandchild, or step grandchild, natural or by adoption.

*Labor organization* means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

Sec. 26-22. Unlawful employment practices.

(a) The following shall constitute unlawful discrimination in employment practices:

- (1) It is a discriminatory practice for an employer to:
  - a. Fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic; or
  - b. Limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- (2) It is a discriminatory practice for an employment agency on the basis of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic to:
  - a. Fail or refuse to refer for employment or otherwise discriminate against an individual; or
  - b. Classify or refer for employment an individual on such a discriminatory basis.
- (3) It is a discriminatory practice for a labor organization to:
  - a. Exclude or to expel from membership or otherwise discriminate against any individual on the basis of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic;
  - b. Limit, segregate, or classify membership or applicants for membership, or to classify or to fail or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic; or
  - c. Cause, assist, or attempt to cause or assist an employer to violate this division.
- (4) It is an unlawful practice for an employer, labor organization, or training committee to discriminate against an individual on the basis of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic in a training program providing apprenticeship or other training.
- (5) It is a discriminatory practice for an employer, labor organization, or employment agency to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination based on age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic.

- (6) Except as permitted and required by regulations of the county, or by applicable federal or state law, it is a discriminatory practice for an employer or employment agency to elicit information about an employee's age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic, or to keep or disclose a record of such information for the purposes of effecting discrimination.
- (b) It is not a discriminatory employment practice for:
  - (1) A religious corporation, association, or society to employ individuals of a particular religion to perform work connected with the beliefs, tenets and doctrines of the corporation, association, or society of its religious activities; or
  - (2) A religious educational institution or religious organization owned, operated, supervised, or controlled by a religious institution or organization to limit employment or give preference to members of the same religion.

### **ARTICLE III. HOUSING DISCRIMINATION**

#### **Sec. 26-30. Generally.**

The general purpose of this article is to secure for all individuals within the city the freedom from discrimination because of age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic in connection with housing, and thereby to promote the interests, rights and privileges of individuals within the city.

#### **Sec. 26-31. Definitions.**

The following words and phrases, when used in this article, shall have the following meanings:

*Covered multifamily dwelling* means:

- (1) A building which consists of four (4) or more units and has an elevator; or
- (2) The ground floor units of a building which consists of four (4) or more units and does not have an elevator.

*Discriminatory housing practice* means an act that is unlawful under the terms of this article.

*Dwelling* means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families, or any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

*Familial status* shall be as defined in the human rights or human relations ordinance of the county.

*Family* includes a single individual.

*To rent* includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

#### **Sec. 26-32. Prohibited practices or acts.**

- (a) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- (b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with such sale or rental, because of age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- (c) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.
- (d) A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic or an intention to make such a preference, limitation, or discrimination.
- (e) A person may not represent to any person because of age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection, sale or rental.

- (f) A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- (g) A person or entity whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- (h) As used in subsection (g), "residential real estate related transaction" means:
  - (1) Making or purchasing loans or providing other financial assistance:
    - a. To purchase, construct, improve, repair, or maintain a dwelling; or
    - b. Secured by residential real estate; or
  - (2) Selling, brokering, or appraising residential real property.

Sec. 26-33. Discrimination in brokerage services.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation therein, on the basis of age, race, color, religion, national origin, ancestry, disability, marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic.

Sec. 26-34. Exemptions.

- (a) Nothing in this article shall apply to:
  - (1) The sale or rental of any single-family house by an owner provided the following conditions are met:
    - a. The owner does not own or have any interest in more than three (3) single-family houses at any one (1) time; and
    - b. The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings.
  - (2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such quarters as his or her residence.
- (b) For the purposes of this section, the term "person in the business of selling or renting dwellings" means any person who:
  - (1) Within the preceding twelve (12) months has participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein;
  - (2) Within the preceding twelve (12) months has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein; or
  - (3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.
- (c) The exemption in subsection (a)(1) of this section applies only to one (1) such sale in any twenty-four-month period.
- (d) This article does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from:
  - (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin; or
  - (2) Giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
- (e) This article does not prohibit a private club not open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.
- (f) This article does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than age, race, color, religion, national origin, ancestry, disability,

marital status, familial status, gender, gender identity or expression, sexual orientation, or physical characteristic.

- (g) This article does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling.
- (h) This article does not prohibit an owner from limiting occupancy on the basis of a person's low-income, age over fifty-five (55) years or disability status in accordance with federal or state law.
- (i) This article does not affect a requirement of nondiscrimination in any other state or federal law.

#### ARTICLE IV. DISCRIMINATION IN PUBLIC ACCOMMODATIONS

##### Sec. 26-40. Generally.

The general purpose of this article is to secure for all individuals within the city the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any educational institution or place of public accommodation, as defined in this section, without discrimination because of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic, and thereby promoting the interests, rights and privileges of all individuals within the city.

##### Sec. 26-41. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

*Operator* means and includes any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of accommodation or an employee or independent contractor of any such person.

*Place of public accommodation* means and includes all places included within the meaning of the following: inns, taverns, roadhouses, hotels, and motels, whether operated for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants, eating houses, and any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirits or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind, are retailed for consumption on the premises; wholesale and retail stores and establishments dealing with goods or services of any kind; dispensaries, clinics, hospitals; bathhouses, swimming pools; laundries and all other cleaning establishments; barbershops, beauty shops; theaters, motion picture houses, airdromes, roof gardens, music halls, racecourses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages; all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof, travel or tour advisory services, agencies or bureaus; and public halls and public elevators of buildings and structures occupied by two (2) or more tenants, or by the owner and one (1) or more tenants.

##### Sec. 26-42. Discrimination prohibited.

- (a) It is a violation of this article for an operator of a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another person the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that person's age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic.
- (b) It is a violation of this article for an owner or operator of a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any person or that any such person is unwelcome, objectionable or unacceptable because of that person's age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic.

##### Sec. 26-43. Exemptions.

- (a) The provisions of this article shall not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society from giving preference to the members of the same religion in the enjoyment of its facilities and services, unless membership in such religion is restricted on account of race, color, or national origin.

- (b) The provisions of this article relating to public accommodations do not prohibit discrimination on the basis of sex in rest rooms, shower rooms, bathhouses, and similar facilities which are by their nature simply private, or dormitory lodging facilities.
- (c) The provisions of this article shall not apply to any private club or other establishment which is not, in fact, open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment which is a place of public accommodation. However, any institution, club, or place of accommodation which has more than four hundred (400) members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers for the furtherance of the trade or business, shall not receive an exemption as a private club under this subdivision.
- (d) The provisions of this article shall not be construed as prohibiting the giving of special discounts on goods and services by a place of public accommodation, provided such goods or services are not denied to individuals on the basis of age, race, color, religion, national origin, ancestry, disability, marital status, gender, gender identity or expression, sexual orientation, or physical characteristic.

## **ARTICLE V. DOMESTIC PARTNERSHIP REGISTRY**

### **Sec. 26-44. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City clerk* means the city clerk or city clerk's designee.

*Competent to contract* means the two (2) partners are mentally competent to contract.

*Declaration of registered domestic partnership (DDP)* means the document filed with the city clerk that two people swear or affirm under penalty of perjury that they meet the requirements of the definition of domestic partnership when they sign the statement.

*Dependent* means a person who lives within the household of a domestic partnership and is:

- (1) A biological child or adopted child of a domestic partner;
- (2) A dependent as defined under Internal Revenue Service regulations; or
- (3) A ward of a domestic partner as determined in a guardianship proceeding.

*Domestic partners* means two (2) adults who have chosen to share one (1) another's lives in a family relationship.

Two (2) persons are considered to be domestic partners if:

- (1) They consider themselves to be members of each other's immediate family.
- (2) They agree to be jointly responsible for each other's basic living needs.
- (3) Neither of them is considered married under the laws of the state, is a member of another domestic partnership, or civil union with anyone other than the co-applicant.
- (4) They are not blood related in a way that would prevent them from being married to each other under the laws of the state.
- (5) Each is at least eighteen (18) years of age and competent to contract.
- (6) They each have signed a declaration of domestic partnership as provided for in section 26-45

*Domestic partnership* means the entity formed by two (2) persons who have met the criteria listed in the definition for domestic partners and file a declaration of registered domestic partnership as provided in this article.

*Health care facility* includes, but is not limited to, hospitals, nursing homes, hospice care facilities, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities and any other short-term or long-term health care facilities located within the city.

*Joint responsibility for basic living needs* means that each partner agrees to provide for the other's needs (e.g., food and shelter) while the domestic partnership is in effect if the partner is unable to provide for themselves. It does not mean that the partners need contribute equally or jointly to each others basic needs.

*Mutual residence* means a residence shared by the registered domestic partners; it is not necessary that the legal right to possess the place of residence be in both of their names. Two (2) people may share a mutual residence even if one (1) or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one (1) leaves the shared placed but intends to return.

### **Sec. 26-45. Procedures to establish.**

- (a) Two (2) people eligible under this article shall file a declaration of registered domestic partnership with the city clerk. The declaration of registered domestic partnership shall include the name of each of the domestic partners, the address of their common household, respective mailing addresses if other than the address of the

household, and the names of any dependents of the domestic partnership. The declaration of registered domestic partnership shall be signed by both domestic partners under the pains and penalties of perjury, signed by two (2) witnesses and notarized.

- (b) Domestic partners may amend the declaration of registered domestic partnership to add or delete dependents or change the household address. Amendments to the declaration of registered domestic partnership shall be signed and notarized, under penalty of perjury, by both domestic partners, signed by two (2) witnesses and notarized.

Sec. 26-46. Termination.

- (a) A domestic partnership is terminated when:
  - (1) One (1) of the partners dies; or
  - (2) A domestic partner files a termination statement with the city clerk, by hand or certified mail, for any reason.
- (b) The person filing the termination statement must declare under penalty of perjury that the domestic partnership is terminated and that a copy of the termination statement has been mailed by certified mail to the other domestic partners last known address. The person filing the termination statement must include on such statement the address to which the copy was mailed.
- (c) The termination of a domestic partnership shall be effective upon the death of a domestic partner and presentation of a death certificate to the city clerk.
- (d) The voluntary termination of a domestic partnership by a partner shall be effective upon the receipt of the termination statement by the city clerk.

Sec. 26-47. City clerk's duties; fees and records.

- (a) The city clerk shall collect a fee for filing a declaration of registered domestic partnership in the amount of \$25.00. The fee shall be adjusted as necessary by resolution of the city council.
- (b) The city clerk shall collect a fee in the amount the city has established under the state public records law for certified copies of domestic partnership documents, other than the copy of the certificate of domestic partnership initially issued by the city clerk to the domestic partners.
- (c) The city clerk shall keep a record of all declarations of registered domestic partnership, amendments and termination statements.
- (d) Upon receipt of a declaration of registered domestic partnership and the requisite filing fee, the city clerk shall issue a certificate of domestic partnership. The city clerk shall mail to the household of the domestic partnership one certified copy of the certificate and two wallet-sized cards indicating the existence of the domestic partnership.
- (e) The city clerk shall provide pertinent domestic partnership forms to persons requesting them.
- (f) The city clerk shall allow public access to domestic partnership records in accordance with Florida Statutes.
- (g) The city clerk is authorized and directed to take all actions necessary to implement the provisions of this section within forty-five (45) days after this article is enacted.
- (h) If the county establishes a domestic partnership registry law that is substantially similar to the city's domestic partnership registry code provisions, the city clerk shall collaborate with the county to determine whether a joint registration system will most efficiently serve our citizens. The city clerk will bring any recommendations for joint administration to the city council for its consideration. If such a joint registry is established. The references regarding the city clerk shall mean the filing officer for the joint registry approved by the city council and county.

Sec. 26-48. Employment benefits.

- (a) The city shall provide the same health and other employment fringe benefits to employees with domestic partners as to employees with spouses. As used in this section, the term "employees" refers to active and retired city employees who are eligible for benefits pursuant to state or municipal law, employment policies, or collective bargaining agreements.
- (b) An employee must file a copy of the declaration of registered domestic partnership with the human resources department in order to obtain benefits under this section.
- (c) The city shall provide health insurance and benefit coverage to an employee's domestic partner as it does to an employee's spouse and to the dependents of an employee's domestic partnership as it does to an employee's children. An employee may opt to decline health insurance coverage for his domestic partner, without forgoing the right to obtain health insurance coverage for his domestic partner at a later date.

- (d) Upon termination of a domestic partnership by an employee, the domestic partners health insurance and benefits shall lapse as it would for the spouse of a married employee.
- (e) Upon termination of a domestic partnership by the death of an employee, the surviving domestic partner's health insurance and benefits coverage shall lapse as it would for the spouse of a married employee upon the death of that employee.
- (f) An employee shall be granted a leave of absence, with pay, for the death of a domestic partner or family member of a domestic partner to the same extent as for a spouse or family member of a spouse. Use of the term "in-law" in employee handbooks shall include the relatives of a domestic partner.
- (g) An employee shall be granted sick leave to care for a domestic partner to the same extent permitted to care for a spouse, and to care for a dependent of a domestic partnership to the same extent permitted to care for a child.
- (h) An employee shall be entitled to take parental leave to take care of a child born to the domestic partner or a newly adopted child to the same extent as a married person.
- (i) The city clerk or human resources department shall distribute copies of the following forms to those persons who request them:
  - (1) Declaration of registered domestic partnership.
  - (2) Amendment to the declaration of registered domestic partnership.
  - (3) Termination statement of the declaration of registered domestic partnership.
- (j) The effectiveness of this section is conditioned upon the city's successful and cost-effective renegotiation of its life and health insurance plan and collective bargaining agreements, as the case may be, for which the city shall make best efforts.

Sec. 26-49. Rights and legal effect of registered domestic partnership.

To the extent not superseded by federal, state, or other city law or ordinance, or contrary to rights conferred by contract or separate legal instrument, registered domestic partners shall have the following rights:

- (1) *Health care facility visitation.* All health care facilities operating within the city shall honor the registered domestic partnership documentation issued pursuant to this code as evidence of the relationship and shall allow a registered domestic partner visitation as provided under federal law. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.
- (2) *Health care decisions.* This section pertains to decisions concerning both physical and mental health. Registry as a domestic partner shall be considered to be written direction by each partner designating the other to make health care decisions for their incapacitated partner, and shall authorize each partner to act as the other's healthcare surrogate as provided in F.S. ch. 765, and otherwise as provided by federal law. Further, no person designated as a health care surrogate shall be denied or otherwise defeated in serving as a health care surrogate based solely upon his or her status as the domestic partner of the partner on whose behalf health care decisions are to be made.
- (3) *Funeral/burial decisions.* Registry as a domestic partner shall be considered to be written direction by the decedent of his or her intention to have his or her domestic partner direct the disposition of the decedent's body for funeral and burial purposes as provided in F.S. ch. 497, unless the decedent provides conflicting, written inter vivos authorization and directions that are dated after the date of the registration, in which case the later dated authorization and directions shall control.
- (4) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including but not limited to notification of family members in an emergency "notification of family" shall include registered domestic partners.
- (5) *Preneed guardian designation.* A person who is a party to a registered domestic partnership relationship, pursuant to section 26-45 above, shall have the same right as any other individual to be designated as a preneed guardian pursuant to F.S. ch. 744, and to serve in such capacity in the event of his or her domestic partner's incapacity. A domestic partner shall not be denied or otherwise be defeated in serving as the plenary guardian or his or her domestic partner or the partner's property under the provision of F.S. ch. 744, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.
- (6) *Participation in education.* To the extent allowed by federal and state law, a registered domestic partner shall have the same rights to participate in the education of a dependent of the registered domestic partnership as a biological parent to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the city. However, if a biological parent of a minor dependent, whose parental rights have not been terminated, objects to the participation of a non-biological registered

domestic partner in education conferences or other dissemination of educational information, only the participation of the biological parents shall be allowed.

Sec. 26-50. Additional requirements.

- (a) Nothing in this article shall be interpreted to contravene the general laws of the state.
- (b) Nothing contained in this article shall be construed to impose liability upon a domestic partner for the health or health expenses of the domestic partner.
- (c) All rights, privileges and benefits extended to domestic partnerships registered pursuant to this article shall also be extended to domestic partnerships registered pursuant to domestic partnership laws in other jurisdictions. If a conflict occurs between jurisdictions, this article shall govern in the city.
- (d) When the term "spouse" or "married" or "marriage" is used in other sections of this Code or city ordinances and documents, it shall be interpreted to include a registered domestic partner. When the term "family" or "dependent" is used in other sections of this Code or city ordinances, it shall be interpreted to include registered domestic partnerships and registered dependents of domestic partnerships. When the term "divorce" or "legal separation" is used in other sections of this Code or city ordinances and documents, it shall be interpreted to mean termination of a domestic partnership.

Sec. 26-51. Enforcement.

A registered domestic partner may enforce the rights under section 26-49 by filing a private judicial action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

Any person violating the provisions of this article of this chapter shall be subject to fines as provided in the City Code.

**Appendix of Existing Ordinances:**

City of Key West:

**Chapter 38 HUMAN RELATIONS <sup>[1]</sup>**

**ARTICLE I. IN GENERAL**

Secs. 38-1—38-25. Reserved.

Secs. 38-1—38-25. Reserved.

**ARTICLE II. FAIR HOUSING <sup>[2]</sup>**

***DIVISION 1. GENERALLY***

Sec. 38-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Board* means the housing authority designated as the fair housing board established by section 38-116.

*Director* means the fair housing director established by section 38-86.

*Discrimination* means any difference in treatment based on race, color, religion, ancestry, sex, national origin, handicap, familial status, or place of birth.

*Executive director* means the executive director of the housing authority and the fair housing board.

*Gender identity or expression* means having or being perceived as having a gender-related self-identity, self-image, appearance, expression or behavior whether or not such gender-related characteristics differ from those associated with the person's assigned sex at birth.

*Housing, housing accommodation and dwelling* mean any building, mobile home or trailer, structure, or portion thereof which is occupied as or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined in this section used or intended to be used for any of the purposes set forth in this definition.

*Lending institution and financial institution* include any person engaged in the business of lending money or guaranteeing loans.

*Mortgage broker* means an individual who is engaged in or performs the business or services of a mortgage broker as defined by state law.

*Open market* means the market which is informed of the availability for sale, purchase, rental or lease of any housing accommodation, whether informed through a real estate broker or mortgage broker, or by advertising by publication, signs or by any other advertising or other methods directed to the public or any portion thereof indicating that the property is available for sale, purchase, rental or lease.

*Owner* includes a lessee, sublessee, cotenant, assignee, managing agent or other person having the right of ownership or possession or the right to sell, rent or lease any housing accommodation.

*Person* includes one or more individuals, governments, governmental agencies, governmental departments, governmental programs, political subdivisions, labor unions, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations.

*Real estate broker and real estate salesperson* include any individual who, for a fee, commission, salary, or for other valuable consideration, with the intention or expectation of receiving or collecting a fee, commission, salary, or other valuable consideration, lists, sells, purchases, rents, or leases any housing accommodation including options thereupon; who negotiates or attempts to negotiate such activities; who advertises or holds himself out as engaged in such activities; who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodations; or who is engaged in the business of charging an advance fee or contracting for a collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

*Real property* includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums.

*To rent* includes to lease, to sublease, to let and otherwise grant for consideration the right to occupy premises not owned by the occupant.

Sec. 38-27. Declaration of policy.

It is declared to be the policy of the city in the exercise of its police power for the public safety, public health, and general welfare to ensure equal opportunity to obtain adequate housing by all persons, regardless of race, color, religion, ancestry, sex, place of birth, handicap, familial status, or national origin, and to that end to eliminate discrimination in housing.

Sec. 38-28. Unlawful practices.

In connection with any of the transactions set forth in this section which affects any housing operation on the open market or in connection with any public sale, purchase, rental or lease of any housing accommodation, it shall be unlawful within the city for a person, owner, financial institution, real estate broker or real estate salesperson, or any representative of such to:

- (1) Refuse to sell, purchase, rent or lease or otherwise deny to or withhold any housing accommodation from a person or evict a person because of his race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, handicap, familial status, or national origin;
- (2) Discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation or in the furnishing of facilities or services in connection therewith;
- (3) Refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of his race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, handicap, familial status, or national origin;
- (4) Evict or refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of his race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, handicap, familial status, or national origin;
- (5) Represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available or refuse to permit a person to inspect any housing accommodation because of his race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, handicap, familial status, or national origin when such dwelling is in fact available to persons who are financially qualified;
- (6) Make, publish, print, circulate, post or mail or cause to be made, published, printed, circulated, posted or mailed any notice, statement or advertisement or announce a policy or sign or use a form of application for a sale, purchase, rental, lease or financing of any housing accommodation, or make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation, which indicates any discrimination or any intent to discriminate;
- (7) Offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease knowing that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith;
- (8) Induce or discourage or attempt to induce or discourage (i) the sale; (ii) the purchase; (iii) the rental; (iv) the lease or (v) the listing for items (i), (ii), or (iv) of this subsection of any housing accommodations in an area, by means of:
  - a. Causing panic;
  - b. Inciting unrest; or
  - c. Creating or playing upon fear, by representing that the presence or anticipated presence in that area of persons of any particular race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, physical handicap or national origin, will or may result in:
    1. The lowering of property values in that area;
    2. The increase in criminal or antisocial behavior in the area; or
    3. A decline in the quality of the schools serving the area;
- (9) For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loans or other financial assistance because of the race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, handicap, familial status, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purpose of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling in relation to which such loan or other financial assistance is to be made or given; or

- (10) Deny any person who is otherwise professionally qualified by state law access to or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization or facility relating to the business of selling or renting dwellings or discriminate against him in the terms or conditions of such access, membership, or participation on account of race, color, religion, ancestry, sex, gender identity or expression, sexual orientation, place of birth, handicap, familial status, or national origin.

Secs. 38-29—38-55. Reserved.

## ***DIVISION 2. ADMINISTRATION*** <sup>[3]</sup>

Subdivision I. In General

Sec. 38-56. Responsibility.

The city commission shall be responsible for the administration of this article and for seeing that its provisions are observed and enforced. The city commission is empowered to make all necessary rules to accomplish this responsibility, which rules shall not become effective until approved, and, by rule, to delegate administrative and investigative authority to the fair housing board. The city commission is directed and authorized to seek substantial equivalency rating and recognition from the United States Department of Housing and Urban Development and other necessary federal agencies for title VIII of the 1968 Civil Rights Act enforcement within the general services district.

Sec. 38-57. Cooperation with federal, state and local agencies administering fair housing laws.

The city commission may cooperate with state, federal and other local agencies charged with the consent of such agencies, utilize the services of such agencies and their employees in carrying out this article. In furtherance of such cooperative efforts, the city commission may enter into written agreement with such local, state and federal agencies to make available such appropriated funds as are necessary to carry out the purpose of this article, but all such agreements shall be executed by the mayor and city clerk and countersigned by the executive director of the fair housing board.

Secs. 38-58—38-85. Reserved.

Subdivision II. Fair Housing Director <sup>[4]</sup>

Sec. 38-86. Office created, appointment.

The office and position of fair housing director is created and established. The director shall be appointed by and shall serve at the will of the executive director of the housing authority. Such director shall be chosen by the executive director on the basis of qualifications and experience. The fair housing director shall serve under the supervision of the executive director.

Sec. 38-87. Assistants.

The executive director shall appoint such assistants to the fair housing director as may be necessary, subject to budgetary limitations, and shall provide the director required administrative support.

Sec. 38-88. Duties and powers.

The duties, functions, powers and responsibilities of the fair housing director shall be to:

- (1) Implement the this article and rules and regulations promulgated under this article and all city ordinances, codes, rules and regulations pertaining to housing discrimination.
- (2) Receive, initiate and investigate any and all complaints alleging violations of this article and take appropriate action to eliminate, conciliate, prevent and/or initiate prosecution of any such violations.
- (3) Provide assistance in all matters relating to equal housing opportunity.
- (4) Publish and disseminate public information and educational materials relating to housing discrimination.
- (5) Subject to the approval of the fair housing board and the city commission, enter into written working agreements, as may be necessary to effectuate the purposes of this article, with federal, state, and county agencies involved in reducing housing discrimination.
- (6) Keep the fair housing board fully and currently informed of all complaints alleging violations of this article and actions taken thereon and of other actions taken by the director under this section; and attend all meetings of the fair housing board.
- (7) Implement recommendations received from the fair housing board concerning this article and in carrying out its purpose. When, in the opinion of the director, effectuating any such recommendation would be

undesirable or infeasible, he will promptly so report to the board, with his reasons; any differences of judgment not susceptible to agreement between the board and director will be referred to the executive director for his determination, and the board may, if it feels the matter warrants, further carry any such disagreement to the city commission for decision.

- (8) Make semiannual reports to the city commission, through the executive director, and to the fair housing board concerning the status of housing discrimination in the city and the enforcement of this article, and make recommendations concerning methods by which to reduce such discrimination.
- (9) Perform such other administrative duties as may be assigned by the executive director.

Secs. 38-89—38-115. Reserved.

Subdivision III. Fair Housing Board <sup>[5]</sup>

Sec. 38-116. Created, appointment of members.

The fair housing board is created and established. The housing authority is designated as the fair housing board and shall consist of five members appointed by the mayor with the approval of the city commission.

Sec. 38-117. Qualifications of members.

Members of the fair housing board shall be permanent residents and electors of the city. Appointments shall be made on the basis of community representatives, civic pride, integrity, experience and interest in the area of equal housing opportunities.

Sec. 38-118. Terms of office.

The terms of office of all members of the fair housing board shall be the same as for the housing authority as stipulated in F.S. § 421.05.

Sec. 38-119. Organization.

- (a) The members of the fair housing board shall elect the chairperson and such other officers as may be deemed necessary or desirable, who will serve at the will of the board.
- (b) Three members of the board constitute a quorum to hold a meeting or take any action. The majority vote of those present at a duly constituted meeting shall be sufficient for all actions.
- (c) Members shall serve without compensation, but shall be entitled to be reimbursed for necessary expenses incurred in the performance of their duties upon approval of the city commission.

Sec. 38-120. Meetings; assistance.

- (a) Meetings of the fair housing board shall be held monthly or more frequently. Notice of the time and place of the meetings shall be given to all board members and all parties scheduled to be heard and shall be made public. The chairperson may call an unscheduled meeting, and meetings may also be called by written notice signed by three members of the board. All meetings shall be public.
- (b) The executive director shall provide adequate and competent clerical and administrative personnel, technical and legal personnel, and administrative and professional support as may reasonably be required by the board for the proper performance of its duties. The executive director of the housing authority shall provide a regular meeting place for the board.

Sec. 38-121. Executive director.

The executive director of the housing authority shall perform as the executive director of the fair housing board and is responsible for providing administrative services and facilities for the enforcement of this article utilizing funds provided by the city commission.

Sec. 38-122. Duties and powers.

- (a) The fair housing board shall have the duty, power, function, and responsibility to:
  - (1) Make recommendations to the fair housing director for the enforcement of this article and for carrying out its purpose.
  - (2) Review the fair housing director's actions and decisions on all complaints of housing discrimination received by or initiated by him.
  - (3) Conduct public hearings and make determinations concerning the fair housing director's actions and decisions on such complaints upon appeal by either the complainant or respondent, at the request of the fair housing director, or when the board deems it desirable, on its own initiative.

- (4) Administer oaths and compel the attendance of witnesses and the production of evidence before it by subpoenas issued by the chairperson of the board.
  - (5) Review and comment on the fair housing director's semiannual report, forwarding such comment to the city commission through the executive director.
  - (6) In coordination with the fair housing director, take other informational, educational, or persuasive actions to implement the purpose of this article.
- (b) In carrying out the functions of subsections (a)(2) and (3) of this section, the board shall have the power to uphold, rescind, reverse, or modify the actions, decisions, and recommendations of the fair housing director.

Secs. 38-123—38-150. Reserved.

***DIVISION 3. COMPLAINT PROCEDURE***

Sec. 38-151. Computation of time.

The provisions of F.A.C. 1.090 shall govern the computation of any period of time prescribed by this article.

Sec. 38-152. Service of papers or pleadings.

All papers or pleadings required by this article to be served may be served by certified mail or in accordance with the provisions of F.A.C. 1.080(b).

Sec. 38-153. Filing of complaint.

Any person aggrieved by an unlawful practice prohibited by this article must file a written complaint with the fair housing director within 45 days after the alleged unlawful practice occurs.

Sec. 38-154. Service of complaint.

Upon receipt of a complaint made pursuant to this division, the fair housing director shall serve upon the individual charged with a violation (referred to as "the respondent") the complaint and a written resume setting forth the rights of the parties, including but not limited to the right of the respondent to a hearing on the matter before adjudication by the fair housing board. Such service may be by personal service or by certified mail.

Sec. 38-155. Investigation and report.

- (a) The fair housing director shall immediately investigate the complaint made pursuant to this division. Within 60 days from the date of the receipt of the complaint, the director shall file a written report with the fair housing board, with findings of fact.
- (b) Copies of the director's report shall also be sent to the complainant and the respondent. Either may, within ten days after such services, request a hearing before the board.

Sec. 38-156. Scheduling of hearing.

When the fair housing director, the complainant, or the respondent requests a hearing by the fair housing board or when the board itself determines that a hearing is desirable, the board shall call and conduct such hearing in accordance with section 38-161.

Sec. 38-157. Review of report without hearing.

Where no fair housing board hearing is requested or directed under this division, the board will expeditiously review the report of the fair housing director and shall approve, rescind, reverse, or modify the director's findings and determinations of action.

Sec. 38-158. Execution of actions.

The fair housing director shall carry into execution the actions specified in his report made pursuant to this article, as approved or altered by the fair housing board in its review, or, if a hearing is held, shall carry into execution the actions determined upon by the board in the hearing.

Sec. 38-159. Determinations.

- (a) The fair housing director in his report, as reviewed by the fair housing board, or the board in its review or its hearing may determine:
  - (1) The complaint lacks grounds upon which to base action for a violation of this article;
  - (2) The complaint has been adequately dealt with by conciliation of the parties;
  - (3) The complaint can be dealt with by adjudicative orders issued by the director; or

- (4) The case warrants filing charges against the offending party in the appropriate court.
- (b) In some cases, both conciliation and adjudicative orders and initiation of court action may be indicated.

Sec. 38-160. Failure to comply.

If the fair housing director, after review or hearing by the fair housing board, issues an adjudicative order to correct, adjust, conciliate, prevent, or prohibit any unlawful act prohibited by this article and the respondent refuses or fails to comply with or obey such adjudication, the director shall forthwith request that the state attorney file a complaint in the appropriate court.

Sec. 38-161. Hearings.

- (a) When a hearing is required before the fair housing board, as specified in section 32-156, the board shall schedule the hearing and serve upon all interested parties a notice of the time and place of the hearing. The hearing shall be held promptly, but not less than 15 days after the service of such notice and of the fair housing director's written report as provided in section 38-155(b).
- (b) The parties or their authorized counsel may file such statements with the board, prior to the hearing date, as they deem necessary in support of their positions. The parties may appear before the board in person or by duly constituted representative and may have the assistance of attorneys. The parties may present testimony and evidence, and the right to cross examine witnesses shall be preserved. All testimony shall be given under oath or by affirmation. The board shall not be bound by strict rules of evidence prevailing in courts of law or equity, but due process shall be observed. The board shall keep a full record of the hearing, which record shall be public and open to inspection by any person. Upon request by any principal party to the proceedings, the director shall furnish such party a copy of the hearing record at cost. The constitutional rights of the respondent not to incriminate himself shall be scrupulously observed.
- (c) The board shall make a finding of fact and a determination of action to be taken under section 38-159
- (d) The board may issue subpoenas to compel access to or the production or appearance of premises, records, documents, individuals, and other evidence or possible sources of evidence relative to the complaint at issue.
- (e) Upon written application to the board, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the board, to the same extent and subject to the same limitations as subpoenas issued by the city commission itself. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his request.
- (f) Witnesses summoned by subpoena of the board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the state courts. Fees payable to a witness summoned by a subpoena issued at the request of the respondent shall be paid by him, unless he is indigent, in which case the city shall bear the cost of the fees.
- (g) Within ten days after service of a subpoena upon any person, such person may petition the board to revoke or modify the subpoena. The board shall grant the petition if it finds that the subpoena requires appearance or attendance, at any unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (h) If a person refuses to obey a subpoena, the board or the person at whose request it was issued may petition for its enforcement in the appropriate court.

Sec. 38-162. Additional remedies.

Nothing in this article shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled or from filing of any complaint with any other agency or any court having proper jurisdiction.

Sec. 38-163. Report of violation or failure to comply with order to state.

If a real estate broker, a real estate salesperson, or an employee thereof has been found to have committed an unlawful practice in violation of this article or has failed to comply with an order issued by the fair housing director, the director shall, in addition to the other procedures and penalties set forth in this article, report the facts to the state real estate commission.

Secs. 38-164—38-190. Reserved.

**ARTICLE III. DISCRIMINATION GENERALLY**

***DIVISION I. GENERALLY***

Sec. 38-191. Title.

This article may be cited as the "Key West Human Rights Ordinance."

Sec. 38-192. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bona fide occupational qualification* means that an employer can demonstrate that a particular characteristic or the absence thereof is reasonably necessary to the essence of the employer's business and that all or substantially all persons with or without the characteristic, as the case may be, are unable to perform the duties of the position in question.

*Credit transaction* means the grant, denial, extension or termination of credit to an individual.

*Disability* means:

- (1) A physical or mental impairment which substantially limits one or more of a person's major life activities;
- (2) A record of such impairment; or
- (3) The perception of having such an impairment.

The term does not include persons who have current, illegal use of or addiction to a controlled substance as defined by F.S. § 893.02, as enacted or amended. A disabled individual is "qualified" with respect to employment if such individual can perform the essential functions of the job in question with reasonable accommodations. As used in this definition, the term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. As used in this division, the term "substantially limited" means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

*Employee* means an individual who is engaged to work for or under the direction and control of another for monetary or other valuable consideration.

*Employer* means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, but such term does not include the United States or a corporation wholly owned by the government of the United States.

*Employment agency* means a person who undertakes to procure employees or opportunities to work for potential employees, either through interviews, referrals, advertising or any combination thereof.

*Gender identity or expression* means having or being perceived as having a gender-related self-identity, self-image, appearance, expression or behavior whether or not such gender-related characteristics differ from those associated with the person's assigned sex at birth.

*Labor organization* means any person who exists and is constituted for the purpose, in whole or in part, of collective bargaining or of representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

*Marital status* means the legal status of being single, married, divorced, separated or widowed.

*Parental status* means the status of living with one or more dependent minor or disabled children.

*Person* means any natural person, firm, corporation, labor organization, partnership or other organization, association or group however organized.

*Public accommodation* means a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public, regardless of ownership or operation:

- (1) By a public body or agency;
- (2) For or without regard to profit; or
- (3) For a fee or not for a fee.

An institution, club, association or other place of accommodation which has more than 100 members and provides regular meal service and regularly receives payment for dues, fees, accommodations, facilities or services from or on behalf of nonmembers for the furtherance of trade or business shall be considered a place of public accommodation for purposes of this article.

*Religion* means all aspects of religious observance and practice, as well as belief.

*Sexual harassment* means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

*Sexual orientation* means the actual or perceived state of heterosexuality, homosexuality or bisexuality.

*Source of income* means the lawful manner by which an individual supports himself and his dependents.

Sec. 38-193. Penalties; enforcement by civil action.

- (a) Any person violating this article shall, upon written citation, be subject to the penalties provided in article VI of chapter 2
- (b) This article may additionally be enforced by civil action, including action for equitable relief, by any aggrieved person in a court of competent jurisdiction.

Sec. 38-194. Construction of article; alternative remedies.

The sections of this article shall be liberally construed for the accomplishment of the purpose of this article. Nothing in this article shall be construed to limit rights granted under the laws of the state or the United States. Nothing in this article shall be construed to waive the right of any person to file a charge with any agency with the authority to investigate or act upon the complaint.

Sec. 38-195. Unlawful waiver.

Any written or oral agreement which purports to waive any section of division 2 of this article is against public policy and void.

Secs. 38-196—38-220. Reserved.

## ***DIVISION 2. PROHIBITED CONDUCT***

Sec. 38-221. Conditions of or for employment.

No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, sex, gender identity or expression, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, or source of income. No employment agency shall directly or indirectly discriminate against any individual in classification, processing, referral or recommendation for employment because of the individual's race, color, sex, gender identity or expression, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, or source of income. The prohibitions contained in this section shall not apply to any of the following:

- (1) Using an individual's unfavorable discharge from military service as a valid employment criterion where the affected position of employment involves the exercise of fiduciary responsibilities and the reasons for the unfavorable discharge relate to his fiduciary capacity.
- (2) Hiring or selecting between individuals for bona fide occupational qualifications.
- (3) Giving preferential treatment to veterans and their relatives as required by federal or state law or regulation.

Sec. 38-222. Sexual harassment.

No employer, employee, agent of an employer, employment agency, or labor organization shall engage in sexual harassment. An employer shall be liable for sexual harassment by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.

Sec. 38-223. Religious beliefs, observances and practices of employee.

- (a) No employer shall refuse to make all reasonable efforts to accommodate the religious beliefs, observances and practices of an employee unless the employer demonstrates that the employer is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. Reasonable efforts to accommodate include but are not limited to allowing an employee to:
  - (1) Take a day of paid leave or vacation, where applicable under the employee's employment agreement;
  - (2) Be excused from work without pay and without discipline or other penalty; or
  - (3) Elect to take the day off with pay in order to practice the employee's religious beliefs, and make up the lost work time within the same pay period of the employer at a time and date consistent with the operational need of the employer's business.
- (b) Any employee who elects such deferred work shall be compensated at his regular rate of pay, regardless of the time and date at which the work is made up. The employer may require that any employee who plans to

exercise the option in subsection (a)(3) of this section provide the employer with notice of the employee's intention to do so no less than ten days prior to the date of absence.

Sec. 38-224. Credit transactions and bonding.

No person shall discriminate against any individual in any aspect of any credit transaction or in any terms and conditions of bonding because of the individual's race, color, sex, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, or source of income.

Sec. 38-225. Public accommodations.

No person who owns, leases, rents, operates, manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's race, color, sex, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, or source of income. The prohibition contained in this section shall not apply to any facility, as to discrimination based on sex, which is distinctly private in nature, such as restrooms, shower rooms, and dressing rooms.

Sec. 38-226. Retaliation.

No person shall retaliate against any individual because that individual in good faith has made a charge, has testified or has assisted or participated in an investigation, proceeding or hearing under this article.

Sec. 38-227. Exceptions.

- (a) No section of this article shall be construed to prohibit restricting rental or sale of housing accommodation to a person of a certain age group when:
- (1) Such housing accommodation is authorized, approved, financed or subsidized in whole or in part for the benefit of the age group by a unit of state, local or federal government;
  - (2) Such restriction is allowed pursuant to the Fair Housing Act, F.S. § 760.20 et seq. or 42 USC 3601 et seq.; or
  - (3) The duly recorded initial declaration of a condominium or association limits such housing accommodations to persons above a certain age, provided that a person or the immediate family of a person owning or renting a unit in such housing accommodation prior to the recording of the initial declaration shall not be deemed to be in violation of the age restriction as long as the person or the person's immediate family continues to own or reside in the housing accommodation.
- (b) No section of this article shall apply to a person or owner who wishes to rent a portion of a single dwelling unit to an individual of the same sex when such persons live in the single dwelling unit.

Secs. 38-228—38-255. Reserved.

#### ARTICLE IV. AIDS DISCRIMINATION

Sec. 38-256. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*AIDS* means infection with or seropositivity to the virus known as human immunodeficiency virus, and includes conditions including but not limited to AIDS-related complex (ARC), progressive generalized lymphadenopathy syndrome, and any other medical condition which a person contracts as a result of infection with such virus.

*Business establishment* means any entity, however organized, which furnishes goods or services to the general public; provided, however, that an otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist:

- (1) Only of payment of fees;
- (2) Of requirements under which a substantial portion of the city residents could qualify; or
- (3) Of an otherwise unlawful business practice.

*Employer* means any person regularly employing one or more persons or any person acting as an agent or the legal representative of an employer, directly or indirectly, including the city.

*Employment agency* means any person undertaking for compensation to procure employees or opportunities to work.

*Housing services* means services connected with the use or occupancy of a rental unit including but not limited to utilities, including light, heat, water and telephone; ordinary repairs or replacement; maintenance, including painting; provision of elevator service; laundry facilities and privileges; common recreational facilities; janitor

service; resident manager; refuse removal; furnishings; food service; parking; and any other benefits, privileges or facilities.

*Labor organization* means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employees concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

*Person* and *anyone* mean any natural person, firm, corporation, partnership or other organization, association or a group, however organized.

*Rent* means the consideration, including any bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, including but not limited to monies demanded or paid for the following: meals where required by the landlord as a condition of the tenancy; parking; furnishings; other housing services of any kind; subletting; or security deposits.

*Rental units* means all dwelling units, efficiency dwelling units, guestrooms, and suites rented or offered for rent for living or dwelling purposes; the land and buildings appurtenant thereto; and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities. This term does not include housing accommodations which a government unit, agency or authority owns, operates, or manages and which are specifically exempted from municipal regulation by state or federal law or administrative regulation.

#### Sec. 38-257. Employment practices.

- (a) *Unlawful employment practices.* It shall be an unlawful employment practice for any employer, employment agency or labor organization or any agent or employee thereof to do or attempt to do any of the following as a result of the fact, in whole or in part, that a person has AIDS or associated conditions:
- (1) Fail or refuse to hire, discharge any person, or otherwise discriminate against any person with respect to compensation, terms, conditions or privileges of employment.
  - (2) Limit, segregate or classify employees or applicants for employment in any manner which would deprive or tend to deprive any person of employment opportunities, or adversely affect his employment status.
  - (3) Fail or refuse to refer for employment any person, or otherwise discriminate against any person.
  - (4) Fail or refuse to include in its membership or otherwise discriminate against any person; limit, segregate or classify its membership; or classify or fail or refuse to refer for employment any person in any way which would deprive or tend to deprive such person of employment opportunities or otherwise adversely affect such person's status as an employee or as an applicant for employment.
  - (5) Discriminate against any person in admission to or employment in any program established to provide apprenticeship or other training or retraining, including any on-the-job training program.
- (b) *Bona fide occupational qualification.* Procedures for a bona fide occupational qualification and the burden of proof shall be as follows:
- (1) Nothing contained in this section shall be deemed to prohibit selection, rejection or dismissal based upon a bona fide occupational qualification. A bona fide occupational qualification exists under this section where a defendant can demonstrate that the absence of AIDS is reasonably necessary to the essence of the employer's business and that all or substantially all persons with AIDS are unable to perform the duties of the position in question without harm to themselves or others.
  - (2) Nothing in this section shall be deemed to prohibit selection, rejection, or assignment where, because a person has AIDS, he is unable to perform his duties or cannot perform such duties in a manner which would not endanger his health or safety or the health and safety of others.
  - (3) Nothing in this section shall be deemed to prohibit selection or rejection where it can be demonstrated that the employer, employment agency or labor organization is unable to reasonably accommodate a person who has AIDS, without undue hardship on the conduct of the employer's business.
  - (4) In any action brought under this subsection, if a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide occupational qualification, that party shall have the burden of proving that:
    - a. The discrimination is in fact a necessary result of a bona fide occupational qualification; and
    - b. There exists no less discriminatory means of satisfying the occupational qualification.
- (c) *Exceptions.* It shall not be an unlawful discriminatory practice for an employer to observe the conditions of a bona fide employee benefit system, provided such system or plan is not a subterfuge to evade the purposes of this section, provided that no such system shall provide an excuse for failure to hire any person.

#### Sec. 38-258. Housing.

- (a) *Prohibited acts.* It shall be unlawful for any person having a housing accommodation for rent or lease or for any authorized agent or employee of such person to do or attempt to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or associated conditions:
  - (1) Refuse to rent or lease a rental unit, refuse to negotiate for the rental or lease of a rental unit, evict from a rental unit, or otherwise deny to or withhold a rental unit from any person.
  - (2) Rent or lease a rental unit on less favorable terms, conditions or privileges, or discriminate in the provision of housing services to any person.
  - (3) Represent to any person that a rental unit is not available for inspection, rental or lease when such rental unit is, in fact, available.
  - (4) Make, print, publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a rental unit that indicates any preference, limitation, or discrimination.
- (b) *Exceptions.* Exceptions to this section shall be as follows:
  - (1) Nothing in this section shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor or any member of his family occupies the same living unit in common with the prospective tenant.
  - (2) Nothing in this section shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.
- (c) *Defense.* The health and safety exception set forth in section 38-261 shall constitute a defense to any violation of this section.

Sec. 38-259. Business establishments.

- (a) *Unlawful practices.* It shall be an unlawful business practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment, including but not limited to medical, dental, health care and convalescent services of any kind whatsoever; restaurants; motels; hotels; and ambulance services on the basis that such person has the medical condition AIDS or an AIDS-related condition. It shall further be an unlawful practice for any person to make, print, publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to such businesses that indicates any preference, limitation, or discrimination with respect to the fact that a person has the medical condition AIDS or an AIDS-related condition.
- (b) *Exceptions.* Nothing in this section shall apply to any blood bank, blood donation facility, sperm bank, sperm donation facility, surrogate mother or surrogate mother facility, or to any like service facility or establishment engaged in the exchange of products containing elements of blood or sperm.
- (c) *Defense.* The health and safety exception set forth in section 38-261 shall constitute a defense to any violation of this section.

Sec. 38-260. City facilities and services.

- (a) *Unlawful practices.* It shall be an unlawful practice for any person to deny any person the full and equal enjoyment of or to impose different terms and conditions on the availability of any of the following as a result of the fact, in whole or in part, that a person has AIDS or associated conditions:
  - (1) Use of any city facility or city service.
  - (2) Any service, program or facility wholly or partially funded or otherwise supported by the city.
- (b) *Exception.* This section shall not apply to any facility, service or program which does not receive any assistance from the city or which is not provided to the public generally.
- (c) *Defense.* The health and safety exception set forth in section 38-261 shall constitute a defense to any violation of this section.

Sec. 38-261. Health and safety exception, defense.

The affirmative defense described in this article shall be applicable to sections 38-258 through 38-260. In any action brought under sections 38-258 through 38-260, if a party asserts that an otherwise unlawful discriminatory practice is justified as necessary to protect the health or safety of a person who has AIDS or associated conditions or the health and safety of the general public, that party may establish a defense by proving that:

- (1) The discriminatory act is necessary to avoid an imminent and substantial risk to the person who has AIDS or associated conditions; or

- (2) The discriminatory act is necessary to avoid a danger to others significantly greater than that posed by persons without AIDS; and
- (3) There exists no less discriminatory means of protecting health and safety.

Sec. 38-262. Subterfuge.

It shall be an unlawful discriminatory practice to do any of the acts mentioned in sections 38-257 through 38-260 for any reason which would not have been asserted, wholly or partially, but for the fact that the person against whom such assertions are made has AIDS or any condition related thereto.

Sec. 38-263. Enforcement by civil action.

Sections 38-257 through 38-260 and 38-262 shall be enforceable solely by civil action, including action for equitable relief, by any aggrieved person or by the city attorney, in a court of competent jurisdiction.

Sec. 38-264. Unlawful waiver.

Any written or oral agreement which purports to waive any section of sections 38-257 through 38-260 is against public policy and void.

Secs. 38-265—38-290. Reserved.

#### ARTICLE V. DOMESTIC PARTNERSHIPS

Sec. 38-291. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Committed relationship* means a family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.

*Declaration of registered domestic partnership* means the document that is filed with the city clerk's office according to the procedures established in section 38-292.

*Dependent* is a person who resides within the household of a registered domestic partnership and is:

- (1) A biological, adopted, or foster child of a registered domestic partner; or
- (2) A dependent as defined under IRS regulations; or
- (3) A ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

*Mutual residence* means that the registered domestic partners share the same place to live. It is not necessary that the legal right to possess the place of residence be in both of their names. Two people may share a mutual residence even if one or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

*Registered domestic partnership* means [a] committed relationship between two persons who consider themselves to be a member of each other's immediate family and have registered their partnership in accordance with section 38-292.

Sec. 38-292. Registration, amendment, termination and administration procedures.

(a) *Registration.*

- (1) Declaration of registered domestic partnership. A declaration of registered domestic partnership shall be filed with the city clerk's office and shall contain the names and addresses of the applicants who shall swear or affirm under penalty of perjury that each partner:
  - a. Is at least 18 years old and competent to contract;
  - b. Is not married to or a member of another registered domestic partnership or civil union with anyone other than the coapplicant;
  - c. Agrees to share the common necessities of life and to be responsible for each other's welfare;
  - d. Shares his or her primary residence with the other;
  - e. Considers himself or herself to be a member of the immediate family of the other partner; and
  - f. Agrees to immediately notify the city clerk's office, in writing, of any change in the status of the registered domestic partnership.
  - g. Agrees to mutually support the other by contributing in some fashion, not necessarily equally, to maintain and support the registered domestic partnership.
- (2) Each partner agrees to immediately notify the city clerk's office, in writing, if the terms of the registered domestic partnership are no longer applicable or one of the domestic partners wishes to terminate the domestic partnership.

- (b) *Amendment.* A registered domestic partner may amend a registered domestic partnership previously filed with the city clerk to show a change in his or her household address or to add or delete dependents. Amendments shall be signed by both members of the registered domestic partnership under penalty of perjury.
- (c) *Termination.*
  - (1) *Termination statement.* A registered domestic partner may terminate the registered domestic partnership by filing a termination statement with the city clerk's office. The person filing the termination statement shall swear or affirm under penalty of perjury that:
    - a. The registered domestic partnership is to be terminated; and
    - b. If the termination statement is not signed by both registered domestic partners, a copy of the termination statement shall be served, by certified or registered mail, on the other registered domestic partner, and proof of service shall be filed with the city clerk's office.
  - (2) *Effective date.* The termination shall become effective on the date of filing of the termination statement signed by both registered domestic partners or if the termination statement is not signed by both parties, on the date proof of service is filed with the city clerk's office pursuant to subsection 38-292(c)(1)b., above.
  - (3) *Automatic termination.* A registered domestic partnership shall automatically terminate in the event that one of the domestic partners dies, marries, or enters into a civil union with someone other than his or her registered domestic partner.
- (d) *Administration.*
  - (1) *Forms.* The city clerk's office shall provide forms for the establishment, amendment, and termination of registered domestic partnerships.
  - (2) *Certificate of registered domestic partnership.* The city clerk's office shall issue to the registered domestic partners a certificate of registered domestic partnership no later than ten business days after the declaration of registered domestic partnership is filed.
  - (3) *Maintain records.* The city clerk's office shall maintain copies of the declaration of registered domestic partnerships, any and all amendments thereto, certificates of registered domestic partnership, and termination statements filed by registered domestic partners.
  - (4) *Fees.* The fee for registering the declaration of registered domestic partnership shall be \$50.00, which shall cover all costs of registration. The fee for amending or terminating the declaration of registered domestic partnership shall be \$25.00, which shall cover all costs of amendment or termination of the registered domestic partnership.

Sec. 38-293. Rights and legal effect of registered domestic partnership.

To the extent not superseded by federal, state, or county law or ordinance, registered domestic partners shall have the following rights:

- (1) *Health care facility visitation.* The term "health care facility" includes, but is not limited to, hospitals, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities, and other short and long term facilities located within, or under the jurisdiction of, the City of Key West. All health care facilities operating within the City of Key West shall allow a registered domestic partner the same visitation rights as a spouse (or parent, if the patient is a dependent of the registered domestic partnership) of the patient. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.
- (2) *Correctional facility visitation rights.* The term "correctional facility" includes, but is not limited to, holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of the City of Key West. A registered domestic partner shall have the same visitation rights at all correctional facilities operating within the City of Key West as a spouse (or parent, if the person in custody is a dependent of the registered domestic partnership) of a person in custody. A dependent shall have the same visitation rights afforded to the child of a person in custody.
- (3) *Health care decisions.* This section pertains to decisions concerning both physical and mental health. If a patient lacks the capacity to make a health care decision, the patient's registered domestic partner shall have the same authority as a spouse to make a health care decision for the incapacitated party. If the patient is a dependent of the registered domestic partnership, the registered domestic partners shall have the same authority to make health care decisions as a parent; however, if a biological parent of a minor dependent, whose parental rights have not been terminated, is available, willing, and competent to make the health care decision, the biological parents' authority to make health care decisions on behalf of the

minor shall supersede that of a registered domestic partner who is not the biological parent of the minor dependent.

- (4) *Participation in education.* A registered domestic partner shall have the same rights to participate in the education of a dependent of the registered domestic partnership as a parent to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the City of Key West. This includes the right of a registered domestic partner to participate in the home schooling of a dependent in accordance with Florida law.
- (5) *Funeral/burial decisions.* Following the death of a registered domestic partner, the surviving partner shall have the same rights to make decisions with regard to funeral/burial decisions and disposition of the decedent's body as a surviving spouse.
- (6) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including, but not limited to, notification of family members in an emergency, or when permission is granted to inmates to contact family members, "notification of family" shall include registered domestic partners.
- (7) *Preneed guardian designation.* Any person who is registered as a registered domestic partner pursuant to this article shall have the same right as any other individual to be designated as a preneed guardian pursuant to F.S. § 744.3045, and to serve in such capacity in the event of his or her declarant registered domestic partner's incapacity. A registered domestic partner shall not be denied or otherwise be defeated in serving [as] the plenary guardian of his or her registered domestic partner or the partner's property, under the provisions of F.S. ch. 744, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

Sec. 38-294. Limited effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene county, state or federal law.
- (b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.
- (c) All rights, privileges, and benefits extended to registered domestic partnerships registered pursuant to this article shall also be extended to all persons legally partnered in another jurisdiction.
- (d) A registered domestic partner may enforce the rights under section 38-163 by filing a private action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

Sec. 38-295. Employment benefits.

- (a) The city shall provide the same health and other employment fringe benefits to employees with domestic partners as to employees with spouses. As used in this section, the term "employees" refers to active and retired city employees who are eligible for benefits pursuant to state or municipal law, employment policies, or collective bargaining agreements.
- (b) An employee must file a copy of the declaration of domestic partnership with the human resources department in order to obtain benefits under this section. On such declaration, the employee shall agree to notify the city promptly of any change in the status of the domestic partnership.
- (c) The city shall provide health insurance and benefit coverage to an employee's domestic partner as it does to an employee's spouse and to the dependents of an employee's domestic partnership as it does to an employee's children. An employee may opt to decline health insurance coverage for his domestic partner, without forgoing the right to obtain health insurance coverage for his domestic partner at a later date.
- (d) Upon termination of a domestic partnership by an employee, the domestic partner may be covered by health insurance and benefits as may be provided in the city's agreement with its health insurance provider.
- (e) Upon termination of a domestic partnership by the death of an employee, the surviving domestic partner's health insurance and benefits coverage shall lapse as it would for the spouse of a married employee upon the death of that employee.
- (f) An employee shall be granted a leave of absence, with pay, for the death of a domestic partner or family member of a domestic partner to the same extent as for a spouse or family member of a spouse. Use of the term "in-law" in employee handbooks shall include the relatives of a domestic partner.
- (g) An employee shall be granted sick leave to care for a domestic partner to the same extent permitted to care for a spouse, and to care for a dependent of a domestic partnership to the same extent permitted to care for a child.
- (h) An employee shall be entitled to take parental leave to take care of a child born to the domestic partner or a newly adopted child to the same extent as a married person.

- (i) The city clerk or human resources department shall distribute copies of the following forms to those persons who request them:
  - (1) Declaration of domestic partnership.
  - (2) Domestic partnership information sheet.
  - (3) Amendment to the declaration of domestic partnership.
  - (4) Termination statement of the domestic partnership.
- (j) The effectiveness of this section is conditioned upon the city's successful and cost-effective renegotiation of its life and health insurance plan and collective bargaining agreements, as the case may be, for which the city shall make best efforts.

Sec. 38-296. Additional requirements.

- (a) Nothing in this article shall be interpreted to contravene the general laws of the state.
- (b) Nothing contained in this article shall be construed to impose liability upon a domestic partner for the health or health expenses of his domestic partner.
- (c) All rights, privileges and benefits extended to domestic partnerships registered pursuant to this article shall also be extended to domestic partnerships registered pursuant to domestic partnership laws in other jurisdictions. If a conflict occurs between jurisdictions, this article shall govern in the city.
- (d) When the term "spouse" or "married" or "marriage" is used in other sections of this Code or city ordinances and documents, it shall be interpreted to include a domestic partner. When the term "family" or "dependent" is used in other sections of this Code or city ordinances, it shall be interpreted to include domestic partnerships and dependents of domestic partnerships. When the term "divorce" or "legal separation" is used in other sections of this Code or city ordinances and documents, it shall be interpreted to mean termination of a domestic partnership.

## **Appendix of Existing Ordinances:**

### City of Lake Worth:

#### **Chapter 20 CIVIL RIGHTS**

##### **ARTICLE I. LAKE WORTH CIVIL RIGHTS ACT**

###### Sec. 20-1. Purpose.

The city commission of the City of Lake Worth desires to secure for its citizens freedom from discrimination because of race, color, religion, sex, national origin, age, handicap or marital status and thereby to protect their interest in personal dignity; to make available to the city their full productive capacities; to secure the city against domestic strife and unrest; to preserve the public safety, health and general welfare; and to promote the interests, rights and privileges of individuals within the city. The city commission also desires to adopt an ordinance which is consistent with state law and which affords its citizens a clear channel of access to a state-mandated remedy in the case of alleged discrimination, to wit the Florida Commission on Human Relations.

###### Sec. 20-2. Adoption of Lake Worth Civil Rights Act.

The Florida Civil Rights Act of 1992, chapter 760, sections 760.01 through 760.11 and section 509.092 is adopted by reference as the Lake Worth Civil Rights Act, subject to and including by reference such amendments, corrections and additions as shall occur to the Florida Civil Rights Act of 1992, and such amendments, corrections or additions as may appear in this Chapter. In addition, a discriminatory practice for purposes of the Lake Worth Civil Rights Act shall include a practice based upon a person's sexual orientation, which is the state of being heterosexual, homosexual or bisexual, or having a history of such identification or a person's gender identity or expression. "Sexual orientation" means the state of being heterosexual, homosexual or bisexual, or having a history of such identification. "Gender identity" and "gender expression" mean a person's various individual attributes, actual or perceived as they are understood to be masculine and/or feminine, or a person's self-identity, self-image, appearance or expression as a man or woman, whether or not different from those traditionally associated with the person's sex at birth.

Secs. 20-3—20-10. Reserved.

##### **ARTICLE II. LAKE WORTH FAIR HOUSING ACT**

###### Sec. 20-11. Purpose.

The city commission of the City of Lake Worth desires, in the exercise of its police power for the public health, safety and general welfare, to assure within constitutional limitation equal opportunity to all persons to live in available housing facilities regardless of race, color, religion, sex, national origin, age, handicap or marital status, within constitutional limitations, and, to that end, to prohibit discrimination in housing by any person. The city commission also desires to adopt an ordinance which is consistent with state law and which affords its citizens a clear channel of access to a state-mandated remedy in the case of alleged discrimination, to wit the Florida Commission on Human Relations.

###### Sec. 20-12. Adoption of Lake Worth Fair Housing Act.

The "Fair Housing Act," chapter 760, section 760.20 through 760.37 is hereby adopted, by reference, as the Lake Worth Fair Housing Act, subject to and including by reference such amendments, corrections and additions as shall occur to the Florida Civil Rights Act of 1992, and such amendments, corrections or additions as may appear in this chapter.

###### Sec. 20-13. Display of American flag.

Every resident in the city shall have the right to display one (1) American flag in a respectful manner, in accordance with the provisions of title 36 U.S.C. 10 (United States Flag Code), and pursuant to the requirements of this section, upon the resident's property, regardless of any documents, declarations of covenants, articles of incorporation, or bylaws of any condominium or homeowners' association regarding flags or decorations. The height of the flagpole displaying the American flag may not exceed twenty-five (25) feet from ground level and the size of the flag may not exceed five (5) feet by eight (8) feet. Any condominium or homeowners' association regulation or provision contrary to this section is hereby declared void as being against public policy, even if the regulation or provision was adopted before this Code provision.

**Appendix of Existing Ordinances:**

City of Miami Beach

**Chapter 62 HUMAN RELATIONS**

**ARTICLE I. IN GENERAL <sup>[1]</sup>**

Secs. 62-1—62-30. Reserved.

**ARTICLE II. DISCRIMINATION <sup>[2]</sup>**

***DIVISION 1. GENERALLY <sup>[3]</sup>***

Sec. 62-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrator* means that person appointed pursuant to subsection 62-56(a).

*Age* means the chronological age of any individual who is 18 years or older.

*Classification category* means each category by which discrimination is prohibited as set forth within section 62-33.

These categories are as follows: race, color, national origin, religion, sex, gender identity, sexual orientation, disability, marital and familial status, or age.

*Committee* means the City of Miami Beach Human Rights Committee.

*Disability*. Disabled persons are persons who:

- (1) Have a physical or mental impairment that substantially limits one or more of such person's major life activities.
  - a. Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
  - b. Qualified, with respect to employment, means such individual can perform the essential functions of the job in question with reasonable accommodations, and with respect to public services means an individual who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the city.
  - c. Substantially limited means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

*Discriminatory practice* means an intentional act that is unlawful and prohibited.

*Employee* means a person employed by or seeking employment from an employer. It does not include any person employed by parents, a spouse or child.

*Employer* means any person who has five or more employees, in each of four or more calendar weeks in the current calendar year, and any agent of such person.

*Entity* includes "employee," "employer," and "person."

*Familial status* means one or more individuals who have not attained the age of 18 years being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having custody, with the written permission of such parent or other person.

*Family* means one or more individuals living as a single housekeeping unit.

*Gender identity* includes actual or perceived sex, and shall also include a person's gender identity, self-image, appearance, expression or behavior, whether or not that gender identity, self image, appearance, expression or behavior is different from that traditionally associated with the sex assigned to that person at birth.

*Housing or housing accommodations* means any building, structure or portion thereof, or other facility occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home, trailer or other facility. However, nothing in this article shall apply to rooms or units in housing containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

*Interested party* means the person filing a complaint or the person against whom a complaint has been filed.

*Marital status* means the presence or absence of a marital relationship and includes the state of being married, separated, or unmarried. The term "unmarried" includes persons who are single, divorced or widowed.

*Mediation agreement* means a written agreement entered into between a complainant and respondent setting forth the resolution of the issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the mediator.

*Mediator* means that person appointed pursuant to section 62-63.

*National origin* means the origin of an ancestor, the country of origin of a person's forbearer, naturally, by marriage or by adoption.

*Owner* means any person, including, but not limited to, a lessee, sublessee, assignee, manager or agent, and also including the city and its departments or other subunits, having the right of ownership or possession or the authority to sell or lease any real property.

*Person* means one or more individuals, partnerships, associations, political subdivisions, labor unions, organizations, cooperatives, mutual companies, joint-stock companies, unincorporated organizations, trusts, trustees, or receivers, legal representatives, for-profit and not-for-profit associations and corporations, and business associations of whatever kind including, without limitation, general partnerships, limited liability partnerships, corporations, limited liability companies, business trusts, and joint ventures.

*Public accommodations* means any retail establishment, an inn, hotel, motel or other establishment providing lodging to transient guests, other than an establishment located within a building containing not more than five rooms for rent or hire and is actually occupied by the proprietor of such establishment as his residence; any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station; any bar, lounge, nightclub or other facility principally engaged in selling alcoholic beverages for consumption on the premises or any facility principally engaged in selling both food and alcoholic beverages for consumption on the premises; any motion picture house, theater, concert hall, convention hall, or other place of exhibition of entertainment; and any establishment physically located within the premises of any establishment otherwise covered by this article or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

*Public services* means services, programs, or activities of the city.

*Real property* means any land, buildings, fixtures, and all other improvements to land. The terms "land", "real estate," "realty" and "real property" may be used interchangeably.

*Rent* means to lease, sublease, assign, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

*Respondent* means any person against whom a complaint is filed pursuant to this article.

*Sale* includes any contract to sell, exchange, convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

*Sex* means male or female gender, and includes pregnancy, child birth, or medical conditions related to pregnancy or child birth.

*Sexual orientation* means actual or perceived heterosexuality, homosexuality, or bisexuality.

Sec. 62-32. City of Miami Beach Human Rights Ordinance.

This article shall be known and may be cited as the "City of Miami Beach Human Rights Ordinance."

Sec. 62-33. Purpose; declaration of policy.

In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, gender, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of differences of race, color, national origin, religion, sex, gender identity, sexual orientation, marital and familial status, age, or disability. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.

The general purpose of this article and the policy of the city, in keeping with the laws of the United States of America and the spirit of the state constitution, is to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain employment, housing and public accommodations of the person's choice in the city without regard to race, color, national origin, religion, sex, gender identity, sexual orientation, marital and familial status, age, or disability, and, to that end, to prohibit discrimination in employment, housing and public accommodations by any person.

Sec. 62-34. City of Miami Beach Human Rights Committee established.

Effective April 15, 2010, there shall be established a City of Miami Beach Human Rights Committee, which shall be a standing committee of the city.

Sec. 62-35. Membership.

- (a) The committee shall consist of a minimum of five and a maximum of 11 members, with one out of every five members to be a direct appointment by the mayor, and with the remaining members to be at large appointments of the city commission.
- (b) The members of the committee shall reflect, as nearly as possible, the diversity of individuals protected under the city's human rights ordinance. In keeping with this policy, not less than two months prior to making appointments or re-appointments to the committee, the city manager shall solicit nominations from as many public service groups and other sources, which he/she deems appropriate, as possible.
- (c) At least one of the committee members shall possess, in addition to the general qualifications set forth herein for members, a license to practice law in the State of Florida; be an active member of and in good standing with the Florida Bar; and have experience in civil rights law. The attorney member shall also serve as chair of the committee.
- (d) Members shall serve without compensation.

Sec. 62-36. Meetings; conduct of business.

- (a) Regular meetings of the committee shall be held at least monthly.
- (b) The city manager shall provide such adequate and competent administrative, technical and clerical personnel as may be reasonably required for the proper performance of the committee's duties.

Sec. 62-37. Duties and powers.

The committee shall have the following advisory duties, functions, powers, and responsibilities:

- (a) To study, advise, and make recommendations to the city manager and city commission for:
  - 1. Legislation on policies, procedures, and practices which would further the purposes of this article;
  - 2. Developing human relations plans and policies for the city to consider and making investigations and studies appropriate to effectuate the purposes of this article;
- (b) To inform persons of the rights assured and remedies provided under this article, and to promote goodwill, and minimize or eliminate discrimination because of race, color, national origin, religion, sex, sexual orientation, gender identity, disability, marital and familial status, or age;
- (c) To call conferences of persons in the industries of housing, public accommodations, and employment in the city to acquaint them with the requirements of this article and, without limitation, the City of Miami Beach Human Rights Ordinance, and to endeavor with their advice to develop programs of voluntary compliance and enforcement; and
- (d) To hear appeals from the city manager's determination of no probable cause, where appropriate and necessary; and designate committee members to hear, in an advisory capacity to the hearing examiner, complaints alleging unlawful discrimination practices; and provide the hearing examiner (through the designated committee members) with a non-binding advisory recommendation prior to final disposition of the complaint.

The city's adoption of any committee recommendations (pursuant to those powers and duties which may be exercised by the committee under subsections (a) through (d) above, including, without limitation, recommendations that the city enact any legislation; plans, policies and procedures; call for studies and/or investigations; call for conferences; enact any programs; and/or distribute educational/informational materials, all with the purpose of furthering and effectuating the mission of the City of Miami Beach Human Rights Ordinance and this article), shall be subject to prior approval of the city commission, and such approval (if given at all) shall be further subject to funding availability.

Secs. 62-38—62-55. Reserved.

## ***DIVISION 2. ADMINISTRATION <sup>44</sup>***

Sec. 62-56. Administrative authority; powers and duties.

- (a) The provisions of this article shall be administered and enforced by the city manager or his/her designee. The city manager or his/her designee shall hereinafter be referred to as the "administrator".
- (b) The administrator's powers and duties include the following:

- (1) Receive written complaints as provided by this article relative to alleged unlawful discriminatory practices, and transmit those complaints for proper handling;
- (2) Establish, administer or review programs at the request of the city commission and make reports on such programs to the city commission;
- (3) Render to the city commission annual written reports of activities under the provisions of this article, along with such comments and recommendations as the administrator may choose to make;
- (4) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions that are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this article; and
- (5) Conduct educational and public information activities at the request of the city commission that are designed to promote the policy of this article.

Sec. 62-57. Religious organizations.

The provisions in this article relating to sexual orientation shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

Sec. 62-58. Filing of a complaint and time limit.

- (a) Any person alleging that an unlawful discriminatory practice has occurred must file a verified, written complaint with the administrator within 180 days after the alleged unlawful discriminatory practice occurred.
- (b) The complaint may be filed by personal delivery, ordinary mail, registered mail or certified mail, addressed to the office of the city manager.

Sec. 62-59. Information on complaint.

- (a) A complaint of an unlawful discriminatory practice must be in writing, either on a form promulgated by the city administration (and approved by the administrator) or on any paper suitable for a complaint. The complaint shall be signed by the person making the complaint (hereinafter, the "complainant"); shall be sworn to or affirmed; and, at a minimum, shall state the full name and address, of the complainant; the full name and address of each respondent against whom the complaint is made, and who are alleged to have committed the unlawful discriminatory practice; the facts upon which the complaint is based; and other such information as may be required by the administrator.
- (b) A complaint shall not be within the jurisdiction of the City of Miami Beach Human Rights Ordinance if:
  - (1) The complaint has been filed more than 180 days after the alleged unlawful discriminatory practice occurred;
  - (2) The complainant has previously initiated, or initiates, a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice with respect to the same grievance which is the subject of the complaint under this article; or
  - (3) The complainant has previously filed, or files, an action or proceeding before any administrative agency under any other law of the state, county, or city (including, without limitation, an agency with duties and powers similar to those prescribed in this article) alleging an unlawful discriminatory practice with respect to the same grievance which is the subject of the complaint under this article, and the administrative agency is either proceeding with its own investigation of the complaint or final determination has been made thereon.

Sec. 62-60. Notification of respondent; answer.

- (a) The administrator shall, within 45 days after the filing of a verified, written complaint of an unlawful discriminatory practice, serve on the respondent, by certified mail or personal delivery, a copy of the complaint and a notice identifying the alleged unlawful discriminatory practice and advising respondent of the procedural rights and obligations of respondent under this article.
- (b) Within 45 days after a copy of the complaint is served upon the respondent by the administrator, the respondent may file an answer thereto. If an answer is filed, the administrator shall cause a copy of such answer to be served upon the complainant. If an answer is filed, the answer shall be in writing and contain, at a minimum, a separate and specific response to each and every particular of the complaint or a denial of any knowledge or information thereof sufficient to form a belief. Any allegation in the complaint which is not denied shall be deemed admitted. If the respondent elects not to answer the complaint, and an answer to the complaint is not filed, then the hearing shall proceed on the evidence in support of the complaint.

Sec. 62-61. Amending complaints or answers.

A complaint of an unlawful discriminatory practice, or answer (if filed), may be amended in writing at any time when it would be fair and reasonable to do so, so long as the administrator will have adequate time to investigate any additional allegations and the parties will have adequate time to present the administrator, mediator, or hearing examiner (as the case may be) with evidence concerning such allegations before the issuance of findings of fact and a determination. The administrator shall furnish a copy of each amended complaint or answer to the respondent or complainant, respectively, as promptly as practicable. For jurisdictional purposes, such amendments shall be related back to the date the original complaint was first filed.

Sec. 62-62. Investigation of complaints.

- (a) Whenever a verified, written complaint is filed pursuant to this article, the administrator, at his or her sole option and election, shall either designate a member of his/her administrative staff, or retain an outside consultant/investigator, who shall make a full and prompt investigation in connection therewith (including a prompt and full investigation of the alleged unlawful discriminatory practice), and forward to the administrator a written summary of the investigation. In the event that the administrator retains an outside investigator, he/she shall first report same to the city commissioners through the "letter to commission" (LTC) process, indicating the name, qualifications and other curriculum vitae of the investigator; and the proposed fee for the investigation. Any city commissioner may place the administrator's proposed retention of an outside investigator for discussion by the full city commission; provided that the item must be placed on the agenda of the next city commission meeting immediately following the administrator's issuance of the LTC.
- (b) The administrator may determine, upon conclusion of the investigation and review of the written summary, that:
  - (1) The complaint has no validity;
  - (2) The respondent charged in the complaint has not engaged in or is not engaging in the alleged unlawful discriminatory practice; and/or
  - (3) The complaint is not within the jurisdiction of the City of Miami Beach Human Rights Ordinance.

Such determination shall be issued in writing. With respect to the written determination, "issued" shall be defined as the date signed by administrator. Upon issuance, the administrator's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or, by the administrator, in response to an appeal taken pursuant to subsection 62-62(d) below; provided, however, that the administrator may correct clerical mistakes or errors arising from oversight or omission.

- (c) If, upon conclusion of the investigation and review of the written summary, the administrator finds that probable cause exists for the allegations made in the complaint, such determination shall also be made in writing. Upon issuance, the written determination shall be furnished promptly to the complainant and respondent.
- (d) Determination of no probable cause; appeal from and dismissal. If a determination is made by the administrator that no probable cause exists for the allegations made in the complaint, the complainant shall have the right to appeal such determination to the committee within 30 days of the issuance of the written determination, by filing a written statement of appeal with the committee. The committee shall promptly deliver a copy of the statement to the administrator and the respondent, and shall, at a duly noticed meeting of the committee, promptly consider and act upon such appeal by either:
  - (1) Affirming the administrator's determination, or
  - (2) Remanding it to the administrator with appropriate instructions.

In the event no appeal is taken or such appeal results in affirmance, or if remanded on appeal (and on remand), the administrator still determines that no probable cause exists, the determination of the administrator shall be final; the complaint shall be closed with a ministerial finding of no probable cause or no jurisdiction; the complainant and the respondent shall be promptly notified, in writing; and the complaint shall be dismissed.

Sec. 62-63. Mediation.

- (a) If a determination is made by the administrator that probable cause exists to believe that an unlawful discriminatory practice has occurred, or is occurring, the administrator shall first endeavor to resolve the complaint by mediation. At his or her election, the administrator may serve as the mediator, or (in consultation with the city attorney) the administrator may appoint an independent mediator to act as a neutral third person to encourage and facilitate the resolution of the complaint. The independent mediator shall be an individual who shall have been determined by the administrator and city attorney to have the knowledge, skills, and abilities to

perform in such capacity as mediator. In the event that the administrator appoints an independent mediator, the costs for mediation shall be shared equally by the complainant and the respondent.

- (b) The mediator shall attempt to mediate the dispute and to report to the administrator and the city attorney on the results of the mediation efforts within 120 days of commencement of mediation.
- (c) The terms of the mediation shall be reduced to writing in the form approved by the mediator, and must be signed and verified by the complainant and respondent, and approved by the mediator. The mediation agreement shall constitute an agreement between the complainant and respondent; shall be for mediation purposes only; and shall not constitute an admission by any party that the law has been violated.
- (d) If the respondent complies with the recommendations under the mediation agreement, the matter shall be deemed settled and terminated and no further proceedings with regard to the complaint need be taken.

Sec. 62-64. Proceeding before hearing examiner; decision and order.

- (a) In the event mediation fails to resolve a complaint, or after 120 days have passed from commencement of mediation, the administrator shall refer the complaint to the city attorney. The city attorney shall prosecute the complaint before a hearing examiner. The hearing shall be conducted pursuant to the procedures set forth in section 30-72; provided, however, that if the city attorney determines that there is no legal basis for a complaint to be filed, or for the proceedings to continue, the complaint shall be dismissed, and a statement of the reasons therefor shall be filed with the administrator, with copies furnished to the complainant and respondent. The city attorney's determination shall be final.
- (b) For purposes of this article, the hearing examiner shall be selected by the city's chief special master, and shall have the knowledge, skills and abilities to perform in such capacity as special master with regard to hearing the particular complaint. At his or her election, the chief special master may either select one of the city's sitting special masters, or a hearing examiner pro tempore, appointed by the chief special master from a list approved by the city commission (and having the knowledge, skills and abilities to perform in the capacity of special master with regard to hearing the particular complaint).
- (c) The committee, after notice of the date of hearing from the hearing examiner, shall, appoint two members of the committee who have not otherwise been involved in the charge, investigation, fact-finding, or other resolution and proceedings on the merits of the case, who have not formed an opinion on the merits of the case, and who have no pecuniary, private or personal interest or bias in the matter, to hear the case with the hearing examiner. The committee designated representatives, shall act in an advisory capacity to the hearing examiner. The hearing examiner shall preside over the hearing, serve as the chair, and make all evidentiary rulings; provided, however, that following conclusion of the hearing but prior to the hearing examiner's ruling on the case, as provided in subsection 62-64(d) below, the designated committee members shall issue their non-binding advisory recommendation to the hearing examiner as to whether, based on the evidence presented, a violation of this article has occurred.
- (d) Within ten days of the conclusion of the hearing, the hearing examiner shall issue written findings of fact and conclusions of law, and a determination as to whether a violation of this article has occurred. Copies shall be sent by certified mail to the complainant and the respondent, with copies also sent to the administrator, city attorney, and the committee.

Sec. 62-65. Penalties; compliance investigation.

- (a) Any person(s) found in violation of this article shall be subject to the following penalties:
  - (1) For a first finding of an unlawful discriminatory practice within a five-year period, up to \$1,000.00;
  - (2) For a subsequent finding of an unlawful discriminatory practice within a five-year period, up to \$5,000.00; and
  - (3) Notwithstanding subparagraphs (1) and (2), for a finding of an unlawful discriminatory practice which is irreparable or irreversible in nature, up to \$15,000.00.
- (b) In determining the amount of the fine, the hearing examiner shall consider the following factors:
  - (1) The gravity of the violation;
  - (2) Any actions taken by the violator to correct the violation; and
  - (3) Any previous violations committed by the violator.
- (c) In addition to the fines which may be imposed in subsection (a), the following penalties may also be applied:
  - (1) In the event of a finding of discrimination in either public accommodations, housing, or employment, a letter may be sent asking that the alleged offender desist from the actions complained of.
  - (2) In the event of a finding of discrimination in public accommodations where the alleged offender holds a license to sell alcoholic beverages, the hearing examiner may request that the administrator refer the

violation to the appropriate state agency to determine whether due cause exists under applicable state law to revoke such license.

- (3) In the event of a finding of discrimination in either public accommodations, housing, or employment where the alleged offender holds an occupational license issued by the city or is doing business with the city pursuant to a contract, the hearing examiner may request that the administrator direct the appropriate city department to conduct an investigation to determine whether due cause exists to revoke such license or contract.
  - (4) In the event of a finding of discrimination in either public accommodations, housing, or employment, the hearing examiner may request that the administrator direct the appropriate city department to conduct an investigation to determine whether the alleged offender has violated any other city ordinance which applies to the alleged discriminatory conduct.
  - (5) In the event of a finding of discrimination in either public accommodations, housing, or employment, the hearing examiner may request that the administrator refer the alleged discriminatory practice to the appropriate and applicable state and/or federal agency(ies) for further investigation, action, and handling (including, without limitation, determination by such appropriate/applicable agency(ies) as to whether the alleged offender has violated any state or federal law which applies to the alleged discriminatory conduct).
- (d) The hearing examiner may reduce a fine imposed pursuant to this article in accordance with the procedures contained in chapter 30 of this Code.
- (e) Compliance investigation. Not later than one year from the date of a mediation agreement or findings after hearing, and at any other times (in his or her discretion) the administrator shall investigate, or may direct the committee to investigate, whether the respondent is complying with the terms of such agreement or recommendations.

Sec. 62-66. Additional remedies.

The procedures prescribed by this article do not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this article shall be deemed to modify, impair, diminish, limit or otherwise affect any right or remedy conferred by local, state or federal law.

Secs. 62-67—62-85. Reserved.

### ***DIVISION 3. REGULATIONS***

Sec. 62-86. Discrimination in employment.

It is an unlawful discriminatory practice for an employer to fail to hire or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's classification category.

**Cross reference**— Businesses, ch. 18.

Sec. 62-87. Discrimination in public accommodations.

- (a) It is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement because of the classification category of any person directly or indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, that are afforded the other customers, or directly or indirectly to publish, circulate, issue, display, place, maintain, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of classification category or that the patronage of any person belonging to any particular classification category is unwelcome, objectionable or not acceptable, desired or solicited.
- (b) The production of or proof of the display or maintenance of any such written or printed notice or advertisement purporting to relate to any place of public accommodation shall be presumptive evidence that such display or maintenance was authorized by the person maintaining and operating such place of public accommodation.

Sec. 62-88. Discrimination in housing.

- (a) *Because of classification category.* In connection with any of the transactions set forth in this section affecting a housing accommodation, it shall be unlawful for any person, owner, financial institution, real estate broker or any representative of the above to engage in any of the following acts because of the classification category of a prospective buyer, renter, lessee or any person associated therewith:

- (1) To refuse to sell, purchase, rent, lease, finance, negotiate or withhold any housing accommodation or to evict a person;
  - (2) To discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith;
  - (3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation;
  - (4) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation;
  - (5) To refuse to lend money, whether or not secured by mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, improvement, repair or maintenance of any housing accommodation or to impose different terms or conditions of such financing or refuse to provide title or insurance relating to the ownership or use of any interest in any housing accommodation;
  - (6) To make, publish, print, circulate, post, mail or cause to be made, published, printed, circulated, posted or mailed any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation that indicates any discrimination or any intent to discriminate;
  - (7) To discriminate in any financial transaction involving real property because of its location, i.e., to "red-line";
  - (8) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental, lease, or the furnishing of facilities or services in connection therewith;
  - (9) To induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental, lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of a person of a particular classification category will or may result in:
    - a. The lowering of property values in the area;
    - b. An increase in criminal or antisocial behavior in the area; or
    - c. A decline in the quality of the schools serving in the area;
  - (10) To make any representations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for sale, purchase, rental or lease of any housing accommodation for the purpose of inducing or attempting to induce any such listing for any of the above transactions;
  - (11) To engage in or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play upon fear with the purpose of either discouraging or inducing or attempting to induce the sale, purchase, rental, lease or listing of any housing accommodation on any basis prohibited by this article;
  - (12) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article, or to obstruct or prevent any person from complying with the provisions of this article or any order issued hereunder;
  - (13) To resist, prevent, impede or interfere with the mediator in the lawful performance of his duties under this article;
  - (14) To canvass to commit any unlawful practice prohibited by this article;
  - (15) To deny or withhold any housing accommodation from a person on any basis prohibited by this article; or
  - (16) To deny any qualified person access to or membership in or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership or participation on any basis prohibited by this article.
- (b) *Because of disability.*
- (1) In connection with the design and construction of covered multifamily dwellings submitted for building permit on or after March 1, 1990, and first occupied after March 13, 1991, it shall be unlawful to fail to design and construct those housing accommodations in such a manner that:
    - a. The public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;
    - b. All the doors designed to allow passage into and within all premises within such housing accommodations are sufficiently wide to allow passage by persons in wheelchairs; and
    - c. All premises within such accommodations contain the following features of an adaptive design:

1. An accessible route into and throughout the dwelling;
  2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
  3. Reinforcements in the bathroom walls to allow later installation of grab bars; and
  4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (2) As used in this subsection, "covered multifamily dwelling" means:
- a. A building that consists of four or more housing units and has an elevator; or
  - b. The ground floor units of a building that consists of four or more housing units and does not have an elevator.
- (3) Conformance with the appropriate specifications of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped persons, commonly cited as ANSI A117.1 (1986), suffices to satisfy the requirements of subsection (1)a. through c. of this section.

Sec. 62-88.1. Discrimination in public services.

No individual shall, by reason of race, color, national origin, religion, sex, sexual orientation, gender identity, marital and familial status, or age, nor any qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied the benefits of the public services of the city, or be subjected to discrimination by the city.

Sec. 62-89. Retaliation, coercion, interference, obstruction or prevention of compliance with this article.

It is an unlawful discriminatory practice for a person to conspire to:

- (1) Retaliate or discriminate against a person because such person has opposed a discriminatory practice or because such person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under this article;
- (2) Aid, abet, incite or coerce a person to engage in an unlawful discriminatory practice;
- (3) Willfully interfere with the performance of a duty or the exercise of a power by the administrator, board or one of its staff members or representatives; or
- (4) Willfully obstruct or prevent a person from complying with the provisions of this article or an order issued under this article.

Sec. 62-90. Use of municipal facilities.

The use of municipal facilities in the city shall be regulated pursuant to the provisions of this section. The purpose and intent of this section is to establish legislative and administrative policies for the nondiscriminatory use of municipal facilities, which shall be defined as any and all city-owned and operated facilities including buildings, parks, fields, and any other facility now or in the future owned, controlled, leased, or operated by the city. All organizations, clubs, and individuals wishing to obtain any fee waiver to use municipal facilities shall confirm in writing as follows:

I [name of organization, club, or person] the [title] of [name of organization or club], certify that I/my organization or club does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, gender identity, familial and marital status, age or disability.

Sec. 62-91. Municipal funds.

Municipal funding of organizations or clubs shall be regulated pursuant to this section. The purpose and intent of this section is to establish legislative and administrative policies for the award of municipal funds to organizations or clubs that do not discriminate in their membership or policies. All organizations or clubs wishing to obtain municipal funding shall confirm in writing as follows:

I [name of organization or club] the [title] of [name of organization or club], certify that my organization/club does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, gender identity, familial and marital status, age or disability.

Sec. 62-92. Posting.

- (a) Every person being the owner, lessee, sub-lessee, assignee, or managing agent of a public accommodation subject to the Miami Beach Human Rights Ordinance shall post and maintain at such public accommodation, in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those

seeking or visiting such public accommodation, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to public accommodations, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.

- (b) Every employer subject to the Miami Beach Human Rights Ordinance shall post and maintain at its offices, places of employment or employment training centers, in a conspicuously and easily accessible and well-lighted place customarily frequented by employees and applicants for employment, notices furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to employment, the place where complaints may be filed and such other information as the City of Miami Beach deems pertinent.
- (c) Every person, owner, financial institution, real estate broker or any representative of the above who interacts with prospective buyers, renters, or lessees of housing or housing accommodations, or any person associated therewith, shall post and maintain in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting the housing unit or business establishment, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to housing and housing accommodations, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.
- (d) Every department or facility of the City of Miami Beach where City employees provide services or access shall post and maintain at such department or facility, in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting such department or facility, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to public benefits and services, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.
- (e) Posting of the notices required in this section is deemed to be an important educational tool to provide residents of and visitors to Miami Beach with vital information concerning their rights under the City's Human Rights Ordinance, so the Administrator is authorized and directed to enforce its provisions. For a period of one year following the effective date of this section, violators of its requirements shall be issued one warning by City of Miami Beach Code Compliance officers or by the Administrator upon complaint, or upon recommendation by a majority vote of the Miami Beach Human Rights Committee. Subsequent violations shall be punished, if not remedied within five calendar days, by fine as described in Section 62-92(f).
- (f) One year after the effective date of this section, penalties for violations of subsections 62-92(a) and 62-92(b) shall [be] assessed (except against the City of Miami Beach) by City of Miami Beach Code Compliance officers or by the Administrator upon complaint, or upon recommendation by a majority vote of the Miami Beach Human Rights Committee as follows:
  - (1) For the first violation: A fine of \$50.00.
  - (2) For the second violation: A fine of \$100.00.
  - (3) For the third violation: A fine of \$150.00.
  - (4) For the fourth and any subsequent violation: A fine of \$200.00.
- (g) Penalties shall be assessed by service of a notice of violation, served personally or by certified mail upon the property owner, business owner, or upon a manager present at the premises.
- (h) Any person receiving a notice of violation pursuant to this section may request, within 15 days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector or the Administrator resulting in the issuance of the notice. The special master shall hold a hearing and shall hear testimony and evidence from the code inspector or the Administrator and the alleged violator. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings. At the conclusion of the hearing, the special master shall issue findings of fact based on evidence and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted in Section 30-72. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.
- (i) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of collection procedures until 30 days after the issuance of a written determination by the special master. Any costs or penalty amounts due the city pursuant to such determination must be received by the city within 30 days after the issuance of the determination, or collection procedures may be commenced, as provided by this chapter or under state law.

#### DIVISION 4. EXCEPTIONS

##### Sec. 62-111. Employment.

- (a) Notwithstanding any other provision of this article:
  - (1) It is not an unlawful discriminatory practice for an employer to hire and employ employees on the basis of that individual's classification category in those certain instances where such classification category is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and
  - (2) It is not an unlawful discriminatory practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion. However, this exception will not apply if such institution restricts membership in its organization on the basis of race, color or national origin.
- (b) Notwithstanding any other provision of this article:
  - (1) It is not an unlawful discriminatory practice for any employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of one's classification category;
  - (2) It is not an unlawful discriminatory practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration or action upon the results, is not designed, intended or used to discriminate because of one's classification category.
- (c) Nothing contained in this article shall be interpreted to require any employer to grant preferential treatment to any individual or to any group because of the classification category of such individual or group, on account of an imbalance that may exist with respect to the total number or percentage of persons of any classification category employed by any employer in comparison with the total number or percentage of persons of such classification category in any community, state, section or any other area, or in the available work force in any community, state, section or other area.
- (d) This article shall not apply to a religious corporation or association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- (e) Notwithstanding any other provisions of this article, it is not an unlawful discriminatory practice for an employer to consider an individual's religion when making a decision concerning that individual if the employer demonstrates that the reason for considering that individual's religion is that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

##### Sec. 62-112. Housing.

- (a) Nothing in this article shall prohibit a religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting or from advertising the sale, rental or occupancy of housing it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of race, color or national origin; nor shall anything in this article prohibit a private club not in fact opened to the public, which as an incident to its preliminary purpose provides lodgings it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (b) No provision in this article regarding familial status shall apply to housing for older persons.
  - (1) As used in this subsection, "housing for older persons" means housing:
    - a. Provided under any local, state or federal program that the administrator determines is specifically designed and operated to assist elderly persons as defined in the local, state or federal program;
    - b. Intended for and solely occupied by persons 62 years of age or older; or

- c. Intended for and occupied by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the administrator shall develop regulations that require at least the following factors:
  - 1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;
  - 2. That at least 80 percent of the housing is occupied by at least one person 55 years of age or older per unit; and
  - 3. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (2) Housing shall not fail to be considered housing for older persons if:
  - a. A person who resides in such housing on or after the effective date of the ordinance from which this article is derived does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or
  - b. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.
- (c) Nothing contained in this article shall preclude the seller, developer, condominium association, lessor, property owner, or that person's authorized agent from setting forth reasonable rules, regulations, terms and conditions pertaining to the sale, lease or disposal of that person's property provided such rules, regulations, terms and conditions are not based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, familial status, or marital status and provided there is no conflict with the affirmative provisions set forth in this article. Furthermore, nothing in this article shall preclude reasonable rules, regulations, or terms and conditions pertaining to the safe and prudent use by minors of facilities and amenities provided in conjunction with real property.

Sec. 62-113. Public accommodations.

- (a) Nothing in this article shall be applied to:
  - (1) Discrimination on the basis of sex in restrooms, shower rooms, bathhouses, health spas or similar facilities, which are by their nature distinctly private, or dormitory-lodging facilities;
  - (2) A religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society from limiting facilities and accommodations it owns or operates for other than a commercial purpose to persons of the same religious organization or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of race, color or national origin.
- (b) Nothing in this article shall prohibit the limiting of the use of kindergartens, nurseries, day care centers, theaters and motion picture houses to persons of a particular age group.

Secs. 62-114—62-125. Reserved.

ARTICLE III. DOMESTIC PARTNERSHIPS

Sec. 62-126. Definitions.

*Affidavit of financial reliance* means the document that is filed with the human resources department according to the procedures established in section 62-127.

*Committed relationship* means a family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.

*Declaration of domestic partnership* means the document that is filed with the human resources department according to the procedures established in section 62-127.

*Dependent* means one who relies on another for financial support. For purposes of this article, a domestic partner of an employee shall be deemed a dependent of the employee if the domestic partner is supported, in whole or in part, by the employee's earnings and has been for at least the past six months.

*Domestic partnership* means committed relationship between two persons who consider themselves to be a member of each other's immediate family and have registered their partnership in accordance with section 62-127.

*Employee* means active and retired employees of the city that are eligible for benefits pursuant to state or municipal law, city employment policies, or collective bargaining agreements.

Sec. 62-127. Registration, termination and administration procedures.

(a) *Registration.*

- (1) *Declaration of domestic partnership.* A declaration of domestic partnership shall be filed with the human resources department and shall contain the names and addresses of the domestic partners who shall swear or affirm under penalty of perjury that each partner:
  - a. Is at least 18 years old and competent to contract;
  - b. Is not related by blood;
  - c. Is the sole domestic partner of the other person;
  - d. Is not married;
  - e. Has not been a member of another domestic partnership for the past six months (unless the prior domestic partnership ended as a result of the death or marriage of one of the partners);
  - f. Agrees to share the common necessities of life and to be responsible for each other's welfare;
  - g. Shares his or her primary residence with the other;
  - h. Considers himself or herself to be a member of the immediate family of the other partner; and
  - i. Agrees to immediately notify the human resources department, in writing, of any change in the status of the domestic partnership.
- (2) *Documentation.* As further evidence of a domestic partnership, one of the following documents must be presented to the human resources department along with the declaration of domestic partnership:
  - a. A lease, deed, or mortgage indicating that both parties are jointly responsible;
  - b. Drivers licenses for both partners showing the same address;
  - c. Passports for both partners showing the same address; or
  - d. Any other document that in the opinion of the director of the human resources department conclusively demonstrates that the partners are living together as a family.
- (3) *Affidavit of financial reliance.* An affidavit of financial reliance shall be filed with the human resources department and shall contain the names and addresses of the domestic partners who shall swear or affirm under penalty of perjury that:
  - a. The domestic partner of the employee is a dependent of the employee as that term is defined in section 62-126; and
  - b. Each partner agrees to immediately notify the human resources department, in writing, if the domestic partner of the employee ceases to be a dependent of the employee.

(b) *Termination.*

- (1) *Termination statement.* A domestic partner may terminate the domestic partnership by filing a termination statement with the human resources department. The person filing the termination statement shall swear or affirm under penalty of perjury that:
  - a. The domestic partnership is to be terminated; and
  - b. If the termination statement is not signed by both domestic partners, a copy of the termination statement shall be served, by certified or registered mail, on the other domestic partner, and proof of service shall be filed with the human resources department.
- (2) *Effective date.* The termination shall become effective 60 days from the date of filing of the termination statement signed by both domestic partners or if the termination statement is not signed by both parties, 60 days from the date proof of service is filed with the human resources department pursuant to subsection (a)(1)b., above.
- (3) *Automatic termination.* A domestic partnership shall automatically terminate in the event that one of the domestic partners dies or marries.

(c) *Administration.*

- (1) *Forms.* The human resources department shall provide forms for the establishment and termination of domestic partnerships.
- (2) *Certificate of domestic partnership.* The human resources department shall issue to the domestic partners a certificate of domestic partnership no later than ten business days after the declaration of domestic partnership and affidavit of financial reliance are filed.
- (3) *Maintain records.* The human resources department of records shall maintain copies of certificates of domestic partnership and termination statements filed by domestic partners.

- (4) *Fees.* The fee for registering or terminating the declaration of domestic partnership shall be \$25.00, which shall cover all costs of registration or termination.

Sec. 62-128. Employment benefits.

- (a) Employees shall be granted bereavement leave with pay for the death of a domestic partner or family member of a domestic partner as set forth in the union contracts governing city employees, Ordinance Nos. 1335 and 1613, and the city's administrative policies. As to employees governed by union contracts, this benefit is contingent upon approval of the benefit by the unions to the extent such approval is necessary.
- (b) Employees shall be granted sick leave, family medical leave, or leave without pay to care for a domestic partner as set forth in Ordinance Nos. 1335 and 1613 and the city's family medical leave policy.
- (c) Employees' domestic partners shall be allowed to be members of the city health plan as set forth in the union contracts governing city employees, ordinances and the city's administrative policies. As to employees governed by union contracts, this benefit is contingent upon approval of the benefit by the unions to the extent such approval is necessary.
- (d) For so long a period as the federal tax code imposes a heavier tax burden upon city employees with domestic partners who elect to receive family medical and dental coverage over that of their married counterparts, the city manager is authorized and directed to reimburse those employees with domestic partners who pay this heavier tax burden by adding to these employees' biweekly pay the additional amount withheld from the employees' pay and the amount of the additional tax assessed by the federal government upon this reimbursement. It is the intent of the city commission that reimbursement under this subsection shall not be considered to be pensionable income. As to police department employees governed by a collective bargaining agreement between the city and the Miami Beach Fraternal Order of Police William Nichols Lodge No. 8 and as to fire department employees governed by a collective bargaining agreement between the city and the Firefighters of Miami Beach International Association of Firefighters Local 1510, acceptance of this reimbursement is contingent upon approval by each union of an agreement setting forth the non-pensionable nature of the reimbursed amount.

Sec. 62-129. Limited effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene state or federal law.
- (b) Nothing in this article shall be construed as recognizing or treating a domestic partnership as a marriage.

#### **ARTICLE IV. REGISTERED DOMESTIC PARTNERSHIPS**

Sec. 62-161. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Committed relationship* means a family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.

*Declaration of registered domestic partnership* means the document that is filed with the city clerk's office according to the procedures established in section 62-162.

*Dependent* is a person who resides within the household of a registered domestic partnership and is:

- (1) A biological, adopted, or foster child of a registered domestic partner; or
- (2) A dependent as defined under IRS regulations; or
- (3) A ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

*Mutual residence* means that the registered domestic partners share the same place to live. It is not necessary that the legal right to possess the place of residence be in both of their names. Two people may share a mutual residence even if one or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

*Registered domestic partnership* means committed relationship between two persons who consider themselves to be a member of each other's immediate family and have registered their partnership in accordance with section 62-162.

Sec. 62-162. Registration, amendment, termination and administration procedures.

(a) *Registration.*

- (1) Declaration of registered domestic partnership. A declaration of registered domestic partnership shall be filed with the city clerk's office and shall contain the names and addresses of the applicants who shall swear or affirm under penalty of perjury that each partner:
  - a. Is at least 18 years old and competent to contract;

- b. Is not married to or a member of another registered domestic partnership or civil union with anyone other than the coapplicant;
  - c. Agrees to share the common necessities of life and to be responsible for each other's welfare;
  - d. Shares his or her primary residence with the other;
  - e. Considers himself or herself to be a member of the immediate family of the other partner; and
  - f. Agrees to immediately notify the city clerk's office, in writing, of any change in the status of the registered domestic partnership.
  - g. Agrees to mutually support the other by contributing in some fashion, not necessarily equally, to maintain and support the registered domestic partnership.
- (2) Each partner agrees to immediately notify the city clerk's office, in writing, if the terms of the registered domestic partnership are no longer applicable or one of the domestic partners wishes to terminate the domestic partnership.
- (b) *Amendment.* A registered domestic partner may amend a registered domestic partnership previously filed with the city clerk to show a change in his or her household address or to add or delete dependents. Amendments shall be signed by both members of the registered domestic partnership under penalty of perjury.
- (c) *Termination.*
- (1) *Termination statement.* A registered domestic partner may terminate the registered domestic partnership by filing a termination statement with the city clerk's office. The person filing the termination statement shall swear or affirm under penalty of perjury that:
    - a. The registered domestic partnership is to be terminated; and
    - b. If the termination statement is not signed by both registered domestic partners, a copy of the termination statement shall be served, by certified or registered mail, on the other registered domestic partner, and proof of service shall be filed with the city clerk's office.
  - (2) *Effective date.* The termination shall become effective on the date of filing of the termination statement signed by both registered domestic partners or if the termination statement is not signed by both parties, on the date proof of service is filed with the city clerk's office pursuant to subsection (c)(1)b., above.
  - (3) *Automatic termination.* A registered domestic partnership shall automatically terminate in the event that one of the domestic partners dies, marries, or enters into a civil union with someone other than his or her registered domestic partner.
- (d) *Administration.*
- (1) *Forms.* The city clerk's office shall provide forms for the establishment, amendment, and termination of registered domestic partnerships.
  - (2) *Certificate of registered domestic partnership.* The city clerk's office shall issue to the registered domestic partners a certificate of registered domestic partnership no later than ten business days after the declaration of registered domestic partnership is filed.
  - (3) *Maintain records.* The city clerk's office shall maintain copies of the declaration of registered domestic partnerships, any and all amendments thereto, certificates of registered domestic partnership, and termination statements filed by registered domestic partners.
  - (4) *Fees.* The fee for registering the declaration of registered domestic partnership shall be \$50.00, which shall cover all costs of registration. The fee for amending or terminating the declaration of registered domestic partnership shall be \$25.00 which shall cover all costs of amendment or termination of the registered domestic partnership.

Sec. 62-163. Rights and legal effect of registered domestic partnership.

To the extent not superseded by federal, state, or county law or ordinance, registered domestic partners shall have the following rights:

- (1) *Health care facility visitation.* The term "health care facility" includes, but is not limited to, hospitals, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities, and other short and long term facilities located within, or under the jurisdiction of, the City of Miami Beach. All health care facilities operating within the City of Miami Beach shall allow a registered domestic partner the same visitation rights as a spouse (or parent, if the patient is a dependent of the registered domestic partnership) of the patient. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.
- (2) *Correctional facility visitation rights.* The term "correctional facility" includes, but is not limited to, holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of the City of Miami Beach. A registered domestic partner shall have the same visitation rights at all

correctional facilities operating within the City of Miami Beach as a spouse (or parent, if the person in custody is a dependent of the registered domestic partnership) of a person in custody. A dependent shall have the same visitation rights afforded to the child of a person in custody.

- (3) *Health care decisions.* This section pertains to decisions concerning both physical and mental health. If a patient lacks the capacity to make a health care decision, the patient's registered domestic partner shall have the same authority as a spouse to make a health care decision for the incapacitated party. If the patient is a dependent of the registered domestic partnership, the registered domestic partners shall have the same authority to make health care decisions as a parent; however, if a biological parent of a minor dependent, whose parental rights have not been terminated, is available, willing, and competent to make the health care decision, the biological parents' authority to make health care decisions on behalf of the minor shall supersede that of a registered domestic partner who is not the biological parent of the minor dependent.
- (4) *Participation in education.* A registered domestic partner shall have the same rights to participate in the education of a dependent of the registered domestic partnership as a parent to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the City of Miami Beach. This includes the right of a registered domestic partner to participate in the home schooling of a dependent in accordance with Florida law.
- (5) *Funeral/burial decisions.* Following the death of a registered domestic partner, the surviving partner shall have the same rights to make decisions with regard to funeral/burial decisions and disposition of the decedent's body as a surviving spouse.
- (6) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including but not limited to notification of family members in an emergency, or when permission is granted to inmates to contact family members, "notification of family" shall include registered domestic partners.
- (7) *Preneed guardian designation.* Any person who is registered as a registered domestic partner pursuant to this article shall have the same right as any other individual to be designated as a preneed guardian pursuant to F.S. § 744.3045, and to serve in such capacity in the event of his or her declarant registered domestic partner's incapacity. A registered domestic partner shall not be denied or otherwise be defeated in serving the plenary guardian of his or her registered domestic partner or the partner's property, under the provisions of F.S. ch. 744, Florida Statutes, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

Sec. 62-164. Limited effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene county, state or federal law.
- (b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.
- (c) All rights, privileges, and benefits extended to registered domestic partnerships registered pursuant to this article shall also be extended to all persons legally partnered in another jurisdiction.
- (d) A registered domestic partner may enforce the rights under section 62-163 by filing a private action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.
- (e) This article is independent of article III of chapter 62 and does not affect any rights or benefits of city employees.

## Appendix of Existing Ordinances:

### City of Tampa:

## Chapter 12 HUMAN RIGHTS <sup>LI</sup>

### ARTICLE I. IN GENERAL

Sec. 12-1. Title.

This chapter shall be known and may be cited as the "City of Tampa Human Rights Ordinance."  
(Ord. No. 92-147, § 2, 9-10-92)

Sec. 12-2. Definitions.

For the purpose of this chapter, unless given a different meaning under an article of this chapter, certain abbreviations, terms, phrases, words and their derivatives shall have the following meanings:

*Administrator* means that person appointed pursuant to section 12-4.

*Board* means the Tampa Human Rights Board created by this chapter.

*Conciliation* means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the administrator.

*Conciliation agreement* means a written agreement setting forth the resolution of the issues in conciliation.

*Disability* is used interchangeably with the term "handicap" and shall have the same meaning as "handicap" in chapter 12 of this Code or in section 802(h) of the Fair Housing Act (42 USC 3602(h)), "individual with a disability" in section 7(8)(B) of the Rehabilitation Act of 1973 (29 USC 706(8)(B)), and "disability" in section 3(2) of the Americans with Disabilities Act (ADA) (42 USC 12102(2)), except that, for purposes of the ADA, the exceptions to the definitions of the terms "disability" and "qualified individual with a disability" shall be those as stated in section 1630.3 of the ADA regulations (29 CFR 1630.3), as now or hereafter revised, which are hereby adopted and incorporated as fully as if set out at length herein.

*Discriminatory practice* means an act that is unlawful and prohibited under the provisions of this chapter.

*Familial status* means one (1) or more individuals, who have not attained the age of eighteen (18) years, being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

*Family* includes a single individual.

*Gender identity or expression* means the inner sense of being a specific gender, gender-related identity, appearance, expression and behavior of an individual, regardless of the individual's assigned sex at birth.

*Hearing officer* means an employee of the Division of Administrative Hearings within the State of Florida, Department of Administration, employed to conduct hearings pursuant to F.S. chapter 120, or other person selected by the administrator to conduct a hearing pursuant to this chapter from a pool of hearing officers, who are members of the Florida Bar, appointed by the mayor and approved by the city council for a term not to exceed two (2) years. The hearing officers shall not be entitled to compensation; however, they shall receive reimbursement for parking in city garages and for mileage for any hearing-related business. Such reimbursement shall be consistent with city policy.

*Marital status* means the state of being unmarried, married, or separated, as defined by state law. The term "unmarried" includes persons who are single, divorced or widowed.

*Quorum* means a majority of the members of the Tampa Human Rights Board.

*Religion* includes all aspects of religious observance, practice and belief.

*Sex*. The terms "sex" or "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions.

*Sexual orientation* means the condition of being heterosexual, homosexual, or bi-sexual or having a history of such identification. This definition is not intended to permit any practice prohibited by state or local law.

Sec. 12-3. Subpoenas; discovery.

The board created by this chapter may issue subpoenas and order discovery in aid of investigations and hearings as required under the provisions of this chapter. Such subpoenas and discovery may be ordered to the same extent and

subject to the same limitations as subpoenas and discovery in a civil action under the Florida Rules of Civil Procedure. The requesting party shall be responsible for service of any subpoena.

Sec. 12-4. Administrative authority; powers and duties.

- (a) The provisions of this chapter shall be administered and enforced by the official. For purposes of administration of the provisions of this chapter, the official's designee shall be the administrator, who shall be appointed by the official.
- (b) The administrator's powers and duties include the following:
  - (1) Receive, initiate and investigate written complaints as provided by this chapter relative to alleged unlawful discriminatory practices;
  - (2) Upon receiving or filing a written complaint, make such investigations as provided by this chapter;
  - (3) Endeavor to resolve complaints, filed pursuant to this chapter, through conciliation;
  - (4) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this chapter;
  - (5) Conduct educational and public information activities that are designed to promote the policy of this chapter.

Sec. 12-5. Human rights board.

- (a) *Created.* There is hereby created the Tampa Human Rights Board, hereinafter called the "board."
- (b) *Composition.* The board shall be composed of nine (9) members who are appointed by the mayor and approved by city council. Board membership shall be chosen to assure representation for all ages, races, religious beliefs and conditions of employment. There shall be on the board at all times at least one (1) representative from each of the following fields: retail merchandising management; industrial management; real estate sales; property leasing; mortgage financing; law enforcement; and labor council. Property leasing shall include managing rental of apartments, mobile home park lot leasing and motel management. The administrator shall be an ex officio, nonvoting member of the board.
- (c) *Terms.* The initial appointments to the board shall be: five (5) members appointed for a term of two (2) years and the remaining initial members for three (3) years. All appointments thereafter shall be for terms of three (3) years. Vacancies shall be filled in the same manner provided for the original appointments for the remainder of the unexpired term. No person shall serve for more than three (3) consecutive terms.
- (d) *Board meetings; compensation.*
  - (1) The board shall hold meetings as necessary to hear and dispose of pending matters. The administrator shall schedule each meeting and give notice of the time and place of meetings to all board members, all parties to be heard and the public. The chair-person may call an unscheduled meeting and meetings may also be called by written notice signed by three (3) members of the board. All meetings shall be public. The mayor may provide such staff as may reasonably be required in the mayor's discretion to assist the board in the performance of its duties. The mayor may provide a regular meeting place for the board.
  - (2) The members of the board shall receive no compensation. Board members may qualify for reimbursement for actual and necessary expenses incurred in the performance of their board duties as prescribed by city policy.
- (e) *Powers and duties.* The powers and duties of the board shall be:
  - (1) To receive and initiate complaints alleging any violation of this chapter for investigation by the administrator;
  - (2) To adopt, promulgate, amend and rescind rules and regulations for the operation of the board and to effectuate the policies of this chapter;
  - (3) Upon failure of conciliation, to review whether the evidence supports the administrator's decision to find reasonable cause, and to order further investigation if it does not;
  - (4) Any other powers and duties provided elsewhere in this chapter.

Secs. 12-6—12-15. Reserved.

ARTICLE II. EMPLOYMENT DISCRIMINATION

***DIVISION 1. GENERALLY***

Sec. 12-16. Purpose.

The general purposes of this article are:

- (1) To provide for execution within the city the policies embodied in the Federal Civil Rights Act of 1964, as amended;
- (2) To secure for all individuals within the city the freedom from discrimination because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, handicap, familial status or marital status, in connection with employment, and thereby to promote the interests, rights and privileges of individuals within the city.

Sec. 12-17. Definitions.

For the purpose of this article, certain abbreviations, terms, phrases, words and their derivatives shall have the following meanings:

*Complaining party* means the city attorney or a person who may bring an action or proceeding under this article.

*Disability* means, with respect to a person:

- (1) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities;
- (2) A record of having such an impairment; or
- (3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance as defined by F.S. § 893.02. Additionally, neither the term "individual with disabilities" nor the term "disability" shall apply to an individual solely because that individual is a transvestite.
  - a. An individual who has a disability is "qualified" with respect to employment if such individual can perform the essential functions of the job in question with reasonable accommodations.
  - b. Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
  - c. Under the provisions of this article, a physical or mental impairment substantially limits one (1) or more of a person's life activities if, because of such impairment, such person is likely to experience difficulty in securing, retaining or advancing in employment.

*Employee* means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any state or political subdivision of any state by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a state government, governmental agency or political subdivision.

*Employer* means any person who has five (5) or more full time employees working more than thirty (30) hours per week, or who has more than fifteen (15) employees irrespective of the number of hours per week, in each of the thirteen (13) or more calendar weeks in the current or preceding calendar year, and any agent of such a person. The term "employer" includes the city.

*Employment agency* means any person regularly undertaking, either with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

*Labor organization* means:

- (1) An organization of any kind, any agency, or employee representation committee, group, association or plan, representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment; or
- (2) Any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization; or
- (3) An agent of a labor organization.

*Lending institution* means any bank, insurance company, savings and loan association or any other person regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information.

*Mediation* means an informal conference to help the parties resolve their dispute prior to the investigation of the complaint.

*Person* includes one (1) or more individuals, corporations, partnerships, associations, labor unions, legal representatives mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries.

*Religion* includes all aspects of religious observance, practice and belief, unless an employer demonstrates that such employer is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

*Respondent* means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or other person or entity accused in a complaint of a discriminatory practice.

*Sex* includes the terms "sex" or "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 12-36(c) shall be interpreted to permit otherwise.

*Training program* includes any plan containing terms and conditions for qualification, recruitment, selection, employment, or training of employees to:

- (1) Enter a specific trade or occupation after completion of a specified training program; or
- (2) Offer a person, who is already either partially or wholly trained in a specified trade or occupation, an opportunity to advance after completion of a specified training program.

Sec. 12-18. Same—ADA equal employment-related definitions adopted.

Except for the definition of the term "employer" which shall be that as defined in section 12-17 of this Code, the definition of terms in section 1630.2 of the ADA regulations (29 CFR 1630.2), as now or hereafter revised, is hereby adopted and incorporated as fully as if set out at length herein.

Secs. 12-19—12-25. Reserved.

## DIVISION 2. UNLAWFUL PRACTICES; EXEMPTIONS <sup>[2]</sup>

Sec. 12-26. Unlawful employment practices.

- (a) *Employers*. It is an unlawful employment practice for an employer:
  - (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to that individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status; or
  - (2) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect that individual's status as an employee, because of such individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status.
- (b) *Employment agencies*. It is an unlawful employment practice for an employment agency, on the basis of an individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status, to:
  - (1) Fail or refuse to refer such individual for employment or otherwise to discriminate against such individual; or
  - (2) Classify or refer such individual for employment.
- (c) *Labor organizations*. It is an unlawful employment practice for a labor organization:
  - (1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of that individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status; or
  - (2) To limit, segregate or classify its membership or applicants for membership or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect that individual's status as an employee or as an applicant for employment, because of an individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status; or
  - (3) To cause, assist, or attempt to cause or assist an employer to discriminate against an individual in violation of this article.
- (d) *Training programs*. It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of that individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status in admission to, or employment in, any program established to provide apprenticeship or other training;

- (e) *Retaliation.* It is an unlawful employment practice for an employer to discriminate against any of such employer's employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this article, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this article.
- (f) *Advertising.* It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print, publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination based on race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status, when religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status is a bona fide occupational qualification for employment.
- (g) *Alteration of test results.* It is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status.
- (h) *Motivations for practice.* Except as otherwise provided in this article, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status was a motivating factor for any employment practice, even though other factors also motivated the practice.
- (i) *Intentional discrimination.* A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this article.
- (j) *Information gathering.* Except as permitted and required by regulations of the board or city, or by applicable federal or state law, it is an unlawful employment practice for an employer or employment agency to elicit information about an employee's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status or to keep or disclose a record of such information for the purposes of effecting discrimination.

Sec. 12-27. Same—ADA unlawful employment-related practices adopted.

The unlawful employment practices in sections 1630.4 through 1630.13 of the ADA regulations (29 CFR 1630.4—1630.13), as now or hereafter revised, are hereby adopted and incorporated as fully as if set out at length herein.

Sec. 12-28. ADA unlawful employment-related defenses adopted.

The unlawful employment-related defenses in section 1630.15 of the regulations (29 CFR 1630.15), as now or hereafter revised, are hereby adopted and incorporated as fully as if set out at length herein.

Sec. 12-29. Adoption of ADA employment-related rules on permitted medical examinations, inquiries, and activities.

The employment-related medical examinations and inquiries specifically permitted in section 1630.14 of the ADA regulations (29 CFR 1630.14), and the employment-related specific activities permitted in section 1630.16 of the ADA regulations (29 CFR 1630.16), as now or hereafter revised, are hereby adopted and incorporated as fully as if set out at length herein.

Secs. 12-30—12-35. Reserved.

Sec. 12-36. Exemptions.

- (a) Notwithstanding any other provision of this article:

- (1) It is not an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of that individual's race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and
  - (2) It is not an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
- (b) Notwithstanding any other provision of this article, it is not an unlawful employment practice for an employer to fail or refuse to hire and employ an individual for any position, for an employer to discharge an individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position:
- (1) If the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any executive order of the President; and
  - (2) If such individual has not fulfilled or has ceased to fulfill that requirement.
- (c) Notwithstanding any other provision of this article:
- (1) It is not an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status;
  - (2) It is not an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status;
- (d) Nothing contained in this article shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this article to grant preferential treatment to any individual or to any group because of the race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status of such individual or group, on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status in any community, state, section or any other area, or in the available work force in any community, state, section or other area.
- (e) The provisions in this article relating to sexual orientation and gender identity or expression shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

Secs. 12-37—12-45. Reserved.

### DIVISION 3. ENFORCEMENT.

Sec. 12-46. Complaints and answers.

- (a) Any person aggrieved by a violation of this article may, within one hundred eighty (180) days after the alleged violation has occurred, file a complaint with the administrator naming the owner, operator, or other person or entity responsible for the alleged violation at a public accommodation and describing the alleged violation. The administrator, on the administrator's own initiative, may also file such a complaint.
- (b) Whenever a complaint is filed under this section by or on behalf of a person claiming to be aggrieved, or by the administrator, the administrator shall, not later than ten (10) days after such filing, serve on the respondent a notice of the complaint, including the date, place and circumstances of the alleged violation, may conduct a mediation and, failing at a resolution of the complaint, shall make an investigation of the complaint;
- (c) Complaints shall be in writing, under oath or affirmation, and shall contain such information and be in such form prescribed by the administrator.
- (d) All complaints filed with the administrator under this article, and all records and documents in the custody of the administrator, which relate to and identify a particular complainant or public accommodation shall be confidential and shall not be disclosed by the administrator, except to the parties or in the course of hearing or proceeding under this article. The restriction of this subsection shall not apply to any record or document which is part of the record of any hearing or court proceeding.

Sec. 12-47. Prompt judicial action.

Whenever a complaint is filed with the administrator and the administrator concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this article, the administrator may request the city attorney to commence, and the city attorney may commence and maintain, an action for appropriate temporary or preliminary relief pending final disposition of such complaint.

Sec. 12-48. Reasonable cause determination; conciliation.

- (a) If the administrator completes an investigation of a complaint and determines that no reasonable cause exists to believe that a violation of this article has occurred or is occurring, the administrator shall dismiss the complaint and promptly notify the person claiming to be aggrieved and the respondent of the administrator's action.
- (b) If the administrator completes an investigation of a complaint and determines that reasonable cause exists to believe that a violation of this article has occurred or is occurring, the administrator shall endeavor to eliminate any such alleged violation by methods of conciliation. Nothing said or done during and as a part of such conciliation shall be made public by the administrator or used as evidence in a subsequent proceeding without the written consent of the persons concerned. A conciliation agreement negotiated under this article may include but is not limited to:
  - (1) Admission or restoration of individuals to a public accommodation;
  - (2) Provision or maintenance of reasonable accommodations;
  - (3) Removal of barriers;
  - (4) Making reasonable modifications.
- (c) The administrator shall make a determination on reasonable cause as promptly as possible and, so far as practical, not later than one hundred twenty (120) days from the filing of the complaint.
- (d) After completing an investigation, where the administrator has not conciliated or dismissed a complaint or made a no cause finding as to the allegations in the complaint, the administrator shall issue a determination that reasonable cause exists to believe that an unlawful public accommodation practice has occurred or is occurring under this article. The administrator shall provide prompt notification of its determination to the person claiming to be aggrieved, the person making the complaint on behalf of such person, if any, and the respondent, or in the case of a complaint filed by the administrator, the person named in the complaint or identified by the administrator, if any, and the respondent.
- (e) If within thirty (30) days after a complaint is filed with the administrator, the administrator has been unable to secure from the respondent a conciliation agreement acceptable to the administrator, the city attorney may bring a civil action against any respondent.
- (f) In the event that the administrator fails to conciliate, or the administrator and the hearing officer fail to take final action on, any complaint under this section within one hundred eighty (180) days of filing sixty (60) days if the complaint is for age discrimination), an aggrieved person may bring a civil action against the respondent named in the complaint in any court of competent jurisdiction. The commencement of such action shall divest the administrator and the hearing officer of jurisdiction of such complaint, except that the administrator may intervene as a matter of right.

Sec. 12-49. Notice of right to sue; procedure and authority.

- (a) *Issuance of notice of right to sue upon request.*
  - (1) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue on the complaint be issued, the administrator shall promptly issue such notice as described in subsection (e) to all parties, at any time after the expiration of one hundred eighty (180) days from the date of filing of the complaint with the administrator, or in the case of a complaint filed by the administrator, one hundred eighty (180) days after the filing of the complaint (60 days in both instances if the complaint is for age discrimination).
  - (2) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue on the complaint be issued, the administrator may issue such notice as described in subsection (e) with copies to all parties, at any time prior to the expiration of one hundred eighty (180) days from the date of filing the complaint with the administrator (60 days if the complaint is for age discrimination); provided, that the administrator has determined that it is probable that the administrator will be unable to complete the administrative processing of the complaint within one hundred eighty (180) days from the filing of the complaint (60 days if the complaint is for age discrimination) and has attached a written certificate to that effect.
  - (3) Issuance of a notice of right to sue shall terminate further proceeding of any complaint not filed by the administrator unless the administrator determines at that time or at a later time that it would effectuate the purpose of this article to further process the complaint. Issuance of a notice of right to sue shall not terminate the processing of a complaint filed by the administrator.
  - (4) The issuance of a notice of right to use does not preclude the administrator from offering such assistance to a person issued such notice as the administrator deems necessary or appropriate.
- (b) *Issuance of notice of right to sue following to administrator's disposition of complaint.*
  - (1) Where the administrator has found reasonable cause to believe that this article has been violated, has been unable to obtain voluntary compliance with this article, and where the administrator has decided not to bring a civil action against the respondent, it will issue a notice of right to sue on the complaint as described in subsection (e) to:
    - a. The person claiming to be aggrieved; or,
    - b. In the case of a complaint filed by the administrator, to any member of the class who is named in the complaint, identified by the administrator in a third-party certificate, or otherwise identified by the administrator as a member of the class, and provide a copy thereof to all parties.
  - (2) Where the administrator has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the administrator shall issue a notice of right to sue on the complaint to the person claiming to be aggrieved.
  - (3) Where the administrator has dismissed a charge pursuant to section 12-48, the administrator shall issue a notice of right to sue as described in subsection (e) to:
    - a. The person claiming to be aggrieved; or,
    - b. In the case of a complaint filed by the administrator, to any member of the class who is named in the complaint, identified by the administrator in a third-party certificate, or otherwise identified by the administrator as a member of the class, and provide a copy thereof to all parties.
  - (4) The issuance of a notice of right to sue does not preclude the administrator from offering such assistance to a person issued such notice as the administrator deems necessary or appropriate.
- (c) Where a complaint has been filed on behalf of a person claiming to be aggrieved, the notice of right to sue shall be issued in the name of the person or organization who filed the complaint.
- (d) *Content of notice of right to sue.* The notice of right to sue shall include:
  - (1) Authorization to the aggrieved person to bring a civil action under this article within ninety (90) days from receipt of such authorization;
  - (2) Advice concerning the institution of such civil action by the person claiming to be aggrieved, where appropriate;
  - (3) A copy of the complaint;
  - (4) The administrator's decision, determination, or dismissal, as appropriate.

Sec. 12-50. Civil action by aggrieved person or city attorney.

- (a) In the case of a civil action commenced pursuant to sections 12-48(e) or (f), or section 12-49, if the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful public accommodation practice alleged in the complaint, the court may enjoin the respondent from engaging in such unlawful public accommodation practice, and order such affirmative action and relief as may be appropriate, which may include, but is not limited to:

- (1) Admission or restoration of individuals to a public accommodation;
  - (2) Provision or maintenance of reasonable accommodations;
  - (3) Removal of barriers;
  - (4) Making reasonable modifications;
  - (5) Reasonable attorney's fees and costs.
- (b) On a claim in which an individual proves a violation under sections 12-64 and 12-65 and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court:
- (1) May grant declaratory relief, injunctive relief, and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under sections 12-64 and 12-65

Sec. 12-51. Pattern or practice cases.

- (a) The administrator has the authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by the administrator.
- (b) Whenever the city attorney has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this article, and that the pattern or practice is of such a nature as to deny the full exercise of the rights herein described, the city attorney may bring a civil action in a court of competent jurisdiction, the complaint or petition by the city attorney shall be accompanied by a certificate that, in the city attorney's opinion, the case is of general public importance.

Secs. 12-52—12-60. Reserved.

### ARTICLE III. DISCRIMINATION IN PUBLIC ACCOMMODATIONS

Sec. 12-61. Purpose.

The general purposes of this article are:

- (1) To provide for execution within the city the policies embodied in Title II of Federal Civil Rights Act of 1964, as amended.
- (2) To secure for all individuals within the city the freedom from discrimination because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status in connection with public accommodations, and thereby to promote the interests, rights and privileges of individuals within the city.

Sec. 12-62. Definitions.

For the purpose of this article, certain abbreviations, terms, phrases, words and their derivatives shall have the following meanings:

*Public accommodation* shall include, but not be limited to, except as hereinafter specified, places or resorts of amusement; inns, hotels, motels and other establishments which provides lodging to transient guests; restaurants, cafeterias, lunchrooms, lunch counters, buffets and other facilities engaged in selling food or beverages; retail establishments; gasoline stations; theaters, motion picture houses, skating rinks, amusement parks, bowling alleys, golf courses, concert halls, gymnasiums, sports arenas, stadiums and other places of exhibition, recreation or entertainment; library or educational facilities supported in part or whole by public funds; public conveyances, including taxis, limousines and buses; barber and beauty shops; hospitals, laundries, swimming pools, nurseries, kindergartens, day-care centers and all establishments holding a license for the sale of alcoholic beverages issued by the Division of Alcoholic Beverages and Tobacco, Department of Business Regulation of the State of Florida. Such term shall not include any establishment, club or place of accommodation which is by its nature distinctly private.

Sec. 12-63. Same—ADA public accommodations-related definitions adopted.

The public accommodations-related definitions in section 36.104 of the ADA regulations (28 CFR 36.104), as now or hereafter revised, are hereby adopted and incorporated as fully as if set out at length herein.

Sec. 12-64. Unlawful practices.

It is an unlawful discriminatory practice for a person, because of the race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status of any person:

- (1) Directly or indirectly, to refuse, withhold from, deny or deprive, or attempt to withhold from, deny or deprive any person any of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.
- (2) Directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation shall be refused, withheld from or denied to any person, or that the patronage of any such person is unwelcome, objectionable or not acceptable, desired or solicited.
- (3) Directly or indirectly, to segregate any person at a place of public accommodation, or to segregate any person in regards to the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.
- (4) To intimidate, threaten, coerce or interfere, or attempt to intimidate, threaten, coerce or interfere with any person in the exercise or enjoyment of, or on account of such person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the provisions in this article.

Sec. 12-65. Same—ADA public accommodations-related unlawful practices adopted.

The public accommodations-related unlawful practices in sections 36.201 through 36.212 (28 CFR 36.201—36.212) (the "general provisions"), and sections 36.301 through 36.310 (28 CFR 36.301-36.310) (the "specific provisions"), as now or hereafter revised, are hereby adopted and incorporated as fully as if set out at length herein. Where both specific and general provisions apply, the specific provisions, including the limitations on those provisions, control over the general provisions.

Sec. 12-66. Exemptions.

- (a) Nothing in this article shall be applied to:
  - (1) Discrimination on the basis of sex in restrooms, shower rooms, bath houses, health spas, or similar facilities which are by their nature distinctly private, or dormitory-lodging facilities;
  - (2) A religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting facilities and accommodations which it owns or operates, for other than a commercial purpose, to persons of the same religious organization or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society, or any nonprofit, charitable, or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, restricts membership in its organization on the basis of race, color, or national origin.
- (b) Nothing in this article shall prohibit the limiting of the use of kindergartens, nurseries, day care centers, theaters and motion picture houses to persons of a particular age group.
- (c) The provisions in this article relating to sexual orientation and gender identity or expression shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

Sec. 12-67. Civil actions for preventive relief.

- (a) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by this article, a civil action for preventive relief, including permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved in a court of competent jurisdiction.
- (b) Upon timely application, the city attorney may intervene in such civil action, if the city attorney certifies that the case is of general public importance.

Sec. 12-68. Enforcement.

The enforcement provisions for employment discrimination prescribed in sections 12-46 through 12-51 of this Code are hereby adopted and expressly made applicable to public accommodations discrimination as fully as if set out at length herein, except as amended [by Ord. No. 2004-73].

Secs. 12-69—12-70. Reserved.

## ARTICLE IV. DISCRIMINATION IN HOUSING

### ***DIVISION 1. GENERALLY***

Sec. 12-71. Purpose.

The general purposes of this article are:

- (1) To provide for execution within the city the policies embodied in Title VIII of the Federal Civil Rights Act of 1968, as amended by the Federal Fair Housing Amendments Act of 1988.
- (2) To secure for all individuals within the city the freedom from discrimination because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, handicap, familial status or marital status in connection with housing and public accommodations, and thereby to promote the interests, rights and privileges of individuals within the city.

Sec. 12-72. Definitions.

For the purpose of this article, certain abbreviations, terms, phrases, words and their derivatives shall have the following meanings:

*Aggrieved person* includes any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

*Broker or agent* includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

*Complainant* means the person, including the administrator or ward, who files a complaint under this article.

*Covered multi-family dwelling* means:

- (1) Buildings consisting of four (4) or more units if such buildings have one (1) or more elevators; and
- (2) Ground floor units in other buildings consisting of four (4) or more units.

*Disability* means, with respect to a person:

- (1) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- (2) A record of having such an impairment; or
- (3) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance as defined by F.S. § 893.02. Additionally, neither the term "individual with disabilities." nor the term "disability" shall apply to an individual solely because that individual is a transvestite.

*Discriminatory housing practice* means an act that is unlawful under this article.

*Dwelling* means any building, structure, or portion thereof which occupied as, or designed or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

*Person* includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, incorporated organizations, trustees, trustees in cases under title 11 of the United States Code, receivers, and fiduciaries.

*Rent* includes to lease, to sublease, to assign, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

*Respondent* means:

- (1) The person or other entity accused in a complaint of a discriminatory practice; and
- (2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under section 12-111(c).

*Sale* includes any contract to sell, exchange, convey, transfer or assign legal or equitable title to or a beneficial interest in dwelling.

Secs. 12-73—12-80. Reserved.

### **DIVISION 2. UNLAWFUL PRACTICES**

Sec. 12-81. Sale or rental.

Except as provided in section 12-101, it is an unlawful discriminatory practice for any person:

- (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status, or marital status.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status, or marital status.
- (3) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status or an intention to make any such preference, limitation or discrimination.
- (4) To represent to any person because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (5) For profit to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status.

Sec. 12-82. Sale or rental to disabled persons.

Except as provided in section 12-101, it is an unlawful discriminatory practice for any person:

- (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
  - a. That buyer or renter;
  - b. A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
  - c. Any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
  - a. That person; or
  - b. A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
  - c. Any person associated with that person.
- (3) For purposes of this section, discrimination includes:
  - a. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
  - b. A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
  - c. In connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:
    1. The public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;
    2. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
    3. All premises within such dwellings contain the following features of adaptive design:
      - i. An accessible route into and through the dwelling;

- ii. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - iii. Reinforcements in bathroom walls to allow later installation of grab bars; and
  - iv. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (4) Compliance with the appropriate requirement of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of paragraph (3)c.3.
  - (5) The city shall review all plans for new construction of covered multi-family housing for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)c. are met. Based on such determination, the city may approve the new construction if the requirements of paragraph (3)c. are met, and may deny the new construction if those requirements are not met.
  - (6) Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 12-83. Residential real estate-related transactions.

- (a) It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status.
- (b) As used in this section, the term "residential real estate-related transaction" means any of the following:
  - (1) The making or purchasing of loans or providing other financial assistance:
    - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
    - b. Secured by residential real estate.
  - (2) The selling, brokering, or appraising of residential real property.

Sec. 12-84. Brokerage services.

It is an unlawful discriminatory practice to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against a person in the terms or conditions of such access, membership, or participation, on account of race, color, religion, national origin, sexual orientation, gender identity or expression, age, disability, familial status or marital status.

Sec. 12-85. Interference, coercion, or intimidation.

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of such person having exercised or enjoyed, or on account of such person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the provisions in this article.

Secs. 12-86—12-100. Reserved.

### ***DIVISION 3. EXEMPTIONS***

#### **Sec. 12-101. Housing.**

- (a) Nothing in this article shall prohibit a religious organization, association, society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (b) Nothing in sections 12-81 or 12-82, other than subsection (3) of section 12-81, shall apply to:
  - (1) Any single-family house sold or rented by an owner; provided, that such private individual owner does not own more than three (3) such single-family houses at any one time; provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one (1) such sale within any twenty-four-month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on such owner's behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three (3) such single-family houses at any one time; provided further, that the sale or rental of any such single-family house shall be excepted from the application of this article only if such house is sold or rented:
    - a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person; and
    - b. Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (3) of section 12-81; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or
  - (2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as said owner's residence.
- (c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if such person:
  - (1) Has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein; or
  - (2) Has, within the preceding twelve (12) months, participated as an agent, other than in the sale of such person's own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein; or
  - (3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.
- (d) No provision in this article regarding familial status shall apply with respect to housing for older persons.
  - (1) As used in this section, "housing for older persons" means housing:
    - a. Provided under any state or federal program that the Secretary of Housing and Urban Development (secretary) determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or
    - b. Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or
    - c. Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the secretary shall develop regulations which require at least the following factors:
      1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

2. That at least eighty (80) percent of the housing is occupied by at least one (1) person fifty-five (55) years of age or older per unit; and
  3. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.
- (2) Housing shall not fail to meet the requirements for housing for older persons by reason of:
- a. Persons residing in such housing on or before September 13, 1988, who do not meet the age requirements of this subsection, provided that new occupants after September 13, 1988, of such housing meet such age requirements; or
  - b. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of this subsection.
- (e) Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, sexual orientation, gender identity or expression, age, disability, familial status or marital status.
- (f) Nothing in this article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under F.S. ch. 893.
- (g) The provisions in this article relating to sexual orientation and gender identity or expression shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.
- (h) Nothing in this article limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
- (i) Nothing in this article affects a requirement of nondiscrimination in any other state or federal law.

Secs. 12-102—12-110. Reserved.

#### DIVISION 4. ENFORCEMENT

Sec. 12-111. Administrative enforcement; preliminary matters.

(a) *Complaints and answers.*

- (1) An aggrieved person may, not later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the administrator alleging such discriminatory housing practice. The administrator, on the administrator's own initiative, may also file such a complaint.
- (2) The administrator may also investigate housing practices to determine whether a complaint should be brought under this article.
- (3) Upon the filing of such a complaint:
  - a. The administrator shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article;
  - b. The administrator shall, not later than ten (10) days after such filing or the identification of an additional respondent under subsection (c), serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint;
  - c. Each respondent may file, not later than ten (10) days after receipt of notice from the administrator, an answer to such complaint.
- (4) Complaints and answers shall be in writing, under oath or affirmation, in the form prescribed by the administrator, and may be reasonable and fairly amended at any time.

(b) *Investigation.*

- (1) The administrator shall commence investigating the allegations in a complaint filed with the administrator, or a complaint that the federal government has referred to the administrator or has deferred jurisdiction over the subject matter of the complaint to the administrator, within thirty (30) days after receipt of such complaint.
- (2) The administrator shall make an investigation of the alleged discriminatory housing practice and complete such investigation within one hundred (100) days after the date the complaint is filed, unless it is impracticable to do so.

- (3) If the administrator is unable to complete the investigation within one hundred (100) days after the date the complaint is filed, the administrator shall notify the complainant and respondent in writing of the reasons for not doing so.
  - (4) The administrator shall make a final administrative disposition of a complaint within one (1) year after the date the complaint is filed, unless it is impracticable to do so. If the administrator is unable to make a final administrative disposition within one (1) year after the date the complaint is filed, the administrator shall notify the complainant and respondent in writing of the reasons for not doing so.
- (c) *Additional or substitute respondent.*
- (1) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsection (a), to such person, from the administrator.
  - (2) Such notice, in addition to meeting the requirements of subsection (a), shall explain the basis for the administrator's belief that the person to whom the notice is addressed is properly joined as a respondent.
- (d) *Conciliation.*
- (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the administrator, the administrator shall, to the extent feasible, engage in conciliation with respect to such complaint.
  - (2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the administrator.
  - (3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.
  - (4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the administrator determines that disclosure is not required to further the purposes of this article.
- (e) *Prohibitions and requirements with respect to disclosure of information.*
- (1) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned.
  - (2) Notwithstanding subsection (1), the administrator shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the administrator's investigation, the final investigative report relating to that investigation and other information derived from the investigation, provided the release of such other information derived from the investigation does not place an excessive burden on the complainant that might discourage the filing of complaints.
- (f) *Prompt judicial action.*
- (1) If the administrator concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the administrator may authorize the city attorney to commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint, in accordance with F.S. § 760.34(8).
  - (2) Upon receipt of such authorization, the city attorney shall promptly commence and maintain such an action.
  - (3) A temporary restraining order or other order granting preliminary or temporary relief under this article shall be governed by the applicable Florida Rules of Civil Procedure.
  - (4) The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and section 12-112
- (g) *Investigative report.* At the end of each investigation under this section, the administrator shall prepare a final investigative report containing:
- (1) The names and dates of contacts with witnesses;
  - (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
  - (3) A summary description of other pertinent records;
  - (4) A summary of witness statements; and
  - (5) Answers to interrogatories.
- Final report under this subsection may be amended if additional evidence is later discovered.
- (h) *Reasonable cause determination and effect.*
- (1) The administrator shall, within one hundred (100) days after the filing of the complaint, determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred

or is about to occur, unless it is impracticable to do so, or unless the administrator has approved a conciliation agreement with respect to the complaint. If the administrator is unable to make the determination within one hundred (100) days after the filing of the complaint, the administrator shall notify the complainant and respondent in writing of the reasons for not doing so.

- (2) For the purposes of this article, "reasonable cause" shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that a discriminatory housing practice has occurred or is about to occur.
  - (3) If the administrator determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the administrator shall, except as provided in paragraph (4) of this subsection, immediately issue a charge on behalf of the aggrieved person, for further proceedings under section 12-112.
  - (4) If the administrator determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the administrator shall immediately refer the matter to the city attorney for appropriate action under section 12-114(c), instead of issuing a charge.
- (i) *Charge.* Such charge:
    - (1) Shall consist of a short and plain statement of the facts upon which the administrator has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
    - (2) Shall be based on the final investigative report; and
    - (3) Need not be limited to the facts or grounds alleged in the complaint.
  - (j) *Service of copies of charge.* Within twenty (20) days after the administrator issues a charge under this section, the administrator shall cause a copy thereof, together with information as to how to make an election under section 12-112(a) and the effect of such an election, to be served:
    - (1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and
    - (2) On each aggrieved person on whose behalf the complaint was filed.
  - (k) *Dismissal.* If the administrator determines that no reasonable causes exists to believe that a discriminatory housing practice has occurred or is about to occur, the administrator shall promptly dismiss the complaint. The administrator shall make public disclosure of each such dismissal.
  - (l) *Pending civil trial.* The administrator may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law, seeking relief with respect to that discriminatory housing practice.

Sec. 12-112. Enforcement by administrator.

- (a) *Election of judicial determination.* When a charge is filed under section 12-111, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (b) in lieu of a hearing under subsection (c). The election must be made not later than twenty (20) days after the receipt by the electing person of service under section 12-111(j) or, in the case of the administrator, not later than twenty (20) days after such service. The person making such election shall give notice of doing so to the administrator and to all other complainants and respondents to whom the charge relates.
- (b) *Civil action for enforcement when election is made for such civil action.*
  - (1) If an election is made under subsection (a), the administrator shall authorize, and not later than thirty (30) days after the election is made, the city attorney shall commence and maintain, a civil action on behalf of the aggrieved person in a court of competent jurisdiction seeking relief as provided by this article, and state and/or federal law.
  - (2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.
  - (3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 12-113. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under section 12-113 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.
- (c) *Administrative hearing in absence of election.*

- (1) If a timely election is not made under subsection (a) with respect to a charge filed under section 12-111, the administrator shall provide an opportunity for a hearing, on the record, on the charge.
  - (2) The administrator shall arrange for the hearing to be conducted by a hearing officer.
  - (3) The hearing officer shall commence the hearing under this section no later than one hundred twenty (120) days following the issuance of the charge, unless it is impracticable to do. If the hearing officer is unable to commence the hearing within one hundred twenty (120) days after the issuance of the charge, the hearing officer shall notify the administrator, the aggrieved person on whose behalf the charge was filed, and the respondent in writing of the reasons for not doing so.
  - (4) The hearing officer shall make findings of fact and conclusions of law within sixty (60) days after the end of the hearing under this section, unless it is impracticable to do so. If the hearing officer is unable to make findings of fact and conclusions of law within such period, or any succeeding sixty-day period thereafter, the hearing officer shall notify the administrator, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.
  - (5) The city attorney shall provide legal representation for the complainant in such administrative hearings.
  - (6) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.
  - (7) A hearing officer may not continue a hearing under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law, seeking relief with respect to that discriminatory housing practice.
- (d) *Order; administrative penalties.*
- (1) If the hearing officer finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such hearing officer shall promptly issue a recommended order to the administrator prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs.
  - (2) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this article.
  - (3) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by governmental agency, the administrator shall, not later than thirty (30) days after the date of the issuance of such order (or, if the order is judicially reviewed, thirty (30) days after such order is in substance affirmed upon such review):
    - a. Send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and
    - b. Recommend to that governmental agency appropriate disciplinary action; including, where appropriate, the suspension or revocation of the license of the respondent.
  - (4) In the case of an order against a respondent whom another order was issued within the preceding five (5) years under this section, the administrator shall send a copy of each such order to the city attorney.
  - (5) The relief provided for under this section are applicable regardless of whether the administrator or an aggrieved person initiated the investigation under this article.
  - (6) If the hearing officer finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such hearing officer shall enter an order dismissing the charge. The administrator shall make such disclosure of each such dismissal.
- (e) *Review by administrator; service of final order.*
- (1) The administrator may review any finding, conclusion, or order issued by a hearing officer under this section. Such review shall be completed not later than thirty (30) days after the finding, conclusion, or order is so issued; otherwise the finding, conclusion, or order becomes final.
  - (2) The administrator shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.
- (f) *Judicial review.* Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought, may petition for a review of such order in a court of competent jurisdiction. Such review shall be limited to a review of the administrator's and hearing officer's written documents expressing their action and the record of the proceedings conducted by the hearing officer under this section. A reviewing court may modify, revoke or remand the final order only upon a finding that such order is not supported by substantial competent evidence and/or the proceedings conducted did not comply with the essential requirements of law. Costs or fees may not be assessed against the administrator or the city in any appeal from

a final order issued under this section. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the administrator.

(g) *Court enforcement of administrative order.*

- (1) The administrator, or any person entitled to relief under a hearing officer's order, may seek enforcement of a final order issued under this section by filing a petition for enforcement, in a court of competent jurisdiction, praying that the final order be enforced and for appropriate temporary or permanent relief, or restraining order. A court considering such petition shall grant it unless there is a showing by the respondent, based upon the record of the proceedings which were conducted under this section, that the order is not supported by substantial competent evidence and/or the proceedings conducted did not comply with the substantial requirements of law.
- (2) The administrator shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the administrator to the parties to the proceeding before the hearing officer.

(h) *Relief which a court may grant; fines.* Upon the filing a petition under subsection (f) or (g), the court may:

- (1) Grant to the petitioner, or any other party, such temporary or permanent relief, restraining order, or other order as the court deems just and proper;
- (2) Affirm, modify, revoke, or set aside, in whole or in part, the order, or remand the order for further proceedings;
- (3) Enforce such order to the extent that such order is affirmed or modified;
- (4) Impose the following fines, pursuant to F.S. § 760.34(8), for each violation of division 2 of this article or other provision of this article, to vindicate the public interest:
  - a. Up to ten thousand dollars (\$10,000.00) if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
  - b. Up to twenty-five thousand dollars (\$25,000.00) if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of this charge; and
  - c. Up to fifty thousand dollars (\$50,000.00) if the respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs b. and c. may imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(j) *Intervention.* Any party to the proceeding before the hearing officer may intervene in a civil action, regarding the final order from such proceeding, brought pursuant to this section.

(i) The court shall award reasonable attorney's fees and costs to the city in any action in which the city prevails.

Sec. 12-113. Enforcement by private persons.

(a) *Civil action.*

- (1) Under the provisions of F.S. § 760.35, an aggrieved person may commence a civil action in a court of competent jurisdiction not later than two (2) years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.
- (2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under section 12-111(a) and without regard to the status of any such complaint, but if the administrator has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.
- (3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the administrator if a hearing officer has commenced a hearing on the record under this article with respect to such charge.

(b) *Relief which a court may grant.* In a civil action under this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and subject to subsection (c), may grant as relief, as the court deems appropriate, any permanent or

temporary injunction, temporary restraining order, reasonable attorney's fees and costs, or other order (including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be deemed appropriate).

- (c) *Effect on certain sales, encumbrances, and rentals.* Relief granted under this section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer, or tenant, without actual notice of the filing of a complaint with the administrator or civil action under this article.
- (d) *Intervention by city attorney.* Upon timely application, the city attorney may intervene in such civil action, if the city attorney certifies that the case is of general public importance. Upon such intervention, the city attorney may obtain such relief as would be available to the city attorney under section 12-114(d) in a civil action to which such section applies.

Sec. 12-114. Enforcement by the city attorney.

- (a) *Pattern or practice cases.*
    - (1) Whenever the city attorney has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this article, or that any group of persons has been denied any of the rights granted by this article and such denial raises an issue of general public importance, the city attorney may commence a civil action in a court of competent jurisdiction.
    - (2) For the purposes of this section, "reasonable cause" shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that a person or persons is engaged in the actions described in paragraph (1).
    - (3) Whenever the administrator has reason to believe that a basis may exist for the commencement of proceedings against any respondent under this subsection, the administrator shall transmit the information upon which such belief is based to the city attorney.
  - (b) *Breach of a conciliation agreement.*
    - (1) Whenever the administrator has reasonable cause to believe that a respondent has breached a conciliation agreement, the administrator shall refer the matter to the city attorney with a recommendation that a civil action be filed for the enforcement of such agreement.
    - (2) The city attorney may commence a civil action in a court of competent jurisdiction for appropriate relief with respect to breach of a conciliation agreement referred to the city attorney by the administrator.
    - (3) A civil action may be commenced under this subsection not later than the expiration of ninety (90) days after the referral of the alleged breach of a conciliation agreement.
  - (c) *Referral of discriminatory housing practice for enforcement.*
    - (1) The city attorney may commence a civil action in a court of competent jurisdiction for appropriate relief with respect to a discriminatory housing practice referred to the city attorney by the administrator under section 12-111(h)(4).
    - (2) A civil action under this subsection may be commenced not later than the expiration of eighteen (18) months after the date of the occurrence or the termination of the alleged discriminatory housing practice.
  - (d) *Relief which a court may granted.* In a civil action under subsections (a), (b) or (c), the court may:
    - (1) Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;
    - (2) Award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and
    - (3) Impose the following fines, pursuant to F.S. § 760.34(8), to vindicate the public interest;
      - a. Up to fifty thousand dollars (\$50,000.00), for a first violation; and
      - b. Up to one hundred thousand dollars (\$100,000.00), for any subsequent violation.
  - (e) *Enforcement of subpoenas.* The city attorney, on behalf of the board, may enforce a subpoena issued under this chapter in appropriate proceedings pursuant to law.
  - (f) *Intervention in civil actions.* Upon timely application, any person may intervene in a civil action commenced by the city attorney under subsections (a), (b) or (c) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under section 12-113
  - (g) The court shall award reasonable attorney's fees and costs to the city in any action which the city prevails.
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Secs. 12-115—12-119. Reserved.

## ARTICLE V. DOMESTIC PARTNERSHIP REGISTRY

### Sec. 12-120. Definitions.

For purposes of this article:

*Affidavit of domestic partnership* means a sworn form under penalty of perjury, which certifies that two (2) domestic partners meet the registration requirements as described in section 12-121.

*City clerk* means the City Clerk of the City of Tampa or such other person or office approved by the city council to administer the domestic partnership registry.

*Dependent* is a person who resides within the household of a registered domestic partnership and is:

- (1) A biological, adopted or foster child of a registered domestic partner; or
- (2) A dependent as defined under IRS regulations; or
- (3) A ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

*Domestic partners* means only two (2) adults who are parties to a domestic partnership and who meet the requisites for a domestic partnership as established pursuant to section 12-121.

*Health care facility* includes, but is not limited to, hospitals, nursing homes, hospice care facilities, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities and any other short-term or long-term health care facilities located within the City of Tampa.

*Jointly responsible* means each domestic partner mutually agrees to provide for the other partner's basic needs while the domestic partnership is in effect, except that partners need not contribute equally or jointly to said basic needs such as food and shelter.

*Mutual residence* means a residence shared by the registered domestic partners; it is not necessary that the legal right to possess the place of residence be in both of their names. Two (2) people may share a mutual residence even if one or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

### Sec. 12-121. Registration of domestic partnerships.

- (a) A domestic partnership may be registered by any two (2) persons by filing an affidavit of domestic partnership with the city, which affidavit shall comply with all requirements set forth in this article V for establishing such domestic partnership. Upon payment of any required fees, the city clerk shall file the affidavit of domestic partnership and issue a certificate reflecting the registration of the domestic partnership in the city. The clerk must maintain or arrange for maintenance of an online searchable database of the domestic partnerships which have been registered with the city.
- (b) An affidavit of domestic partnership shall contain the name and address of each domestic partner, the signature of each partner, the signatures of two (2) witnesses for each partner signature, and each partner shall swear or affirm under penalty of perjury that:
  - (1) Each person is at least eighteen (18) years old and competent to contract;
  - (2) Neither person is currently married under Florida law or is a partner in a domestic partnership or a member of civil union with anyone other than the co-applicant;
  - (3) They are not related by blood as defined in Florida law;
  - (4) Each person considers himself or herself to be a member of the immediate family of the other partner and to be jointly responsible for maintaining and supporting the registered domestic partnership;
  - (5) The partners reside together in a mutual residence;
  - (6) Each person agrees to immediately notify the city clerk, in writing, if the terms of the registered domestic partnership are no longer applicable or one of the domestic partners wishes to terminate the domestic partnership; and
  - (7) Each person expressly declares their desire and intent to designate their domestic partner as their healthcare surrogate and as their agent to direct the disposition of their body for funeral and burial.
- (c) Any partner to a domestic partnership may file an amendment to the domestic partnership certificate issued by the city clerk to reflect a change in his or her legal name or address. Amendments shall be signed by both members of the registered domestic partnership under oath.

### Sec. 12-122. Termination of registered domestic partnership.

- (a) Either partner to a registered domestic partnership may terminate such registration by filing a notarized affidavit of termination of domestic partnership registration with the city clerk. Upon the payment of the

required fee, the city clerk shall file the affidavit and issue a certificate of termination of the domestic partnership to each partner of the former partnership. The termination shall become effective ten (10) days from the date the certificate of termination is issued.

- (b) A registered domestic partnership will automatically terminate upon notice to the city clerk of the following events:
  - (1) One (or both) of the domestic partners marries in Florida;
  - (2) One of the domestic partners dies (provided however, the provisions relating to funeral and burial decisions shall survive); or
  - (3) One of the domestic partners registers with another partner.

The marrying, surviving or re-registering domestic partner(s) shall file an affidavit terminating the domestic partnership within ten (10) days of one of the occurrences listed in subsections (b)(1) through (3) above.

Sec. 12-123. Maintenance of records; filing fees.

- (a) The city clerk shall prepare the form of all affidavits, amendments, and certificates required to be filed under this article. The city clerk shall maintain a record of all affidavits, amendments, and certificates filed pursuant to this article.
- (b) The city clerk is authorized to establish fees for the filing of any affidavits, amendments, and the issuance of any certificates required by this article, subject to the approval of the Tampa City Council. Any fees established under this section shall be reasonable and commensurate with the actual costs of administering the provisions of this article.
- (c) The city clerk is authorized and directed to take all actions necessary to implement the provisions of this section within ninety (90) days after this article is enacted.
- (d) If Hillsborough County, Florida establishes a domestic partnership registry law that is substantially similar to the City of Tampa's Domestic Partnership registry code provisions, the city clerk shall collaborate with Hillsborough County to determine whether a joint registration system will most efficiently serve our citizens. The city clerk will bring any recommendations for joint administration to city council for its consideration. If such a joint registry is established, the references herein to the city clerk shall then mean the filing officer for the joint registry approved by city council and Hillsborough County.

Sec. 12-124. Rights and legal effect of registered domestic partnership.

To the extent not superseded by federal, state, or other city law or ordinance, or contrary to rights conferred by contract or separate legal instrument, registered domestic partners shall have the following rights:

- (a) *Health care facility visitation.* All health care facilities operating within the city shall honor the registered domestic partnership documentation issued pursuant to this Code as evidence of the partnership and shall allow a registered domestic partner visitation as provided under federal law. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.
- (b) *Health care decisions.* This section pertains to decisions concerning both physical and mental health. Registry as a domestic partner shall be considered to be written direction by each partner designating the other to make health care decisions for their incapacitated partner, and shall authorize each partner to act as the other's healthcare surrogate as provided in F.S. ch. 765, and otherwise as provided by federal law. Further, no person designated as a health care surrogate shall be denied or otherwise defeated in serving as a health care surrogate based solely upon his or her status as the domestic partner of the partner on whose behalf health care decisions are to be made. Any statutory form, including but not limited to, a living will or health care surrogate designation in the form prescribed by F.S. ch. 765, that is properly executed after the date of registration which contains conflicting designations shall control over the designations by virtue of the registration.
- (c) *Funeral/burial decisions.* Registry as a domestic partner shall be considered to be written direction by the decedent of his or her intention to have his or her domestic partner direct the disposition of the decedent's body for funeral and burial purposes as provided in F.S. ch. 497, unless the decedent provides conflicting, written inter vivos authorization and directions that are dated after the date of the registration, in which case the later dated authorization and directions shall control.
- (d) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including but not limited to notification of family members in an emergency, "notification of family" shall include registered domestic partners.
- (e) *Pre-need guardian designation.* A person who is a party to a registered domestic partnership, pursuant to section 12-121 above, shall have the same right as any other individual to be designated as a preneed

guardian pursuant to F.S. ch. 744, and to serve in such capacity in the event of his or her domestic partner's incapacity. A domestic partner shall not be denied or otherwise be defeated in serving as the plenary guardian of his or her domestic partner or the partner's property under the provisions of F.S. ch. 744, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

- (f) *Participation in education.* To the extent allowed by federal and state law, and in a manner consistent with any applicable court orders or valid agreements or contracts, a registered domestic partner shall have the same rights to participate in the education of a dependent of their registered domestic partnership as a biological parent to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the city. However, if a biological parent of a minor dependent, whose parental rights have not been terminated, objects to the participation of a non-biological registered domestic partner in education conferences or other dissemination of educational information, only the participation of the biological parents shall be allowed.

Sec. 12-125. Limited effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene city, county, state or federal law or to impair any court order or contractual agreement.
- (b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.

Sec. 12-126. Enforcement.

A registered domestic partner may enforce the rights under section 12-124 by filing a private judicial action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

Sec. 12-127. Recognition of domestic partnerships registered in other jurisdictions.

All rights, privileges and benefits extended to domestic partnerships registered pursuant to this article shall also be extended to domestic partnerships registered pursuant to domestic partnership laws in other jurisdictions, so long as the registry documents issued by other jurisdictions comply with all applicable state and federal requirements. If a conflict occurs between jurisdictions, this article shall govern in the city.

## **ARTICLE VI. CRIMINAL HISTORY SCREENING PRACTICES <sup>[3]</sup>**

Sec. 12-128. Definitions.

For purposes of this article:

*Applicant* means a person who applies for employment with the City of Tampa, excluding persons applying for employment with the police or fire department.

*Background check* means the process of verifying information submitted by an applicant, including criminal history, through third party sources.

*Criminal history* means any information related to criminal charges against the applicant, proceedings related to the applicant's criminal charges and disposition of the applicant's criminal charges.

*Finalist* means an applicant selected for a position.

*Initial application for employment* means any document, whether in paper or electronic form, the City of Tampa requires an applicant to submit prior to being selected as a finalist for a position.

*Position* means the particular job with the City of Tampa sought by the applicant.

Sec. 12-129. Background checks.

- (a) Except as otherwise provided by state or federal law, the City of Tampa will not inquire about an applicant's criminal history on its initial application for employment.
- (b) Except as otherwise provided by state or federal law, the City of Tampa will not seek an applicant's authorization to conduct a background check unless and until the applicant is selected as the finalist for a position.
- (c) The City of Tampa will make the finalist a contingent offer of employment, pending a successful background check, as determined by the City of Tampa.
- (d) If the City of Tampa determines the background check makes the finalist ineligible for the position, the finalist will be notified and given an opportunity to respond. The City of Tampa will consider any additional information provided in writing by the finalist within five business days of notification of ineligibility.

(e) The City of Tampa's selection and hiring decisions are final and are not subject to appeal.

Sec. 12-130. Limiting provisions.

- (a) This article does not apply to the selection of any position that is otherwise subject to additional screening or requirements regarding criminal history as allowed by state or federal law.
- (b) Nothing in this article requires the city to hire someone with a criminal record, nor limits the city's ability to select the most qualified applicant for a position.
- (c) Nothing in this article prohibits the city from denying employment based on a criminal conviction directly related to the position sought.
- (d) Nothing in this article creates a cause of action for any applicant with regard to hiring or selection for employment.

Sec. 12-131. Implementation.

The director of human resources will have ninety (90) days from the effective date of this ordinance to develop and implement any policies necessary to ensure full compliance with this section.

## Appendix of Existing Ordinances:

### Pinellas County:

## Chapter 42 HUMAN RELATIONS

### ARTICLE I. IN GENERAL

Secs. 42-1—42-30. Reserved.

### ARTICLE II. EQUAL OPPORTUNITY

Sec. 42-31. Purpose; declaration of policy.

The general purpose of this article and the policy of the city, in keeping with the laws of the United States of America and the spirit of the Constitution of the State of Florida, is to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain employment, housing and public accommodations of the person's choice in the city without regard to race, color, national origin, religion, sex, gender identity or expression, genetic information, sexual orientation, disability, marital status, familial status, or age, and to that end, to prohibit discrimination in employment, housing and public accommodations by any person.

Sec. 42-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrator* means that person appointed pursuant to section 42-33.

*Age* means the chronological age of any individual who is 18 years or older.

*Classification category* means that category to, or basis upon, which discrimination is prohibited in this article, such categories or basis being as follows: race, color, national origin, religion, sex, gender identity or expression, genetic information, sexual orientation, disability, marital status, familial status, or age.

*Complainant* means any person filing a complaint pursuant to this article.

*Disabled persons* means persons who can demonstrate a physical or mental impairment which substantially limits one or more of such persons' major life activities. Physical or mental impairment includes any physiological disorder or condition, disfigurement or anatomical loss affecting one or more of the body systems. The term "disabled persons" does not include persons who have current, illegal use of or addiction to alcohol or a controlled substance as defined by F.S. ch. 893, as now enacted or hereinafter amended.

- (1) *Disabled individual* is "qualified" with respect to employment if such individual can perform the essential functions of the job in question with reasonable accommodations.
- (2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) *Substantially limited* means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

*Discriminatory practice* means an intentional act that is unlawful and prohibited as defined in this article.

*Employee* means a person employed by or seeking employment from an employer. It does not include any person employed by parents, spouse or child.

*Employer* means any person who employs 15 or more employees for wages, salaries or commission within the city, exclusive of parents, spouse or children, in each of the four or more calendar weeks in the current calendar year. For the purposes of this article, an employer is also any person acting on behalf of an employer, directly or indirectly.

*Entity* means employees, employer or person, as used or defined in this article.

*Family* means one or more individuals who have not attained the age of 18 years being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody, with the written permission of such parent or other person.

*Gender identity or expression* means a person's various individual attributes, actual or perceived, as they are understood to be masculine and/or feminine, or a person's self-identity, self-image, appearance or expression as a man or woman, whether or not different from those traditionally associated with the person's sex at birth.

*Genetic information* means information about an individual's genetic tests, the genetic tests of an individual's family members, the manifestation of a disease or disorder in an individual's family members, or any request of or receipt by the individual or family members of genetic services.

*Housing and housing accommodations* mean any building, structure or portion thereof, or other facility which is occupied as, or designed or intended for occupancy as a residence, and any vacant land which is offered for sale or

lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home, trailer or other facility. However, nothing in this article shall apply to dwellings occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

*Interested parties* means the persons filing a complaint and the persons against whom a complaint has been filed.

*Lending institution* means any bank, insurance company, savings and loan association or any other person regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information.

*Marital status* means the state of being single, divorced, widowed, married, or separated, as defined by state law.

*Mediation agreement* means a written statement entered into between a complainant and respondent setting forth the resolution of the issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent and the mediator.

*Mediator* means the person appointed pursuant to [section 42-43](#).

*National origin* means the origin of an ancestor, the country of origin or a person's forbear, naturally, by marriage or by adoption.

*Owner* means any person, including, but not limited to, a lessee, sublessee, assignee, manager or agent, and also including the city and its departments or other subunits, having the right of ownership or possession of the authority to sell or lease any real property.

*Person* means one or more individuals, employees, employers, employment agencies, owners, businesses, governments, government agencies, governmental departments, unions, joint apprenticeship committees, firms, associations, joint ventures, partnerships, estates, trusts, trustees, trustees in bankruptcy, joint-stock companies, receivers, syndicates, fiduciaries, corporations, unincorporated organizations, and all other groups or combinations.

*Public accommodations* means any retail establishment, an inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence; any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station; any bar, lounge, nightclub or other facility principally engaged in selling alcoholic beverages for consumption on the premises or any facility principally engaged in selling both food and alcoholic beverages for consumption on the premises; any motion picture house, theater, concert hall, convention hall, or other place of exhibition of entertainment; any establishment otherwise covered by this article or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment. The term "public accommodations" does not include a bona fide private club or other establishment not in fact open to the general public.

*Real property* means any land, buildings, fixtures, and all other improvements to land.

*Rent* means to lease, sublease, assign, let or otherwise grant for a consideration the right to occupy premises that are not owned by the occupant.

*Respondent* means any person or entity against whom a complaint is filed pursuant to this article.

*Sale* means any contract to sell, exchange, convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

*Sex* means a male or female.

*Sexual orientation* means the state of being heterosexual, homosexual or bisexual, or having a history of such identification.

#### Sec. 42-33. Administrative authority; powers and duties.

- (a) For purposes of administration of the provisions of this article, the mayor or mayor's designee shall be the administrator.
- (b) The administrator's powers and duties shall include, but not be limited to:
  - (1) Receiving written complaints as provided by this article relative to alleged unlawful discriminatory practices and transmitting the complaints to a mediator for proper handling;
  - (2) Establishing, administering or reviewing programs at the request of the city commission and making reports on such programs to the city commission;
  - (3) Rendering to the city commission annual written reports of activities under the provisions of this article along with such comments and recommendations as the administrator may choose to make;
  - (4) Cooperating with and rendering technical assistance to federal, state, local and other public and private agencies, organizations and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this article; and

- (5) Conducting educational and public information activities that are designed to promote the policy of this article.

Sec. 42-34. Housing and public accommodation complaints.

All complaints involving fair housing and public accommodation matters shall be referred by the administrator to the county fair housing division of the office of equal opportunity.

Sec. 42-35. Discrimination in employment.

It is an unlawful discriminatory practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to that individual's compensation, terms, conditions, or privileges of employment, because of such individual's classification category.

Sec. 42-36. Employment exemptions.

- (a) Notwithstanding any other provisions of this article, the following shall not be unlawful discriminatory practices:
  - (1) For an employer to hire and employ employees on the basis of that individual's classification category in those certain instances where such classification category is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
  - (2) For a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion. However, this exception will not apply if such institution restricts membership in its organization on the basis of race, color or national origin.
  - (3) For any employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earning by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of one's classification category.
  - (4) For an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of one's classification category.
- (b) Nothing contained in this article shall be interpreted to require any employer to grant preferential treatment to any individual or to any group because of the classification category of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any classification category employed by any employer in comparison with the total number or percentage of persons of such classification category in any community, state, section or any other area, or in the available work force in any community, state, section or other area.
- (c) This article shall not apply to a religious corporation or association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- (d) Notwithstanding any other provisions of this article, it is not an unlawful discriminatory practice for an employer to consider an individual's religion when making a decision concerning that individual if the employer demonstrates that the reason for considering that individual's religion is that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Sec. 42-37. Discrimination in public accommodations.

- (a) It is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent, or employee of any place of public accommodation, resort or amusement, because of the classification category of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, that are afforded the other customers or, directly or indirectly, to publish, circulate, issue, display, place, maintain, cost or mail any written or printed communications or notice of advertisement to the effect that any person on account of classification category,

or the patronage of any person belonging to any particular classification category, is unwelcome, objectionable or not acceptable, desired or solicited.

- (b) The production of or proof of the display or maintenance of any such written or printed notice or advertisement purporting to relate to any place of public accommodation shall be presumptive evidence that such display or maintenance was authorized by the person maintaining and operating such place of public accommodation.

Sec. 42-38. Public accommodations exemptions.

Nothing in this article shall be applicable to:

- (1) Discrimination on the basis of sex in restrooms, shower rooms, bathhouses, health spas or similar facilities, which are by their nature distinctly private, or dormitory-lodging facilities; or
- (2) A religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society from limiting facilities and accommodations which it owns or operates for other than a commercial purpose to persons of the same religious organization or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of race, color or national origin.

Sec. 42-39. Discrimination in housing.

- (a) In connection with any of the transactions set forth in this section affecting a housing accommodation, it shall be unlawful for any person, owner, financial institution, real estate broker or any representative of the above to engage in any of the following acts because of the classification category of a prospective buyer, renter, lessee or any person associated therewith:
  - (1) To refuse to sell, purchase, rent, lease, finance, negotiate or withhold any housing accommodation or to evict a person;
  - (2) To discriminate against a person in the terms, conditions, or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith;
  - (3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation;
  - (4) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation;
  - (5) To refuse to lend money whether or not secured by mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, improvement, repair or maintenance of any housing accommodation or to impose different terms or conditions of such financing or refuse to provide title or insurance relating to the ownership or use of any interest in any housing accommodation;
  - (6) To make, publish, print, circulate, post, mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation which indicates any discrimination or any intent to discriminate;
  - (7) To discriminate in a financial transaction involving real property because of its location, i.e., to "redline";
  - (8) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental, lease, or the furnishing of facilities or services in connection therewith;
  - (9) To induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental, lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of a person of a particular classification category will or may result in:
    - a. The lowering of property values in the area;
    - b. An increase in criminal or anti-social behavior in the area; or
    - c. A decline in the quality of the schools serving in the area;
  - (10) To make any representations concerning the listing for sale, purchase, rental, or lease, or the anticipated listing for sale, purchase, rental or lease of any housing accommodation for the purpose of inducing or attempting to induce any such listing for any of the above transactions;

- (11) To engage in or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play upon fear with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental, lease or listing of any housing accommodation on any basis prohibited by this article;
  - (12) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article, or to obstruct or prevent any person from complying with the provisions of this article or any order issued under this article;
  - (13) To resist, prevent, impede or interfere with the mediator in the lawful performance of his duties under this article;
  - (14) To canvass to commit any unlawful practice prohibited by this article;
  - (15) To deny or withhold any housing accommodation from a person on any basis prohibited by this article; or
  - (16) To deny any qualified person access to or membership in or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation on any basis prohibited by this article.
- (b) In connection with the design and construction of covered multifamily dwellings submitted for building permit on or after the effective date of the ordinance from which this article is derived, it shall be unlawful to fail to design and construct those housing accommodations in such a manner that:
- (1) The public use and common use portions of such dwelling are readily accessible to and usable by disabled persons;
  - (2) All the doors designed to allow passage into and within all premises within such housing accommodations are sufficiently wide to allow passage by persons in wheelchairs; and
  - (3) All premises within such accommodations contain the following features of an adaptive design:
    - a. An accessible route into and throughout the dwelling;
    - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
    - c. Reinforcements in the bathroom walls to allow later installation of grab bars; and
    - d. Usable kitchens and bathroom such that an individual in a wheelchair can maneuver about the space.
- (c) As used in this section, the term "covered multifamily dwelling" means:
- (1) A building consisting of four or more housing units and has an elevator; or
  - (2) The ground floor units of a building which consists of four or more housing units and does not have an elevator.
- (d) Conformance with the appropriate specifications of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped persons, commonly cited as "ANSI A117.1 (1986)," suffices to satisfy the requirements of this article.

Sec. 42-40. Housing exemptions.

- (a) Nothing in this article shall prohibit a religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting or from advertising the sale, rental or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of race, color or national origin, nor shall anything in this article prohibit a private club not in fact opened to the public, which as an incident to its preliminary purpose provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (b) No provision of this article regarding familial status or age shall apply to the housing for older persons. As used in this subsection, the term "housing for older persons" means housing:
  - (1) Specifically designed and operated, pursuant to any local, state, or federal regulations, to assist elderly persons as defined in the local, state or federal program;
  - (2) Intended for and solely occupied by persons 62 years of age or older; or
  - (3) Intended for and occupied by at least one person 55 years of age or older per unit.
- (c) In determining whether the housing qualifies as housing for older persons as provided in this section, the mediator or county fair housing division shall consider, but not be limited to, the following factors:

- (1) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;
  - (2) That at least 80 percent of the housing is occupied by at least one person 55 years of age or older per unit; and
  - (3) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (d) Housing shall not fail to be considered housing for older persons if:
- (1) A person who resides in such housing on or after the effective date of the ordinance from which this article is derived does not meet the age requirements of subsection (b) of this subsection, provided that any new occupant meets such age requirements; or
  - (2) One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of subsection (b) of this section.
- (e) Nothing contained in this article shall preclude the seller, developer, condominium association, lessor, property owner, or that person's authorized agent, from setting forth reasonable rules, regulations, terms and conditions pertaining to the sale or lease or disposal of such person's property; provided such rules, regulations, terms and conditions are not based on race, color, religion, sex, gender identity or expression, genetic information, sexual orientation, national origin, age, disability, familial status, or marital status and provided there is no conflict with the affirmative provisions set forth in this article. Furthermore, nothing in this article shall preclude reasonable rules, regulations, or terms and conditions pertaining to the safe and prudent use by minors and facilities and amenities provided in conjunction with real property.

Sec. 42-41. Retaliation, coercion, interference, obstruction or prevention of compliance with this article.

It is an unlawful discriminatory practice for a person to conspire to:

- (1) Retaliate or discriminate against a person because such person opposed a discriminatory practice or because such person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under this article;
- (2) Aid, abet, incite or coerce a person to engage in any unlawful discriminatory practice;
- (3) Willfully interfere with the performance of a duty or the exercise of a power by the administrator, board or one of its staff members or representatives; or
- (4) Willfully obstruct or prevent a person from complying with the provisions of this article or an order issued under this article.

Sec. 42-42. Complaints.

- (a) *Complaints generally.* Complaints under this article may be filed, not later than one year or 365 days after the date of the alleged unlawful discriminatory practice, by any person alleging to be aggrieved by an unlawful discriminatory practice under this article. All complaints shall be in writing on a form prescribed by the administrator, shall be under oath or affirmation, and shall state the name, address and telephone number of the respondent, the address of the complainant, the date of the alleged offense, the alleged facts surrounding the acts complained of and other information the administrator reasonably requires. The administrator shall not process any complaint failing to provide all information required in this subsection.
- (b) *Fees.* A filing fee as established by resolution of the city commission and on file in the city clerk's office shall accompany any complaint. Such fee shall be used to cover administrative costs of this article. The administrator may waive such fee, in whole or part, for persons determined to be indigent upon the filing of an affidavit certifying the person is indigent and unable to pay the subject fee.
- (c) *Timeliness and reasonable cause determination.* Prior to the administrator taking any action on the complaint, the administrator must first find that the complaint has been timely filed and there is reasonable cause to proceed with the complaint. If the administrator determines that no reasonable cause exists to believe that an unlawful discriminatory practice under this article has occurred, the administrator shall promptly dismiss the complaint. Upon a determination that the complaint states reasonable causes to believe that an unlawful practice has occurred, the administrator shall provide notification to the respondent as provided in this section. For the purposes of this section, the term "reasonable cause" shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that an unlawful discriminatory practice under this article has occurred.
- (d) *Service of copies of charge.* Within ten days of finding reasonable cause, the administrator shall cause a copy of the complaint to be served on the respondent by certified mail, return receipt requested, or hand delivery,

and shall advise the respondent of the procedural rights and obligations under this article. The respondent may file, within 15 days after receipt of the complaint from the administrator, an answer to the complaint. An answer must be in writing and under oath. The administrator shall forward a copy of the answer to the complainant.

- (e) *Amendments to complaints or answers.* Complaints or answers may be amended any time prior to the 14th calendar day before the date of a hearing held pursuant to section 42-44. The administrator shall furnish a copy of each amended complaint or answer to the respondent or complainant, respectively, as promptly as practicable.
- (f) *Pending civil trial.* The administrator, a mediator or administrative panel may not proceed on any complaint where the aggrieved person has instituted a civil action under federal or state law, seeking relief with respect to the unlawful discriminatory practice.

Sec. 42-43. Mediation of complaints.

- (a) *Scheduling and appointment of mediator.* Within 20 days of the respondent's receipt of the complaint, the administrator shall cause contact to be made with the respondent and complainant for the scheduling of mediation for possible resolution of the complaint. In addition, the administrator shall forward a copy of the complaint, answer and any amendments thereto to the director of Palm Beach County Legal Aid Society, Inc., with a request for the appointment of a mediator.
- (b) *Mediator.* Any mediator appointed by Palm Beach County Legal Aid Society, Inc., shall serve without compensation, shall be a member of the Florida Bar, and shall have knowledge, skills, and abilities in mediation.
- (c) *Mediation hearing and report.* The mediator shall schedule a mediation hearing, with notice to the complainant, respondent and administrator, and provide the results of the mediation efforts to the administrator within 30 days of receiving the mediation assignment. If the mediation results in the resolution of a complaint, the mediator shall prepare an agreement to be signed by all parties. Such agreement shall be enforceable in a court of competent jurisdiction by either party. If mediation fails to resolve a complaint, then the mediator shall issue a notice of failure to conciliate.
- (d) *Inadmissibility of mediation statements.* Statements of parties made during the mediation process to the mediator shall not be admissible in any subsequent proceedings for any purpose.
- (e) *Dismissal upon successful mediation.* The administrator shall not proceed further on any complaint where the mediator submits an agreement and final report indicating the resolution of the matter.

Sec. 42-44. Administrative hearings.

- (a) *Notice of election.* Within ten days of the administrator's receipt of a mediator's report indicating that a failure of the complainant and respondent to conciliate, the complainant may elect to have the complaint decided in an administrative hearing or in civil action in a court of law. The complainant shall give notice of doing so to the administrator and to the respondent to whom the charge relates.
- (b) *Administrative panel.* If a timely election is made under subsection (a) of this section for an administrative hearing, the administrator shall appoint a three-member panel to conduct an administrative hearing within 30 days of the request. The administrator shall appoint the panel members from a list of volunteers, which may include volunteers provided by the Palm Beach County Legal Aid Society, Inc. The panel shall not consist of any person having served as a mediator in the matter.
- (c) *Administrative hearing.* At the hearing, the complainant and respondent may appear, present evidence, cross examine witnesses, submit rebuttal evidence, and be represented by counsel. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. After considering the evidence, the administrative panel shall determine by a majority of the panel whether, by a preponderance of evidence, the respondent has engaged in an unlawful discriminatory practice of this article.
- (d) *Administrative panel determination.* If the administrative panel determines that the respondent has not engaged in an unlawful practice, the panel shall issue, and cause to be served on the respondent, complainant and administrator, a decision and order, accompanied by findings of fact and conclusions of law and any fine as provided in section 42-45

Sec. 42-45. Penalties.

If an administrative hearing results in the administrative panel finding of violation of any provisions of this article, the administrative panel may impose a fine not to exceed \$500.00 per day for each day of noncompliance with the provisions of this article.

Sec. 42-46. Other penalties.

Nothing in this article shall modify, impair, diminish, limit or otherwise affect any right or remedy conferred by local, state or federal law.

### ARTICLE III. REGISTERED DOMESTIC PARTNERSHIPS

Sec. 42-47. Definitions.

*Committed relationship* means a family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.

*Declaration of registered domestic partnership* means the document that is filed with the city clerk's office according to the procedures established in section 42-48.

A *dependent* is a person who resides within the household of a registered domestic partnership and is:

- (1) A biological, adopted, or foster child of a registered domestic partner;
- (2) A dependent as defined under IRS regulations; or
- (3) A ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

*Mutual residence* means that the registered domestic partners share the same place to live. It is not necessary that the legal right to possess the place of residence be in both of their names. Two people may share a mutual residence even if one or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

*Registered domestic partnership* means committed relationship between two persons who consider themselves to be a member of each other's immediate family and have registered their partnership in accordance with section 42-48.

Sec. 42-48. Registration, amendment, termination and administration procedures.

(a) *Registration.*

- (1) Declaration of registered domestic partnership. A declaration of registered domestic partnership shall be filed with the city clerk's office and shall contain the names and addresses of the applicants who shall swear or affirm under penalty of perjury that each partner:
  - a. Is at least 18 years old and competent to contract;
  - b. Is not married to or a member of another registered domestic partnership or civil union with anyone other than the co-applicant;
  - c. Agrees to share the common necessities of life and to be responsible for each other's welfare;
  - d. Shares his or her primary residence with the other;
  - e. Considers himself or herself to be a member of the immediate family of the other partner;
  - f. Agrees to immediately notify the city clerk's office, in writing, of any change in the status of the registered domestic partnership; and
  - g. Agrees to mutually support the other by contributing in some fashion, not necessarily equally, to maintain and support the registered domestic partnership.
- (2) Each partner agrees to immediately notify the city clerk's office, in writing, if the terms of the registered domestic partnership are no longer applicable or one of the domestic partners wishes to terminate the domestic partnership.

(b) *Amendment.* A registered domestic partner may amend a registered domestic partnership previously filed with the city clerk to show a change in his or her household address or to add or delete dependents. Amendments shall be signed by both members of the registered domestic partnership under penalty of perjury.

(c) *Termination.*

- (1) *Termination statement.* A registered domestic partner may terminate the registered domestic partnership by filing a termination statement with the city clerk's office. The person filing the termination statement shall swear or affirm under penalty of perjury that:
  - a. The registered domestic partnership is to be terminated; and
  - b. If the termination statement is not signed by both registered domestic partners, a copy of the termination statement shall be served, by certified or registered mail, on the other registered domestic partner, and proof of service shall be filed with the city clerk's office.
- (2) *Effective date.* The termination shall become effective on the date of filing of the termination statement signed by both registered domestic partners or if the termination statement is not signed by both parties, on the date proof of service is filed with the city clerk's office pursuant to subsection (c)(1)b. above.

- (3) *Automatic termination.* A registered domestic partnership shall automatically terminate upon the following events:
  - a. One of the domestic partners marries;
  - b. One of the domestic partners dies; or
  - c. One of the domestic partners enters into a civil union with someone other than his or her registered domestic partner.
- (d) *Administration.*
  - (1) *Forms.* The city clerk's office shall provide forms for the establishment, amendment, and termination of registered domestic partnerships.
  - (2) *Certificate of registered domestic partnership.* The city clerk's office shall issue to the registered domestic partners a certificate of registered domestic partnership no later than ten business days after the declaration of registered domestic partnership is filed.
  - (3) *Maintain records.* The city clerk's office shall maintain copies of the declaration of registered domestic partnerships, any and all amendments thereto, certificates of registered domestic partnership, and termination statements filed by registered domestic partners.
  - (4) *Fees.* The fee for registering the declaration of registered domestic partnership shall be established by resolution of the city commission, which shall cover all costs of registration. The fee for amending or terminating the declaration of registered domestic partnership shall also be established by resolution of the city commission, which shall cover all costs of amendment or termination of the registered domestic partnership.

Sec. 42-49. Rights and legal effect of registered domestic partnership.

To the extent not superseded by federal, state, or county law or ordinance, registered domestic partners shall have the following rights:

- (1) *Health care facility visitation.* The term "health care facility" includes, but is not limited to, hospitals, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities, and other short and long term facilities located within, or under the jurisdiction of, the city. All health care facilities operating within the city shall allow a registered domestic partner the same visitation rights as a spouse (or parent, if the patient is a dependent of the registered domestic partnership) of the patient. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.
- (2) *Health care decisions.* This section pertains to decisions concerning both physical and mental health. If a patient lacks the capacity to make a health care decision, the patient's registered domestic partner shall have the same authority as a spouse to make a health care decision for the incapacitated party to the extent allowed by F.S. § 765.401.
- (3) *Funeral/burial decisions.* Following the death of a registered domestic partner, the surviving partner shall have the same rights to make decisions with regard to funeral/burial decisions and disposition of the decedent's body as a surviving spouse. The surviving partner shall retain these rights notwithstanding the automatic termination provision of subsection 42-48(c)(3)b.
- (4) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including, but not limited to, notification of family members in an emergency, or when permission is granted to inmates to contact family members, "notification of family" shall include registered domestic partners.
- (5) *Preneed guardian designation.* Any person who is registered as a registered domestic partner pursuant to this article shall have the same right as any other individual to be designated as a preneed guardian pursuant to F.S. § 744.3045, and to serve in such capacity in the event of his or her declarant registered domestic partner's incapacity. A registered domestic partner shall not be denied or otherwise be defeated in serving the plenary guardian of his or her registered domestic partner or the partner's property, under the provisions of F.S. ch. 744, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

Sec. 42-50. Limited effect.

- (a) Nothing in this article shall be interpreted to alter, affect, or contravene county, state or federal law.
- (b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.

- (c) All rights, privileges, and benefits extended to registered domestic partnerships registered pursuant to this article shall also be extended to all persons legally partnered in another jurisdiction.
- (d) This article is independent of chapter 62 of the Code of Ordinances of the City of West Palm Beach and does not affect any rights or benefits of city employees.
- (e) A registered domestic partner may enforce the rights under section 42-49 by filing a private action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

**Appendix of Existing Ordinances:**

Monroe County:

**Chapter 14 HUMAN RELATIONS <sup>14</sup>**

**ARTICLE I. IN GENERAL**

Secs. 14-1—14-39. Reserved.

**ARTICLE II. DISCRIMINATION**

Sec. 14-40. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bona fide occupational qualification* means that an employer can demonstrate that a particular characteristic or the absence thereof is reasonably necessary to the essence of the employer's business and that all or substantially all persons with or without the characteristic (as the case may be) are unable to perform the duties of the position in question.

*Credit transaction* means the grant, denial, extension or termination of credit to an individual.

*Disability* means:

- (1) A physical or mental impairment that substantially limits one or more of a person's major life activities;
- (2) A record of such impairment; or
- (3) The perception of having such an impairment.

The term does not include persons who have current, illegal use of or addiction to a controlled substance as defined by F.S. § 893.02, as now enacted or hereinafter amended. A disabled individual is qualified with respect to employment if such individual can perform the essential functions of the job in question with reasonable accommodations. For the purpose of this definition, the term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. For the purpose of this definition, the term "substantially limited" means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

*Employee* means an individual who is engaged to work for or under the direction and control of another for monetary or other valuable consideration.

*Employer* means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, but such term does not include the United States or a corporation wholly owned by the government of the United States.

*Employment agency* means a person that undertakes to procure employees or opportunities to work for potential employees, either through interviews, referrals, advertising or any combination thereof.

*Familial status* means the status of living alone or in any familial relationship whatsoever, including, but not limited to, living with a partner, whether maintaining the legal status of being single, married, divorced, separated or widowed, and whether the partner is the same sex or opposite sex, and of living with one or more dependents, whether minor or disabled children or parents.

*Gender identity or expression* means having, or being perceived as having, a gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the person's assigned sex at birth.

*Labor organization* means any person which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

*Person* means any natural person, firm, corporation, labor organization, partnership or other organization, association or group however organized.

*Public accommodation* means a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public, regardless of ownership or operation:

- (1) By a public body or agency;
- (2) With or without regard to profit; or
- (3) For a fee or not for a fee. An institution, club, association or other place of accommodation that has more than 100 members, and provides regular meal service and regularly receives payment for dues, fees,

accommodations, facilities or services from or on behalf of nonmembers for the furtherance of trade or business shall be considered a place of public accommodation for purposes of this article.

*Religion* means all aspects of religious observance and practice, as well as belief.

*Sexual harassment* means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or
- (3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

*Sexual orientation* means the actual or perceived state of heterosexuality, homosexuality or bisexuality.

Sec. 14-41. Prohibited conduct—Employment.

- (a) No person shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age. No employment agency shall directly or indirectly discriminate against any individual in classification, processing, referral or recommendation for employment because of the individual's race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age.
- (b) The prohibitions contained in this subsection shall not apply to any of the following:
  - (1) Using an individual's unfavorable discharge from military service as a valid employment criterion where the affected position of employment involves the exercise of fiduciary responsibilities and the reasons for the unfavorable discharge related to his fiduciary capacity;
  - (2) Hiring or selecting among individuals for bona fide occupational qualifications; or
  - (3) Giving preferential treatment to veterans and their relatives as required by federal or state law or regulation.
- (c) No employer, employee, agent of an employer, employment agency, or labor organization shall engage in sexual harassment. An employer shall be liable for sexual harassment by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures.
- (d) No employer shall refuse to make all reasonable efforts to accommodate the religious beliefs, observances and practices of an employee unless the employer demonstrates that the employer is unable to reasonably accommodate the employee's religious observance or practice without undue hardship on the conduct of the employer's business. Reasonable efforts to accommodate include, but are not limited to, allowing an employee:
  - (1) To take a day of paid leave or vacation, where applicable under the employee's employment agreement;
  - (2) To be excused from work without pay and without discipline or other penalty; or
  - (3) To elect to take the day off with pay in order to practice the employee's religious beliefs, and to make up the lost work time within the same pay period of the employer at a time and date consistent with the operational need of the employer's business.
- (e) Any employee who elects such deferred work shall be compensated at his regular rate of pay, regardless of the time and date at which the work is made up. The employer may require that any employee who plans to exercise the provisions of subsection (d)(3) of this section provide the employer with notice of the employee's intention to do so, no less than ten days prior to the date of absence.

Sec. 14-42. Same—Credit.

No person shall discriminate against any individual in any aspect of any credit transaction, or in any terms and conditions of bonding because of the individual's race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age.

Sec. 14-43. Same—Public accommodations.

No person who owns, leases, rents, operates, manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age. The prohibition contained in this section, shall not

apply to any facility, as to discrimination based on sex, that is distinctly private in nature, such as restrooms, shower rooms, and dressing rooms.

Sec. 14-44. Retaliation.

No person shall retaliate against any individual because that individual in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this article.

Sec. 14-45. Liberal construction; alternative remedies.

The provisions of this article shall be liberally construed for the accomplishment of the purpose hereof. Nothing in this article shall be construed to limit rights granted under the laws of the state or the United States. Nothing in this article shall be construed to waive the right of any person to file a charge with any agency with the authority to investigate or act upon the complaint.

Sec. 14-46. Penalties; enforcement by civil action.

- (a) Any person violating the provisions of the Monroe County Human Rights Ordinance shall upon written citation be subject to the penalties provided in section 8-66 of the Monroe County Code.
- (b) The Monroe County Human Rights Ordinance may additionally be enforced by civil action, including action for equitable relief, by any aggrieved person in a court of competent jurisdiction.

Secs. 14-47—14-72. Reserved.

### ARTICLE III. HOUSING DISCRIMINATION <sup>[2]</sup>

#### ***DIVISION 1. GENERALLY***

Sec. 14-73. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Board* means the county housing authority designated as the fair housing board established by this article.

*Director* means the fair housing director established by this article.

*Discrimination* means any difference in treatment based on race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age.

*Executive director* means the executive director of the housing authority and the fair housing board.

*Housing, housing accommodation or dwelling* means any building, mobile home or trailer, structure or portion thereof that is occupied as, or designed or intended for, occupancy as a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, mobile home or trailer, structure, or portion thereof or any real property, as defined in this section, used or intended to be used for any of the purposes set forth in this definition.

*Lending institution or financial institution* includes any person, as defined in this section, engaged in the business of lending money or guaranteeing loans.

*Mortgage broker* means an individual who is engaged in or performs the business or service of a mortgage broker as the same is defined by state statutes.

*Open market* means the market that is informed of the availability for sale, purchase, rental or lease of any housing accommodation whether informed through a real estate broker or mortgage broker, or by advertising by publication, signs or by any other advertising or other methods directed to the public or any portion thereof, indicating that the property is available for sale, purchase, rental or lease.

*Owner* includes a lessee, sublessee, cotenant, assignee, managing agent or other person having the right of ownership or possession, or the right to sell, rent or lease any housing accommodation.

*Real estate broker or real estate salesman* includes any individual who, for a fee, commission, salary, or for other valuable consideration, with the intention or expectation of receiving or collecting same, lists, sells, purchases, rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds himself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer of any housing accommodation or who is engaged in the business of charging an advance fee or contracting for a collection of a fee in connection with a contract whereby he undertakes to promote the sale, purchase, rental or lease of any housing accommodation

through its listing in a publication issued primarily for such purpose; or who is an individual employed by or acting on behalf of any of these.

*Real property* includes buildings, structures, lands, tenements, leaseholds, cooperatives and condominiums.

*To rent* includes to lease, to sublease, to let and to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

Sec. 14-74. Declaration of policy.

It is hereby declared to be the policy of the county in the exercise of its police power for the public safety, public health and general welfare, to ensure equal opportunity to obtain adequate housing by all persons regardless of race, color, sex, gender identity or expression, religion, disability, national origin, ancestry, sexual orientation, familial status, or age, and to that end, to eliminate discrimination in housing.

Sec. 14-75. Board of county commissioners to administer article.

The board of county commissioners shall be responsible for the administration of this article and for seeing that its provisions are observed and enforced. The board of county commissioners is empowered to make all necessary rules to accomplish this responsibility, which rules shall not become effective until approved by the board of county commissioners and, by rule, to delegate administrative and investigative authority to the fair housing board. The board of county commissioners is directed and authorized to seek substantial equivalency rating and recognition from the United States Department of Housing and Urban Development and other necessary federal agencies for title VIII of the 1968 Civil Rights Act enforcement within the General Services District.

Sec. 14-76. Cooperation with federal, state and local agencies administering fair housing laws.

The board of county commissioners may cooperate with federal, state and other local agencies charged, with the consent of such agencies, to use the services of such agencies and their employees in carrying out the provisions of this article. In furtherance of such cooperative efforts, the board of county commissioners may enter into written agreements with such federal, state and local agencies to make available such appropriated funds as are necessary to carry out the purposes of this article and all such agreements shall be executed by the chair of the board of county commissioners and the county clerk and countersigned by the executive director of the fair housing board.

Sec. 14-77. Unlawful practices.

In connection with any of the transactions set forth in this section that affect any housing operation on the open market, or in connection with any public sale, purchase, rental, or lease of any housing accommodation, it shall be unlawful within the unincorporated areas of the county for a person, owner, financial institution, real estate broker or real estate salesman, or any representative of the above:

- (1) To refuse to sell, purchase, rent or lease, or otherwise deny to or withhold any housing accommodation from a person, or to evict a person because of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age;
- (2) To discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation from or to a person because of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age;
- (4) To evict or to refuse to negotiate for the sale, purchase, rental or lease of any housing accommodation to a person because of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age;
- (5) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation because of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age;
- (6) To make, publish, print, circulate, post or mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for a sale, purchase, rental, lease or financing of any housing accommodation, that indicates any discrimination or any intent to discriminate;
- (7) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease knowing that a person may be subjected to discrimination in connection with such sale, purchase, rental or lease, or in the furnishing of facilities or services in connection therewith;

- (8) To induce or discourage, or to attempt to induce or discourage:
  - a. The sale;
  - b. The purchase;
  - c. The rental;
  - d. The lease;
  - e. The listing for subsections (8)a., b., d. of this section;
    - of any housing accommodation in an area by means of (i) causing panic; (ii) inciting unrest; or (iii) creating or playing upon fear, by representing that the presence or anticipated presence in that area of persons of any particular race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age, will or may result in the lowering of property values in the area, the increase in criminal or antisocial behavior in the area, or a decline in the quality of the schools serving the area;
- (9) For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying there for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loans or other financial assistance because of the race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwellings in relation to which such loan or other financial assistance is to be made or given; or
- (10) To deny any person who is otherwise professionally qualified by state law access to, or membership or participation in, any multiple listing service, real estate broker's organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age.

Sec. 14-78. Exemption.

Nothing in section 14-77 prohibits a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling that it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such person, unless membership in such religion is restricted on account of race, color, or national origin.

Sec. 14-79. Exemption for housing for older persons.

- (a) Any provision of this article regarding familial status does not apply with respect to housing for older persons.
- (b) As used in this section, the term "housing for older persons" means housing:
  - (1) Provided under any state or federal program that the state determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
  - (2) Intended for, and solely occupied by, persons 62 years of age or older; or
  - (3) Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:
    - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older;
    - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subsection (b)(3)b. If the housing facility or community meets the requirements of subsection (b)(3)a. and (b)(3)c. of this section and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents that can be

amended at a future date must be amended and properly recorded within one year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons; and

- c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 CFR 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of subsection (b)(3)b. of this section. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.
- (c) Housing shall not fail to be considered housing for older persons if:
  - (1) A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or
  - (2) One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.
- (d) A person shall not be personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this subsection, a person may show good faith reliance on the application of the exemption only by showing that:
  - (1) The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and
  - (2) The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

Secs. 14-80—14-101. Reserved.

## DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Secs. 14-102—14-130. Reserved.

### Subdivision II. Fair Housing Director

Sec. 14-131. Fair housing director.

The office and position of fair housing director is hereby created and established. The director shall be appointed by and serve at the will of the executive director of the county housing authority. Such director shall be chosen by the executive director on the basis of qualifications and experience. The fair housing director shall serve under the supervision of the executive director. The executive director shall appoint such assistants to the director as may be necessary, subject to budgetary limitations, and shall provide the director required administrative support.

Sec. 14-132. Duties and powers of fair housing director.

The duties, functions, powers and responsibilities of the fair housing director shall include:

- (1) To implement the provisions of this article and rules and regulations promulgated hereunder and all county ordinances, codes, rules and regulations pertaining to housing discrimination;
- (2) To receive, initiate and investigate any and all complaints alleging violations of this article, and take appropriate action to eliminate, conciliate, prevent and/or initiate prosecution of any such violations;
- (3) To provide assistance in all matters relating to equal housing opportunity;
- (4) To publish and disseminate public information and educational materials relating to housing discrimination;
- (5) Subject to the approval of the fair housing board and the board of county commissioners, to enter into written working agreements, as may be necessary to effectuate the purposes of this article, with federal, state and local agencies involved in reducing housing discrimination;
- (6) To keep the fair housing board fully and currently informed of all complaints alleging violations of this article and actions taken thereon, and of other actions taken by the director under the provisions of this section; and to attend all meetings of the fair housing board;
- (7) To implement recommendations received from the fair housing board concerning this article and the carrying out of its purpose. When, in the opinion of the director, effectuating any such recommendation would be undesirable or infeasible, he will promptly so report to the board with his reasons. Any

differences of judgment not susceptible of agreement between the board and director will be referred to the executive director for his determination; and the board may, if it feels the matter warrants, further carry any such disagreement to the board of county commissioners for decision;

- (8) To make semiannual reports to the board of county commissioners through the executive director, and to the fair housing board, concerning the status of housing discrimination in the county and the enforcement of the provisions of this article, and to make recommendations concerning methods by which to reduce such discrimination; and
- (9) To perform such other administrative duties as may be assigned by the executive director.

Secs. 14-133—14-162. Reserved.

### Subdivision III. Fair Housing Board

Sec. 14-163. Established; members.

The county fair housing board is hereby created and established. The county housing authority is hereby designated as the fair housing board and shall consist of five members appointed by the board of county commissioners.

- (1) *Qualifications of members.* Members of the board shall be permanent residents and electors of the county. Appointments shall be made on the basis of community representatives, civic pride, integrity, experience and interest in the area of equal housing opportunities.
- (2) *Term of office.* The terms of office of all members of the board shall be the same as for the housing authority as stipulated in F.S. § 421.05.
- (3) *Organization of the board.* The members of the board shall elect the chair and such other officers as may be deemed necessary or desirable, who will serve at the will of the board. Three members of the board constitute a quorum to hold a meeting or take any action. The majority vote of those present at a duly constituted meeting shall be sufficient for all actions. Members shall serve without compensation but shall be entitled to be reimbursed for necessary expenses incurred in the performance of their duties upon approval by the board of county commissioners.
- (4) *Meetings of the board.* Meetings of the board shall be held monthly or more frequently. Notice of the time and place of the meeting shall be given to all board members and all parties scheduled to be heard, and shall be made public. The chair may call an unscheduled meeting, and meetings may also be called by written notice signed by three members of the board. All meetings shall be public. The executive director shall provide adequate and competent clerical and administrative and professional support as may reasonably be required by the board for the proper performance of its duties. The executive director of the housing authority shall provide a regular meeting place for the board.
- (5) *Executive director.* The executive director of the county housing authority shall perform as the executive director of the fair housing board and is responsible for providing administrative services and facilities for the fair housing ordinance enforcement, using funds provided by the board of county commissioners.

Sec. 14-164. Duties and powers.

The board shall have the following duties, powers, functions and responsibilities:

- (1) To make recommendations to the fair housing director for the enforcement of this article and the carrying out of its purpose;
- (2) To review the fair housing director's actions and decisions on all complaints of housing discrimination received by or initiated by him;
- (3) To conduct public hearings and make determinations concerning the fair housing director's actions and decisions on such complaints upon appeal by either complainant or respondent, at the request of the fair housing director, or when the board deems it desirable, on its own initiative;
- (4) In carrying out the functions of subsections (2) and (3) of this section, the board shall have the power to uphold, rescind, reverse or modify the actions, decisions and recommendations of the fair housing director;
- (5) To administer oaths and compel the attendance of witnesses, and the production of evidence before it, by subpoenas issued by the chair of the board;
- (6) To review and comment on the fair housing director's semiannual report, forwarding such comment to the board of county commissioners through the executive director; and
- (7) In coordination with the fair housing director, to take other informational, educational or persuasive actions to implement the purposes of this article.

Secs. 14-165—14-181. Reserved.

#### Subdivision IV. Violations

##### Sec. 14-182. Procedure.

- (a) Any person aggrieved by an unlawful practice prohibited by this article must file a written complaint with the fair housing director or his designated representative within 45 days after the alleged unlawful practice occurs.
- (b) Upon receipt of a complaint, the director shall serve upon the individual charged with a violation (hereinafter referred to as the respondent), the complaint and a written resume setting forth the rights of the parties, including, but not limited to, the right of the respondent to a hearing on the matter before adjudication by the fair housing board. Such service may be by personal service or by certified mail.
- (c) The director shall immediately investigate the complaint. Within 60 days from the date of the receipt of the complaint, the director shall file a written report with the board, with findings of fact.
- (d) Copies of the director's report shall also be sent to the complainant and the respondent. Either may, within ten days after such service, request a hearing before the board.
- (e) When the director, the complainant, or the respondent requests a hearing by the board, or when the board itself determines that a hearing is desirable, the board shall call and conduct a hearing in accordance with section 14-183
- (f) Where no board hearing is requested or directed, the board will expeditiously review the report of the director, and shall approve, rescind, reverse or modify the director's findings and determinations of action.
- (g) The director shall carry into execution the actions specified in his report, as approved or altered by the board in its review, or, if a hearing is held, shall carry into execution the actions determined upon by the board in the hearing.
- (h) The director in his report, as reviewed by the board, or the board in its review or its hearing may determine:
  - (1) That the complaint lacks grounds upon which to base action for violation of this article;
  - (2) That the complaint has been adequately dealt with by conciliation of the parties;
  - (3) That the complaint can be dealt with by adjudicative orders issued by the director; or
  - (4) That the case warrants filing charges against the offending party in the appropriate court.In some cases, both conciliation and adjudicative orders, and initiation by court action may be indicated.
- (i) If the director, after review or hearing by the board, issues an adjudicative order to correct, adjust, conciliate, prevent or prohibit any unlawful activity prohibited by this article, and the respondent refuses or fails to comply with or obey such adjudication, the director shall forthwith request that the state attorney file a complaint in the appropriate court.
- (j) The provisions of rule 1.090, Florida Rules of Civil Procedures, shall govern the computation of any period of time prescribed by this article.
- (k) All papers or pleadings required by this article to be served may be served by certified mail or in accordance with the provisions of rule 1.080(b), Florida Rules of Civil Procedure.

##### Sec. 14-183. Hearings before the fair housing board.

- (a) When a hearing is required before the fair housing board, as specified in section 14-182(e), the board shall schedule the hearing and serve upon all interested parties a notice of time and place of the hearing. The hearing shall be held promptly, but not less than 15 days after the service of such notice and of the director's written report (section 14-182(d)).
- (b) The parties, or their authorized counsel, may file such statements with the board, prior to the hearing date, as they deem necessary in support of their positions. The parties may appear before the board in person or by duly constituted representatives and may have the assistance of counsel. The parties may present testimony and evidence, and the right to cross examine witnesses shall be preserved. All testimony shall be given under oath or by affirmation. The board shall not be bound by strict rules of evidence pertaining to courts of law or equity, but due process shall be observed. The board shall keep a full record of the hearing, which record shall be public and open to inspection by any person; and upon request by any principal party to the proceedings, the director shall furnish such party a copy of the hearing record at cost. The constitutional rights of the respondent not to incriminate himself shall be scrupulously observed.
- (c) The board shall make a finding of fact and a determination of action to be taken (section 14-182(h)).
- (d) The board may issue subpoenas to compel access to or the production or appearance of premises, records, documents, individuals and other evidence or possible sources of evidence relative to the complaint at issue.

- (e) Upon written application to the board, the respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the board, to the same extent and subject to the same limitations as subpoenas issued by the board of county commissioners itself. Subpoenas issued at the request of the respondent shall show on their face the name and address of such respondent and shall state that they are issued at his request.
- (f) Witnesses summoned by subpoena of the board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the state courts. Fees payable to a witness summoned by a subpoena issued at the request of the respondent shall be paid by him unless he is indigent, in which case the county shall bear the cost of the fees.
- (g) Within ten days after service of a subpoena upon any person, such person may petition the board to revoke or modify the subpoena. The board shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence that does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (h) In case of refusal to obey a subpoena, the board, or the person at whose request it was issued, may petition for its enforcement in the appropriate court.

Sec. 14-184. Other remedies.

Nothing in this division shall prevent any person from exercising any right or seeking any remedy to which he might otherwise be entitled, or from filing any complaint with any other agency or any other court having proper jurisdiction.

Sec. 14-185. Report to real estate commission.

If a real estate broker, a real estate salesman, or an employee thereof has been found to have committed an unlawful practice in violation of this article, or has failed to comply with an order issued by the director, the director shall, in addition to the other procedures and penalties set forth herein, report the facts to the real estate commission of the state.

**Appendix of Existing Ordinances:**

Palm Beach County:

**Chapter 15 HUMAN RIGHTS**

**ARTICLE I. IN GENERAL**

Secs. 15-1—15-10. Reserved.

**ARTICLE II. RESERVED**

Secs. 15-11—15-35. Reserved.

**ARTICLE III. HOUSING, PLACES OF PUBLIC ACCOMMODATION <sup>[3]</sup>**

Sec. 15-36. Purpose.

It is hereby declared to be the policy of the board of county commissioners in the exercise of its police power for the public safety, public health, and general welfare to assure, within constitutional limitations, equal opportunity to all persons to live in available housing facilities regardless of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression, and, to that end, to prohibit discrimination in housing by any person. It is also hereby declared to be the policy of the board of county commissioners in the exercise of its police power for public safety, public health and general welfare to assure, within constitutional limitations, equal opportunity to all persons, regardless of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression, to participate in the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation.

Sec. 15-37. Definitions.

When used herein:

- (1) *Person* includes one (1) or more individuals, partnerships, associations, corporations, unincorporated organizations, legal representatives, trustees, trusts, trustees in bankruptcy, labor organizations, mutual companies, joint-stock companies, receivers, or fiduciaries.
- (2) The term *unlawful discriminatory practice* includes only those practices specified in sections 15-57 through 15-61 hereof.
- (3) The term *board*, unless a different meaning clearly appears from the context, means the fair housing board, created by section 15-39
- (4) Each of the following establishments which serve the public is a place of *public accommodation* within the meaning of this article:
  - a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five (5) rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his/her residence;
  - b. Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment; or any gasoline station;
  - c. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
  - d. Any establishment:
    - (i) 1. Which is physically located within the premises of any establishment otherwise covered by this subsection; or
    2. Within the premises of which is physically located any such covered establishment; and
    - (ii) Which holds itself out as serving patrons of such covered establishment. Such term shall not include any institution, club or place of accommodation which is in its nature distinctly private and not in fact open to the public.

- (5) *Dwelling* or *housing* means any real property, building, mobile home or trailer, structure or portion thereof which is used or occupied as, or is intended, arranged or designed to be used or occupied as, the home, residence or sleeping place of one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
  - (6) *To rent* includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
  - (7) The term *family* includes the grandparents, parents, children, brothers and sisters, whether by marriage, legal adoption or blood, and their spouses and children, of either the property owner or spouse of the property owner; and the term "family" also includes a single individual.
  - (8) The term *complainant* shall mean the person filing a complaint pursuant to this article.
  - (9) The term *respondent* shall mean the person or other entity accused in a complaint of an unfair housing practice and any other person or entity identified in the course of investigation not named as a respondent in the initial complaint who may be joined as an additional or substitute respondent upon written notice.
  - (10) *Disability* means with respect to a person:
    - a. Has a physical or mental impairment which substantially limits one (1) or more major life activities.
    - b. Has a record of such an impairment; or
    - c. Is regarded as having such impairment.
    - d. "Disability" does not include current illegal use or addition to a controlled substance (as defined in Section 102 of the Controlled Substance Act (21U.S.C.802)).
    - e. As used throughout this article, prohibitions against discrimination on the basis of disability includes disabilities of the buyer or renter, or of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available, or of any person associated with the buyer or renter.
  - (11) *Familial status* means one (1) or more individuals (who have not attained the age of eighteen (18) year) being domiciled with:
    - a. A parent or another person having legal custody of such individual or individuals; or
    - b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.
  - (12) *Sexual orientation* means male or female homosexuality, heterosexuality and bisexuality, by preference or practice.
  - (13) *Conciliation* means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the director.
  - (14) *Conciliation agreement* means a written agreement setting forth the resolution of the issues in conciliation.
  - (15) *Prevailing party* has the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).
  - (16) *Multifamily dwelling* means:
    - a. Buildings consisting of four (4) or more units if such buildings have one (1) or more elevators; and
    - b. Ground floor units in other buildings consisting of four (4) or more units.
  - (17) *Residential real estate related transaction* means any of the following:
    - a. The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a dwelling; or secured by residential real estate.
    - b. The selling, brokering or appraising of residential real property.
  - (18) *Housing for older persons* means housing:
    - a. Provided under any state or federal program that the office of equal opportunity or the fair housing board determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
    - b. Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or
    - c. Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit in eighty (80) percent of the units, provided that the occupancy of such housing can be verified in accordance with rules established by the U. S. Department of Housing and Urban Development and provided that the housing facility publishes and adheres to policies and procedures that demonstrate the intent to provide housing for older persons.
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- d. Housing shall not fail to be considered housing for older persons if:
    - (i) A person who resides in such housing on or after September 13, 1988, does not meet the age requirements of this subsection provided that any new occupant meets such age requirements; or
    - (ii) One (1) or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.
  - e. In determining whether housing meets the requirements of housing for older persons, the county will utilize current federal regulations regarding criteria for housing for older persons.
- (19) *Gender identity or expression* means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.

Sec. 15-38. Office of equal opportunity (OEO).

The county administrator exercising his/her power of appointment shall employ a director of the office of equal opportunity and such other personnel in the office of equal opportunity (OEO) as may be provided for in the budget approved by the board of county commissioners and for which an appropriation has been made. The staffing complement shall be referred to as the office of equal opportunity (OEO). It shall be the responsibility of the director and/or the director's designee to investigate complaints of discrimination prohibited by this article, attempt to conciliate and mediate complaints of discrimination, and to perform such other duties of an administrative nature as may be assigned by the county administrator.

Sec. 15-39. Fair housing board.

The fair housing board of Palm Beach County is hereby created and established. The board is to be comprised of nine (9) citizens of the county appointed by the board of county commissioners to serve for staggered terms of two (2) years. In addition to minority representation on such board, the board shall reflect, to the greatest extent possible, representation for all ages, races, religious beliefs and types of employment. Members of the fair housing board shall be the same as members of the equal employment board created by separate ordinance. Seven (7) of the appointments shall be made as district appointments and two (2) of the appointments shall be made at large by the board of county commissioners on the basis of community representation, integrity, experience and interest in the area of equal opportunities. In order that the terms of office of all members shall not expire at the same time, all current members of the fair housing board shall serve the remainder of their respective terms, if they so elect. Any member who elects not to serve the remainder of their term shall be replaced by appointments made at large by the board of county commissioners to serve the unexpired portion of the term. The two (2) additional members needed to complete the fair housing board shall be appointed at-large by the board of county commissioners for a term of one (1) year. Vacancies shall be filled in the same manner as the original appointments for the remainder of the vacant term. Each member shall serve without compensation. Each district appointee may be removed without cause by the appointing commissioner at any time, and at large appointees may be removed without cause by a vote of the board of county commissioners at any time. Members may not be members of more than two (2) other advisory boards appointed by the board of county commissioners; however, membership on the equal employment board and the fair housing board shall only be considered membership on one (1) advisory board. Members shall be governed by the applicable provisions of the Palm Beach County Code of Ethics, Resolution No. R-94-693, as may be amended. Abstention from voting due to a conflict of interest on more than three (3) separate matters during a calendar year shall result in automatic removal. Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or failure to attend more than one-half (½) of the meetings scheduled during a calendar year. Participation for less than three fourths (¾) of a meeting shall constitute lack of attendance. Excused absences due to illness, absence from the county, or personal hardship, if approved by vote of the fair housing board, shall not constitute lack of attendance. Excused absences shall be entered into the minutes at the next regularly scheduled meeting of the fair housing board. Members removed under this section shall not continue to serve until a new appointment is made and removal shall create a vacancy. Members of the fair housing board shall appoint a chairperson and vice-chairperson, and the board may promulgate rules and regulations for the conduct of its meetings and affairs.

Sec. 15-40. Board terms, rules and regulations.

The following rules and regulations shall govern the operation of the board:

- (1) The chairperson of the board shall be elected by majority vote of the board and shall serve for a term of one (1) year and have the following duties:
  - a. Call board meetings and set the agenda for the same.

- b. Preside at board meetings.
  - c. Sign subpoenas.
  - d. Appoint and define the role of such committees as are necessary or expedient to advise the board, the director of the office of equal opportunity and the board of county commissioners.
  - e. Perform such other functions as the board may assign by rule or order.
- (2) The vice-chairperson shall be elected by majority vote of the board and shall serve for a term of one (1) year. The vice-chairperson shall perform the duties of the chairperson in the chairperson's absence and such other duties as the chairperson may assign.
  - (3) If a vacancy occurs in the office of chairperson, the vice-chairperson shall become the chairperson for the unexpired term of the chairperson. If a vacancy occurs in the office of vice-chairperson, the board will elect another member to fill the unexpired term of the vice-chairperson.
  - (4) Three (3) members of the board shall constitute a hearing panel for the purposes of hearing discrimination complaints. A majority of members appointed shall constitute a quorum to hold a meeting for any other purpose.
  - (5) A majority of the members of a panel or committee shall constitute a quorum for the conduct of business assigned to a panel or committee.
  - (6) In the presence of a quorum, board or panel business shall be taken by a majority vote.

Sec. 15-41. Board meetings.

The board shall meet on a regular basis and as necessary to conduct administrative hearings. Notice of the time and place of the meeting shall be given to all board members and all parties scheduled to be heard, and shall be made public. The chairperson may call an unscheduled meeting. Upon not less than twenty-four (24) hours' notice, and meetings may also be called by the director upon the request of three (3) members of the board. The county administrator shall provide such staff as may reasonably be required in his/her discretion to assist the board in the performance of its duties. The county administrator shall provide a regular meeting place for the board.

Sec. 15-42. Objectives of the board.

The objectives of the board shall be:

- (1) To promote and encourage fair treatment and equal opportunity in housing and public accommodation for all persons regardless of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression, to promote and encourage mutual understanding and respect among such persons and to endeavor to eliminate discrimination in housing and public accommodation against and antagonism between such persons;
- (2) To cooperate with governmental and nongovernmental agencies and organizations having like or kindred functions;
- (3) To make such investigations and studies in the field of fair housing and public accommodation as in its judgment will aid in effectuating its general purposes;
- (4) To assist various groups and agencies of the community to cooperate in educational programs and campaigns, devoted to the elimination of discrimination in housing and places of public accommodation;
- (5) To aid in permitting the county to benefit from the fullest realization of its housing and public accommodation resources;
- (6) To recommend to the board of county commissioners the acceptance of certain grants and contracts from foundations and other sources for the purposes of carrying out the purposes of this article; and
- (7) To recommend to the board of county commissioners methods for elimination of discrimination and intergroup tensions.

The objectives set forth above are not to be construed as duties, and the board of county commissioners shall have the discretion to determine when each objective is implemented.

Sec. 15-43. Powers and duties of the board.

The powers and duties of the board shall be:

- (1) To refer or accept referral of complaints when appropriate and to cause, through the office of equal opportunity, investigations of:
  - a. Tension or prejudice in relation to all housing and public accommodation matters involving race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression.

- b. Discrimination against any person by any person with regard to housing and public accommodation matters on the basis of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression.
- (2) To propose reasonable rules and regulations as are necessary to effectuate the policies of this article and govern the proceedings of the board. Such rules and regulations shall become effective upon approval by the board of county commissioners after a public hearing has been held by the board of county commissioners, pursuant to at least one (1) notice published in a newspaper of general circulation in the county at least ten (10) days prior to the hearing.
- (3) To receive, initiate, seek to conciliate, hold hearings upon and adjudicate complaints alleging violations of this article; to recommend methods and alternatives for eliminating injustices occasioned thereby; to carry out and enforce the purpose of this article.
- (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any hearing convened pursuant to the powers and duties authorized by this article.
- (5) To subpoena witnesses and compel production of evidence requested by the office of equal opportunity relating to an investigation being conducted pursuant to this article.
- (6) Meet and exercise its power in any place within the county.
- (7) To issue remedial orders prohibiting violations of this article and providing affirmative relief from the effects of the violation as specified in section 15-55
- (8) Become a referral agency for the state and federal government and comply with the necessary state and federal regulations.

Sec. 15-44. Powers and duties of the director.

The powers and duties of the director and/or the director's designee shall be:

- (1) To investigate:
  - a. Tension or prejudice in relation to all housing and public accommodation matters involving race, sex, color, religion, national origin, disability familial status, sexual orientation, age, marital status, or gender identity or expression.
  - b. Discrimination against any person by any person with regard to housing and public accommodation matters on the basis of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression.

In conducting an investigation the director and/or the director's designee shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the director and/or the director's designee complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures.
- (2) To attempt to conciliate and mediate complaints of discrimination brought pursuant to this article.
- (3) To prepare consent agreements embodying any agreement reached by the parties relating to the complaint and to present such agreement to the board, for the board's acceptance or rejection.
- (4) To dismiss complaints of discrimination upon a finding of no reasonable grounds to support a finding of discrimination under this article.
- (5) To administer oaths.
- (6) To exercise all powers reasonable and necessary to fulfill the purposes of this article.

Sec. 15-45. Filing of complaints.

Any person who claims to have been injured by an unlawful discriminatory practice or who believes that he/she will be injured by an unlawful discriminatory practice that is about to occur may file a sworn written complaint with the office of equal opportunity, which shall state the name and address of the complainant and the person or persons against whom the complaint is made. It shall also state the facts surrounding the alleged unlawful discriminatory practice and such other information as may be required by the office of equal opportunity. The director, with the board's approval, may also file such a complaint. A complaint shall be filed not later than one (1) year after the date of the alleged unlawful discriminatory practice in order to be processed under this article.

Sec. 15-46. Notice of complaint.

Upon the filing of a complaint, the director shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article. The director or

the director's designee shall, not later than ten (10) days after such filing or the identification of an additional respondent, serve on the respondent a notice, by registered or certified mail, identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint. The respondent may file a sworn written answer to the complaint within ten (10) days of receipt of the complaint. Failure to file an answer by the respondent shall not result in any presumption of admission to the allegations in the complaint. Any subsequent amendment to the complaint or answer thereto shall be served by U.S. mail.

Sec. 15-47. Processing complaints.

The office of equal opportunity shall commence its investigation under this article within thirty (30) days of the receipt of a sworn written complaint. Within one hundred (100) days of the filing of a complaint as set forth in section 15-45, the staff of the fair housing division of the office of equal opportunity shall make such investigation as the director or the board deems appropriate to ascertain facts and issues. If the fair housing division of the office of equal opportunity is unable to complete the investigation within one hundred (100) days after the filing of the complaint, they shall notify the complainant and the respondent in writing of the reasons for not doing so. In conducting an investigation to ascertain whether or not there has been a violation of this article, the director and/or the director's designee shall have access at all reasonable times to premises, records, documents, individuals, and other evidence, or possible sources of evidence, and may examine, record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the office of equal opportunity complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The director, chairperson, vice-chairperson or any other member of the fair housing board may issue subpoenas to compel access to, or the production of, such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. In the case of a refusal to obey a subpoena issued to any person, or refusal to comply with any method of discovery authorized in the Florida Rules of Civil Procedure, the board and/or the director shall request the county attorney to make application to the appropriate court to order the witness to comply with a request for discovery, or to appear before the board and to produce evidence, if so requested, or to give testimony concerning the matter in question. Failure to obey the order may be punishable by the court as contempt. The director and/or the board may administer oaths. The office of equal opportunity shall endeavor to achieve final administrative disposition of a complaint within one (1) year of its filing, unless it is impracticable to do so. If final administrative disposition is impractical to achieve within one year of the filing of the complaint, the parties shall be provided notice which shall state the reasons why it is impractical to achieve final disposition within one year.

Sec. 15-48. Withdrawal of complaint.

A complaint filed pursuant to this article may be withdrawn at any time by the complaining party upon notifying the fair housing division of the office of equal opportunity; however, the director may continue action against the respondent if the facts establish reasonable grounds to support a finding of discrimination and the board approves such further action.

Sec. 15-49. Preservation of records.

Following service of the complaint in the manner provided herein, the respondent shall preserve all personnel records, property records, or any other written or documentary material relating to the complaint until the complaint has been resolved.

Sec. 15-50. Administrative dismissal of complaint.

Any complaint filed pursuant to this article shall be dismissed by the director upon the following grounds:

- (1) The complainant has failed or refused to cooperate or the complainant cannot be located after reasonable efforts to do so have been made and after twenty (20) days' notice to the complainant by mail to the complainant's last known address the complainant has failed to duly respond;
- (2) The complaint has not been timely filed with the board or the office of equal opportunity.

Sec. 15-51. Investigation procedure.

After a complaint has been filed, the director and/or the director's designee shall conduct an investigation. The director and/or the director's designee may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws. The following procedures shall be followed:

- (1) *Complaint verification.* As part of the investigation process, the complaining party may be required to provide an additional sworn written statement, which shall include:
  - a. A statement of each particular harm or potential harm which the aggrieved person has suffered or will suffer and the date on which each harm occurred or will occur;
  - b. For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful;
  - c. For each act, policy or practice alleged to have harmed the aggrieved person, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory.
- (2) *Requests for information.* In investigating a complaint, the director and/or the director's designee may obtain information by:
  - a. Oral interview; and/or
  - b. Requests for written statement or affidavit; and/or
  - c. Any discovery methods set forth in the Florida Rules of Civil Procedure.
- (3) *Complaining party's failure to cooperate.* Where the complainant fails to provide a necessary information statement, fails or refuses to appear or be available for interviews or conferences, fails or refuses to provide necessary information requested by the office of equal opportunity pursuant to this section, or otherwise refuses to cooperate to the extent that the fair housing [office is unable to resolve the complaint, the] division coordinator shall dismiss the complaint after providing twenty (20) days' notice to the complainant unless the director, with board approval, determines there is sufficient grounds and sufficient evidence to proceed with the complaint.
- (4) *Access to files during investigation.* Information obtained during the investigation of a complaint shall be disclosed only to the complainant, the respondent, or their authorized representative, or to witnesses, only when disclosure is deemed necessary by the director for the investigation or for securing appropriate disposition of the complaint. The director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret and only in accordance with the provisions of the Florida Public Records Law [F.S. § 119.01 et seq.].

Sec. 15-52. Determination of reasonable grounds; notice.

- (a) Upon completion of an investigation, if a complaint has not been settled or withdrawn, the director shall make a determination as to whether there is a reasonable grounds to believe that an unlawful discriminatory practice has occurred. The director and/or the director's designee shall report the results of the investigation and his/her determination to the board and advise the board that a notice of determination shall be served upon the complainant and respondent. The board shall receive a copy of the notice of determination.
- (b) The board shall have the opportunity to review the report and submit comments to the director.
- (c) A notice of determination of reasonable grounds shall include an invitation to participate in conciliation.
- (d) After service of a notice of determination, the parties named in the determination may inspect the records and documents, in the custody of the office of equal opportunity, which pertain to the determination. The director may direct that a particular record, document or portion thereof be withheld from inspection by a part only when necessary for the protection of a witness or third party, or for the preservation of a trade secret and only in accordance with the provisions of the Florida Public Records Law [F.S. § 119.01 et seq.].

Sec. 15-53. Finding of reasonable grounds; conciliation procedure.

- (a) During the period beginning with the filing of the complaint and ending with the final disposition of a complaint, the office of equal opportunity shall, to the extent feasible, engage in conciliation with respect to such complaint. Where such conciliation attempts are successful, the terms of the consent agreement shall be reduced to writing and signed by the complainant, the respondent and the director. The original of the signed agreement shall be filed with the director, and copies shall be served upon the respondent, complainant and the board. The board shall, at its next regularly scheduled meeting, approve or disapprove the agreement.
- (b) When a consent agreement has not been signed, and the complaint has not been withdrawn or dismissed, the director shall serve a notice of failure of conciliation upon the complainant, respondent and the board not less than thirty (30) days after service of a notice of determination of reasonable grounds.
- (c) Nothing said or done in the course of the conciliation process may be made public or used as evidence in subsequent proceedings under sections 15-54 through 15-56 without the written consent of the persons concerned. Any employee of the office of equal opportunity who makes public any such information in violation of this provision shall be prosecuted in the same manner as a misdemeanor of the second degree,

punishable as provided in Florida Statutes Chapter 775. However, final executed and approved conciliation agreements will be made public.

Sec. 15-54. Enforcement.

- (a) In any proceeding brought pursuant to this article, the burden of proof is on the complainant.
- (b) A complainant need not have petitioned for an administrative hearing or exhausted the administrative remedies prior to commencement of a civil action pursuant to section 15-56
- (c) Whenever an action filed in either federal or state court pursuant to this article, or any federal or state laws protecting the same rights stated herein comes to trial, the office of equal opportunity shall immediately terminate all efforts to obtain voluntary compliance.
- (d) If the board of county commissioners concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the board of county commissioners shall direct the county attorney to institute a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this article. The commencement of a civil action under this subsection shall not affect the initiation or continuation of proceedings under this article. The board of county commissioners need not have petitioned for administrative hearing or exhausted the administrative remedies prior to requesting the commencement of a civil action.
- (e) The court may award actual and punitive damages and may impose the following fines for each violation of this article:
  - (1) Up to ten thousand dollars (\$10,000.00), if the respondent has been adjudged to have committed an unlawful discriminatory practice;
  - (2) Up to twenty-five thousand dollars (\$25,000.00), if the respondent has been adjudged by order of the fair housing board or a court to have committed one (1) prior unlawful discriminatory practice within the preceding five-year period ending on the date of the filing of the charge.
  - (3) Up to fifty thousand dollars (\$50,000.00), if the respondent has been adjudged by order of the fair housing board or a court to have committed two (2) or more unlawful discriminatory practices within the preceding seven-year period ending on the date of the filing of the charge.
- (f) In imposing a fine under subsection (e), the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of this article, the financial circumstances of the respondent, and the goal of deterring future violations of this article.
- (g) In addition to the above-stated fines, the court shall award reasonable attorney's fees and costs to the county in any action in which the county prevails under this article.
- (h) The court may also grant injunctive and/or other appropriate equitable relief.

Sec. 15-55. Administrative remedies.

- (a) If the director is unable to obtain voluntary compliance with this article or has reasonable grounds to believe that a discriminatory practice has occurred:
  - (1) The director may institute an administrative proceeding before the fair housing board on any director-initiated complaint.
  - (2) The complainant may request an administrative proceeding before the fair housing board within thirty (30) days after receiving notice of failure of conciliation.
- (b) In conducting an administrative hearing to ascertain whether or not there has been a violation of this article, the board shall have the power to administer oaths, issue subpoenas, compel the production of books, papers and other documents, and receive evidence. The board shall conduct the administrative hearing in accordance with the procedure provided in sections 120.57(1) and 120.58, Florida Statutes.
- (c) All recommended orders prepared by the board as a result of such hearing or hearings shall conform with the requirements for such orders as set out in section 120.59, Florida Statutes.
- (d) The board shall serve a copy of the order on each party to the administrative proceedings. The recommended order shall be considered as the final order of the board for the purposes of proceeding further under this section.
- (e) Either party to such administrative proceedings shall have the right to appeal the administrative order described herein by filing notice of appeal pursuant to Florida Appellate Rule 9.110(2) within thirty (30) days of the issuance of such order by the board. Any party shall have the right to bring an action in the appropriate court to ensure compliance with this Order.

- (f) In case of refusal to obey a subpoena issued by the board, the county or the person at whose request it was issued may, in addition to any other remedies made available, petition for its enforcement in the appropriate court.
- (g) Should any party fail or refuse to comply with the final order issued or breach a conciliation agreement as provided herein, then following the expiration of the appeal time provided herein, the board shall forward such order or conciliation agreement to the board of county commissioners with a request that the board of county commissioners authorize the county attorney to bring such action or actions as necessary to obtain compliance with this article.
- (h) When any act is required or allowed to be done at or within a specified time by this section, for cause shown, the board, at any time in its discretion, and upon the written request of a party, may order the period enlarged unless otherwise prohibited by law.
- (i) All written motions upon which a ruling is requested shall be filed at least three (3) days prior to the hearing date established by the board. Such motions shall be considered and ruled upon by the board prior to the start of the hearing.
- (j) All motions and orders thereon shall be made a part of the record of such administrative proceedings.
- (k) No appeal may be made from rulings on such motions until a final order has been issued.
- (l) If there are separately filed cases before the board which involve similar issues of law and fact and identity of parties, then such cases may be consolidated by the director for hearing before the board.
- (m) Discovery shall be permitted and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
- (n) The board may order a prehearing conference prior to any administrative hearing. Prior to such conference the board may direct that the parties submit a preconference statement addressing the issues of law and fact that will be involved in such hearing, identifying the witnesses that will testify, providing a list of all documents or other exhibits that will be submitted, and providing such other information as requested by the board.
- (o) The director shall set the time and place of any administrative hearing. The director shall serve notice by certified mail of such hearing on the parties no later than fourteen (14) calendar days prior to the final hearing. Such notice requirement may be waived with the written consent of all parties. The notice shall also contain:
  - (1) A statement of the nature of the hearing;
  - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
  - (3) A reference to the statutes, ordinances and rules involved.
- (p) Requests for subpoenas in any administrative proceeding shall be filed with the office of equal opportunity and forwarded to the board. Such request shall set forth the name and address of the person whose attendance is requested and shall describe with particularity any material to be produced. Such subpoenas shall be issued by the board or the director. The requesting party shall be responsible for service of any subpoena.
- (q) Any subpoena shall be subject to a motion to quash or a motion for protective order before the appropriate court.
- (r) The official transcript of a hearing shall be preserved by tape recording or by a court reporter.
- (s) Should a party elect to provide a court reporter for a hearing, that party shall be responsible for entire payment of the reporter's fee.
- (t) If the fair housing board finds that a discriminatory housing practice has occurred or is about to occur, it shall issue an order prohibiting the practice and awarding affirmative relief from the effects of the practice, including actual damages and reasonable attorney's fees and costs, and other injunctive or equitable relief. To vindicate the public interest, the fair housing board, may assess a civil penalty against the respondent. Funds recovered under this section shall be paid to the board of county commissioner's general fund.

Sec. 15-56. Enforcement by private persons.

- (a) A civil action shall be commenced no later than two (2) years after an alleged discriminatory practice. However, the court shall continue a civil case brought pursuant to this article from time to time before bringing it to trial if the court believes that the conciliation efforts of the office of equal opportunity are likely to result in satisfactory settlement of the discriminatory practice complained of in the complaint made to the office of equal opportunity and which practice forms the basis for the action in court. Any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this article and involving a bona fide purchaser, encumbrance, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this article shall not be affected.
- (b) If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney's fees and costs.

Sec. 15-57. Unlawful discriminatory practice in public accommodations.

It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, sex, color religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression of any person directly or indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof that are afforded the other customers, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, sex, color, religion, national origin disability, familial status, sexual orientation, age, marital status, or gender identity or expression or that the patronage of any person belonging to any particular race, sex, color religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression is unwelcome, objectionable or not acceptable, desired or solicited.

Sec. 15-58. Discriminatory housing practices.

Except as provided in section 15-62 hereof, it shall be an unlawful discriminatory housing practice:

- (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression.
- (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection therewith, because of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status, or gender identity or expression.
- (3) To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of dwelling that indicates any preference, limitation or discrimination based on race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression or an intention to make any such preference, limitation or discrimination.
- (4) To place or display any other device either purporting to offer for sale, leasing assignment, transfer or other disposition or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer or other disposition based on race, sex, color, religion, national origin disability, familial status, sexual orientation, age, marital status or gender identity or expression.
- (5) To represent to any person because of race, color, religion, sex, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- (6) To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existence or potential proximity of real property owned, used or occupied by any person of any particular race, sex, color, religion, national origin disability, familial status, sexual orientation, age, marital status or gender identity or expression.
- (7) To promote, induce, influence or attempt to promote, induce or influence by the use of postcards, letters, circulars, telephone, visitation or any other means directly or indirectly, a property owner, occupant or tenant to list for sale, sell, remove from, lease, assign, transfer or otherwise dispose of any housing by referring as a part of a process or pattern of inciting neighborhood unrest, community tension, or fear of racial, sexual, color, religious, nationality disability, familial status, sexual orientation, age, marital status or gender identity or expression change in any street, block, neighborhood or any other area due to the race, sex, color, religion, national origin disability, familial status, sexual orientation, age, marital status, or gender identity or expression of actual or anticipated neighbors, tenants or prospective buyers of any housing.
- (8) To cause to be made any untrue or intentionally misleading statement, advertise or in any other manner attempt as part of a process or pattern of inciting neighborhood unrest, community tension or fear of racial, sexual color religious nationality, disability, familial status, sexual orientation, age, marital status or gender identity or expression change in any street, block, neighborhood, or any other area, to obtain a listing of housing for sale, rental assignment transfer or other disposition, where such statement,

advertising or other representation is false or materially misleading or where there is insufficient basis to judge its truth or falsity to warrant making the statement, or to make any other such material misrepresentation in order to obtain such listing, sale, removal from, lease, assignment, transfer or other disposition of said housing.

- (9) To make, as part of a process or pattern of discouraging the purchase, rental, occupancy or other use of any housing in a particular block or neighborhood area, any representation to a person known to be a prospective purchaser that such block, neighborhood or area may undergo, is undergoing or had undergone a change with respect to racial, sexual, color, religious, nationality, disability, familial status, sexual orientation, age, marital status or gender identity or expression composition of such neighborhood, block or area.
- (10) To place or display any device or to indicate by use of postcards, letters, circulars, telephone, visitation or any other means, directly or indirectly, either purporting to offer for sale, rental leasing, assignment, transfer or other disposition, or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer, rental or other disposition based on race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression.
- (11) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for persons with disabilities any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate, as part of a restoration agreement, a provision requiring that the tenant pay into an interest-bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.
- (12) To refuse to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.
- (13) To fail to design and construct multifamily dwellings for first occupancy after March 13, 1991, in such a manner that:
  - a. The public use and common use portions of such dwellings are readily accessible to and usable by persons with a disability.
  - b. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by person with disabilities who utilize wheelchairs; and
  - c. All premises within such dwellings contain the following features of adoptive design: Building entrances on an accessible route, an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations, reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchen and bathrooms such that an individual who utilizes a wheelchair can maneuver about the space;
  - d. Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for persons with physical disabilities commonly cited as ANSI. A 117.1-1986, Suffices to satisfy the requirements of paragraph 13(d).
- (14) To retaliate or discriminate in any manner against a person who has opposed a practice declared discriminatory by this article, or who has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this article.
- (15) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article; or to obstruct or prevent any person from complying with the provision of this article; or any order issued thereunder.
- (16) To resist, prevent, impede or interfere with the board or any of its members or representatives in the lawful performance of its or their duty under this article.
- (17) To initiate maliciously, frivolously or in bad faith any charge under the provisions of this article for the purposes of harassment.

- (18) To intimidate, threaten, coerce or interfere with the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article.

Sec. 15-59. Discrimination in the financing of housing.

It shall be an unlawful discriminatory housing practice of any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to any person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to discriminate against him/her in the fixing of the amount, interest rate, duration, or other terms or conditions as such loan or other financial assistance, because of the race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression of such person or any person associated with him/her in connection with such loan or other financial assistance, or the purposes of such loan or other financial assistance of the present or prospective owners, lessees, tenants or occupants, of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; provided, that nothing contained in this section shall impair the scope of effectiveness of the exceptions set forth in section 15-62.

Sec. 15-60. Discrimination in the provision of brokerage services.

It shall be an unlawful discriminatory housing practice to deny any person who is otherwise professionally qualified by state law, and subject to the rules and regulations of the Florida Real Estate Commission, provided the local board of realtors does not discriminate in its membership policies on the basis of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression, access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, on account of race, sex, color, religion, national origin disability, familial status, sexual orientation, age, marital status or gender identity or expression.

Sec. 15-61. Discrimination in residential real estate related transactions.

It shall be an unlawful discriminatory housing practice for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction because of race, sex, color, religion, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression.

Sec. 15-62. Limitations and exceptions—Housing practices.

- (a) The prohibitions set forth in sections 15-57 through 15-80 shall not apply to a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, sex, color, national origin, disability, familial status, sexual orientation, age, marital status or gender identity or expression.
- (b) The prohibitions set forth in sections 15-58—15-60 shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other if the owner actually maintains and occupies one of such living quarters, provided such rooms or units are sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker or real estate salesperson or person in the business of selling or renting dwellings and/or without the publication, posting or mailing of any advertisement or written document in contravention of section 15-58, but this shall not prohibit the use of any attorney, escrow agents, abstractors, title companies and such other professional assistance as is necessary to perfect or transfer title to a dwelling.
- (c) The prohibitions set forth in sections 15-58 through 15-60 shall not apply to any single-family dwelling unit sold or rented by an owner who does not own more than three (3) such single-family dwelling units at any one time if such unit is sold or rented without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker or real estate salesperson or person in the business of selling or renting dwellings and/or without the publication, posting or mailing of any advertisement or written document in contravention of section 15-58; but this shall not prohibit the use of any attorney, escrow agents, abstractors, title companies and such other professional assistance as is necessary to perfect or transfer title to a dwelling.

- (d) For the purposes of subsections (a) and (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings and said exceptions shall not apply if:
  - (1) That person has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein; or
  - (2) That person has, within the preceding twelve (12) months, participated as agent, other than in the sale of his/her own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein; or
  - (3) That person is the owner of any dwelling designed for or intended for occupancy by, or occupied by, five (5) or more families.
- (e) The prohibitions set forth in sections 15-57 through 15-60 shall not apply to a person or owner who wishes to rent a portion of a single dwelling unit to a person or persons of the same sex when such persons live in the single dwelling unit.
- (f) Housing for older persons shall be exempted from the provisions regarding familial status. Housing for older persons may also maintain only those age restrictions necessary in order to be designated as housing for older persons.
- (g) Nothing in this article:
  - (1) Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, sex, color, religion, national origin, handicap, familial status, sexual orientation, age or marital status.
  - (2) Limits the applicability of any reasonable local government restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
  - (3) Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
  - (4) Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by Florida Statutes, chapter 893.
- (h) An individual who engages in conduct with a reasonable good faith reliance on the existence of the exemption of this article relating to housing for older persons is not personally liable for money damages for a violation of this article. For the purposes of this paragraph (h), a person engaged in the business or residential real estate transactions is presumed to have such a good faith reliance if that person has no actual knowledge that the housing facility is not or will not be eligible for the housing for older persons exemption and the housing facility gives such a person a written certification stating the compliance of the facility with the requirements for the housing for older persons.

Sec. 15-63. Same—Public accommodations.

The prohibitions set forth in section 15-57 shall not be applied to:

- (1) Limit of the use of restroom to persons of one (1) sex;
- (2) A religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society from limiting facilities and accommodations, which it owns or operates, for other than a commercial purpose, to persons of the same religion or from giving preference to such persons.

Sec. 15-64. Same—Physical handicap.

Nothing in this article requires any person renting or selling a dwelling constructed for first occupancy before March 13, 1991, to modify, alter or adjust the dwelling in order to provide physical accessibility except as otherwise required by law and as provided in section 15-58 (11) and (12).

**Appendix of Existing Ordinances:**

Palm Beach County:

**Chapter 70 HUMAN RELATIONS**

**ARTICLE I. IN GENERAL**

**Secs. 70-1—70-35. Reserved.**

**ARTICLE II. DISCRIMINATION**

***DIVISION 1. GENERALLY***

**Sec. 70-36. Territory embraced.**

All territory within the legal boundaries of Pinellas County, Florida, including all unincorporated and incorporated areas, shall be embraced by the provisions of this article.

**Sec. 70-37. Penalty for violation of article.**

Violations of this article are punishable as provided in section 1-8.

**Secs. 70-38—70-50. Reserved.**

***DIVISION 2. EMPLOYMENT*** <sup>[2]</sup>

Subdivision I. In General

**Sec. 70-51. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrative law judge* means a judge appointed by the State of Florida Division of Administrative Hearings to conduct hearings under this Code.

*Age* means any person being at least 18 years of age or legally emancipated.

*Chairperson* means the duly appointed chairperson or persons of the designated human rights commission.

*Commission* means the official body or bodies given authority by the board of county commissioners to administer this division.

*Conciliation agreement* means an agreement entered into between the complainant and respondent resolving the alleged discriminatory practice.

*Director* means the director of the human rights office.

*Disability* means:

- (1) A physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

An individual having a disability is "qualified" with respect to employment if he can perform the essential functions of the job in question with reasonable accommodations.

*Discriminatory practice* means a practice designated as illegal or unlawful under the terms of this division.

*Employee* means any individual employed by, or seeking employment from, an employer.

*Employer* means a person who employs five or more employees for each working day in each of 13 or more calendar weeks in the current or preceding calendar year and any agent of such a person, but such term does not include:

- (1) The United States or a corporation wholly owned by the government of the United States;
- (2) An Indian tribe;
- (3) A bona fide private membership club; or
- (4) The state.

*Employment agency* means a person, or his agent, regularly undertaking to procure employees for an employer or opportunities for employees to work for an employer.

*Gender* includes but is not limited to sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-

related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity, or not being asserted for an improper purpose.

*Hearing officer* means that person selected to administer the conduct of a hearing.

*Human relations or rights office* means the enforcement agency or agencies designated or created by the board of county commissioners.

*Labor organization* means:

- (1) An organization of any kind representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;
- (2) A conference, general committee, system board, or council which is subordinate to a national or international labor organization; or
- (3) An agent of a labor organization.

*Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

*Marital status* means the state of being unmarried, married, or separated, as defined by state law. The term "unmarried" includes persons who are single, divorced, or widowed.

*National origin* means the origin of an ancestor, the country of origin of a person's forebears, naturally, by marriage, or by adoption.

*Religion* means any belief protected by the free exercise clause of the First Amendment to the United States Constitution.

*Sexual orientation* means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality. This definition is not intended to protect any practice prohibited by federal, state, or local law.

*Substantially limited* means to experience difficulty in securing, retaining, or advancing in employment because of a disability.

*Training program* means any plan containing terms and conditions for qualification, recruitment, selection, employment, or training of employees to:

- (1) Enter a specific trade or occupation after completion of a specified training program; or
- (2) Offer a person already either partially or wholly trained in a specified trade or occupation an opportunity to advance himself after completion of a specified training program.

#### **Sec. 70-52. Purposes and intent.**

(a) The general purposes of this division are to:

- (1) Provide for execution within the county of the policies embodied in the Federal Civil Rights Act of 1964, as amended.
  - (2) Secure for all individuals within the county the freedom from discrimination because of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability in connection with employment, and thereby to promote the interests, rights and privileges of individuals within the county.
- (b) This division shall be liberally construed to preserve the public safety, health and general welfare, and to further the general purposes stated herein.
- (c) The enforcement of this division may be delegated by interlocal agreement to other units of local government or to nonprofit corporations.

#### **Sec. 70-53. Unlawful practices.**

(a) *Unlawful discrimination in employment practices.*

(1) *Employers.* It is a discriminatory practice for an employer to:

- a. Fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability; or
- b. Limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability.
- c. The above described prohibited discrimination on the basis of gender includes sexual harassment, including same-gender sexual harassment, and pregnancy discrimination.

- (2) *Employment agencies.* It is a discriminatory practice for an employment agency on the basis of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability to:
- a. Fail or refuse to refer for employment or otherwise discriminate against an individual; or
  - b. Classify or refer for employment an individual on such a discriminatory basis.
- (3) *Labor organizations.* It is a discriminatory practice for a labor organization to:
- a. Exclude or to expel from membership or otherwise discriminate against any individual on the basis of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability;
  - b. Limit, segregate, or classify membership or applicants for membership, or to classify or to fail or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability; or
  - c. Cause, assist, or attempt to cause or assist an employer to violate this division.
- (4) *Training programs.* It is an unlawful practice for an employer, labor organization, or training committee to discriminate against an individual on the basis of race, color, religion, national origin, gender, sexual orientation, marital status, or disability in a training program providing apprenticeship or other training.
- (5) *Advertising.* It is a discriminatory practice for an employer, labor organization, or employment agency to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination based on race, color, religion, national origin, gender, sexual orientation, marital status, or disability.
- (6) *Discriminatory information gathering.* Except as permitted and required by regulations of the commission, or by applicable federal or state law, it is a discriminatory practice for an employer or employment agency to elicit information about an employee's race, color, religion, gender, sexual orientation, national origin, age, marital status, or disability, or to keep or disclose a record of such information for the purposes of effecting discrimination.
- (b) *Exemptions to employment discriminatory practices.* It is not a discriminatory employment practice for:
- (1) A religious corporation, association, or society to employ individuals of a particular religion to perform work connected with the beliefs, tenets and doctrines of the corporation, association, or society of its religious activities; or
  - (2) A religious educational institution or religious organization owned, operated, supervised, or controlled by a religious institution or organization to limit employment or give preference to members of the same religion.

**Sec. 70-54. Retaliation, coercion, interference, obstruction or prevention of compliance with division.**

It is an unlawful discriminatory practice for a person to:

- (1) Retaliate or discriminate against a person because he or she has opposed a discriminatory practice, or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this division;
- (2) Aid, abet, incite, or coerce a person to engage in an unlawful discriminatory practice;
- (3) Willfully interfere with the performance of a duty or the exercise of a power by the commission or one of its staff members or representatives; or
- (4) Willfully obstruct or prevent a person from complying with the provisions of this division or an order issued thereunder.

**Secs. 70-55—70-75. Reserved.**

**Subdivision II. Violations**

**Sec. 70-76. Filing of complaints.**

- (a) Any person alleging that they have been subject to an unlawful discriminatory practice shall file a complaint in writing with the commission through the designated office or offices sworn to or affirmed, which shall state the name and address of the complainant and the person against whom complaint is made. It shall also state the alleged facts surrounding the alleged unlawful discriminatory practice and such other information as the commission may require or deems necessary. A complaint shall be filed within 180 days after the date of the alleged unlawful discriminatory practice in order to be processed under this division. No complaint shall be filed under this division for a claim which has previously been adjudicated under a similar municipal ordinance.
- (b) Complaints against Pinellas County or one of its agencies or constitutional officers may be filed with the City of St. Petersburg Office of Human Relations for those complainants residing south of Ulmerton Road, or with the City of Clearwater Office of Community Relations for those complainants residing north of Ulmerton Road. Such complaints shall be dual-filed with the Federal Equal Opportunity Commission (EEOC), under Title VII of the Civil Rights Act of 1964, as amended, and the complaints shall be forwarded, after the initial filing, by the

respective cities of St. Petersburg and Clearwater, to the EEOC for its exclusive investigation and handling in accordance with federal rules and regulations.

(c) Notwithstanding the provisions of Pinellas County Code, section 1-4, all complaints against Pinellas County, its agencies, or constitutional officers, which, at the time of the passage of this section, are being processed by the cities of St. Petersburg or Clearwater, in accordance with an interlocal agreement between Pinellas County and those municipalities, including cases filed under this section which have been referred to an administrative hearing by a board of one of those municipalities, and which are pending an administrative hearing, shall be immediately closed and forwarded to the EEOC for further handling and processing, and the cities of Clearwater and St. Petersburg, and any municipal board created by those municipalities, are hereby divested of any further jurisdiction regarding those complaints. Should the cities of St. Petersburg and Clearwater attempt to take any action in contravention of this section, the county attorney shall initiate action in a court of competent jurisdiction to ensure that the provisions of this section are complied with.

**Sec. 70-77. Processing of complaints; administrative hearings.**

(a) Notwithstanding the provisions of Pinellas County Code, section 1-4, no complaints brought under this section against Pinellas County, its agencies, or constitutional officers, shall be processed, nor shall an administrative hearing be conducted under this section, by any municipal body or board, but said complaints, including complaints which are presently being investigated or have been scheduled for administrative hearings by a municipal body or board, shall be closed and forwarded for further investigation and action by the Federal Equal Opportunity Commission (EEOC), in accordance with its rules and regulations.

(b) Upon the filing of a complaint as set forth in section 70-76, the staff within 90 days shall make such investigation as the director deems appropriate to ascertain facts and issues. If, within 90 days, the complaint is not settled and if the director shall determine that there are reasonable grounds to believe an unlawful discriminatory practice has occurred, the director shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them and shall have the option of scheduling a hearing date. Conciliation conferences shall be informal, and all reasonable efforts shall be made by the parties thereto to reach a settlement.

(c) The terms of conciliation agreed to by the parties may be reduced to writing and incorporated into a consent agreement to be signed by the parties, which agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated. Consent agreements shall be signed on behalf of the commission by the chairperson or acting chairperson.

(d) If the director determines that the complaint lacks reasonable grounds upon which to base the violation of this division, the director shall dismiss the case, and inform the parties of his or her findings through the issuance of a written report. A complainant may request reconsideration of a no cause finding within 15 days of receipt of the written report by notifying the director of such request in writing, with the specific grounds therefor included. Within 15 days of receipt of a request for reconsideration, the director shall issue a final determination, unless it is decided that further investigation must be conducted, in which case the final determination shall be issued within 45 days.

(e) If the director, with respect to a matter which involves a contravention of this division, fails to conciliate a complaint, after the parties, in good faith, have attempted such conciliation, as provided in subsection (b) of this section, the director shall notify the parties within fifteen days that he or she has been unable to conciliate the complaint. The director shall thereafter, within ten days, notify the State of Florida Division of Administrative Hearings that a hearing shall be scheduled with respect to such complaint. The administrative hearing shall be conducted by the administrative law judge within 60 days of the director's request.

(f) The administrative law judge shall have the powers at any time to administer oaths, issue subpoenas, compel the production of books, papers and other documents and receive evidence.

(1) Whenever it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, payrolls, personnel records, correspondence, documents, papers, or any other evidence relating to any matter under investigation or in question, the administrative law judge may issue a subpoena or subpoena duces tecum and thereby compel such attendance of witnesses or production for examination of books, papers and records.

(2) The administrative law judge may issue a subpoena or subpoena duces tecum at the request of any party to a hearing or other proceedings. The issuance of such subpoena and subpoena duces tecum at the request of a party shall depend upon a showing of the necessity therefor.

(3) Where a subpoena or subpoena duces tecum is applied for and issued at the request of any party to a hearing or other proceeding, the cost of service, witness and mileage fees, if any, shall be borne by the party at

whose request it has been issued. Where a subpoena or subpoena duces tecum is issued at the request of the director, the cost of such service, witness, and mileage fees, if any, shall be borne by the commission.

(4) Depositions of witnesses, including any party, may be taken as prescribed by the Florida Rules of Civil Procedure.

(5) The administrative law judge may, at any time after the complaint is filed, require any party or witness to answer interrogatories. The procedure for interrogatories shall conform to the Florida Rules of Civil Procedure, as far as is practicable.

(6) If a person fails to permit access, fails to comply with a subpoena, refuses to have his deposition taken, refuses to answer interrogatories, or otherwise refuses to make discovery, the administrative law judge or any party may request an order of a court of proper jurisdiction.

(g) All administrative hearings held pursuant to this division shall be subject to the following:

(1) All motions upon which a ruling is requested shall be filed prior to the hearing date established by the administrative law judge. Such motions shall be considered and ruled upon by the administrative law judge prior to the start of the hearing. In any case where the administrative law judge is unable to consider such motion prior to the start of a hearing, and in order to prevent delay, such motion may be deferred for later review.

(2) All motions and orders thereon shall be made a part of the record of such administrative proceedings.

(3) If there are separately filed cases before the administrative law judge which involve similar issues of law and fact and identity of parties, then such cases may be consolidated for hearing before the administrative law judge.

(4) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

(5) The administrative law judge shall order a pre-hearing conference prior to any administrative hearing. Prior to such conference the administrative law judge shall direct that the parties submit a pre-conference statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.

(6) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. The notice shall include:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the ordinance and rules involved.

d. A short and plain statement of the matters asserted by all parties of record at the time the notice is given.

(7) Any requests for subpoenas in any administrative proceeding shall be filed with the administrative law judge. Such request shall set forth the name and address of the person whose attendance is requested and shall describe with particularity any material to be produced. The requesting party shall be responsible for service of any subpoena.

(8) Any subpoena shall be subject to a motion to quash the same or a motion for protective order which motion shall be determined in the same manner as are other motions.

(9) The official transcript of a hearing shall be preserved by tape recording, shorthand, court reporter or any similar means or combination. A party may request the commission to provide a court reporter for a hearing where the commission has elected not to do so. In such event, the requesting party shall be responsible for payment of the court reporter's per diem expense and any costs of transcribing the record.

(10) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or administrative law judge's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the commission proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

(11) The record in cases governed by this subsection shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the administrative law judge;

g. All staff memoranda or data submitted to the administrative law judge during the hearing or prior to its disposition, after notice of the submission to all parties, if such communications are public records;

h. All matters placed on the record after an ex parte communication; and

- i. The official transcript.
- (12) Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.
- (13) The administrative law judge shall complete and submit to all parties a recommended order consisting of his findings of fact, conclusions of law, interpretation of administrative rules, recommended remedy, if applicable, and any other information required by law or agency rule to be contained in the final order. The administrative law judge shall allow each party at least ten days in which to submit written exceptions to the recommended order. The recommended order must include specific factual findings by the administrative law judge relating to his or her jurisdiction over the complaint. The administrative law judge shall respond to submitted written exceptions and issue a final order within 30 days of the hearing.
- (14) The administrative law judge's final order shall be the final action under this section, and may be appealed by filing a petition for writ of certiorari in the circuit court of the Sixth Judicial Circuit in and for Pinellas County, Florida, within 30 calendar days of the date of the final order.
- (h) Notwithstanding any other provisions of this division, if the administrative law judge, human relation employees, or the director, when acting on a charge or complaint, is required to perform some act within a particular time period and the administrative law judge, human relation employees, or the director fails to do the act within the required time period, that failure will not invalidate further proceedings on such charge or complaint and that failure shall not invalidate any of the powers of the administrative law judge, human relation employees, or director, provided that such required act is performed within a reasonable time.

**Sec. 70-78. Enforcement.**

- (a) The administrative law judge shall have the authority to award actual damages and reasonable costs and attorney's fees incurred by a party which were caused by a violation of this division.
- (b) Upon failure of any party to comply with an order of the administrative law judge to pay damages, a "petition for enforcement" may be filed by the board of county commissioners, or the complainant, in a court of competent jurisdiction. A court reviewing a petition for enforcement shall require the responding party to show cause, based upon the record established below, why such order should not be enforced, and shall enforce the order unless there is a showing by the responding party that, based upon the record, there is no competent substantial evidence to support the order and/or the order did comply with the essential requirements of law.
- (c) A court which receives a petition for enforcement as described in paragraph (b) above shall direct the responding party to show cause why the administrative law judge's order should not be enforced within 20 days from the date of the petition's filing. In making its decision, the reviewing court shall be limited to the record established under section 70-77 of this division.

**Secs. 70-79—70-100. Reserved.**

**DIVISION 3. HOUSING AND PUBLIC ACCOMMODATIONS <sup>[3]</sup>**

Subdivision I. In General

**Sec. 70-101. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aggrieved person* means any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that he will be injured by a discriminatory housing practice that is about to occur.

*Commission* means the official body or bodies given authority by the board of county commissioners to administer this division.

*Complainant* means a person, including the commission, who files a complaint under this division.

*Conciliation* means the attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the respondent, and the commission.

*Conciliation agreement* means a written agreement setting forth the resolution of the issues in conciliation.

*Discriminatory housing practice* means an act prohibited by subdivision III of this division.

*Dwelling* means:

- (1) Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or
- (2) Any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described by subsection (1), above.

*Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

*Family* includes a single individual.

*Gender* includes but is not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of the person's core identity, or not being asserted for an improper purpose.

*Handicap* means a mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). In this division, a reference to "an individual with a handicap" or to "handicap" does not apply to an individual because of that individual's sexual orientation or because that individual is a transvestite.

*Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under 11 U.S.C. section 101, et seq. (Bankruptcy Code), receivers and fiduciaries.

*Respondent* means:

- (1) The person or other entity accused of a violation of this division; or
- (2) Any person identified as an additional or substitute respondent under this division or an agent of an additional or substitute respondent.

*Sexual orientation* means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality. This definition is not intended to protect any practice prohibited by federal, state, or local law.

*To rent* means to lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

#### **Sec. 70-102. Familial status; application.**

The protections afforded against discrimination in this division on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

#### **Sec. 70-103. Purposes and intent.**

(a) The general purposes of this division are to:

- (1) Provide for execution within the county the policies embodied in title VIII of the Federal Civil Rights Act of 1968, as amended by the Federal Fair Housing Act Amendments of 1988.
- (2) Secure for all individuals within the county the freedom from discrimination because of race, color, religion, national origin, gender, sexual orientation, familial status, or handicap in connection with housing and public accommodations, and thereby to promote the interests, rights and privileges of individuals within the county.

(b) This division shall be liberally construed to preserve the public safety, health and general welfare and to further the general purposes stated in this section.

(c) The enforcement of this division may be delegated by interlocal agreement to fair housing boards or commissions of other units of local government, as provided in section 70-109 of this division.

#### **Sec. 70-104. Certain sales and rentals exempted.**

(a) Except for the prohibitions against discriminatory advertising provided in subdivision III of this division, and subject to subsection (c) of this section, subdivision III of this division does not apply to:

- (1) The sale or rental of any single-family house by an owner, provided the following conditions are met:
  - a. The owner does not own or have any interest in more than three single-family houses at any one time.
  - b. The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such quarters as his residence.

- (b) For the purposes of this section, the term "person in the business of selling or renting dwellings" means any person who:
- (1) Within the preceding 12 months has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;
  - (2) Within the preceding 12 months has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
  - (3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.
- (c) The exemption in subsection (a)(1) of this section applies only to one such sale in any 24-month period.

**Sec. 70-105. Religious organization and private club exemptions.**

- (a) This division does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from:
- (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin; or
  - (2) Giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
- (b) This division does not prohibit a private club not open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.

**Sec. 70-106. Housing for older persons exempted.**

- (a) The provisions regarding familial status in this division shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:
- (1) There are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
  - (2) There are unoccupied units, provided that all such units are reserved for occupancy by persons 62 years of age or over;
  - (3) There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.
- (b) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit pursuant to this section.
- (c) In order to qualify as housing for older persons under this section, at least 80 percent of the units in the housing facility must be occupied by at least one person 55 years of age or older, except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this section until twenty percent of the units in the facility are occupied.
- (d) Housing satisfies the requirements of this section even though:
- (1) On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units are occupied after September 13, 1988, are occupied by at least one person 55 years of age or older.
  - (2) There are unoccupied units, provided that at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older;
  - (3) There are units occupied by employees of the housing provider (and family members residing in the same unit) who are under 55 years of age, provided the employees perform substantial duties directly related to the management or maintenance of the housing.
- (e) A person shall not be personally liable for monetary damages for a violation of this part if such person reasonably relied in good faith on the application of the exemption under this section relating to housing for older persons. For purposes of this paragraph, a person may show good faith reliance on the application of the exemption only by showing that:
- (1) The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and
  - (2) The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

**Sec. 70-107. Appraisals.**

This division does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, gender, sexual orientation, handicap, familial status, or national origin.

**Sec. 70-108. Effect of division on other laws.**

- (a) This division does not affect a reasonable local or state restriction on the maximum number of occupants permitted to occupy a dwelling.
- (b) This division does not affect a requirement of nondiscrimination in any other state or federal law.

**Sec. 70-109. Responsibility for administration of division.**

The director of the county human rights office is authorized to administer the provisions of this part. Additionally, the board of county commissioners may designate other fair housing boards or commissions of units of local government within the county as being authorized to administer the provisions of this division. Such authorized boards or commissions may adopt procedural rules for implementation of this division, which are not in conflict with or inconsistent with the provisions of this division. No private organization or entity shall receive such authority.

**Sec. 70-110. Cooperation with other entities.**

The commission, or its designee under section 70-109, shall cooperate with and, as appropriate, may provide technical and other assistance to federal, state, local, and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices.

**Secs. 70-111—70-130. Reserved.**

**Subdivision II. Housing Violations**

**Sec. 70-131. Subpoenas; discovery.**

The commission, or its designee under section 70-109, may issue subpoenas and order discovery as provided by this division in aid of investigations and hearings as required. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as subpoenas and discovery in a civil action under the Florida Rules of Civil Procedure.

**Sec. 70-132. Complaints—Generally.**

The commission, or its designee as provided in section 70-109, shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this division.

**Sec. 70-133. Same—Investigation, filing, amendment.**

- (a) The commission, or its designee under section 70-109, shall investigate alleged discriminatory housing practices.
- (b) A complaint must be:
  - (1) In writing;
  - (2) Under oath; and
  - (3) In the form prescribed by the commission.
- (c) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the commission alleging the discriminatory housing practice.
- (d) Not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, the commission, or its designee under section 70-109, may file its own complaint.
- (e) A complaint under this division may be amended at any time.
- (f) On the filing of a complaint under this division the commission shall:
  - (1) Give the aggrieved person and/or complainant notice that the complaint has been received;
  - (2) Advise the aggrieved person and/or complainant of the time limits and choice of forums under this division; and
  - (3) Not later than the 20th day after the filing of the complaint or the identification of an additional respondent under section 70-136 of this division, serve on each respondent:

- a. A notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this article; and
- b. A copy of the original complaint.

**Sec. 70-134. Answering complaint.**

- (a) Not later than the tenth day after receipt of the notice and copy under subsection (f)(3) of section 70-133 of this division, a respondent may file an answer to the complaint.
- (b) An answer to a complaint under this division must be:
  - (1) In writing;
  - (2) Under oath; and
  - (3) In the form prescribed by the commission.
- (c) An answer to a complaint under this division may be amended at any time.
- (d) An answer to a complaint under this division does not inhibit the investigation of the complaint.

**Sec. 70-135. Investigation of complaints.**

- (a) For complaints filed with the commission and for all other complaints that the federal government has referred to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the commission, or its designee, shall promptly investigate the allegations set forth in the complaint within 30 days.
- (b) The commission, or its designee, shall investigate all complaints, and except as provided by subsection (c) of this section, shall complete an investigation not later than the 100th day after the date the complaint is filed, or if it is unable to complete the investigation within the 100-day period, shall dispose of all administrative proceedings related to the investigation not later than one year after the date the complaint is filed.
- (c) If the commission, or its designee, is unable to complete administrative disposition within the time periods prescribed in subsection (b) of this section, the commission shall notify the complainant and the respondent in writing of the reasons for the delay.

**Sec. 70-136. Additional or substitute respondent.**

- (a) The commission, or its designee, may join a person not named in a complaint as an additional or substitute respondent if in the course of the investigation it determines that the person should be accused of a discriminatory housing practice.
- (b) In addition to the information required in the notice under subsection (f)(3) of section 70-133 of this division, the commission, or its designee, shall include in a notice to a respondent joined under this section an explanation of the basis for the determination that the person is properly joined as a respondent.

**Sec. 70-137. Conciliation.**

- (a) The commission, or its designee, as provided in section 70-109, shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the commission, to the extent feasible, engage in conciliation with respect to the complaint.
- (b) A conciliation agreement is an agreement between a respondent and the complainant and is subject to the commission, or its designee's, as provided in section 70-109, approval.
- (c) A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.
- (d) A conciliation agreement shall be made public unless the complainant and respondent agree otherwise, and the commission, or its designee, determines that disclosure is not necessary to further the purposes of this division.
- (e) Nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under this division without the written consent of the persons concerned.
- (f) Failure by the parties to abide by the terms of a signed conciliation agreement under this division shall constitute a separate violation of this section, and will be investigated as such upon the filing of a complaint by either party thereto.

**Sec. 70-138. Temporary or preliminary relief.**

- (a) If the commission, or its designee, concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this division, it may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint, in accordance with F.S. § 760.34(8).

- (b) On receipt of the commission's authorization pursuant to this section, the county attorney shall promptly file the action.
- (c) A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Florida Rules of Civil Procedure.
- (d) The filing of a civil action under this section does not affect the initiation or continuation of administrative proceedings under section 70-147 of this division.

**Sec. 70-139. Investigative report.**

- (a) The commission, or its designee, shall prepare a final investigative report showing:
  - (1) The names and dates of contacts with witnesses;
  - (2) A summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts;
  - (3) A summary description of other pertinent records;
  - (4) A summary of witness statements; and
  - (5) Answers to interrogatories.
- (6) After completion of the investigation, the commission, or its designee, shall make available to the aggrieved person and the respondent, at any time, the final investigation report relating to that investigation and other information derived from the investigation, provided the release of such other information does not place an excessive burden on the complainant that might discourage the filing of complaints.
- (b) A final report under this section may be amended if additional evidence is discovered.

**Sec. 70-140. Reasonable cause determination.**

- (a) The commission, or its designee, shall determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. For the purposes of this division, "reasonable cause" shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that a discriminatory housing practice has occurred or is likely to occur.
- (b) The commission shall make the determination under subsection (a) of this section not later than the 100th day after the date a complaint is filed unless:
  - (1) It is impracticable to make the determination; or
  - (2) The commission, or its designee, has approved a conciliation agreement relating to the complaint.
- (c) If it is impracticable to make the determination within the time period provided by subsection (b) of this section, the commission shall notify the complainant and respondent in writing of the reasons for the delay.
- (d) If the commission, or its designee, determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, it shall, except as provided by section 70-142, immediately issue a reasonable cause finding on behalf of the aggrieved person.

**Sec. 70-141. Notice of determination.**

- (a) A reasonable cause finding issued under section 70-140
  - (1) Must consist of a short and plain statement of the facts on which the commission, or its designee, has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
  - (2) Must be based on the final investigative report; and
  - (3) Need not be limited to the facts or grounds alleged in the complaint.
- (b) Not later than the 20th day after the commission, or its designee, issues a reasonable cause finding, the commission shall send a copy of such finding with information concerning the election under section 70-145 of this division to:
  - (1) Each respondent, together with a notice of the opportunity for a hearing provided by section 70-147 of this division; and
  - (2) Each complainant on whose behalf the complaint was filed.

**Sec. 70-142. Application of land use law.**

If the commission determines that a discriminatory housing practice involves the legality of a state or local zoning or other land use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the county attorney for appropriate action.

**Sec. 70-143. Dismissal of complaint.**

- (a) If the commission, or its designee, determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, it shall promptly dismiss the complaint.
- (b) The commission shall make public disclosure of each dismissal under this section.

**Sec. 70-144. Pending civil trial.**

The commission, or its designee, may not issue a reasonable cause finding under this division regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law seeking relief with respect to that discriminatory housing practice.

**Sec. 70-145. Election of judicial determination.**

- (a) A complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed under this division may elect to have the claims asserted in that charge decided in a civil action as provided by section 70-146 of this division.
- (b) The election under this section must be made not later than the 20th day after the date of receipt by the electing person of service under subsection (b) of section 70-141 of this division or, in the case of the commission, not later than the 20th day after the date the charge was issued.
- (c) The person making the election under this section shall give notice to the commission and to all other complainants and respondents to whom the charge relates.

**Sec. 70-146. County attorney action for enforcement.**

- (a) If a timely election is made under section 70-145, the commission shall authorize, and not later than the 30th day after the election is made the county attorney shall file a civil action on behalf of the aggrieved person in a court of competent jurisdiction seeking relief as provided by state and/or federal law.
- (b) An aggrieved person may intervene in the civil action filed under this section.

**Sec. 70-147. Administrative hearing.**

- (a) If a timely election is not made under section 70-145, the commission, or its designee, shall provide for a hearing on the charge.
- (b) Except as provided by subsection (d) of this section, the Florida Administrative Procedures Act (F.S. ch. 120) governs hearings under this section.
- (c) When the commission, or its designee, has issued a reasonable cause finding and a judicial election has not been made under section 70-145 nor a settlement agreement entered between the complainant and respondent, the commission or its designee shall arrange for a hearing to be conducted by an administrative law judge from the state division of administrative hearings.
- (d) A hearing under this section may not continue regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person seeking relief with respect to that discriminatory housing practice.
- (e) The county attorney shall provide legal representation for the complainant in such administrative hearings under this section.
- (f) The administrative law judge shall issue a final order within 30 days of the hearing conducted under this section. The final order issued by the administrative law judge shall be the final agency action under this section.
- (g) Any party to the complaint shall have the right to petition for judicial review of the administrative law judge's final order in a court of competent jurisdiction. Such review shall be limited to a review of the administrative law judge's final order and the record of the proceedings conducted under this section. A reviewing court may modify, revoke or remand the final order only upon a finding that such order is not supported by substantial competent evidence and/or the proceedings conducted did not comply with the essential requirements of law.
- (h) The commission, or its designee, as well as a complainant, may seek enforcement of a final order issued under this section by filing a petition for enforcement in a court of competent jurisdiction. Such a petition for enforcement may request declaratory relief, temporary or permanent equitable relief, a fine, forfeiture, penalty, and/or issuance of a money judgment for actual damages, attorney's fees and costs, as provided in the final order. A court considering such petition shall grant it unless there is a showing by the respondent, based upon the record of the proceedings which were conducted under this section, that the order is not supported by substantial competent evidence and/or the proceedings conducted did not comply with the essential requirements of law.

**Sec. 70-148. Administrative penalties.**

- (a) If the administrative law judge determines at a hearing under section 70-147 of this division that a respondent has engaged in or is about to engage in a discriminatory housing practice, the administrative law judge may order the appropriate relief, including actual damages, reasonable attorney's fees, costs, and other injunctive or equitable relief.
- (b) To vindicate the public interest, the administrative law judge may assess a civil penalty against the respondent in an amount that does not exceed:
- (1) Ten thousand dollars if the respondent has been adjudged by an administrative law judge or a court to have committed a prior discriminatory housing practice;
  - (2) Except as provided in subparagraph (c) below, \$25,000.00 if the respondent has been adjudged by an administrative law judge or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charge; and
  - (3) Except as provided by subsection (c) of this section, \$50,000.00 if the respondent has been adjudged by an administrative law judge or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.
- (c) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, whether adjudged by an administrative law judge or court, the civil penalties in subsections (b)(2) and (3) of this section may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.
- (d) At the request of the commission, the county attorney shall sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the board of county commissioners' finance department and shall be used to offset expenses incurred by the commission or county attorney in enforcing this division.
- (e) The penalties provided for under this section are applicable regardless of whether the commission or aggrieved party initiated the investigation under this division.

**Sec. 70-149. Restriction on sale or rental of property.**

If at any time following the issuance of a reasonable cause determination, a respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property which is the subject of a reasonable cause determination, the respondent must provide a copy of the cause determination to such person prior to entering into the contract, sale, encumbrance, or lease. A commission determination of reasonable cause, however, shall not affect a contract, sale, encumbrance, or lease which:

- (1) Was consummated before the commission issued the reasonable cause finding; and
- (2) Involved a bona fide purchaser, encumbrances, or tenant who did not have actual notice of the charge filed under this division.

**Sec. 70-150. Orders involving licensed or regulated business.**

If the administrative law judge issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission, or its designee, shall, not later than the 30th day after the date of the issuance of the order:

- (1) Send copies of the findings and the order to the governmental agency; and
- (2) Recommend to the governmental agency appropriate disciplinary action.

**Sec. 70-151. Previous order within five years.**

If the administrative law judge, issues an order against a respondent against whom another order was issued within the preceding five years under section 70-148 of this division, the commission shall send a copy of each order issued under that section to the county attorney.

**Sec. 70-152. Private enforcement.**

(a) *Civil action.*

(1) Under the provisions of this section, an aggrieved person may file a civil action in a court of competent jurisdiction no later than two years after an alleged discriminatory housing practice has occurred. However, the computation of such two-year period shall not include any time during which an administrative proceeding under sections 70-133—70-143 took place with respect to a charge or complaint of such alleged discriminatory housing practice.

(2) An aggrieved person may file an action regardless of whether they have filed a complaint under sections 70-133—70-151 of this division, and regardless of the status of any complaint filed under this division.

(3) In a civil action under this subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages and may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate.

(b) *Intervention by county attorney.* Upon the request of the commission, the county attorney may intervene in an action brought under the provisions of subsection (a) of this section if the commission certifies that the case is of significant public importance to the citizens of the county.

**Sec. 70-153. Enforcement by county attorney.**

(a) *Pattern or practice cases.*

(1) Whenever the commission, or its designee, has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this division, or that any group of persons has been denied any of the rights granted by this division, and such denial raises an issue of general public importance, it shall direct the county attorney to commence a civil action in a court of competent jurisdiction.

(2) For the purposes of this section, "reasonable cause" shall be based upon sufficiently trustworthy information which would lead an impartial observer to a belief that a person is engaged in the actions described in subsection (a)(1) of this section.

(b) *Subpoena enforcement.* The county attorney, on behalf of the commission, or its designee, may enforce a subpoena issued under this division in appropriate proceedings pursuant to law.

**Secs. 70-154—70-175. Reserved.**

**Subdivision III. Housing Discrimination**

**Sec. 70-176. Sale or rental.**

(a) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, handicap, religion, gender, sexual orientation, familial status, or national origin.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with such sale or rental, because of race, color, handicap, religion, gender, sexual orientation, familial status, or national origin.

(c) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

**Sec. 70-177. Publication.**

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, gender, sexual orientation, handicap, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination.

**Sec. 70-178. Falsely representing availability.**

A person may not represent to any person because of race, color, religion, gender, sexual orientation, handicap, familial status, or national origin that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection, sale or rental.

**Sec. 70-179. Entry into neighborhood.**

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, gender, sexual orientation, handicap, familial status, or national origin.

**Sec. 70-180. Handicap.**

(a) A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

- (3) Any person associated with that buyer or renter.
- (b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a handicap of:
  - (1) That person;
  - (2) A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
  - (3) Any person associated with that person.
- (c) For purposes of this section only, discrimination includes:
  - (1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises;
  - (2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or
  - (3) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the federal Fair Housing Amendments Act of 1988 (P.L. 100-430), a failure to design and construct those dwellings in a manner that:
    - a. The public use and common use portions of the dwellings are readily accessible to and usable by handicapped persons;
    - b. All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
    - c. All premises within the dwellings contain the following features of adaptive design:
      - 1. An accessible route into and through the dwelling;
      - 2. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
      - 3. Reinforcements in bathroom walls to allow installation of grab bars; and
      - 4. Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.
  - (d) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, ANSI A117.1-1986, suffices to satisfy the requirements of subsection (c)(3)c of this section.
  - (e) As used in this section, the term "covered multifamily dwellings" means:
    - (1) Buildings consisting of four or more units if the buildings have one or more elevators; and
    - (2) Ground floor units in other buildings consisting of four or more units.
  - (f) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**Sec. 70-181. Residential real estate related transactions.**

- (a) A person or entity whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, gender, sexual orientation, handicap, familial status, or national origin.
- (b) As used in this section, "residential real estate related transaction" means:
  - (1) Making or purchasing loans or providing other financial assistance:
    - a. To purchase, construct, improve, repair, or maintain a dwelling; or
    - b. Secured by residential real estate; or
  - (2) Selling, brokering, or appraising residential real property.

**Sec. 70-182. Brokerage services.**

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation therein, on the basis of race, color, religion, national origin, gender, sexual orientation, familial status, or handicap.

**Sec. 70-183. Interference, coercion, or intimidation.**

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this subdivision.

**Secs. 70-184—70-210. Reserved.**

#### **Subdivision IV. Prohibited Discrimination in Public Accommodations**

##### **Sec. 70-211. Definitions.**

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Commission* means the official body or bodies given authority by the board of county commissioners to administer this subdivision, as well as the board of county commissioners itself.

*Disability* means:

- (1) A physical or mental impairment which substantially limits one or more of a person's major life activities;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

*Gender* includes but is not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of the person's core identity, or not being asserted for an improper purpose.

*National origin* means the origin of an ancestor, the country of origin of a person's forebears, naturally, by marriage, or by adoption.

*Operator* means and includes any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of accommodation or an employee or independent contractor of any such person.

*Place of public accommodation* means and includes all places included within the meaning of the following: Inns, taverns, roadhouses, hotels, and motels, whether operated for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants, eating houses, and any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirits or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind, are retailed for consumption on the premises; wholesale and retail stores and establishments dealing with goods or services of any kind; dispensaries, clinics, hospitals; bathhouses, swimming pools; laundries and all other cleaning establishments; barbershops, beauty shops; theaters, motion picture houses, airdromes, roof gardens, music halls, racecourses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages; all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; and public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants.

*Sexual orientation* means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality. This definition is not intended to protect any practice prohibited by federal, state, or local law.

##### **Sec. 70-212. Purpose and intent.**

- (a) It is the purpose and intent of the board of county commissioners through the passage of this subdivision to assure to the citizens of the county the equal enjoyment of the facilities and services of any public place of accommodation, regardless of their race, color, religion, national origin, gender, sexual orientation, or disability.
- (b) To the extent that the provisions of this subdivision overlap or conflict with other provisions of this article, such other provisions shall take precedence.
- (c) The enforcement of this subdivision may be delegated by interlocal agreement to other units of local government or to nonprofit corporations.

##### **Sec. 70-213. Exemptions from subdivision.**

- (a) The provisions of this subdivision shall not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society from giving preference to the members of the same religion in the enjoyment of its facilities and services, unless membership in such religion is restricted on account of race, color, gender, sexual orientation, or national origin.

(b) The provisions of this subdivision relating to public accommodations do not prohibit discrimination on the basis of gender in rest rooms, shower rooms, bathhouses, and similar facilities which are by their nature simply private, or dormitory lodging facilities.

(c) The provisions of this subdivision shall not apply to any private club or other establishment which is not, in fact, open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment which is a place of public accommodation. However, any institution, club, or place of accommodation which has more than 400 members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers for the furtherance of the trade or business, shall not receive an exemption as a private club under this subdivision.

(d) The provisions of this subdivision shall not be construed as prohibiting the giving of special discounts on goods and services by a place of public accommodation, provided such goods or services are not denied to individuals on the basis of race, color, religion, national origin, gender, sexual orientation, or disability.

**Sec. 70-214. Discrimination prohibited.**

(a) It is a violation of this subdivision for an operator of a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another person the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that person's race, color, religion, national origin, gender, sexual orientation, or disability. For the purposes of this subdivision, the failure by an owner of a public building, or a private building which has restrooms open to the public, to comply with the provisions of F.S. § 553.86, relating to the provision of public restrooms, shall be considered a denial of full and equal enjoyment of the facilities of a place of public accommodation to women on the basis of their gender.

(b) It is a violation of this subdivision for an owner or operator of a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any person or that any such person is unwelcome, objectionable or unacceptable because of that person's race, color, religion, national origin, gender, sexual orientation, or disability.

**Sec. 70-215. Filing of complaints.**

Any person alleging that he has been subject to an unlawful discriminatory practice under this subdivision shall file a complaint in writing with the commission through the designated office or offices, sworn to or affirmed, which shall state the name and address of the complainant and the person against whom the complaint is made. It shall also state the alleged facts surrounding the alleged unlawful discriminatory practice and such other information as the commission may require or deem necessary. A complaint shall be filed within 180 days after the date of the alleged unlawful discriminatory practice in order to be processed under this subdivision. No complaints shall be filed under this subdivision for a claim which has previously been adjudicated under a similar municipal ordinance.

**Sec. 70-216. Processing complaints, administrative hearings and enforcement.**

(a) The same process for handling complaints and conducting administrative hearings as is provided for in section 70-77 of this article shall apply to the complaints filed and administrative hearings conducted under this subdivision.

(b) The same authority and procedures for enforcement provided in section 70-78 of this article shall apply to the enforcement of an administrative order issued by the commission for an unlawful discriminatory practice under this subdivision.

**Sec. 70-217. Refueling assistance for persons with disabilities.**

(a) *Title.* This ordinance [Ordinance No. 12-38] shall be known and may be cited as the "Gas Pumping Assistance For Persons With Disabilities Ordinance".

(b) *Definitions.* For purposes of this section, the following terms shall have the meanings given to them below. No attempt is made to define any words which are used in accordance with their established dictionary meaning, except when necessary to avoid misunderstanding. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall", "will", and "must" are mandatory and the word "may" is permissive.

*Assurance of compliance (AC)* means a written agreement between the commission or designee and a gas station retailer, entered into willingly by each party, as provided for in subsection (i) of this section.

**Complainant** means any individual, regardless of whether such individual is a person with a disability, who witnesses or who is subjected to conduct in violation of this subdivision and who files a complaint with the commission or designee stating the information required by subsection (g).

**County** means Pinellas County, Florida, a political subdivision of the State of Florida.

**Day(s)** means calendar day(s).

**Gasoline station** means that portion of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from fixed, approved dispensing equipment into the fuel tanks of motor vehicles by any person.

**Gas station retailer** means:

(1) Any full service gasoline station; or

(2) Any self-service gasoline station that has two or more attendants on duty at any given time during the hours the station is open for business to the public.

**Notice of violation** means a written notice of an alleged violation of this section issued to a gas station retailer by the commission or designee.

**Person or persons** means any individual (including a minor child), firm association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, and any other groups or combination.

**Reasonable cause** means, if given the same set of facts or actions, a reasonable person would conclude that a violation of this section has occurred.

**Repeat violation** means any violation of this section by a gas station retailer committed within five years after (i) such gas station retailer has entered into an AC with respect to a violation of the same or a different provision of this section; or (ii) such gas station retailer has been found to have violated the same or a different provision of this section; or (iii) such gas station retailer has been convicted, pled nolo contendere or guilty to a violation of the same or different provision of this section in a criminal court; or (iv) such gas station retailer has admitted violating the same or a different provision of this section; or (v) a failure by a gas station retailer to abide by any provision of an AC entered into by the gas station retailer.

(c) **Administration.** For purposes of this section, the powers herein delegated, shall be jointly administered by the Pinellas County Office of Human Rights and the Pinellas County Department of Justice and Consumer Services.

(d) **Accessibility requirements.**

(1) Within 90 days of enactment of this section, all gas station retailers shall be required to prominently display a sign, decal or sticker, no smaller than 15 square inches, on the canopy column of all gasoline pumps clearly stating the telephone number for that gas station retailer, the international symbol of accessibility (ISA), and wording such as "Signal or Call for Assistance" or "Assistance Available - Signal or Call". The sign, decal or sticker must also include the statement "Complaints? Contact the Pinellas County Office of Human Rights", must be on a blue background with white text, and shall be 48 to 54 inches above ground level from the baseline to the character of the text. The telephone number indicated on the sign, decal or sticker shall be operational and answered directly by an attendant of the gas station retailer during the hours the gas station retailer is open for business to the public.

(2) The gas station retailer shall require an attendant to provide refueling assistance to the driver of any motor vehicle properly displaying an exemption parking permit as provided in F.S. §§ 316.1958 or 320.0848, as may be amended, or the driver of any motor vehicle properly displaying a license plate issued pursuant to F.S. §§ 320.084, 320.0842, 320.0843 or 320.0845, as may be amended, or other out of state license plates designating the driver as disabled, when such service is requested during the hours the gas station retailer is open for business to the public.

However, should such assistance be requested during times when a second attendant is not present at a self-service gas station, the gas station retailer is not required to provide the requested assistance. In such case, if a remote or electronic means of communication with the requester exists, the one attendant on duty shall inform the person that he or she is unable to provide such assistance as a result of having only one attendant on duty.

(e) **Prohibited conduct.** It shall be a violation of this section for a gas station retailer to:

(1) Fail or refuse to prominently display a sign, decal or sticker, as described in subsection (d)(1) above; or

(2) Fail to ensure the telephone number indicated on the sign, decal or sticker is operational and answered by an employee of the gas station retailer during hours the gas station retailer is open for business to the public; or

(3) Fail to provide refueling assistance to the driver of any motor vehicle properly displaying an exemption parking permit as provided in F.S. § 316.1958 or § 320.0848, as may be amended, or to the driver of any motor vehicle properly displaying a license plate issued pursuant to F.S. § 320.084, § 320.0842, § 320.0843 or § 320.0845, as may be amended, or other out of state license plates designating the driver as disabled, when such service is requested during the hours the gas station retailer is open to the public unless there is only one attendant on duty at the time of the request; or

- (4) Failure to abide by any provision of an AC entered into by such gas station retailer. If a gas station retailer fails to abide by more than one provision of an AC, each such failure shall be a separate violation of this section.
- (f) *Dual remedies.* A violation of this section may also constitute grounds for a violation of section 70-214, Prohibited Discrimination in Public Accommodations, of Pinellas County's Human Rights Ordinance, as may be amended. Nothing herein shall prevent any person from exercising any right or seeking any remedy or redress to which one might be entitled to under that section.
- (g) *Filing of complaints.*
- (1) Any person who witnesses or who is subject to an unlawful practice or conduct in violation of this section may file a complaint with the commission or designee.
- (2) The complaint shall contain the following information:
- a. Name and address of the gas station retailer alleged to have committed the offense;
  - b. Date of the alleged offense;
  - c. General statement of the facts of the alleged offense;
  - d. Name and signature of the complainant;
  - e. Such other information as required by the commission or designee.
- (h) *Duties and responsibilities of the commission or designee under this section.*
- (1) The commission or designee shall receive and review complaints of violations of this section to ensure the complaint is in compliance with subsection (g) above.
- (2) The commission or designee may request additional information from the complainant for purposes of processing the complaint.
- (3) The commission or designee shall then reduce the complaint to writing and forward the complaint, within ten days of receipt, for further processing.
- (4) The commission or designee shall administratively track the complaint through the enforcement process until closure of the complaint.
- (5) The commission or designee shall evaluate received complaints of violations of this section, investigate such complaints, including what other measures, if any, a gasoline station retailer has taken to afford accessibility for persons with disabilities, and take such action it deems appropriate with respect thereto, as provided for in this section.
- (6) The commission or designee may also initiate an investigation into any suspected violation of this section and, when warranted, take such action it deems appropriate with respect thereto, as set forth in this section.
- (7) If upon investigation the commission or designee determines that there is reasonable cause to believe that a gas station retailer has violated this section, then the commission, or designee may take one or more of the following actions in accordance with the provisions of this section:
- a. Notify the gas station retailer of the finding of reasonable cause to believe that a violation occurred and allow the gas station retailer a specified period of time to correct the violation, not to exceed 15 days;
  - b. Issue a notice of violation to the gas station retailer;
  - c. Attempt to conciliate the matter through conference(s) with all interested parties and such representatives as the parties may choose to assist;
  - d. Negotiate and enter into an AC with gas station retailer in accordance with subsection (i) of this section;
  - e. Utilize county, state, and federal agencies in an effort to resolve complaints filed under this section;
  - f. Initiate enforcement actions pursuant to subsection (j);
  - g. Refer the matter to appropriate federal and state agencies for criminal prosecution and/or administrative action and file such criminal or administrative complaints with state or federal agencies as may be required.
- (i) *Assurance of compliance.* After receiving and investigating a complaint as set forth in subsection (h) above, if the commission or designee determines that a violation of this section has occurred that is not a repeat violation, the commission or designee may accept an assurance of compliance (AC) as an alternative to initiating other enforcement action delineated in subsection (h) above. The AC shall be executed by the authorized agent of the gas station retailer responsible for ensuring that no future violations shall occur. Pursuant to the terms of the AC, the responsible gas station retailer shall agree to refrain from and prevent any future violations of this section. If the gas station retailer fails to adhere to the terms of the AC, said failure shall constitute a violation of this section in its own right, as indicated in subsection (e)(4). A notice of violation may be issued for the underlying violation as well as the violation of the AC.
- (j) *Enforcement and penalties.*
- (1) Any violations of this section may be punished as provided in subsections subsections (d) through (i) above.

(2) In addition to the penalties provided in subsection (1) above, any violations of this section may be punished as provided for in Chapter 2, Article VIII, of the Pinellas County Code.

(k) *Additional enforcement agencies.* County municipalities may enforce this section as its embraced area is countywide. Code enforcement officers and law enforcement officers may enforce this section in their respective jurisdictions.

**Secs. 70-218—70-235. Reserved.**

### **ARTICLE III. DOMESTIC PARTNERSHIP REGISTRATION**

#### **Sec. 70-236. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Affidavit of domestic partnership* means a sworn form, under penalty of perjury, that is created by the board of county commissioners, which certifies that two domestic partners meet the registration requirements as described in section 70-237.

*Affidavit of termination of domestic partnership* means a sworn form, under penalty of perjury, which certifies that two domestic partners have terminated the domestic partnership and all rights and duties included therein as described in this article.

*Certificate of domestic partnership* means the certificate received from the clerk after registration as domestic partners under this article.

*Clerk* means the Clerk of the Circuit Court, Pinellas County, Florida.

*Dependent* is a person who resides within the household of a registered domestic partnership and is:

- (1) A biological, adopted, or foster child of a registered domestic partner; or
- (2) A dependent as defined under IRS regulations; or
- (3) A ward of a registered domestic partner as determined in a guardianship or other legal proceeding; or
- (4) A person supported in whole or in part by their partner's earnings and relies on such support.

*Domestic partnership registry* means a public record maintained by the clerk which includes those persons who have met the domestic partnership requirements set forth in this article and have registered with the clerk.

*Health care facility* includes, but is not limited to, hospitals, nursing homes, hospice care facilities, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities, and any other short-term or long-term health care facilities located within Pinellas County.

*Jointly responsible* means each domestic partner mutually agrees to provide for the other partner's basic needs while the domestic partnership is in effect, except that partners need not contribute equally or jointly to said basic needs such as food and shelter.

*Mutual residence* means a residence shared by the registered domestic partners; it is not necessary that the legal right to possess the place of residence be in both names. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

*Registered domestic partners* means two adults who are parties to a domestic partnership and who meet the requisites for a domestic partnership as established pursuant to the registration requirements of this article and who have registered as a domestic partnership under this article.

#### **Sec. 70-237. Registration of domestic partnerships.**

(a) A domestic partnership may be registered by any two persons by filing an affidavit of domestic partnership with the clerk which affidavit shall comply with all requirements set forth in this article for establishing such domestic partnership.

(b) Upon payment of any required fees, the clerk shall file the affidavit of domestic partnership electronically and issue a certificate of domestic partnership reflecting the registration of the domestic partnership in the county.

(c) The clerk shall maintain a domestic partnership registry which shall be an online searchable database of the domestic partnerships which have been registered with the county.

(d) A notarized affidavit of domestic partnership, on such form as created by the county, shall be presented to the clerk by both partners, physically present, who shall provide proof of identification; and shall contain the name and address of each domestic partner, the signature of each partner, the signatures of two witnesses, and each partner shall swear or affirm under penalty of perjury that:

- (1) Each person is at least 18 years old and competent to contract;

- (2) Neither person is currently married under Florida law or is a partner in a domestic partnership or a member of civil union with anyone other than the co-applicant;
  - (3) Neither person is related by blood as defined in Florida law;
  - (4) Each person considers themselves to be a member of the immediate family of the other partner and to be jointly responsible for maintaining and supporting the registered domestic partnership;
  - (5) The partners reside together in a mutual residence;
  - (6) Each person expressly declares their desire and intent to designate their registered domestic partner as their healthcare surrogate and as their agent to direct the disposition of their body after death;
  - (7) Each person agrees to be jointly responsible for each other's basic food and shelter;
  - (8) Each person agrees to immediately notify the clerk, in writing, if the terms of the registered domestic partnership are no longer applicable or one of the domestic partners wishes to terminate the domestic partnership.
- (e) Any partner to a domestic partnership may file an amendment with the clerk to the domestic partnership registry, on the form created by the county, to reflect a change in their legal name or address. Amendments shall be signed by both members of the registered domestic partnership under oath and must be accompanied by the applicable fee as determined by the clerk.

**Sec. 70-238. Termination of registered domestic partnership.**

- (a) Either partner to a registered domestic partnership may terminate such registration by filing, in person, a notarized affidavit of termination of domestic partnership with the clerk which shall become effective on the date of filing.
- (b) The clerk shall file the affidavit of termination and update the online registry to remove the domestic partnership.
- (c) A registered domestic partnership will terminate by operation of law upon occurrence of the following events:
  - (1) One of the domestic partners marries in Florida;
  - (2) One of the domestic partners dies; or
  - (3) One of the domestic partners registers with another partner.
- (d) The marrying, surviving, or re-registering domestic partner(s) shall file an affidavit with the clerk terminating the domestic partnership within ten days of one of the occurrences listed in (c) above.
- (e) The surviving domestic partner, pursuant to subsection (c)(2) of this section, shall retain funeral and burial decision rights as provided for in section 70-240(c).

**Sec. 70-239. Maintenance of records; filing fees.**

- (a) The county shall prepare the form of all affidavits, amendments, and certificates required to be filed under this article. The clerk shall maintain electronic copies. Domestic partnerships which have properly registered, and have not been terminated, will appear on the online registry. Records regarding a terminated registration can be requested from the clerk.
- (b) The clerk shall establish fees for the filing of any affidavits, amendments, the issuance of any certificates required by this article, or for the provision of copies of documents subject to the approval by the board of county commissioners. Any fees established under this section shall be reasonable and commensurate with the actual costs of administering the provisions of this article. A discount in the amount of the difference between the cost of municipal registration for domestic partnership and that of the county registration for domestic partnership shall be provided to those persons who are registered in a municipality located in Pinellas County prior to the date of enactment of this article.
- (c) The clerk is authorized and directed to take all actions necessary to implement the provisions of this section within 90 days after this article is enacted.

**Sec. 70-240. Legal effect of registered domestic partnership.**

To the extent not superseded by federal, state, or other city law or ordinance, or contrary to rights conferred by contract or separate legal instrument, registered domestic partners shall have the following rights:

- (1) *Health care facility visitation.* All health care facilities operating within the county shall honor the registered domestic partnership documentation issued pursuant to this article as evidence of the partnership and shall allow a registered domestic partner or dependant visitation rights as provided for under 42 CFR 482 and 485.
- (2) *Health care decisions.* Registry as a domestic partner shall be considered to be written direction by each partner designating the other to make health care decisions for their incapacitated partner, and shall authorize each partner to act as the other's healthcare surrogate as provided for in Chapter 765, Florida Statutes. No person

designated as a health care surrogate shall be denied or otherwise defeated in serving as a health care surrogate based solely upon their status as the domestic partner of the partner on whose behalf health care decisions are to be made. Any statutory form, including, but not limited to, a living will or health care surrogate designation in forms provided for in Chapter 765, Florida Statutes, that is properly executed after the date of registration which contain conflicting designations shall control over the designations made pursuant to domestic partnership registration in Pinellas County.

(3) *Funeral/burial decisions.* Registry as a domestic partner shall be considered to be written direction by the decedent of their intention to have their domestic partner direct the disposition of the decedent's body for funeral and burial purposes as provided in Chapter 497, Florida Statutes, unless, prior to death, the decedent creates written authorization and direction providing conflicting terms of disposition. Where such conflict exists, the later dated document shall control.

(4) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including, but not limited to, notification of family members in an emergency, "notification of family members" shall include registered domestic partners.

(5) *Pre-need guardian designation.* A person who is a party to a registered domestic partnership, pursuant to this article, shall have the same right as any other individual to be designated as a pre-need guardian pursuant to Chapter 744, Florida Statutes, and to serve in such capacity in the event of their domestic partner's incapacity. A domestic partner shall not be denied or otherwise be defeated in serving as the plenary guardian of their domestic partner or the partner's property under the provisions of Chapter 744, Florida Statutes, to the extent that the incapacitated partner has not executed a valid pre-need guardian designation, based solely upon their status as the domestic partner of the incapacitated partner.

(6) *Participation in education.* To the extent allowed by federal and state law, and subject to the policies of the School Board of Pinellas County, Florida, as amended from time to time, as well any applicable court orders, agreements, or contracts, a domestic partner of a domestic partnership registered in this county shall have the same rights as the parent partner to participate in the education of a dependent of the registered domestic partnership in the county. Any right to participate in the education of a dependent of the registered domestic partnership shall be exercised consistently with applicable policies and procedures of the School Board of Pinellas County, Florida.

**Sec. 70-241. Limited effect.**

(a) Nothing in this article shall be interpreted to alter, affect, or contravene city, county, state, or federal law or to impair any court order or contractual agreement.

(b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.

**Sec. 70-242. Enforcement; legal remedy; and limitation of liability.**

(a) A registered domestic partner may enforce rights provided for under this article by filing a private judicial action in the Sixth Judicial Circuit Court for declaratory relief, injunctive relief, or both, or for any other available legal remedy.

(b) The clerk acts in a purely ministerial capacity and has no authority or responsibility for the resolution of disputes arising from the domestic partnership registry. Any disputes as to registration or legal effect under this article shall be filed with the Sixth Judicial Circuit Court.

(c) The clerk shall not be liable for any act taken within the scope of its authority provided pursuant to this article.

**Sec. 70-243. Reciprocity.**

All rights, privileges and benefits extended to registered domestic partnerships as provided for in this article shall also be extended to all persons who can provide proof of their registration as domestic partners in any other jurisdiction. In the event of a conflict between this article and the domestic partnership laws of another jurisdiction, the provisions of this article shall prevail.

## Appendix of Existing Ordinances:

### Volusia County:

## Chapter 36 CIVIL RIGHTS

### ARTICLE I. IN GENERAL

#### **Sec. 36-1. Declaration of findings and policy.**

The county council finds and declares it to be county policy, applicable to the incorporated and unincorporated areas of Volusia County:

- (1) To protect and safeguard the right and opportunity of all individuals to be free from all forms of discrimination, including discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation; to promote by enactment of this chapter the public health, safety and welfare of all individuals who live in, visit, and work in Volusia County; and to ensure that all individuals within Volusia County have equal access to employment, housing, and public accommodations;
- (2) To foster and encourage growth and development in a manner that will ensure all individuals throughout Volusia County an equal opportunity to live free of discrimination imposed by age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation; and
- (3) To secure for all individuals throughout Volusia County freedom from discrimination because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, to protect their interest in personal dignity, to make Volusia County secure against strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals by enacting a private cause of action against such discriminatory practices.

#### **Sec. 36-2. Definitions.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where context clearly indicates a different meaning or a different meaning is given under another article or chapter:

*Age* shall mean chronological age greater than or equal to 18 years.

*Aggrieved individual* shall mean any individual who claims to have been the victim of a discriminatory practice.

*Asexuality* shall mean a person's lack of romantic or sexual attraction to either gender.

*Bisexuality* shall mean a person's disposition to be attracted, whether sexually or romantically, to either gender, as well as an individual's sense of personal and social identity based on those attractions, the behaviors utilized in expressing them, and membership in a community of others sharing such attractions.

*Compensation and terms, conditions, or privileges of employment* are used interchangeably and shall encompass all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.

*Conciliation agreement* shall mean an agreement entered into between an aggrieved individual and a respondent resolving the alleged discriminatory practice and which may require the respondent to take affirmative action and to refrain from committing a discriminatory practice.

*Council* shall mean Volusia County Council.

*Covered multifamily dwelling* shall mean: (i) a building which consists of four or more units and has an elevator; or (ii) the ground floor of a building which consists of four or more units and does not have an elevator.

*Disability*, with respect to an individual, shall mean: (i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) a record of impairment that substantially limits one or more of the life activities of such individual; (iii) being regarded as having an impairment that substantially limits one or more of the major life activities of such individual; (iv) having a developmental disability as defined in F.S. § 393.063(9), (2010), or as such section may thereafter be amended.

*Discriminatory practice* shall mean any practice or act applied by a person or entity to an individual in a manner which is prohibited by this chapter.

*Dwelling* shall mean any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

*Employee* shall mean an individual employed by an employer.

*Employer* shall mean any person who has five or more employees for each working day in each of four or more calendar weeks in the current or preceding calendar year, and any such agent of such a person.

*Employment agency* shall mean any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such a person.

*Familial status* shall mean an individual's status established when such individual who has not attained the age of 18 years is domiciled with: (i) a parent or other individual having legal custody of such individual; or (ii) a designee of a parent or other individual having legal custody, with written permission of such parent or other individual. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

*Family* shall include a single individual.

*FCHR* shall mean Florida Commission on Human Relations or any of its successor organizations.

*Gender* shall mean person's anatomical sex, whether it be their assigned sex at birth or transgender post-operative sex. The term "sex" and "gender" shall be used interchangeably in this chapter.

*Heterosexuality* includes but is not limited to, an enduring pattern of or disposition to experience sexual or romantic attractions primarily or exclusively to people of the opposite sex, as well as an individual's sense of personal and social identity based on those attractions, the behaviors utilized in expressing them, and membership in a community of others sharing such attractions.

*Homosexuality* includes but is not limited to, an enduring pattern of or disposition to experience sexual or romantic attractions primarily or exclusively to people of the same sex as well as an individual's sense of personal and social identity based on those attractions, the behaviors utilized in expressing them, and membership in a community of others sharing such attractions.

*Labor organization* shall mean any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

*Lending institution* shall mean any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information, including but not limited to credit bureaus.

*Marital status* shall mean an individual's status of being married, separated, or unmarried, including being single, divorced or widowed.

*National origin* shall mean the national origin of an ancestor or the country of origin of an individual's forebears, naturally, by marriage, or by adoption.

*Operator* shall mean and include any owner, lessee, proprietor, manager, superintendent, agent, or occupant of a place of accommodation or an employee or independent contractor of any such person.

*Person* shall mean and include an individual association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, fiduciary, trustee in bankruptcy, unincorporated organization of any other legal or commercial entity; provided, however, a person shall not mean or include any federal, state, or local government or publicly funded educational entity, or any agency or unit of such entities to which the absolute protection of sovereign immunity extends.

*Personal gender identity* shall mean an individual's self-identified perception as a member of a particular gender, or an individual's sense of personal and social belonging to that gender. Gender-related expression, appearance, or behavior shall be determinative with regard to personal gender identity. An individual's assigned sex at birth shall not be determinative with regard to personal gender identity.

*Public accommodation* shall mean a place of accommodation owned or operated by a person including, but not limited to, lodgings, facilities principally engaged in selling food for consumption on the premises, gasoline stations, places of exhibition or entertainment, and other covered establishments. Each of the following establishments owned or operated by a person and which serve the public is a place of public accommodation within the meaning of this section:

- (1) Any inn, hotel, motel, resort or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than four rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his or her residence;
- (2) Any restaurant, lunch counter, buffet or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station;

- (3) Any tavern, bar, liquor lounge, package store or other facility holding a license for the sale of alcoholic beverages issued by the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state, and which serves or which holds itself out as serving the general public;
- (4) Any pool or billiard hall, bowling alley, motion picture house, theater, concert hall, sports arena, place of amusement, skating rink, amusement park, golf courses, swimming pool, or other place of exhibition or entertainment;
- (5) A gasoline station, retail establishment, convenience store, beauty parlor, barbershop, styling salon or laundries;
- (6) Facilities, or portions of facilities, when open to the general public, including, but not limited to hospitals or nurseries;
- (7) Any transportation conveyance open to the general public, including, but not limited to, taxis, limousines, trains and buses;
- (8) Any professional office, generally open to the public, such as those of attorneys, physicians, dentists, architects or accountants;
- (9) Any establishment which is physically located within the premises of any establishment otherwise covered by this section, or within the premises of which is physically located in any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

*Religion* shall include all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

*Religious organization* shall include a religious corporation, association or society.

*Sexual orientation* shall mean an individual's actual or perceived heterosexuality, homosexuality, bisexuality or asexuality.

*To rent* shall include to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

*Transgender* shall mean a person whose personal gender identity, expression, or behaviors are not traditionally associated with their assigned sex at birth. A transgender person has not undergone surgery to modify their assigned sex at birth.

*Transsexual* shall mean a person of a given birth gender who has undergone surgery to modify their genitalia to conform, to the extent possible by current medical practices, with the genitalia of the opposite gender, and subsequently adopts a personal gender identity consistent with the primary sexual characteristics sought in the surgery.

*Transvestite* shall mean a transgender person as that term is defined herein.

### **Sec. 36-3. General discriminatory practices.**

(a) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a practice prohibited by this chapter or prohibited by existing federal or state law prohibiting discrimination; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this chapter or under any federal or state law prohibiting discrimination.

(b) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

### **Sec. 36-4. Private cause of action; remedies.**

(a) An aggrieved individual under this chapter may commence a civil action in a court of competent jurisdiction against the person alleged to have committed a discriminatory practice; provided, however, that such civil action must be filed no later than one year after the discriminatory practice is alleged to have been committed. The aggrieved individual must send the prospective defendant a notice letter outlining his or her intention to file a lawsuit and a detailed explanation of the grounds for the intended lawsuit at least 21 days prior to the filing of said action. The notice letter must be sent to the prospective defendant via U.S. certified mail, return receipt requested.

(b) If the court finds that a discriminatory practice has been committed or is about to be committed, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the discriminatory practice including, but not limited to, a temporary restraining order, a temporary or permanent injunction, an award of actual damages, including back pay, punitive damages, an award of reasonable attorney's fees, interest, and costs, or other such relief as the court deems appropriate.

(c) The provisions of F.S. § 57.105, (2010), shall apply to an unsupported claim for which relief is sought under the provisions of this chapter.

**Sec. 36-5. Sovereign immunity; no waiver of rights or remedies at law.**

(a) Pursuant to Article X, Section 13, Florida Constitution, nothing in this chapter shall be deemed to be a provision for bringing suit against the state or any governmental entity or otherwise be deemed to be a waiver of sovereign immunity.

(b) Nothing in this chapter shall be deemed to modify, impair, or otherwise affect any other right or remedy conferred by the constitution or laws of the United States or the State of Florida, and the provisions of this chapter shall be deemed to be in addition to those provided by such other laws.

**Secs. 36-6—36-25. Reserved.**

**ARTICLE II. EMPLOYMENT DISCRIMINATION**

**Sec. 36-26. Generally.**

(a) The general purpose of this article is to secure for all individuals within throughout the entirety of Volusia County the freedom from discrimination because of age, race, color, religion, national origin, disability, marital status, sex, personal gender identity or sexual orientation in connection with employment, and thereby to promote the interests, rights and privileges of said individuals.

(b) Nothing in this article shall be construed to limit an employer, employment agency or labor organization from taking adverse action against an individual because of a charge of harassment against that individual, provided that rules and policies on harassment, including when adverse action is taken, are designed for, and uniformly applied to, all individuals regardless of age, race, color, religion, national origin, disability, marital status, familial status, personal gender identity or sexual orientation.

(c) Nothing in this article shall be construed to establish a discriminatory practice based on sex due to the denial of access to restrooms, shower rooms, and similar facilities which are by their nature simply private, provided that the employer, employment agency or labor organization provides reasonable access to adequate facilities that are not inconsistent with the employee's actual anatomical gender as established with the employer, employment agency or labor organization by the employee. If the employee has undergone and completed gender transition surgical procedures, either before or during employment, the employee shall be allowed to use restrooms, shower rooms and similar facilities consistent with his or her transsexual status.

(d) Nothing in this article shall be construed to require the construction of new or additional facilities.

(e) Nothing in this article shall prohibit an employer, employment agency or labor organization from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards associated with the employee's gender or personal gender identity. If an employee's anatomical gender differs from his or her personal gender identity, the employee shall have the right to choose whether to adhere to the dress and grooming standards of his or her personal gender identity or anatomical gender.

(f) Nothing in this article shall be construed to require an employer, employment agency or labor organization to treat an unmarried couple in the same manner as the employer, employment agency or labor organization treats a married couple for the purposes of employee benefits; provided, however, that nothing in this article shall be construed to prohibit an employer, employment agency or labor organization from adopting its own internal policies and rules to treat an unmarried couple in the same manner as the employer, employment agency or labor organization treats a married couple.

(g) Nothing in this article shall be construed to repeal or modify any federal, state or local law creating a special right or preference concerning employment for a veteran.

**Sec. 36-27. Unlawful employment practices.**

(a) It shall be a discriminatory practice for an employer to:

(1) Fail or refuse to hire, promote, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of age, race, color, religion, national origin, disability, marital status, familial status, personal gender identity or sexual orientation;

(2) Limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;

- (3) Discharge or take adverse action against an employee because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.
- (b) It shall be a discriminatory practice for an employment agency to:
  - (1) Fail or refuse to refer for employment or otherwise discriminate against an individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;
  - (2) Classify or refer for employment an individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation; or
  - (3) Cause, assist, or attempt to cause or assist an employer to violate any provision of this article.
- (c) It shall be a discriminatory practice for a labor organization to:
  - (1) Exclude or to expel from membership or otherwise discriminate against any individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;
  - (2) Limit, segregate, or classify membership or applicants for membership, or to classify or to fail or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex gender identity or sexual orientation; or
  - (3) Cause, assist, or attempt to cause or assist an employer to violate any provision of this article.
- (d) It shall be a discriminatory practice for an employer, employment agency, labor organization, or a training committee associated with an employer, employment agency, or labor organization to:
  - (1) Discriminate against an individual on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation in a training program providing apprenticeship or other training;
  - (2) Publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation unless such preference is supported by a legally recognized bonafide occupational qualification; or
  - (3) Except as permitted and required by regulations of Volusia County, or by applicable federal or state law to elicit information about an employee's age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, or to keep or disclose a record of such information for the purposes of preventing or terminating discrimination.

**Sec. 36-28. Exemptions.**

- (a) This article shall not apply to a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of Title VII of the Civil Rights Acts of 1964, pursuant to section 702(a) of such Act (42 U.S.C. 2000e-1(a)), or as such section may hereafter be amended. For purposes of this article, such corporations, associations, educational institutions, or societies shall include religious corporations, associations, educational institutions, or societies which condition opportunities in the area of employment to members of a religious corporation, associations, educational institution, or society or to persons who subscribe to its beliefs.
- (b) Notwithstanding any other provision of this article, it shall not be a discriminatory practice for a school, college, university or other educational institution or institution of learning to hire and employ individuals of a particular religion or individuals whose beliefs are consistent with a particular religion if such school, college, university, or other educational institutional or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
- (c) Notwithstanding any other provision of this article, it shall not be a discriminatory practice for an employer, employment agency, labor organization to:
  - (1) Take or fail to take any action on the basis of age, race, marital status, religion, national origin, disability, familial status, personal gender identity, sex, or sexual orientation in those certain instances in which age, race, color, religion, national origin, absence of a particular disability, marital status, familial status, personal gender identity, sex, or sexual orientation are bona fide occupational qualifications reasonably necessary for the performance of a particular employment to which such action or inaction is related;
  - (2) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of this article, provided that; (a) no such employee plan or system

which measures earnings shall excuse the failure to hire, and no such seniority system, employee benefit plan, or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual has applied or in which such individual is engaged; (b) this subsection (c)(2)(b) shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in any bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, or for two years after July 1, 2011, which occurs first, or to preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held;

(3) Give and act upon the results of any professionally developed or validated ability test, provided that such test, its administration, or action upon the results, is not designed, intended, or used to discriminate because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;

(4) Take or fail to take any action on the basis of age, pursuant to law or regulation governing any employment or training program designed to benefit individuals of a particular age group; or

(5) Take or fail to take any action on the basis of familial or marital status if that status is prohibited under its anti-nepotism policy.

**Secs. 36-29—36-39. Reserved.**

### **ARTICLE III. EQUAL ACCESS TO PLACES OF PUBLIC ACCOMMODATIONS**

#### **Sec. 36-40. Generally.**

The general purpose of this article is to secure for all individuals within and throughout the entirety of Volusia County, the full and equal employment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this chapter, without discrimination because of age, race, color, religion, national origin, disability, marital status, familial status, personal gender identity, sex, or sexual orientation, and thereby to promote the interests, rights and privileges of all individuals within Volusia County.

#### **Sec. 36-41. Prohibition of discrimination in places of public accommodation.**

(a) It is a violation of this article for a person who owns or operates a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another individual the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.

(b) It is a violation of this article for a person who owns or operates a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any individual or that any such individual is unwelcome, objectionable, or unacceptable because of that individual's age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.

#### **Sec. 36-42. Exemptions.**

The provisions of this article shall not:

(1) Apply to lodge halls or other similar facilities of private organizations which are available for public use periodically;

(2) Prohibit a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations which it owns or operates, other than for a commercial purpose, to individuals of the same religion, or to individuals who substantially subscribe to its beliefs, or from giving preference to such individuals;

(3) Prohibit a restriction or use in restrooms, shower rooms, bathhouses, and similar facilities consistent with the facility user's actual anatomical gender, except that if the facility user has undergone and completed gender transition surgical procedures, either before or during employment, then said user shall be allowed to utilize restrooms, shower rooms and similar facilities consistent with his or her transsexual status;

(4) Prohibit the giving of special discounts on goods and services by the place of public accommodation if such special discount rates are not denied to individuals on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, unless such denial is pursuant to the laws of the United States, State of Florida, or local government;

(5) Apply to any private club or other establishment which is not, in fact, open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment which is a place of public accommodation.

However, any institution, club, or place of accommodation which has more than 400 members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers for the furtherance of the trade or business shall not be exempt from the provisions of this article.

**Secs. 36-43—36-50. Reserved.**

#### **ARTICLE IV. FAIR HOUSING**

##### **Sec. 36-51. Generally.**

The general purpose of this article is to promote through fair, orderly, and lawful procedure the opportunity for each individual so desiring to obtain housing of such individual's choice in throughout the entirety of Volusia County without regard to race, color, religion, national origin, disability, marital status, sex, personal gender identity or sexual orientation, and, to that end, to prohibit discrimination in housing by any person.

##### **Sec. 36-52. Discrimination in the sale or rental of housing and prohibited practices.**

(a) It shall be unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny a dwelling to any individual because of age, race, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.

(b) It shall be unlawful to discriminate against any individual in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation. Prohibited actions under this subsection include, but are not limited to any of the following:

(1) Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;

(2) Failing or delaying maintenance or repairs of sale or rental dwellings because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;

(3) Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of age, race, color, religion, national origin, disability, marital status, familial status, sex, gender identity or sexual orientation;

(4) Limiting the use of privileges, services or facilities associated with a dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation of an owner, tenant or a person associated with him or her; or

(5) Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because an individual refused to provide sexual favors.

(c) It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, or an intention to make any such preference, limitation or discrimination. The prohibitions in this subsection shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards or any documents used with respect to the sale or rental of a dwelling. Discriminatory notices, statements and advertisements include, but are not limited to any of the following:

(1) Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of individuals because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;

- (2) Expressing to agents, brokers, employees, prospective sellers or renters or any other individuals a preference for or limitation on any purchaser or renter because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation of such individuals;
- (3) Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation; or
- (4) Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.
- (d) It shall be unlawful to represent to any individual because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) It is unlawful, for profit, to induce or attempt to induce any individual to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of an individual or individuals of a particular age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.
- (f) It shall be unlawful, because of age, race, color, religion, national origin, marital status, familial status, disability, sex, personal gender identity or sexual orientation, to restrict or attempt to restrict the choices of an individual by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development. Prohibited actions under this subsection that are generally referred to as unlawful steering practices include, but are not limited to any of the following:
- (1) Discouraging any individual from inspecting, purchasing or renting a dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, or sexual orientation, or because of the age, race, color, religion, national origin disability, marital status, familial status, sex, personal gender identity or sexual orientation of individuals in a community, neighborhood or development;
- (2) Discouraging the purchase or rental of a dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, by exaggerating drawbacks or failing to inform any individual of desirable features of a dwelling or of a community, neighborhood or development;
- (3) Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation; or
- (4) Assigning any individual to a particular section of a community, neighborhood or development, or to a particular floor of a building, because of age, race, color, religion, national origin, disability, marital status, sex, personal gender identity or sexual orientation.
- (g) It shall be unlawful, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to individuals. Prohibited activities relating to dwellings under this subsection include, but are not limited to any of the following:
- (1) Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice;
- (2) Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation, or refusing to deal with certain brokers or agents because they or one or more of their clients are a particular age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation;
- (3) Denying or delaying the process of an application made by a purchaser or renter or refusing to approve such an individual for occupancy in a cooperative or condominium dwelling because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation; or
- (4) Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.

(h) The protections afforded under this article against discrimination on the basis of familial status apply to any individual who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(i) It shall be unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of: (i) that buyer or renter; (ii) an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (iii) any person associated with the buyer or renter.

(j) It shall be unlawful to discriminate against any individual in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of: (i) that buyer or renter; (ii) an individual residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (iii) any individual associated with the buyer or renter.

(k) For purposes of subsections (i) and (j) above, discrimination includes:

(1) A refusal to permit, at the expense of the disabled individual, reasonable modifications of existing premises occupied or to be occupied by such individual if such modifications may be necessary to afford such individual full enjoyment of the premises; or

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such individual equal opportunity to use and enjoy a dwelling.

(l) Covered multifamily dwellings as defined herein which are intended for first occupancy after July 1, 2011, shall be designed and constructed to have at least one building entrance on the accessible route unless it is impractical to do so because of the terrain or unusual characteristic of the site as determined by FCHR rule. Such buildings shall also be designed and constructed in such a manner that:

(1) The public use and common use portions of such dwellings are readily accessible to and usable by disabled individuals;

(2) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide enough to allow passage by an individual in a wheelchair; and

(3) All premises within such dwellings contain the following features of adaptive design:

a. All accessible routes into and through the dwelling;

b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

c. Reinforcements in bathroom walls to allow later installation of grab bars; and

d. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, or as such standards may thereafter be amended, which are sufficient to satisfy the requirements therein.

(5) State agencies with building construction regulation responsibility for local governments, as appropriate, shall review plans and specifications for the construction of covered multifamily dwellings to determine consistency with this article.

### **Sec. 36-53. Discrimination in the provision of brokerage services.**

It shall be unlawful to deny any individual access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation, on the basis of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.

### **Sec. 36-54. Discrimination in the financing of housing or in residential real estate transactions.**

(a) It shall be unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to an individual applying for the loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him or her in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance, because of the age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation of such individual or of any individual associated with him or her in connection with such loan or other financial assistance, or because of the age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation of the present or prospective

owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(b) Residential real estate transactions.

(1) It shall be unlawful for any person or entity whose business includes engaging in residential real estate transactions to discriminate against any individual in making available such a transaction, or in the terms or conditions of such a transaction, because of age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation.

(2) As used in this subsection, the term "residential estate transaction" means either of the following:

a. The making or purchasing of loans or providing other financial assistance: (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or (ii) secured by residential real property; or

b. The selling, brokering, or appraising of residential real property.

### **Sec. 36-55. Discrimination in the provision of housing for older persons.**

The provisions of this article prohibiting discrimination based on age, race, color, religion, national origin, disability, marital status, familial status, sex, personal gender identity or sexual orientation shall apply to the provision of "housing for older persons" as such housing is defined and regulated by Title 42 U.S.C. § 3607, to the extent said provisions are not in conflict with federal or Florida law.

### **Sec. 36-56. Exemptions.**

(a) Single-family and multifamily dwellings. Nothing in this article applies to:

(1) Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this subsection applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any interest in, nor shall there be owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of more than three single-family houses at any one time. The sale or rental of any single-family house shall be exempted from the application of this article only if the house is sold or rented:

a. Without the use in any manner of sales or rental facilities or the sales or rental services of any real estate licensee or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such licensee or person; and

b. Without the publication, posting, or mailing, after notice of any advertisement or written notice in violation of section 36-52

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies and other professional assistance as is necessary to perfect or transfer the title of the property at issue.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(b) For the purposes of this section, a person is deemed to be in the business of selling or renting dwellings if the person:

(1) Has participated within the preceding 12 months in three or more transactions involving the sale or rental of any dwelling or interest therein;

(2) Has participated within the preceding 12 months, as an agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or interest therein; or

(3) Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(c) Nothing in this article prohibits a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to individuals of the same religion or from giving preference to such individuals, unless membership in such religion is restricted on account of race, color, or national or origin.

(d) Nothing in this article prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings that it owns or operates for other than a commercial activity from limiting the rental or occupancy of such lodgings to its members or giving preference to members.

(e) Nothing in this article requires any person renting or selling a dwelling constructed for first occupancy before July 1, 2011, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

**Secs. 36-57—36-80. Reserved.**

**ORDINANCE NO. 95-14-**

**AN ORDINANCE OF THE CITY OF ATLANTIC BEACH, FLORIDA, AMENDING CHAPTER 9, OF THE CODE OF ORDINANCES, TO PROHIBIT DISCRIMINATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission of the City of Atlantic Beach, Florida, recognizes individuals within the City should be free from discrimination based upon race, color, religion, sex, national origin, sexual orientation, gender identity or expression;

**WHEREAS**, the City Commission of the City of Atlantic Beach, Florida, wishes to protect each citizen's interest in personal dignity and to preserve the public safety, health and general welfare of the City;

**WHEREAS**, the City Commission of the City of Atlantic Beach, Florida, finds that it is necessary to amend Chapter 9 of the Atlantic Beach Code of Ordinances.

**NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION ON BEHALF OF THE PEOPLE OF THE CITY OF ATLANTIC BEACH, FLORIDA:**

**SECTION 1. Regulation Amended.** That Chapter 9 of the Code of Ordinances, of the City of Atlantic Beach, Florida, is hereby amended to read as follows:

**ARTICLE I. IN GENERAL**

**Sec. 9-1. Purpose.**

**To promote a City where individuals are free from discrimination based upon race, color, religion, sex, national origin, sexual orientation, gender identity or expression.**

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Words ~~stricken~~ are deletions; words underlined are additions.

Sec. 9-2. Definitions.

Whenever used in this chapter, the following words and terms shall have the following meanings unless the context necessarily requires otherwise:

*Aggrieved individual* shall mean any individual who claims to have been injured by a discriminatory practice.

*Discriminatory practice* shall mean any practice or act made unlawful or which is otherwise prohibited by this chapter.

*Dwelling* shall mean any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location of any such building, structure or portion thereof.

*Family* shall include a single individual.

*Gender identity or expression* shall mean gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

*National origin* shall mean the national origin of an ancestor or the country of origin of an individual's forebears, naturally, by marriage or by adoption.

*Person* shall include one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal

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Words ~~stricken~~ are deletions; words underlined are additions.

representatives, mutual companies, joint-stock companies, trust, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.

Religious organization shall include a religious corporation, association or society.

To rent shall include to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Sexual orientation means an individual's actual or perceived heterosexuality, homosexuality or bisexuality.

Sec. 9-3. Prohibited conduct.

Subject to the exceptions set out in this article, it shall be unlawful for any person to do any of the following acts:

(1) No person or employment agency shall directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, religion, sex, national origin, sexual orientation, gender identity or expression.

(2) No person shall discriminate against any individual in any aspect of any credit transaction, or in any terms and conditions of bonding because of the individual's race, color, religion, sex, national origin, sexual orientation, gender identity or expression.

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Words ~~stricken~~ are deletions; words underlined are additions.

(3) No person who owns, leases, rents, operates, manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's race, color, religion, sex, national origin, sexual orientation, gender identity or expression.

(4) It shall be unlawful for a person to retaliate or discriminate in any manner against an individual because such individual opposed a practice prohibited by this chapter or prohibited by existing federal or state law prohibiting discrimination; or to retaliate or discriminate in any manner against an individual because such individual has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this chapter or under any federal or state law prohibiting discrimination.

(5) It shall be unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

#### Sec. 9-4. Complaints.

(1) An aggrieved individual may, under this article, commence a civil action in a court of competent jurisdiction against the person alleged to have committed a discriminatory practice; provided,

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Words ~~stricken~~ are deletions; words underlined are additions.

however, that such civil action must be filed no later than one year after the discriminatory practice is alleged to have been committed.

(2) If, in a civil action commenced under this article, the court finds that a discriminatory practice has been committed or is about to be committed, the court may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the discriminatory practice including, but not limited to, a temporary or permanent injunction or other equitable relief, a temporary restraining order, an award of actual damages, including back pay, punitive damages, an award of reasonable attorney's fees, interest, and costs, or other such relief as the court deems appropriate.

Sec. 9-5. Exemptions.

Nothing in sections 9-1 through 9-4 shall apply to:

(1) Sovereign immunity:

(a) Pursuant to Article X, Section 13, Florida Constitution, nothing in this chapter shall be deemed to be a provision for bringing suit against the state or otherwise be deemed to be a waiver of sovereign immunity.

(b) Nothing in this chapter shall be construed to prohibit any sovereignly immune entity from adopting its own internal policies and rules to prohibit discriminatory practices and acts and to resolve allegations or complaints of such discriminatory practices and acts to the extent allowed by law.

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Words ~~stricken~~ are deletions; words underlined are additions.

(c) Nothing in this chapter shall be deemed to modify, impair, or otherwise affect any other right or remedy conferred by the constitution or laws of the United States or the State of Florida, and the provisions of this chapter shall be deemed to be in addition to those provided by such other laws.

(2) Religious organizations:

This article shall not apply to a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of Title VII of the Civil Rights Acts of 1964 pursuant to section 702(a) of such Act (42 U.S.C. 2000e-1(a)), or as such section may hereafter be amended. For purposes of this chapter, such corporations, associations, educational institutions, or societies shall include religious corporations, associations, educational institutions, or societies which condition opportunities in the area of employment to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenants or beliefs.

(3) Accommodations:

Nothing in this article shall be construed to establish a discriminatory practice based on sex, gender or expression due to the denial of access to rest rooms, shower rooms, bathhouses, dressing rooms and similar facilities which are by their nature simply private.

(4) Employers:

Notwithstanding any other provision of this article, it shall not be a discriminatory practice under this article to take or fail to take any

action based upon the individual's race, color, religion, sex, national origin, sexual orientation, gender identity or expression when a bona fide occupational qualification is reasonably necessary for the performance of employment to which such action or inaction is related. Employers are able to observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of this article. This article shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held, nor shall this article preclude such physical and medical examinations of applicants and employees as an employer may require of applicants and employees to determine fitness for the job or position sought or held.

Sec. 9-6. False Claims

If a court of competent jurisdiction finds that an unsupported claim was filed by an individual claiming to be an aggrieved party, the party required to defend against the meritless claim shall be entitled to attorney's fees and sanctions pursuant to Section 57.105, Florida Statutes.

~~Secs. 9-1—9-15. Reserved.~~ Secs. 9-7—9-16. Reserved.

## ARTICLE II. FAIR HOUSING

### ~~Sec. 9-16. Definitions.~~

~~Whenever used in this article, the following words and terms shall have the following meanings unless the context necessarily requires otherwise:~~

~~*Dwelling* shall mean any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location of any such building, structure or portion thereof.~~

~~*Family* shall include a single individual.~~

~~*Person* shall include one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trust, unincorporated organizations, trustees in bankruptcy, receivers, and fiduciaries.~~

~~*To rent* shall include to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.~~

### Sec. 9-17. Prohibited conduct.

Subject to the exceptions set out in this article, it shall be unlawful for any person to do any of the following acts:

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Words ~~stricken~~ are deletions; words underlined are additions.

(1) To refuse to sell or rent after the making of a bona fide offer to do so or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection therewith, because of race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression.

(3) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression or an intention to make any such preference, limitation or discrimination.

(4) To represent to any person because of race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a

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Words ~~stricken~~ are deletions; words underlined are additions.

particular race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression.

Sec. 9-18. Multiple listing services.

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression.

Sec. 9-19. Educational activities.

The city manager is authorized and directed to undertake such educational and conciliatory activities as in his judgment will further the purposes of this article. He may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions hereof and the suggested means of implementing this article. The city manager shall further endeavor, with the advice of the housing industry and other interested parties, to work out programs of voluntary compliance and may advise appropriate city officials on matters of enforcement. The city manager may issue reports on such conferences and consultation as it deems appropriate.

Sec. 9-20. Complaints.

(a) Any person who claims to have been injured by an act made unlawful by this article or who claims that he will be injured by such an act, may file a complaint with the city manager. A

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complaint shall be filed within one hundred eighty (180) days after the alleged unlawful act occurred. Complaints shall be in writing and shall contain such information and be in such form as required by the city manager. Upon receipt of a complaint, the city manager shall promptly investigate it and shall complete his investigation within fifteen (15) days. If the city manager finds reasonable cause to believe that a violation of this article has occurred, or if a person charged with violation of this article refused to furnish information to the city manager, the city manager may request the city attorney to prosecute an action in a court or board of competent jurisdiction against the person charged in the complaint. The request shall be in writing.

(b) Upon receiving such written request and with the assistance of the aggrieved person and city manager, within fifteen (15) days after receiving the request the city attorney shall be prepared to prosecute an action in the appropriate court or board of competent jurisdiction, provided a warrant is sworn out by the aggrieved person and served upon the person or persons charged with the offense.

Sec. 9-21. Use of remedies of this article, other remedies.

Nothing in this article requires any person claiming to have been injured by an act made unlawful by this article to exhaust the remedies provided herein; nor prevent any such person from seeking relief at any time under the Federal Civil Rights Acts or other applicable legal provisions.

Sec. 9-22. Discrimination in the financing of housing.

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It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, sex, or national origin of the person or of any person associated with him in connection with the loan or other financial assistance or the purposes of the loan or other financial assistance, or because of the race, color, sex, religion, ~~or~~ national origin, sexual orientation, gender identity or expression of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which the loan or other financial assistance is to be made or given.

Sec. 9-23. Exemptions.

(a) Nothing in sections 9-17 and 9-22 shall apply to:

(1) Any single-family house sold or rented by its owner, provided the private individual owner does not own more than three (3) single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in the house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph shall apply only with respect to one (1) sale within any twenty-four-month period. In addition, the bona fide

private individual owner shall not own any interest in, nor shall there be owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of this article only if the house is sold or rented:

a. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman or the facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of the broker, agent, salesman, or person; and

b. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of section 9-17(3).

Nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of paragraph (a), a person is deemed to be in the business of selling or renting dwellings if:

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Words ~~stricken~~ are deletions; words underlined are additions.

(1) He has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.

(c) Nothing in this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

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Sec. 9-24. Interference, coercion, or intimidation; enforcement by civil action.

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of his having exercised, or on account of his having aided or encouraged any other person in the exercise of any right granted under this article. This section may be enforced by appropriate civil action.

Sec. 9-25. Violations.

Any person violating any provision of this article shall be guilty of an offense and upon conviction shall pay a penalty of not more than fifty dollars (\$50.00) for each offense.

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**SECTION 2. Conflict.** If any portion of this ordinance is in conflict with any portion of any other ordinance, then the provisions of this ordinance shall govern.

**SECTION 3. Severability.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**SECTION 4. Effective Date.** This Ordinance shall take effect immediately upon its final passage and adoption.

**PASSED** by the City Commission on first reading this \_\_\_\_ day of \_\_\_\_\_ 2014.

**PASSED** by the City Commission on second and final this \_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
CAROLYN WOODS,  
Mayor, Presiding Officer

ATTEST:

\_\_\_\_\_  
DONNA L. BARTLE,  
City Clerk

Approved as to form and correctness:

\_\_\_\_\_  
RICHARD KOMANDO,  
City Attorney

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Words ~~stricken~~ are deletions; words underlined are additions.