

**ORDINANCE NO. 90-11**

AN ORDINANCE DECLARING IT TO BE THE POLICY OF FLAGLER COUNTY, FLORIDA, TO ELIMINATE DISCRIMINATION IN HOUSING BASED UPON RACE, COLOR, RELIGION, ANCESTRY, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, AGE, SOURCE OF INCOME, VETERAN STATUS, VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, CRIMINAL RECORD HISTORY OR NATIONAL ORIGIN~~RACE, COLOR, AGE, RELIGION, ANCESTRY, SEX, FAMILIAL STATUS, PLACE OF BIRTH HANDICAP, OR NATIONAL ORIGIN~~; PROVIDING DEFINITIONS; SPECIFYING EXEMPTIONS; SPECIFYING UNLAWFUL ACTS OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING; SPECIFYING UNLAWFUL ACTS OF DISCRIMINATION OF BROKERAGE SERVICE; PROVIDING FOR THE ADMINISTRATION OF THIS ORDINANCE; PROVIDING FOR PROCEDURES FOR INITIATING AND ACTING UPON COMPLAINTS; PROVIDING FOR HEARINGS; PROVIDING FOR OTHER REMEDIES; PROVIDING PROCEDURES FOR FILING REPORTS WITH THE REAL ESTATE COMMISSION OF THE STATE OF FLORIDA; REPEALING CONFLICTING ORDINANCES; AND PROVIDING FOR SEVERABILITY.

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA, AS FOLLOWS:

**SECTION I. - DECLARATION OF POLICY**

It is hereby declared to be the policy of Flagler County, Florida, in the exercise of its police power of the public safety, public health, and general welfare, to assure equal opportunity to obtain adequate housing by all persons, regardless of race, color, religion, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, ~~handicap~~ disability, criminal record history or national origin, and, to that end, to eliminate discrimination in housing.

**SECTION II. - DEFINITIONS**

When used herein:

- (a) "Commission" means the Board of County Commissioners of Flagler County, Florida.

(b) “Dwelling” means any building, structure, or portion thereof which is occupied as, or designated 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.

(c) “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 persons having such custody, with the written permission of such parent or others persons. 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.

(d) “Family” includes a single individual.

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

(f) “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.

(g) “Discriminatory housing practice” means an act that is unlawful under Section IV, V or VI of this Ordinance.

(h) “~~Handicap~~Disability” means that a person has a physical or mental impairment which substantially limits one or more major life activities or that he has a record of having, or is regarded as having, such physical or mental impairment.

(i) “Veteran status” means the state of having served in any branch of the armed forces of the United States, including the Reserves and National Guard, and having been discharged or released therefrom under conditions other than dishonorable as defined under federal law.

(j) “Victim of domestic violence” means a family or household member who has been subjected to acts or threats of violence, not including acts of self-defense, by another family or household member. For purposes of this section, ‘family or household member’ includes:

- 1) A current or former spouse of the victim;
- 2) A person with whom the victim shares a child in common;
- 3) A person who is cohabitating with or has cohabitated with the victim; or
- 4) A person who is or has continually or at regular intervals lived in the same household as the victim.

“Victim of dating violence” means a person who has been subjected to acts of threats of violence, not including acts of self-defense, during the course of a significant relationship of a romantic or intimate nature, committed by another person under the following circumstances:

- 1) The nature of the relationship was characterized by the expectation of affection or sexual involvement between the individuals; and
- 2) The frequency and type of interaction between the individuals was on a continuous basis during the course of the relationship.

“Victim of stalking” means a victim of acts that constitute or are deemed under state law to be willful, malicious, and repeated following, harassing, or cyberstalking of another

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person, or the making of a credible threat with the intent to place that victim in reasonable fear of death or bodily injury of the person, or the person's child, sibling, spouse, parent, or dependent. The term 'cyberstalking' means engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(k) "Source of income" means the origin or cause of a legal gain or recurrent benefit, often measured in money or currency, including, but not limited to, income derived from social security, supplemental security income, child support, alimony, veteran's benefits, disability benefits, unemployment, pension and retirement benefits, an annuity, a gift, an inheritance, the sale or pledge of or interest in property, or any form of federal, state, or local public or housing assistance or subsidy, including Housing Choice Voucher Program or 'Section 8' vouchers, whether such income is received directly or indirectly by the renter or purchaser and even if such income includes additional federal, state, or local requirements.

(h)(l) "Criminal history" means records or other information received from a criminal background check or contained in records collected by criminal justice agencies, including courts, consisting of identifiable descriptions and notations of arrests, arrest records, detentions, indictments, informations, or other formal criminal charges, any disposition arising therefrom, including conviction records, waiving trial rights, deferred sentences, stipulated order of continuance, dispositional continuance, or any other initial resolution which may or may not later result in dismissal or reduction of charges

depending on subsequent events. The term includes acquittals by reason of insanity, dismissal based on lack of competency, sentences, correctional supervision, and release, any issued certificates of restoration of opportunities and any information contained in records maintained by or obtained from criminal justice agencies, including courts, which provide individual's record of involvement in the criminal justice system as an alleged or convicted individual. The term does not include status registry information.

### **SECTION III. EXEMPTIONS**

(a) Nothing in Section IV 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 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 twenty-four (24) month period;

PROVIDED FURTHER, That such a bona fide private individual owner does not own any interest in, nor is there 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) such single-family houses at any one time;

PROVIDED FURTHER, That the sale or rental is made (A) without the use of any manner of sales or rental facilities or the sales or rental services of any real

estate broker, agent, or salesman, 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, salesman, or person and (B) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of Section IV (c); but 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 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 of such living quarters as his residence.

(b) For the purposes of Subsection (a), a person shall be deemed to be in the business of selling or renting dwellings if:

(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, or

(2) He has, within the preceding twelve (12) months, participated as agent, other than in the sale of his 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 designated or intended for occupancy by, or occupied by, five (5) or more families.

(c) Nothing in this ordinance 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 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, religion, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin~~race, color, sex, handicap, age, familial status, ancestry, or national origin~~. Nor shall anything in this Ordinance 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.

(d) Nothing in this Ordinance requires any person renting or selling a dwelling to modify, alter or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

#### **SECTION IV. – DISCRIMINATION IN THE USE SALE OR RENTAL OF HOUSING**

Except as exempted by Section III, it shall be unlawful:

- (a) 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, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin~~race, color, religion, sex, age, handicap, familial status, ancestry, or national origin~~.

- (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin, ~~race, color, religion, sex, age, handicap, familial status, ancestry, or national origin.~~
- (c) 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, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence, or stalking, familial status, marital status, disability, criminal record history or national origin, ~~race, color, religion, sex, age, handicap, familial status, ancestry, or national origin~~ or an intention to make any such preference, limitation, or discrimination.
- (d) To represent to any persons because of race, color, religion, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin, ~~race, color, religion, sex, age, handicap, familial status, ancestry, or national origin~~ that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (e) 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, ancestry, sex, sexual orientation, gender



identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin, race, color, religion, age, sex, handicap, familial status, ancestry, or national origin.

#### **SECTION V. – DISCRIMINATION IN THE FINANCING OF HOUSING**

It shall be unlawful 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 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 term or condition of such loan or other financial assistance, because of race, color, religion, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin ~~race, color, religion, sex, age, handicap, familial status, ancestry, or national origin~~ of such person or any person associated with him in connection with such loan or other financial assistance or 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 or effectiveness of the exception contained in Section III.

#### **SECTION VI. – DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICE**

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 conditions of such access, membership or participation, on account of ~~race, color, religion, ancestry, sex, sexual orientation, gender identity, age, source of income, veteran status, victim of domestic violence, dating violence or stalking, familial status, marital status, disability, criminal record history or national origin.~~ ~~race, color, religion, sex, handicap, age, ancestry, familial status, or national origin.~~

#### **SECTION VII. – ADMINISTRATION**

- (a) The authority and responsibility for administering this Ordinance shall be with the Commission.
- (b) The Commission may delegate its function, duties, and powers to an appointed ~~board designee~~ in whole or in part, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this Ordinance.
- (c) The Commission or its appointed ~~board designee~~ is authorized to:
- (1) implement the provisions of this Ordinance and rules and regulations promulgated hereunder an all ordinances, codes, rules, and regulations pertaining to housing discrimination.
  - (2) receive, initiate and investigate any and all complaints alleging violations of the Ordinance, 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) enter into written working agreements, as may be necessary to effectuate the purposes of this Ordinance, with federal, state and county agencies involved in reducing housing discrimination.

(6) administer oaths and compel the attendance of witnesses and the production of evidence before it, by subpoenas issued by the Commission or its appointed board designee.

(7) take other informational, educational, or persuasive actions to implement the purposes of this Ordinance.

#### **SECTION VIII. – PROCEDURE**

- (a) Any person aggrieved by an unlawful practice prohibited by this Ordinance must file a written complaint with the Commission or its appointed board designee within forty-five (~~45~~90) days after the alleged unlawful practice occurs.
- (b) Upon receipt of a complaint, the Commission or its appointed board designee 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 the Commission or its appointed board designee.
- (c) The Commission or its appointed board designee shall immediately investigate the complaint. Within sixty (~~60~~120) days from the date of the receipt of the complaint, the Commission or its appointed board designee shall make a written report with findings of fact.

- (d) Copies of the Commission or its appointed board's designee's report shall be sent to the complainant and the respondent. Either may, within ten (10) days after such mailing, request a hearing before the entity which issued the report.
- (e) When the complainant or the respondent requests a hearing by the Commission or its appointed board designee, or when the Commission or its appointed board designee itself determines that a hearing is desirable, the Commission or its appointed board designee shall call and conduct such hearing in accordance with Section IX, below.
- (f) The Commission or its appointed board designee shall carry out the actions specified in its report or, if a hearing is held the actions determined by the Commission or its appointed board designee in the hearing.
- (g) The Commission or its appointed board designee in its report or its hearing may determine:
- (1) that the complaint lacks ground upon which to base action for violation of this Ordinance, or
  - (2) that the complaint has been adequately dealt with by conciliation of the parties, or
  - (3) that the case warrants filing charges against the offending party in the appropriate court. In some cases, both conciliation and adjudicative orders, or both adjudicative orders and initiation of court action may be indicated.
- (h) If the Commission or its appointed board designee issues an adjudicative order to correct, adjust, conciliate, prevent, or prohibit an unlawful act prohibited by this Ordinance, and the respondent refuses or fails to comply with or obey such adjudication, the Commission or its appointed board designee shall forthwith request that the State Attorney file a complaint in the appropriate court. The Commission or its appointed board designee shall

provide the complainant with full and timely information as to all the alternatives available to him or her under local, state and federal law.

- (i) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed by this Ordinance.
- (j) All papers or pleadings required by this Ordinance 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.

#### **SECTION IX. – HEARINGS BEFORE THE COMMISSION**

- (a) When a hearing is required before the Commission or its appointed board designee, as specified in Section VIII~~E~~ above, the Commission or its appointed board designee 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 fifteen (15) days after service of such notice.
- (b) The parties or their authorized counsel may file such statements with the Commission or its appointed board designee, prior to the hearing date, as they may deem necessary in support of their positions. The parties may appear before the Commission or its appointed board designee in person or by a 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 Commission or its appointed board designee shall not be bound by strict rules of evidence prevailing in courts of law or equity but due process shall be observed. The Commission or its appointed board designee shall keep a full record of the hearing,

which records shall be public and open to inspection by any person, and upon request by any principal party to the proceedings, the Commission or its appointed board designee shall furnish such copy of the hearing record at cost. The constitutional rights of the respondent not to incriminate himself shall be scrupulously observed.

- (c) The Commission or its appointed board designee shall make a finding of fact and a determination of action to be taken (Section VIII (g) above). This Ordinance adopts those remedies specified in Section 760.34 (7) (b) and (7) (c), Florida Statutes (1989) or of any successor provision for those claims brought in Circuit Court.
- (d) The Commission or its appointed board designee may issue subpoenas to compel access to, the production of, or the appearance of, as the case may be, individuals, premises, records, documents, and other evidence or possible sources of evidence relative to the complaint at issue.
- (e) Upon written application to the commission or its appointed board designee, the parties are entitled to issuance of a reasonable number of subpoenas by and in the name of the Commission to the same extent and subject to the same limitations as subpoenas issued by the Commission or its appointed board designee. Subpoenas issued at the request of a party shall show on their face the name and address of such party and shall state that they were issued at his request.
- (f) Witnesses summoned by subpoena of the Commission or its appointed board designee shall be entitled to the same witness and mileage fees as are witnesses in proceedings in state courts of Florida. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by the party, unless he is indigent in which case the Commission shall bear the cost of said fees.

(g) Within ten (10) days after service of a subpoena upon any person, such person may petition the Commission or its appointed board designee to revoke or modify the subpoena. The Commission or its appointed board designee 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 which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance with be unduly onerous, or for other good reason.

(h) In case of refusal to obey a subpoena, the Commission or its appointed board designee or the person at whose request it was issued may petition for its enforcement in the appropriate court.

#### **SECTION X. – OTHER REMEDIES**

Nothing herein 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.

#### **SECTION XI. – 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 Ordinance, or has failed to comply with an order issued by the Commission or its appointed board designee, the Commission or its appointed board designee shall, in addition to the other procedures set forth herein, report the finding to the Real Estate Commission of the State of Florida.

#### **SECTION XII. – CONFLICTING ORDINANCES REPEALED**

All other ordinances and parts of ordinances in conflict herewith to the extent of such conflict are hereby repealed.

**SECTION XIII. – SEVERABILITY**

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the Ordinance and the application of the provisions to other persons not similarly situated or to other circumstances shall not be affected thereby.

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