

AMENDED COPY AS OF 9/1/06

Intro. Res. No. 2027-2006
8/8/2006

Laid on Table

Introduced by the Presiding Officer on Request of the County Executive and Legislators Montano and Mystal

**RESOLUTION NO. -2006, ADOPTING
LOCAL LAW NO. -2006, A LOCAL LAW TO UPDATE
AND STRENGTHEN THE INVESTIGATION AND
ENFORCEMENT POWERS OF THE SUFFOLK COUNTY
HUMAN RIGHTS COMMISSION AND TO ACHIEVE
SUBSTANTIAL EQUIVALENCE WITH THE FEDERAL
FAIR HOUSING ACT**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on _____, 2006 a proposed local law entitled, "**A LOCAL LAW TO UPDATE AND STRENGTHEN THE INVESTIGATION AND ENFORCEMENT POWERS OF THE SUFFOLK COUNTY HUMAN RIGHTS COMMISSION AND TO ACHIEVE SUBSTANTIAL EQUIVALENCE WITH THE FEDERAL FAIR HOUSING ACT**" now, therefore,
be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. -2006, SUFFOLK COUNTY NEW YORK

**A LOCAL LAW TO UPDATE AND STRENGTHEN
THE INVESTIGATION AND ENFORCEMENT
POWERS OF THE SUFFOLK COUNTY HUMAN
RIGHTS COMMISSION AND TO ACHIEVE
SUBSTANTIAL EQUIVALENCE WITH THE
FEDERAL FAIR HOUSING ACT**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY
OF SUFFOLK**, as follows:

Section 1. Legislative Intent.

The Suffolk County Legislature hereby finds and determines that in the County of Suffolk, with its diverse population, there is no greater danger to the health, morals, safety, and welfare of the County and its inhabitants than the existence of groups and individuals reflecting prejudice against one another and antagonism to each other because of actual or perceived differences of race, creed, color, sex, disability, religion, familial status, marital status, sexual orientation, age, gender, or national origin. Many persons have been compelled to live under substandard unhealthful, unsanitary, and crowded living conditions because of discrimination and segregation in housing.

The Legislature also finds that housing segregation creates economic instability by limiting individuals' access to quality education, health care and job opportunities for professionals and skilled workers, which manifests into unequal wealth accumulation. These factors create pockets of poverty, and limit the financial resources

available to those neighborhoods. As businesses relocate to other communities, the neighborhoods left behind lose a sustainable tax base, to the social and economic detriment of the entire County.

The Legislature further finds and declares that acts of prejudice, intolerance, bigotry, and discrimination which deny a person the opportunity to sell, purchase or lease, rent, or obtain financing for the purchase or lease of housing accommodations because of actual or perceived race, creed, color, sex, disability, religion, familial status, marital status, sexual orientation, age, gender, or national origin threaten the fundamental rights and privileges of the inhabitants of the County of Suffolk and undermine the foundations of a free democratic state and the economic stability of the region.

The Legislature further declares it to be the public policy of the County of Suffolk to eliminate and prevent discrimination and segregation based on actual or perceived race, creed, color, sex, disability, religion, familial status, marital status, sexual orientation, age, gender, or national origin and to safeguard the right of every person to sell, purchase, lease, rent, or obtain financing for the purchase or lease of housing accommodations without regard to actual or perceived race, creed, color, sex, disability, religion, familial status, marital status, sexual orientation, age, gender, or national origin.

The Legislature also finds that housing segregation creates economic instability by limiting access to quality education, health care and job opportunities for professionals and skilled workers. It creates pockets of poverty and increases the cost of housing in all neighborhoods. It limits the availability of housing for enterprises whose workforces reflect the efficiencies of diversity, and this limitation reduces the County's capacity for economic development, to the social and economic detriment of the entire County.

Therefore, the purpose of this law is to address and eliminate such discriminatory practices, and obtain certification by the United States Department of Housing and Urban Development that this law is substantially equivalent to the federal Fair Housing Act, so that the County can be eligible for federal and State funding for enforcement and administration of this law.

Section 2. Repeal.

Section 89-12 of the SUFFOLK COUNTY CODE is repealed.

Section 3. Amendments.

A new Section 89-12 of the SUFFOLK COUNTY CODE is added as follows:

§89-12. Unlawful discriminatory practices in the sale, lease, or rental of real property.

A.) Definitions.

The terms defined in Section 2 of Local Law No. 14-2001 shall have the meanings as set forth therein. For the purpose of unlawful discriminatory practices in the sale, lease, or rental of real property, the terms defined in Section

2 of Local Law No. 14-2001 that are not in conflict with this section shall be applicable. To the extent that they are in conflict, the following terms shall have the meanings set forth herein:

1. "Agent" means any person or entity, whether or not for financial consideration, with the authority to engage in any act associated with the offer for sale or rental of a housing accommodation on behalf of an owner or other person or entity in control of such accommodation. The term "agent" shall include, but not be limited to, a real estate agent or real estate broker.
2. "Commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended arranged or designed to be used or occupied as a separate business or professional unit or office in any building structure or portion thereof.
3. "Commission" refers to the Suffolk County Human Rights Commission, established and governed pursuant to this chapter.
4. "County" means the County of Suffolk.
5. "Couple" shall encompass two individuals who reside or seek to reside together and who have interdependence and emotional and financial commitment to and between each other, as those terms are currently used in 9 N.Y.C.R.R. § 2204.6.
6. "Covered entity" means a person required to comply with any provision of Section 89-12 of this chapter.
7. "Covered multifamily dwellings" means (a) buildings consisting of 4 or more units if such buildings have one or more elevators; and (b) ground floor units in other buildings consisting of 4 or more units.
8. "Demonstrates" means meets the burdens of production and persuasion.
9. The term "disability" means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

10. "Discrimination" means any difference in treatment based on actual or perceived race, creed, color, sex, gender, disability, religion, familial status, marital status, sexual orientation, age or national origin, alienage or citizenship and shall include segregation, except that it shall not be discrimination for any religious or denominational institution to devote its facilities, exclusively or primarily, to or for members of its own religion or denomination or to give preference to such members or to make such selection as is calculated by such institution to promote the religious principles for which it is established or maintained, unless membership in such religion is restricted on account of race, color, or national origin.
11. "Dwelling" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of 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.
12. "Familial status" means (a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or (b) one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals or the designee of such parent.
13. "Gender" means both the biological and social characteristics of being female or male.
14. "Housing accommodation" includes any building, structure, or portion thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, and any vacant land offered for sale or lease for the construction or location thereon of any such buildings, structure, or portion thereof.
15. "Legislature" means the Legislature of Suffolk County.
16. "Lending institution" means any bank, insurance company, savings and loan association, or any other person regularly engaged in the business of lending money or guaranteeing loans.
17. "Marital status," as used in this chapter, refers both to the status of an individual and to the status of a couple.
18. "National origin" for the purposes of this section includes "ancestry."
19. "Person" includes one or more individuals, partnerships, associations, limited liability companies, corporations of all types, legal representatives, trustees, trustees in bankruptcy, mutual companies, joint-stock companies, trusts, unincorporated associations, fiduciaries, or receivers. The term "person" also includes recipients of County funding after

September 1, 2007, which recipients have entered into agreements accepting the jurisdiction of this chapter.

20. "Protected basis" means race, creed, color, sex, gender, disability, religion, familial status, national origin, alienage or citizenship, marital status, sexual orientation or age.

21. "Publicly-assisted housing accommodations" shall include all housing accommodations within the County of Suffolk in:

(a) public housing;

(b) housing constructed after July first, nineteen hundred fifty, within the County of Suffolk;

(i) which is exempt in whole or in part from taxes levied by the state or any of its political subdivisions.

(ii) which is constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine.

(iii) which is constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(iv) for the acquisition, construction, repair or maintenance of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance;

(c) housing which is located in a multiple dwelling, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance; and

(d) housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if

(i) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodations is, after

July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance; or

- (ii) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

22. "Real estate broker," "real estate salesperson," and "associate real estate broker" shall have, respectively, the meanings of "real estate broker," "real estate salesman," and "associate real estate broker" set forth in section four hundred forty of the Real Property Law. Notwithstanding any inconsistent provision, for the purposes of this title, a real estate broker shall be legally responsible for any act of a real estate salesperson or associate real estate broker, provided that:

(a) in connection with the offer, purchase, sale, rental, or lease of housing accommodations, the real estate broker has authorized such real estate salesperson or associate real estate broker to act on the broker's behalf and subject to his or her direction, supervision, or control; and

(b) such violation has occurred within the scope of the authorization described in subparagraph a. of this paragraph 25.

23. "Reasonable modification" and "reasonable accommodation" means such modification or accommodation that shall not cause undue hardship in the conduct of the covered entity's business.

24. "Religious or denominational institution" means an institution which is operated for religious purposes or is operated, supervised or controlled by religious or denominational organizations.

25. "Sexual orientation" means a person's being homosexual, bisexual or heterosexual.

26. "Unlawful discriminatory practice" refers to any act that is unlawful under Section 89-12(B).

B. Unlawful Discriminatory Practices.

1. It shall be an unlawful discriminatory practice:
 - a. to refuse to sell, rent or lease any housing accommodations, including publicly assisted housing accommodations, and commercial space to any person, or refuse to negotiate for the sale, rental or lease of any housing accommodation to any person, because of the actual or perceived protected basis of such person, or to represent that any housing accommodation is not available for inspection, sale, rental or lease when in fact it is so available, or to otherwise deny or withhold any housing accommodation or any facilities of any housing accommodation from any person because of the actual or perceived protected basis of such person;
 - b. to discriminate against any person because of actual or perceived protected basis in the terms, conditions or privileges of the sale, rental, or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith;
 - c. to discriminate against any person in making available a residential real-estate transaction, or in the terms and conditions of such a transaction, because of actual or perceived protected basis of such person;
 - d. to make print or publish any statement, advertisement, or publications, or to use any form of application for the purchase, rental, or lease of such housing accommodations, or to make any record or inquiry in connection with the prospective purchase, rental, or lease of such housing accommodations which expresses, directly or indirectly, any limitation, specification, or discrimination with respect to actual or perceived protected basis, or any intent to make any such limitation, specification, or discrimination;
 - e. to refuse to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the covered entity may, where it is reasonable to do so, condition permission for a modification on a renter agreeing to restore the interior and/or exterior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - f. 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;

g. in connection with the design and construction of covered multifamily dwellings for first occupancy after January 1, 2007, to fail to design and construct those dwellings in such a manner that:

i. the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

ii. all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

iii. 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; and

(D). usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(1) Compliance with the appropriate requirements of the American National Standard Institute for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of clause iii. of subparagraph h. of this paragraph.

(2) Nothing in subparagraphs e., f., or g. of this section B.1. 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.

(3) The provisions of subparagraphs a. through g. of this section B.1. shall not apply: (a) to the rental of housing accommodations in a building which contains housing accommodations for not more than two

families if the owner or members of his family reside in one of such housing accommodation; or (b) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and he or she or members of his or her family reside in such housing accommodation; (c) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c) of the federal Fair Housing Act of 1988, as amended, shall apply.

2. It shall be an unlawful discriminatory practice to:
 - a. discriminate against any applicant or applicants for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation because of actual or perceived protected basis 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 accommodations in the granting, withholding, extending, or in the fixing of the rates, terms or conditions of any such financial assistance; or
 - b. use any form or application for such financial assistance or make any record or inquiry in connection with applications for such financial assistance which express, directly or indirectly, limitations, specifications, preferences, or discrimination because of actual or perceived protected basis.
3. It shall be an unlawful discriminatory practice to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this section, or attempt to do so.
4. It shall be an unlawful discriminatory practice to retaliate or discriminate against any person in any manner because he or she has opposed any practices forbidden under this section or because he has filed a complaint, testified, or assisted in any proceeding under this section.

5. It shall be an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with any person (a) in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed any right granted or protected by this section.; or (b) on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this section; or because of the protected basis of a person with whom such person has or is perceived to have a relationship or association.
6. It shall be an unlawful discriminatory practice to violate the terms of any conciliation agreement entered into pursuant to section C. 5., below.
7. It shall be an unlawful discriminatory practice, 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 protected class.

C. Administrative Enforcement.

1. Complaint.

- a. Any person aggrieved by an unlawful discriminatory practice may, by himself or herself or by such person's attorney, make, sign and file with the Commission a verified complaint in writing which shall: (i) state the name of the person alleged to have committed the unlawful discriminatory practice complained of, and the address of such person if known; (ii) set forth the particulars of the alleged unlawful discriminatory; and (iii) contain such other information as may be required by the Commission. The Commission shall acknowledge the filing of the complaint and advise the complainant of the time limits and choice of forums set forth in this section.
- b. Commission-initiated complaints. The Commission may itself make, sign and file a verified complaint alleging that a person has committed an unlawful discriminatory practice.
- c. The Commission shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent of his or her procedural rights and obligations as set forth herein.
- d. The Commission shall not have jurisdiction over any complaint that has been filed more than one year after the alleged unlawful discriminatory practice occurred.
- e. The Commission shall not have jurisdiction to entertain a complaint if: (i) the complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice as defined by this section with respect to

the same grievance which is the subject of the complaint under this section, unless such civil action has been dismissed without prejudice or withdrawn without prejudice; or (ii) the complainant has previously filed and has an action or proceeding before any administrative agency under any other law of the state alleging an unlawful discriminatory practice as defined by this section with respect to the same grievance which is the subject of the complaint under this section; or (iii) the complainant has previously filed a complaint with the New York State Division of Human Rights alleging an unlawful discriminatory practice as defined by this section with respect to the same grievance which is the subject of the complaint under this section and a final determination has been made thereon.

f. Any complaint filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the Commission by filing such amended complaint with the Commission and serving a copy thereof upon all parties to the proceeding.

2. Answer.

a. Within ten days after a copy of the complaint is served upon the respondent by the Commission, the respondent shall file a written, verified answer thereto with the Commission, and the Commission shall cause a copy of such answer to be served upon the complainant and any necessary party.

b. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial.

c. Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the Commission unless good cause to the contrary is shown.

d. All affirmative defenses shall be stated separately in the answer.

e. Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended in accordance with the rules of the Commission.

f. Any necessary party may file with the Commission a written, verified answer to the complaint, and the Commission shall cause a copy of such answer to be served upon the complainant, respondent and any other necessary party.

g. Any answer filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the Commission by filing such amended answer with the Commission and serving a

copy thereof upon the complainant and any necessary party to the proceeding.

3. Withdrawal of Complaints.

- a. A complaint filed pursuant to Section C. 1. may be withdrawn by the complainant as of right at any time prior to a determination of the issue of probable cause. Such a withdrawal shall be in writing and signed by the complainant.
- b. Unless such complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint shall be without prejudice:
 - (i) to the continued investigation of the complaint by the Commission in accordance with rules of the Commission;
 - (ii) to the initiation of a complaint by the Commission based in whole or in part upon the same facts;
 - (iii) to the commencement of a civil action by the complainant in a court of competent jurisdiction; or
 - (iv) to the commencement of a civil action in a court of competent jurisdiction by the County Attorney based upon the same facts pursuant to subparagraph 8. b. of this section C.

4. Dismissal of Complaint.

- a. The Commission may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:
 - (i) Commission personnel have been unable to locate the complainant after diligent efforts to do so;
 - (ii) the complainant has repeatedly failed to appear at mutually agreed upon appointments with Commission personnel or is unable or unwilling to meet with Commission personnel, provide requested documentation, or to attend a hearing;
 - (iii) relief is precluded by the respondent's absence or other special circumstances;
 - (iv) the complainant's objections to a proposed conciliation agreement are without substance;
 - (v) holding a hearing will not benefit the complainant;

- (vi) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Commission;
or
 - (vii) prosecution of the complaint will not serve the public interest.
- b. The Commission shall dismiss a complaint for administrative convenience where a complainant requests that it do so for the purpose of commencement by the complainant of a civil action in a court of competent jurisdiction.
- c. In accordance with the rules of the Commission, the Commission shall dismiss a complaint if the complaint is not within the jurisdiction of the Commission.
- d. If after investigation the Commission determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the Commission shall dismiss the complaint as to such respondent.
- e. The Commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.
- f. The complainant or respondent may, within thirty days of such service, and in accordance with the rules of the Commission, apply to the Executive Director of the Commission for review of any dismissal pursuant to this section. Upon such application, the Executive Director shall review such action and issue an order affirming, reversing or modifying such determination or remanding the matter for further investigation and action. A copy of such order shall be served upon the complainant, respondent and any necessary party.
- g. All complaints administratively dismissed pursuant to this section shall be reported in the Yearly Report of the Human Rights Commission mandated by Chapter 89 of the Suffolk County Code and will include:
 - (i) the total number of cases administratively dismissed for the reporting period;
 - (ii) the specific protected basis of the affected complainants;
 - (iii) the type of violation or discriminatory act alleged in the complaint; and
 - (iv) the basis for dismissing the complaint under this subsection.

h. Upon dismissal of the complaint, the Executive Director shall have the authority to refer the complaint to the New York State Division of Human Rights for further processing.

5. Mediation and Conciliation.

a. If in the judgment of the Commission circumstances so warrant, it may at any time after the filing of a complaint endeavor to resolve the complaint by any method of dispute resolution prescribed by rule of the Commission including, but not limited to, mediation and conciliation.

b. Mediators shall be selected by the Executive Director of the Suffolk County Human Rights Commission and may include Commission staff.

c. The terms of any conciliation agreement may contain such provisions as may be agreed upon by the Commission, the complainant and the respondent, including a provision for the entry in court of a consent decree embodying the terms of the conciliation agreement.

d. The members of the Commission and its staff shall not publicly disclose what transpired in the course of mediation and conciliation efforts.

e. If a conciliation agreement is entered into, the Commission shall embody such agreement in an order and serve a copy of such order upon all parties to the conciliation agreement. Every conciliation agreement shall be made public except where the Commission determines, either on its own or at the request of all parties, that extraordinary circumstances exist that would make such disclosure contrary to the public interest.

6. Investigation.

a. Every complaint shall be investigated in a timely, comprehensive and thorough manner, according to standards and procedures to be adopted in rules of practice of the Commission.

b. Such standards, procedures and rules shall include a requirement that a proceedings with respect to a complaint be commenced within 30 days of its filing, and that the investigation shall be completed within 100 days of its filing, unless the Commission determines that it is impracticable to do so, in which case the Commission shall be required to notify the complainant and respondent in writing of the reasons for not doing so.

c. At the end of each investigation, the Commission shall prepare a final investigative report containing:

- (i) the names and dates of contacts with witnesses;
- (ii) a summary and the dates of correspondence with the complainant and the respondent;
- (iii) a summary description of other pertinent records;
- (iv) a summary of witness statements; and
- (v) answers to interrogatories.

A final investigative report may be amended if additional evidence is later discovered.

- d. After the conclusion of an investigation, the Commission shall make available on request of a complainant or respondent a copy of the final investigative report and the information derived from the investigation.

7. Determination of Probable Cause.

- a. Except in connection with Commission-initiated complaints, which shall not require a determination of probable cause, where the Commission determines that probable cause exists to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the Commission shall issue a written notice to complainant and respondent so stating. A determination of probable cause is not a final order of the Commission and shall not be administratively or judicially reviewable.
- b. If there is a determination of probable cause pursuant to subparagraph a. of this paragraph 7. in relation to a complaint, including a Commission-initiated complaint, alleging any unlawful discriminatory practice in the sale, lease, or rental of real property, complainant may apply to a court of appropriate jurisdiction for an order enjoining respondent from doing or causing to be done any act that would tend to render ineffectual any such remedial relief that may thereafter be ordered.
- c. If a determination is made pursuant to subparagraph a. of this paragraph 7. that probable cause exists, or if a Commission-initiated complaint has been filed, the Executive Director of the Commission shall refer the complaint to an administrative law judge, except in a case where the Executive Director determines that: the respondent is already under investigation by the New York State Division of Human Rights as part of a pattern and practice or repeat offender case; the matter would be more appropriately handled by the New York State Division of Human Rights; or it would further the purposes of fair housing

enforcement to refer the case to the New York State Division of Human Rights.

- d. If a determination is made pursuant to subparagraph a. of this paragraph 7. that probable cause exists, or if a Commission-initiated complaint has been filed, the Executive Director of the Commission shall serve a notice upon the complainant, respondent and any necessary party that the complaint has been so filed.
- e. Notwithstanding subparagraph d. of this paragraph 7., the Executive Director may elect to accept cases after a determination that probable cause exists, or may decline and refer the complaint to the New York State Division of Human Rights for further processing. In the event that a case is declined and so referred, the Commission shall issue a written notice to complainant and respondent so stating and inform the complainant that s/he may file an action in a court of appropriate jurisdiction against the respondent or apply to the New York State Division of Human Rights for further processing of the complaint by the State.
- f. The Commission shall maintain statistics as to the number of cases processed pursuant to subparagraph .e. of this paragraph 7.
- g. Nothing in this Section 89-12 shall be interpreted to prevent the receiving or other processing of complaints in accordance with any cooperative agreement with the New York State Division of Human Rights or with other agencies concerned with the enforcement of laws against discrimination.

8. Election of Remedies.

- a. Within 20 days of the Commission's service of notice of probable cause pursuant to subparagraph a. of paragraph 7. above, a complainant or respondent may elect to proceed in a court of appropriate jurisdiction. A complainant or respondent so electing shall notify the Commission in writing of such election.
- b. Where an election is made pursuant to subparagraph a. of this paragraph 8., the Executive Director may elect to commence an action in a court of appropriate jurisdiction within 45 days thereafter.
- c. If the Executive Director commences an action in a court of appropriate jurisdiction pursuant to subparagraph b. of this paragraph 8., the complainant shall have the right to intervene in such action at any time.

9. Rules of Procedure.

The Commission shall adopt rules providing for hearing and pre-hearing procedures. These rules shall include rules providing that the Commission shall be a party to all complaints and that a complainant shall be a party if the complainant has intervened in the manner set forth in the rules of the Commission. These rules shall also include rules governing discovery, sanctions for non-compliance with orders, motion practice and the issuance of subpoenas. Wherever necessary, the Commission shall issue orders compelling discovery.

10. Hearing.

- a. A hearing on the complaint shall be held before an administrative law judge, who shall be any attorney in good standing designated by the Commission.
- b. The place of any such hearing shall be the office of the Commission or such other place as may be designated by the Commission. Notice of the date, time and place of such hearing shall be served upon the complainant, respondent and any necessary party.
- c. The case in support of the complaint shall be presented before the Commission. The complainant may present additional testimony and cross-examine witnesses in person or by counsel, if the complainant shall have intervened pursuant to rules established by the Commission.
- d. The administrative law judge may, in his or her discretion, permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.
- e. Evidence relating to endeavors at mediation or conciliation by, between or among the Commission, the complainant and the respondent shall not be admissible.
- f. If the respondent has failed to answer the complaint within the time period prescribed in section C.2.a. above, the administrative law judge shall enter a default and the hearing shall proceed to determine the evidence in support of the complaint; provided, however, that, upon application, the administrative law judge may, for good cause shown, open a default in answering, upon equitable terms and conditions, including the taking of an oral answer.
- g. A respondent who has filed an answer or whose default in answering has been set aside by the Commission for good cause shown; or a necessary party; or a complainant; or other person who has intervened pursuant to the rules of the Commission, may appear at such hearing in person or otherwise, with or without

counsel, and cross-examine witnesses, present testimony and offer evidence.

- h. The hearing shall be governed by the rules of evidence applicable in the Supreme Court of the State of New York. The testimony taken at the hearing shall be under oath and shall be transcribed.
- i. Subsequent to the hearing and to such briefing as the presiding Administrative Law Judge may direct, the presiding Administrative Law Judge shall prepare a recommended decision and order and forward that recommended decision and order, along with the record in the case, to the Executive Director.

11. Decision and Order.

- a. If, upon all the evidence at the hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the Executive Director shall find that a respondent has engaged in any unlawful discriminatory practice in the sale, lease, or rental of real property or has discriminated against any applicant(s) for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation because of actual or perceived protected basis of such applicant(s), the Executive Director shall state his/her findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order for such relief as may be appropriate. Such order shall require the respondent to take such affirmative action as, in the judgment of the Executive Director, will effectuate the purposes of this chapter including, but not limited to:
 - (i) selling, renting or leasing, or approving the sale, rental or lease of housing accommodations or land, or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination, if such actions are appropriate;
 - (ii) requiring training, monitoring, or adopting alternative policies;
 - (iii) payment of compensatory damages to the person aggrieved by such practice or act; and
 - (iv) submission of reports with respect to the manner of compliance.

The Commission may also direct the payment of civil penalties to the County in the amounts and under circumstances described below in paragraph 12. of this section C. The Commission may further direct the payment of a prevailing complainant's reasonable attorney's and expert's fees and costs.

b. If, upon all the evidence at the hearing, and upon the findings of fact and conclusions of law recommended by the administrative law judge, the Executive Director shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Executive Director shall state his/her findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, and any necessary party or any complainant who has not intervened, an order dismissing the complaint as to such respondent.

12. Civil penalties imposed by Commission for Unlawful Discriminatory Practices.

a. Except as otherwise provided in subparagraph b. of this paragraph 12., in addition to any of the remedies and penalties set forth in paragraph 11., above, in any matter where the Executive Director finds that a person has engaged in an unlawful discriminatory practice, the Commission may impose (i) compensatory damages to the person aggrieved by such practice; (ii) punitive damages in an amount not to exceed ten thousand dollars to the person aggrieved by such practice; (iii) payment to the county general fund of profits obtained by a respondent through the commission of unlawful discriminatory acts described in this Section 89-12; and (iv) civil fines and penalties in an amount not to exceed fifty thousand dollars, to be paid to the county general fund by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the County General Fund by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious;

b. A respondent that is found liable for an unlawful discriminatory practice, may, in relation to the determination of the appropriate amount of civil penalties to be imposed pursuant to subparagraph a. of this paragraph, plead and prove any relevant mitigating factor(s), including the following:

(i) the establishment of and compliance with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including but not limited to:

(A) a meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices;

(B) a firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(C) a program to educate employees and agents about unlawful discriminatory practices under local, state, and federal law;

(D) procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

(ii) a record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

c. In addition to any other penalties or sanctions which may be imposed pursuant to any other law, any person who knowingly makes a material false statement in any proceeding conducted, or document or record filed with the Commission, or record required to be preserved or made and kept and subject to inspection by the Commission pursuant to this section shall be liable for a civil penalty in an amount up to five thousand dollars.

13. Reopening of Proceeding by Commission.

The Commission may reopen any proceeding, or vacate or modify any order or determination of the Commission, whenever justice so requires, in accordance with the rules of the Commission.

14. Injunction and Temporary Restraining Order.

At any time after the filing of a complaint with the Commission alleging an unlawful discriminatory practice in the sale, lease, or rental of real property, where there is reason to believe that the respondent, or any other person acting in concert with the respondent, may do or cause to be done any act that would tend to render ineffectual relief that could be ordered:

(a) The County may commence or cause to be commenced, a special proceeding in accordance with article sixty-three of the civil practice law and rules for an order to show cause why the respondent and such other persons should not be enjoined from doing or causing such acts to be done; and

(b) Where the County has obtained injunctive relief pursuant to this paragraph, in order to prevent the involvement of innocent third parties in the rental or sale of housing accommodations during the

pendency of the complaint, a notice may be posted by the County in a conspicuous place on such housing accommodation stating that such accommodation is the subject of a complaint before the Commission and that prospective buyers or renters will take such accommodations at their own risk, provided, however, that no such notice shall be posted where the person charged with discrimination agrees in writing not to sell or rent such housing accommodations during the pendency of the action or proceeding against him or her. Any willful destruction, defacement, alteration or removal of such notice by the owner or the agents or employees of the owner shall be a misdemeanor punishable upon conviction by a fine of up to five hundred dollars.

- (c) Nothing herein shall prevent a complainant from applying to a court of competent jurisdiction for an injunction, temporary or permanent, or from filing a lis pendens against the property.

15. Judicial Review.

- a. Any complainant, respondent or other person aggrieved by a final order of the Executive Director or of the Commission issued pursuant to paragraphs C. 4. and C. 11. above, may obtain judicial review thereof in a proceeding as provided in this paragraph.
- b. Such proceeding shall be brought in Supreme Court, Suffolk County.
- c. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing before the Commission, and the issuance and service of a notice of petition returnable before such court. Thereupon, the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such relief as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order annulling, confirming or modifying the order of the Commission in whole or in part. Objections not previously raised on the record before the Commission shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.
- d. The findings of the Executive Director and the Commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole.
- e. An audiotape copy of the completed testimony shall be made available by the Commission at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the Commission.

f. A proceeding under this section must be instituted within thirty days after the service of the final order of the Commission.

16. Civil Penalties for Violating Orders of the Commission and the Executive Director.

Any person, who shall willfully resist, prevent, impede or interfere with the Commission or any of its employees or representatives in the performance of duty under this article, or shall willfully violate an order of the Commission or director or a conciliation agreement, shall be liable for a civil penalty of not more than fifty thousand dollars (\$50,000) and an additional civil penalty of not more than one thousand dollars (\$1,000) per day for each day that the violation continues.

17. Enforcement.

a. Any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the Commission pursuant to this section, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing penalties, or for such other relief as may be appropriate, may be initiated in any court of competent jurisdiction by the County on behalf of the Commission. In any such action or proceeding, application may be made for a temporary restraining order or preliminary injunction, enforcing and restraining all persons from violating any provisions of any such order, or for such other relief as may be just and proper, until hearing and determination of such action or proceeding and the entry of final judgment or order thereon. The court to which such application is made may make any or all of the orders specified, as may be required in such application, with or without notice, and may make such other or further orders or directions as may be necessary to render the same effect.

b. In any action or proceeding brought pursuant to subparagraph a. of this paragraph 17., no person shall be entitled to contest the terms of the order sought to be enforced unless that person has timely commenced a proceeding for review of the order pursuant to paragraph 15. of this section C.

c. An action or proceeding may be commenced in any court of competent jurisdiction on behalf of the Commission for the recovery of the civil penalties provided for in paragraph 16. of this section C..

18. Disposition of Civil Penalties.

a. Any civil penalties recovered by the Commission pursuant to this section shall be paid into the general fund of the County.

- b. Notwithstanding the foregoing provision, where an action or proceeding is commenced against a County agency for the enforcement of a final order issued by the Executive Director of the Commission pursuant to paragraph 11. of this section C. after a finding that such agency has engaged in an unlawful discriminatory practice and in such action or proceeding civil penalties are sought for violation of such order, an amount equal to any civil penalties imposed against such agency shall be appropriated in the subsequent fiscal year for any of the following purposes, to be determined by the County Executive: (i) investigation of alleged discriminatory practices under this law; (ii) prosecution of alleged discriminatory practices under this law; and (iii) education programs designed to eradicate discrimination.

19. Institution of Actions or Proceedings.

Where any of the provisions of this chapter authorize an application to be made, or an action or proceeding to be commenced on behalf of the Commission in a court, such application may be made or such action or proceeding may be instituted only by the County Attorney, such attorneys that may be employed by the commission as are designated by the county attorney or other persons designated by the county attorney.

20. Civil Cause of Action.

- a. Any person claiming to be aggrieved by an unlawful discriminatory practice as proscribed by this section shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the County Commission on Human Rights or with the State Division of Human Rights with respect to such alleged unlawful discriminatory practice. For purposes of this paragraph, the filing of a complaint with a federal agency pursuant to applicable federal law prohibiting discrimination which is subsequently referred to the County Commission on Human Rights or to the State Division of Human Rights pursuant to such law shall not be deemed to constitute the filing of a complaint under this subdivision.
- b. Notwithstanding any inconsistent provision of subparagraph a of this paragraph, where a complaint filed with the County Commission on Human Rights or the State Division on Human Rights is dismissed by the Commission pursuant to paragraph 4. of this section C., or by the State Division of Human Rights pursuant to section two hundred ninety-seven of the executive law for administrative convenience or because an election of remedies has been annulled, an aggrieved person shall maintain all rights to commence a civil action pursuant to this section as if no such complaint had been filed.

- c. A civil action commenced under this paragraph must be commenced within two years after the alleged unlawful discriminatory practice occurred. Upon the filing of a complaint with the County Commission on Human Rights or the State Division of Human Rights and during the pendency of such complaint and any court proceeding for review of the dismissal of such complaint, such two year limitations period shall be tolled.
- d. Notwithstanding any inconsistent provision of subparagraph 20. c. above., where a complaint filed with the County Commission on Human Rights or State Division of Human Rights is dismissed for administrative convenience and such dismissal is due to the complainant's malfeasance, misfeasance or recalcitrance, the two year limitation period on commencing a civil action pursuant to this section shall not be tolled.
- e. In any civil action commenced pursuant to this paragraph, the court, in its discretion, may award the prevailing party costs and reasonable attorney's fees.

21. Pattern and Practice Investigations by County Attorney.

- a. Whenever there is reasonable cause to believe that a person is engaged in pattern or practice that results in the denial to any person of the full enjoyment of any right secured by this section 89-12, a civil action on behalf of the Commission or the County may be commenced in a court of competent jurisdiction, by filing a complaint setting forth facts pertaining to such pattern or practice and requesting such relief as may be deemed necessary to insure the full enjoyment of the rights described in such section, including, but not limited to, injunctive relief, damages, including punitive damages, and such other types of relief as are deemed appropriate. Nothing in this paragraph 21. shall be construed to prohibit (i) an aggrieved person from filing a complaint pursuant to paragraph C. 1. or from commencing a civil action in a court of competent jurisdiction based upon the same facts pertaining to such a pattern or practice as are alleged in the civil action, or (ii) the Commission from filing a Commission-initiated complaint pursuant to paragraph C. 1. alleging a pattern or practice of discrimination, provided that a civil action pursuant to this section shall not have previously been commenced.
- b. A civil action commenced under this section 89-12 must be commenced within two years after the alleged discriminatory practice occurred.
- c. Such action may be instituted only by the County Attorney, such attorneys employed by the Commission as are designated by the County Attorney or other persons designated by the County Attorney.

22 Chapter to be liberally construed.

This chapter shall be construed liberally for the accomplishment of its purposes.

23. Severability.

If any provision of this local law or the application of such provision to any person or circumstance shall be held invalid by a court of competent jurisdiction, the remainder of such local law or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

24. Regulations.

The Executive Director of the Suffolk County Human Rights Commission is hereby authorized, empowered, and directed to promulgate and issue such rules and regulations as shall be deemed necessary to carry out the provisions of this law.

Section 4. Applicability.

This law shall apply to all complaints filed with the Commission on or after the effective date of this law.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect on the ninetieth (90th) day immediately subsequent to filing in the Office of the Secretary of State.

[] Brackets denote deletion of existing language

___ Underlining denotes addition of new language

DATED:

APPROVED BY:

County Executive of Suffolk County

Date:

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