

Introduced by the County Executive
LOCAL LAW NO. 9-2006

A LOCAL LAW TO AMEND CHAPTER 272 OF THE LAWS OF 1939,
CONSTITUTING THE NASSAU COUNTY ADMINISTRATIVE CODE, IN
RELATION TO THE NASSAU COUNTY COMMISSION ON HUMAN RIGHTS.

WHEREAS, discrimination based upon race, color, creed, gender, age, disability, religion, source of income, sexual orientation, national origin, marital status, familial status or ethnicity threatens all county residents; and

WHEREAS, the County is an increasingly diverse and interdependent community that cannot thrive unless each of its residents and prospective residents is accorded fair treatment and opportunity, particularly in the context of finding, obtaining, and enjoying housing accommodations; and

WHEREAS, the County has the capacity and desire to enforce fair housing laws by means sufficient to safeguard its residents and itself; now, therefore,

Be it enacted by the Nassau County Legislature, as follows:

Section 1. Titles C and C1 of Chapter 21 of Chapter 272 of the Laws of 1939, constituting the Nassau County Administrative Code, as amended by Local Law No. 72004, is hereby amended to read as follows:

Chapter Twenty One Title C Commission on Human Rights

§ 219.0. **Policy.** In a county such as the County of Nassau, with its large and diverse population, there is no greater danger to the health, morals, safety and welfare of the County than the existence of groups prejudiced against and antagonistic to one another because of actual or perceived differences of race, color, creed, gender, age, disability, religion, source of income, sexual orientation, national origin, marital status, familial status or ethnicity. The Nassau County Legislature hereby finds and declares that prejudice, intolerance, bigotry and discrimination threaten the rights and proper privileges of its residents and menace the institutions of a free democratic society.

Pursuant to the powers granted to the County by the New York State Constitution and the Municipal Home Rule Law, in order to protect the health, morals, safety and welfare of the County and its inhabitants, a Commission is hereby created through which the County of Nassau officially may encourage mutual understanding and respect among all groups in the County, eliminate prejudice, intolerance, bigotry and discrimination and give effect to the guarantee of equal rights for all assured by the Constitution and the laws of this state and of the United States of America.

§ 219.0a. **Titles to be liberally construed.** Titles C, C1 and C2

of this chapter shall be construed liberally for the accomplishment of their purposes and any provision of this code inconsistent with any provision of these titles shall not apply.

§ 219.1. **Creation of Commission on Human Rights.** There is hereby created a Commission on Human Rights. It shall consist of fifteen members, serving without compensation, to be appointed by the County Executive, upon recommendation of the Commission and subject to confirmation by the County Legislature. One member shall be designated by the County Executive as the chair of the Commission. Of the fifteen members first appointed, five shall be appointed for one year, five for two years and five for three years; thereafter all appointments to the Commission shall be for a term of three years. In the event of death or resignation of any member, his or her successor

shall be appointed to serve for the unexpired period of the term for which such member has been appointed.

§ 219.2. **Definitions.** For the purposes of titles C, C1 and C2 of this chapter the following terms shall have the following meanings:

a. "Commission" means the Nassau County Human Rights Commission, established and governed pursuant to this chapter.

b. "County" means the County of Nassau.

c. "County attorney" means the Nassau County Attorney.

d. "Discrimination" means any difference in treatment based on actual or perceived race, creed, color, national origin, ethnicity, gender, religion, source of income, sexual orientation, age, marital status, familial status or disability 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.

e. "Disability" means (a) a physical, mental or medical impairment, resulting from anatomical, physiological, genetic or neurological conditions, that 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 chapter regarding 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.

f. "Familial status" refers to (a) a person who is pregnant or has a child or is in the process of securing legal custody of a person who has not attained the age of eighteen years, or (b) one or more persons who have not attained the age of eighteen years and are domiciled with a parent or another person having legal custody of such person or persons or the designee of such parent.

g. "Legislature" means the Legislature of Nassau County.

h. "Marital status" refers both to the status of a person and to the status of a couple.

i. "National origin," for the purposes of this chapter, includes ancestry.

j. "Person" includes one or more individuals, partnerships, limited liability companies, associations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, mutual companies, joint stock companies, trusts, unincorporated associations, fiduciaries, or receivers.

k. "Protected status" means race, creed, color, gender, disability, age, religion, source of income, sexual orientation, ethnicity, familial status, marital status, or national origin.

l. "Reasonable accommodation" means actions taken that permit an employee, prospective employee or member with a disability to perform in a reasonable manner the activities involved in the job or occupation sought or held. Reasonable accommodation includes, but is not limited to, provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired

hearing or vision, job restructuring and modified work schedules, provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested.

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

n. "Sexual orientation" refers to a person's actual or perceived identity as being homosexual, bisexual or heterosexual.

o. "Source of income" means any lawful source of income, including federal, state, local, nonprofit assistance or subsidy program.

§ 219.3. **Functions of the Commission.** The Commission shall:

a. foster mutual understanding and respect in Nassau County, a community diverse with respect to race, creed, color, national origin, ethnicity, gender, religion, source of income, sexual orientation, age, marital status, familial status or disability;

b. encourage equality of treatment and prevent discrimination based upon actual or perceived race, creed, color, national origin, ethnicity, gender, religion, source of income, sexual orientation, age, marital status, familial status or disability;

c. cooperate with governmental and nongovernmental agencies and organizations having like or kindred functions; and

d. make such investigations and studies in the field of human relations as in the judgment of the Commission will aid in effectuating its general purposes.

§ 219.4. **Powers and duties.** In addition to the powers and duties set forth in section 219.3, the Commission shall:

a. work together with federal, state, city, town, village and nonprofit agencies in developing courses of instruction, for presentation in public and private schools, public libraries and other suitable places, on techniques for achieving harmonious intergroup relations within the County of Nassau;

b. enlist the cooperation of those comprising diversity with respect to race, creed, color, national origin, ethnicity, gender, religion, source of income, sexual orientation, age, marital status, familial status and disability; community organizations; labor organizations; fraternal and benevolent associations; and other groups in the County of Nassau in programs and campaigns devoted to eliminating group prejudice, intolerance, bigotry and discrimination;

c. study the problems of prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby in all or any fields of human relationship;

d. receive and investigate complaints and to initiate its own investigations of (i) tensions, prejudice, intolerance and bigotry based upon race, creed, color, national origin, ethnicity, gender, religion, source of income, sexual orientation, age, marital status, familial status and disability; and any disorder occasioned thereby; (ii) discrimination against any person or persons, organization or corporations whether practiced by private persons, associations, corporations and, after consultation with the County Executive, by county officials or agencies;

e. hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith require the production of any evidence relating to any matter under investigation or in question before the Commission. Except as provided in section 219.7

of this chapter, all such hearings shall be held in executive session unless prior written approval for a public hearing is obtained from the County Executive. The Commission, after the completion of any public hearing, shall make a report in writing to the County Executive setting forth the facts found by the Commission and its recommendations. At any hearing before the Commission or any committee thereof a witness shall have the right to be advised by counsel present during such hearing. The powers enumerated in this subdivision may be exercised by any group of three or more members of the Commission acting as a committee thereof, when so authorized in writing by the Commission. The Commission shall designate one member of the committee to chair such hearing and such chair is designated, pursuant to section twenty two hundred thirteen of the County Government Law of Nassau County, as an officer who may administer oaths and affirmations; compel the attendance of witnesses and the production of books and papers;

f. issue publications and reports of investigations and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby;

g. recommend to the County Executive and to the Nassau County Legislature policies and procedures to aid in carrying out the purposes of the title; and

h. submit an annual report to the County Executive and the Nassau County Legislature.

§ 219.5. **Employment and expenses.** The Nassau County Legislature may appropriate sufficient sums to meet the capital and operating expenses of said Commission. The County Executive, upon the recommendation of the Commission and subject to the confirmation of the Legislature, shall appoint an Executive Director. The Commission may employ such additional personnel as it deems necessary within appropriations therefor. The Executive Director shall act as Secretary of said Commission and perform such other duties as shall be assigned to him or her by the Commission.

§ 219.6. **Separability.** If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of such title or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Title C1 Open Housing

§ 219.7. Open housing provisions.

a. Policy.

There is no greater danger to the health, morals, safety, and welfare of the County and its residents than the existence of groups and persons antagonistic to each other because of actual or perceived differences of race, creed, color, gender, disability, age, religion, source of income, sexual orientation, familial status, marital status, ethnicity 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 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. The Nassau County Legislature hereby 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, gender, disability, age, religion, source of income, sexual orientation, familial status, marital status, ethnicity or national origin threaten the fundamental rights and privileges of the residents of the County of Nassau and undermine the foundations of a free democratic state. The Legislature further declares it to be the public policy of the County of Nassau to eliminate and prevent discrimination and segregation based on actual or perceived race, creed, color, gender, disability, age, religion, source of income, sexual orientation, ethnicity, familial status, marital status 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, gender, disability, age, religion, source of income, sexual orientation, ethnicity, familial status, marital status or national origin.

The Nassau County Legislature further declares it to be the public policy of the County of Nassau to require that every department or other agency of the County which may be involved in any public construction program which could involve the removal of persons from their present housing accommodations and their relocation elsewhere, or which endeavor to implement any public or publicly assisted or public approved housing or relocation plan, promote the elimination of segregation in housing within the County. It shall be the duty of all county officers, officials, and employees to exercise appropriate governmental functions relating to the use or occupancy of land, real property, or housing accommodations in such a manner consistent with law that all patterns of racially segregated housing existing in this county be eliminated and that the creation of any such patterns be prevented to the maximum extent that such a result can be achieved by such action.

b. Definitions. The terms defined in section 219.2

of this chapter, unless otherwise defined herein, shall have the meanings set forth therein. In addition, the following terms shall have the following meanings:

1. "Agent" means a person with the authority to engage, on behalf of another, in any act associated with the offer, purchase, sale, rental, or occupancy of one or more housing accommodations.
2. "Covered multifamily dwelling" means:
 - (i) any building consisting of four or more units if such building has one or more elevators; and
 - (ii) any ground floor unit in any building consisting of four or more units.
3. "Couple" means two persons who reside or seek to reside together.
4. "Covered entity" means a person required to comply with any provision of this title.
5. "Housing accommodation" includes a building, structure, or portion thereof used or occupied or intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more human beings, and vacant land

offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

6. "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.

7. "Reasonable modification" and "reasonable accommodation" mean such modification or accommodation, including a reasonable economic or financial accommodation relating to the payment for or financing of a dwelling, that will not cause undue hardship in the conduct of the owner's business. The owner shall be required to demonstrate undue hardship.

8. "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:

(i) 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

(ii) such violation has occurred within the scope of the authorization described in subparagraph i of this paragraph.

c. Certain acts prohibited.

1. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease housing accommodations, constructed or to be constructed, or any agent or employee thereof:

(i) to refuse to sell, rent or lease any housing accommodation to any person or group of persons, or refuse to negotiate for the sale, rental or lease of any housing accommodation to any person or group of persons, because of the actual or perceived protected status of such person or persons, 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 or group of persons because of the actual or perceived protected status of such person or persons;

(ii) to discriminate against or harass any person in the terms, conditions or privileges of the sale, rental, lease, or occupancy of any such housing accommodations or in the furnishing of facilities or services in connection therewith because of the actual or perceived protected status of such person.

(iii) to induce or attempt to induce any person to sell or rent any housing accommodation through the use of representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, creed, gender, age, disability, religion, source of income, sexual orientation, national origin and ethnicity.

(iv) to print or circulate or cause to be printed or circulated 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 status.

(v) to refuse to make reasonable modifications of existing premises occupied or to be occupied by a person with a disability if such modifications are made at the expense of the person with a disability and are 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 such modification on a tenant's agreement to restore, at his or her own expense, the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(vi) 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;

(vii) in connection with the design and construction of covered multifamily dwellings for first occupancy after the first of January two thousand seven, to fail 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 disabled persons;

(B) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons in wheelchairs; and

(C) all premises within such dwellings contain the following features of adaptive design:

(aa) a route into and through the dwelling accessible by persons in wheelchairs;

(bb) light switches, electrical outlets, thermostats, and other environmental controls in locations accessible to such persons;

(cc) reinforcements in bathroom walls that permit installations of grab bars; and

(dd) kitchens and bathrooms about which persons in wheelchairs can maneuver.

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"), as such standard may from time to time be amended, suffices to satisfy the requirements of clause (C) of subparagraph (vii) of this paragraph. Nothing in subparagraphs (iv), (v) or (vi) of this paragraph requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to his or her health or safety or to the health or safety of others or whose tenancy would result in substantial physical damage to the property of others.

The provisions of subparagraphs (i) through (iv) of this paragraph shall not apply: (1) to the rental of housing accommodations in a building which contains

housing accommodations for not more than two families if the owner of such building actually maintains and occupies one of such housing accommodations as his or her residence, or (2) to the rental of a room or rooms in a housing accommodation by a person who actually maintains and occupies such housing accommodation as his or her residence. With respect to familial status, the provisions of this title shall not apply to housing accommodations that fall under a state or federal program specifically designed and operated to assist elderly persons, as defined in such program; are intended for and solely occupied by persons sixty two years of age or older; or are intended and operated for occupancy by persons fifty five years of age or older, as such intention and operation is defined at subparagraph C of paragraph 2 of subdivision b of section eight hundred seven of the federal Fair Housing Amendments Act of 1988, as amended.

2. No person, bank, trust company, private banker, savings bank, industrial bank, saving and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the County and, if incorporated, regardless of whether incorporated under the laws of the state of New York, the United States, or any other jurisdiction, or any officer, agent or employee thereof, to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodations shall:

(i) discriminate against any such applicant or applicants because of the actual or perceived protected status 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.

(ii) use any form or application for such financial assistance or make any record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, limitations, specification, preference or discrimination because of actual or perceived protected status.

3. No person shall aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this title, or attempt to do so.

4. No person shall coerce, intimidate, threaten, harass, or interfere with any person:

(i) in the exercise or enjoyment of, or because he or she exercised or enjoyed any right granted or protected by this title; (ii) because he or she aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this title; or (iii) because of the protected status of a person with whom such person has or is perceived to have a relationship or association.

d. Enforcement. 1. Administrative enforcement. (i) It shall be the duty of the Commission to receive and investigate complaints and to initiate its own investigations of violations of this title, to hold hearings, compel the attendance of witnesses, administer oaths, take the testimony of any person under oath, and in connection thereof to require the production of any evidence relating to any matter under investigation or any question before the Commission, provided, however, that the Commission shall not have jurisdiction to hear a complaint if:

(A) the complainant has previously initiated a civil action in a court of competent jurisdiction with respect to the same grievance that is the subject of the complaint under this title unless such civil action has been dismissed without prejudice or withdrawn without prejudice;

(B) the complainant has previously filed and has an action or proceeding pending before an administrative agency of the state of New York with respect to the same grievance that is the subject of the complaint under this title; or

(C) the complainant has previously filed a complaint with the New York State Division of Human Rights with respect to the same grievance that is the subject of the complaint under this title and the complaint has not been dismissed pursuant to subdivision nine of section two hundred ninety seven of the Executive Law.

(ii) Complainant initiated

complaints. Any person aggrieved by an unlawful discriminatory practice may, by himself or herself or such person's attorney, make, sign and file with the Commission a verified complaint. The Commission shall acknowledge the filing of the complaint and advise the complainant of the time limits and forum choices set forth in this title. It shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent and such parties of his or her procedural rights and obligations as set forth herein. The Commission shall not have jurisdiction over any complaint that has been filed more than one year after the alleged unlawful discriminatory practice occurred, or over any complaint that has been filed more than one year after a complainant learns or should have learned that he or she has been harmed as a result of an act or acts prohibited under this section, whichever is later.

(iii) Commission initiated

complaints. The Commission may itself make, sign and file a verified complaint alleging that a person has committed an unlawful discriminatory practice, provided that the Commission shall not have authority to file such complaint more than two years after the alleged unlawful discriminatory practice occurred or after a complainant learns or should have learned that he or she has been harmed as a result of an act or acts prohibited under this section, whichever is later.

(A) A verified complaint filed with the Commission pursuant to subparagraphs (ii) or (iii) shall conform to the requirements for verified pleadings set forth in the Civil Practice Law and Rules.

(B) The Commission shall not have jurisdiction to entertain a complaint if:

(aa) the complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice as defined by this title with respect to the same grievance which is the subject of the complaint under this title, unless such civil action has been dismissed without prejudice or withdrawn without prejudice; or

(bb) 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 title with respect to the same grievance which is the subject of the complaint under this title;

or

(cc) 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 title with respect to the same grievance with is the subject of the complaint under this title and a final determination has been made thereon.

(dd) such complaint alleges in whole or part that a zoning law, ordinance, regulation or rule duly enacted by a municipal corporation is or will be, pursuant to subparagraph (i) or (ii) of paragraph one of subdivision c of this section, an unlawful discriminatory practice by virtue of or as evidenced by its disparate impact on persons having a protected status. Nothing herein shall be construed to prohibit the commencement of a civil action to obtain enforcement upon such claim pursuant to paragraph three of this subdivision.

(iv) Answer. (A) A written, verified answer shall be filed with the Commission no later than thirty days after a copy of the complaint has been served upon the respondent by the Commission. The Commission shall cause a copy of such answer to be served upon the complainant and any necessary party.

(B) All verified answers filed with the Commission pursuant to this section shall conform to the requirements for verified pleadings set forth in the Civil Practice Law and Rules;

(v) Withdrawal of complaints. (A) A complaint filed pursuant to paragraph one of this section may be withdrawn by the complainant as of right at any time prior to the commencement of a hearing before an administrative law judge. 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:

(aa) to the continued prosecution of the complaint by the Commission;

(bb) to the filing by the Commission of a complaint based in whole or in part upon the same facts;

(cc) to the commencement of a civil action pursuant to paragraph three of this subdivision; or

(dd) to the commencement of a civil action by the County Attorney based upon the same facts pursuant to paragraph two of this subdivision.

(vi) Dismissal of complaint. (A) The Commission may, in its discretion, dismiss a complaint:

(aa) for administrative convenience at any time prior to the taking of testimony at a hearing. The grounds for dismissal of a complaint for administrative convenience may include, but shall not be limited to, the following:

(1) the complainant's objections to a proposed conciliation agreement are without substance;

(2) the complainant is unavailable or unwilling to participate in conciliation or investigation, or to attend a hearing, or has repeatedly engaged in conduct that is disruptive to the orderly functioning of the Commission;

(3) relief is precluded by the respondent's absence or other special circumstances;

(4) holding a hearing will not benefit the complainant;

(5) processing the complaint will not serve the public interest; or

(6) the complainant has initiated or intends to initiate an action or proceeding in another forum based on the same grievance.

(bb) if the complaint is not within the jurisdiction of the Commission.

(cc) 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.

(B) The Commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.

(C) The complainant or respondent may, in accordance with the rules of the Commission, apply to the chairperson for review of any dismissal pursuant to this section. Upon such application, the chairperson 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.

(D) 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.

(vii) Investigation. (A) The Commission shall cause every complaint to be investigated according to standards and procedures adopted by the Commission.

(B) Such standards and procedures shall include, but not be limited to, a requirement that proceedings with respect to a complaint be commenced within thirty days of its filing. They shall also include a requirement that, within one hundred days of the filing of a complaint, the Commission shall determine whether it has jurisdiction and, if so, whether there is probable cause to believe that the respondent named in the complaint has engaged or is engaging in activity prohibited under this section.

(C) At the end of each investigation, the Commission shall prepare a final investigative report. 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.

(viii) Injunction and temporary restraining order.

(A) At any time after the filing of a complaint with the Commission alleging an unlawful discriminatory practice under this title, 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:

(aa) The County Attorney may commence 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

(bb) Where the County Attorney 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 not less than five hundred dollars nor more than one thousand dollars.

(ix) Determination of probable cause.

(A) Where the Commission determines that there is probable cause to believe that the respondent has engaged or is engaging in an act or acts prohibited under this section, the Commission shall issue a written notice to complainant and respondent so stating. A complaint initiated by the Commission shall be deemed a determination that there is such probable cause.

(B) A determination of probable cause shall not be administratively or judicially reviewable.

(C) Where the Commission has found probable cause pursuant to clause A of this subparagraph, the Commission shall refer the complaint to an administrative law judge and shall serve a notice upon the complainant, respondent and any necessary party that the complaint has been so referred.

(x) Investigative orders.

(A) The Commission may at any time issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence relating to any matter under investigation or any question before the Commission.

(B) Where the Commission has determined that probable cause exists to believe that any respondent engaged or is engaging in an act or acts prohibited under this title, the Commission may demand, with respect to records of the type made and kept by such respondent and that the Commission determines is or could be relevant to determining whether such person or persons have committed unlawful discriminatory practices, that such respondent continue to make and keep such records until the termination of all proceedings relating to the complaint about which probable cause has been determined. The Commission may inspect such records or require them to be filed with the Commission.

(C) The Commission shall establish by procedures enabling any person upon whom a demand has been made pursuant to this provision to object to such demand. Unless the Commission orders otherwise, the assertion of an objection shall not stay compliance with the demand.

(D) Upon the expiration of the time set pursuant to such rules for making an objection to such demand, or upon a determination that an objection to the demand shall not be sustained, the Commission shall order compliance with the demand.

(E) A proceeding may be brought by the County Attorney on behalf of the Commission in any court of competent jurisdiction seeking an order to compel compliance with an order issued pursuant to subparagraph (D) of this paragraph.

(xi) Mediation and conciliation.

(A) At any time after the filing of a complaint, the Commission may endeavor to resolve such complaint by any method of dispute resolution prescribed by rule of the Commission including but not limited to mediation and conciliation.

(B) 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 or complaint with motion for conditional dismissal based upon a settlement agreement embodying the terms of the conciliation agreement.

(C) The members of the Commission and its staff shall not publicly disclose what transpired during the processes of mediation and conciliation.

(D) 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. The Commission may impose civil penalties for a violation of a conciliation order as authorized under subparagraph (ii) of paragraph four of this subdivision.

(E) Every conciliation agreement shall be available to the public except where, to the extent allowed by law, the Commission determines, either on its own or at the request of both complainant and respondent, that extraordinary circumstances exist that would make such disclosure contrary to the public interest.

(xii) Hearing.

(A) A hearing on a complaint shall be held before an administrative law judge 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.

(B) The case in support of the complaint shall be presented before the Commission by prosecutors employed or otherwise designated by the Commission, under contract to the Commission, or attorneys assigned to the Commission for such purpose by the County Attorney.

(C) An 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.

(D) An administrative law judge shall have the powers of the Commission as set forth at clause (A) of subparagraph (x) of this paragraph.

(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 clause (A) of subparagraph (iv) of paragraph one of subdivision d of section 219.7

of this title, the administrative law judge shall enter a default and the hearing shall proceed to determine the evidence in support of the complaint.

(G) Except as otherwise provided in this title, the Commission through its prosecutors, a respondent who has filed an answer or whose default in answering has been set aside for good cause shown, 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 may cross examine witnesses, present testimony and offer evidence.

(H) A hearing shall be governed by rules of evidence adopted by the Commission and established to elicit the best evidence consistent with due process. The rules of evidence observed by courts need not be adopted. The testimony taken at such hearing shall be under oath and shall be transcribed.

(I) Subsequent to a hearing and to such briefing as the administrative law judge may direct, the administrative law judge shall prepare and forward to the Commission, along with the record, a recommended decision and order.

(xiii) Decision and order.

(A) If the Commission finds that a respondent has engaged in any unlawful discriminatory practice, it shall state its findings of fact and conclusions of law and issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice. Such order shall require the respondent to take such affirmative action as, in the judgment of the Commission, will effectuate the purposes of this title including, but not limited to: selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination; requiring training, monitoring, or the adoption of alternative policies; payment of compensatory damages to the person aggrieved by such practice or act; and 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 in paragraph four of this subdivision. The Commission may also direct the payment of a prevailing complainant's reasonable attorney's and expert fees and costs.

(B) If the Commission finds that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall issue an order stating its findings of fact and conclusions of law and shall dismiss the complaint as to such respondent.

(xiv) Judicial review. Any final order of the Commission shall be subject to review in the manner provided in article seventy eight of the Civil Practice Law

and Rules.

(xv) Enforcement of final orders of the Commission. The County Attorney may initiate any action or proceeding that may be appropriate or necessary for the enforcement of any final order issued by the Commission pursuant to this title, including actions to secure temporary or permanent injunctions enjoining any acts or practices that constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing civil penalties pursuant to paragraph four of this subdivision, or for such other relief as may be appropriate.

2. Enforcement actions by County Attorney. In addition to any other enforcement provision of this title, the County Attorney is hereby authorized to obtain enforcement of the provisions of this title by commencing an administrative proceeding before the Commission or an action in any court of competent jurisdiction for any relief as provided under this title, including but not limited to injunctive relief, monetary and punitive damages to persons aggrieved, civil penalties, and attorney's fees. Such authority shall include the authority to appear as intervenor in any action commenced by a party pursuant to any provision of this title. Notwithstanding any other provision of law, any action taken by the County Attorney under this paragraph shall not require a resolution of the Legislature.

3. Civil cause of action. (i) Except where a complainant has filed a complaint with the Commission or the New York State Division of Human Rights or a federal enforcement agency with respect to the same grievance and such complaint has not been dismissed by such division pursuant to subdivision nine of section two hundred ninety seven of the Executive Law, any person claiming to be aggrieved by a practice prohibited by this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages and for injunctive relief or such other remedies as may be appropriate.

(ii) Notwithstanding any inconsistent provision of this subdivision, where a complaint filed with the Commission is dismissed for administrative convenience or by annulment of complainant's administrative remedy by the Commission or by the New York State Division of Human Rights, an aggrieved person shall maintain all rights to commence a civil action pursuant to this section as if no such complaint had been filed.

(iii) Notice of any civil action filed pursuant to this paragraph shall be delivered in person to the County Attorney within ten days of such filing, or by any method calculated to place the County Attorney in receipt thereof within ten days of such filing. In any such action, the County Attorney shall have the right to intervene whenever he or she determines such intervention necessary to vindicate the public interest.

(iv) A civil action commenced under this section must be commenced within three years after the occurrence of the alleged unlawful discriminatory practice. Upon the filing of a complaint with the Commission and during the pendency of such complaint and any court proceeding for review of the dismissal of such complaint, such three year limitations period shall be tolled.

(v) Notwithstanding any inconsistent provision of this subdivision, where a complaint filed with the Commission is dismissed for administrative

convenience and such dismissal is due to the complainant's malfeasance, misfeasance or recalcitrance, the three year limitation period on commencing a civil action pursuant to this paragraph shall not be tolled.

(vi) Any person shall be deemed to be injured by an unlawful discriminatory practice and shall have the right to commence an action pursuant to this paragraph or to file a complaint pursuant to subparagraph (ii) of paragraph one of this subdivision when such person or its agents:

(A) are deprived of truthful information in violation of section 219.7(c)(1)(i); or

(B) discover through investigation that a covered entity is engaging or has engaged in an unlawful discriminatory practice, provided that such person has expended funds to reveal the covered entity's unlawful discriminatory practice, regardless of whether such expenditure constituted a diversion of resources from his or her other activities.

This subparagraph shall not limit the availability of any other basis in law for alleging injury resulting from acts prohibited under subdivision d of this title.

The measure of compensatory damages for a person injured as defined in this subparagraph shall include the fair market value of the efforts such person has undertaken to investigate and remedy the unlawful discriminatory practice.

4. Civil penalties for unlawful discriminatory practices or for violating orders of the Commission.

(i) In any matter where the Commission or a court of competent jurisdiction finds that a person has engaged in a discriminatory practice in violation of this title, the Commission or such court shall impose a civil penalty in an amount not more than fifty thousand dollars. Where the Commission finds that an unlawful discriminatory practice was the result of the respondent's wanton or malicious act, the Commission or court shall impose a civil penalty in an amount not more than one hundred thousand dollars.

(ii) Any person who fails to comply with an order issued by the Commission pursuant to subparagraphs (x), (xi) or (xiii) of paragraph one of this subdivision shall be liable for a civil penalty of not more than fifty thousand dollars and an additional civil penalty of not more than one thousand dollars per day for each day that the violation continues.

(iii) Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the County.

5. Attorney's fees. In any administrative enforcement or civil action commenced pursuant to this subdivision, the Commission or court, in its discretion, may award the prevailing party or parties costs and reasonable attorney's fees regardless of the amount of damages awarded to a complainant in such action. For the purposes of this paragraph, the term "prevailing" includes a complainant or plaintiff and/or intervenor whose commencement and/or prosecution of litigation has been found by the Commission or court to have substantially resulted in the remediation of an unlawful discriminatory act on the part of the respondent or defendant, regardless of whether such remediation has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such complainant's, plaintiff's or intervenor's favor.

6. Guidelines for construction and rules of procedure. The Commission may adopt

guidelines for the construction of the provisions of this title and shall adopt rules setting forth hearing and prehearing procedures. Such rules shall include, but not be limited to, rules governing discovery, motion practice and the issuance of subpoenas.

e. **Separability.** If any section, subdivision, paragraph, subparagraph, clause, or item of this title is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions thereof.

§2. This local law shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Eff. 1-1-07