

**BE IT ENACTED BY
THE LEGISLATURE OF THE
COUNTY OF ERIE AS FOLLOWS**

LOCAL LAW INTRO No. 5 -2018

LOCAL LAW No. ____-2018

A LOCAL LAW in relation to fair housing in Erie County.

SECTION 1: Legislative Findings and Intention

It is the intent of the Legislature to provide for fair housing throughout the County of Erie and to prohibit discrimination of any kind in the sale, rental or leasing of housing to any person.

SECTION 2: Definitions

As used in this local law, the following words shall have the meaning indicated:

- a. Advertising: Printing, circulating, placing or publishing or causing to be placed or published any written statement, including electronic media, with respect to the availability for sale or rent of a housing accommodation or the listing of a housing accommodation with any person, business or entity which maintains a referral list of available housing.
- b. Disability: A physical, mental or medical impairment which substantially limits one (1) or more major life activities; or a record of having such an impairment; or a condition regarded by others as such an impairment.
- c. Marital Status: Single, married, divorced, separated or widowed.
- d. Source of Income: Payments from any lawful occupation or employment, as well as other payments including, but not limited to, public assistance, public assistance security agreements, supplemental security income, pensions, annuities, unemployment benefits, disability payments, government subsidies, or other housing subsidies.
- e. Sexual Orientation: A person's heterosexuality, homosexuality, bisexuality, asexuality, whether actual or perceived.
- f. Housing: Any building, structure, or portion thereof located within the

- Accommodation: County of Erie, 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 persons.
- g. Military Status: A person's participation in the military service of the United States or the military service of the state including, but not limited to, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law.
- h. Gender Identity: A person's actual or perceived gender, as well as a person's gender identity, self-image, appearance, expression or behavior, whether or not that gender identity, self-image, appearance, expression or behavior is different than that traditionally associated with the person's sex at birth.
- i. Familial Status: 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 one or more individuals who have not attained the age of eighteen years domiciled with a parent or another person having legal custody of such individual or the designee of such parent.
- j. National Origin: Ancestry.
- k. Immediate Family: A person's spouse, parents, grandparents, children, grandchildren, brothers, sisters, mother in law, father in law, brothers in law, sisters in law, daughters in law, sons in law, adopted, half and step members.
- l. Immigration and Citizenship Status: Any person's immigration or citizenship status in the United States.

SECTION 3: Unlawful Acts

It shall be unlawful for any person or entity engaged in the sale or rental of housing to do the following:

- A) Refuse to sell or rent or refuse to negotiate for the sale or rental or to deny any housing accommodation to any person because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status or immigration and citizenship status.

- B) Discriminate against any person in the terms, conditions or provision of services or in the furnishing of facilities in connection with the sale or rental of any housing accommodation because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status or immigration and citizenship status.
- C) To induce or attempt to induce any person to sell or rent any housing accommodation by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status or immigration and citizenship status.
- D) For a person offering residential property for sale or rent or anyone acting on behalf of such a person to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the sale or rental of a housing accommodation or to make any record or inquiry in connection with the sale or rental of a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status or immigration and citizenship status.
- E) To incite, compel or coerce, the doing of any acts forbidden by this local law, or to retaliate or discriminate against any person or entity because that person or entity has filed a complaint or testified in a proceeding commenced under this local law.

For purposes of this local law, discrimination shall include (i) a refusal to permit, at the expense of a disabled person, reasonable modifications of existing premises occupied or to be occupied by such a person if such modifications may be necessary to afford such person full enjoyment of the premises (except that, in the case of rental, the landlord may where it reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted), and (ii) a refusal to make reasonable accommodations in the rules, policies, practices or services when such accommodation may be necessary to afford a disabled person equal opportunity to use and enjoy a housing accommodation.

SECTION 4: Exemptions

The provisions of this local law shall apply to all housing accommodations, as well as land zoned for residential uses, within the County of Erie, except for the following:

- A) A religious institution or religious organization limiting the sale, rental or occupancy of housing accommodations which it owns or operates, to persons of the same religion or

giving preference to such persons, unless membership in such religion is restricted on account of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status or immigration and citizenship status.

- B) The prohibitions of this chapter against discrimination because of sex shall not apply to a residential building owned by a public body or a private institution or organization and maintained, in whole or part, for the exclusive use of one (1) sex.
- C) The rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his immediate family reside in one of such housing accommodations and the rental has occurred without advertising.
- D) The rental of rooms in a housing accommodation if such rental is by the occupant of the housing accommodation or the owner of the housing accommodation, and the occupant/owner or members of his/her family reside in such housing accommodation.
- E) Restriction of the sale, rental or lease of a housing accommodation exclusively to persons fifty-five (55) years of age or older and their spouses with respect to age and familial status only.

SECTION 5: Enforcement

A) Filing of Complaints

The County shall receive and investigate complaints filed pursuant to this local law. The County Executive shall designate the Commissioner of the Department of Environment and Planning to perform enforcement and may designate a not-for-profit fair housing organization to either assist in conducting investigations or to complete said function for the Department of Environment and Planning.

Any person or organization, whether or not an aggrieved party, may file a complaint alleging a violation of this law. Such a complaint shall be filed within one year of the alleged act of discrimination with the Department of Environment and Planning or the County's designated entity.

The County or its designee may investigate individual instances and patterns of conduct prohibited by this local law, even without a complaint filed from any person or organization, and may initiate complaints in connection therewith.

B) Investigation

The County or its designee shall notify the accused party, in writing, within fifteen (15) days of the filing of any complaint. The County or its designee shall make a prompt investigation in connection with the complaint and within sixty (60) days after the complaint is filed, determine

whether the County has jurisdiction and, if so, whether there is probable cause to believe that the person/entity named in the complaint (hereinafter referred to as the respondent), has engaged or is engaging in an unlawful discriminatory practice.

C) Conciliation

If, in the judgment of the County or its designee, a conciliation agreement would satisfactorily resolve the complaint, the County or its designee shall seek to facilitate such an agreement which may include provisions requiring the respondent to refrain from unlawful discriminatory practices and such compensation and/or affirmative relief as is agreed upon by the parties. Conciliation agreements shall not be subject to confidentiality agreements.

D) Action

If, at the conclusion of the investigation, the County or its designee makes a finding of probable cause of discriminatory practice by the respondent, and is unable to resolve the complaint via conciliation, the County or its designee shall certify and refer the matter to the Erie County Fair Housing Board.

SECTION 6: Erie County Fair Housing Board

- A) There is hereby created an Erie County Fair Housing Board ("Board"). Such Board shall consist of five members who shall be appointed by the County Executive under the composition specified in Section 6 (C), with each member being subject to confirmation by the Erie County Legislature. One of the Board members shall be designated as chairperson by the County Executive. The members and Chairperson of the Board shall serve at the pleasure of the County Executive.
- B) Three members of the Board shall constitute a quorum for the purpose of conducting business thereof. A vacancy on the Board shall not impair the right of the remaining members to exercise all the powers of the Board. Each member of the Board shall serve without compensation.
- C) Composition of the Fair Housing Board.

The voting members of the Board shall be prescribed as follows:

- One member upon a recommendation from the Buffalo Niagara Association of Realtors;
- One member upon a recommendation from the Western New York Law Center or Neighborhood Legal Services;
- One member upon a recommendation from Belmont Housing Resources for Western New York or the Rental Assistance Corporation of Buffalo;
- Erie County Commissioner of Public Advocacy;
- Erie County First Deputy Commissioner of the Department of Social Services – Family Independence.

The Board shall be staffed by the Department of Environment and Planning and its Commissioner shall serve as an ex-officio, non-voting member of the Board. The Erie County Department of Law will represent the Board and shall designate an assistant county attorney to attend all Board meetings and provide legal counsel and support.

D) Bylaws.

The Erie County Fair Housing Board shall have the power to adopt, by a majority vote of its members, bylaws which further effectuate the purpose of this local law, prescribe attendance, quorum, officers, meeting notifications, conflicts of interest, and other administrative matters.

E) Terms of Fair Housing Board Members.

- 1) Voting members shall be appointed to serve for a term of three (3) years except that the terms of the initial voting members, which are established by section 6(E)3 below.
- 2) No person shall serve more than two (2) consecutive three-year terms as a voting member on the Board, including the completion of a term of another voting member. Any previous member who has served such two (2) consecutive three-year terms shall not be eligible to serve again until two (2) years following the last date of the most recent of such consecutive terms served.
- 3) To establish the initial terms of members, at the inaugural meeting of the Fair Housing Board, the members shall draw lots (or have a lot drawn for them if they are unable to attend) so that one member is assigned initial terms of one (1) year, two (2) members are assigned initial terms of two (2) years, and two (2) members are assigned initial terms of three (3) years. All subsequent terms shall be for a three-year period.

F) Powers and Duties.

The Erie County Fair Housing Board shall have the following powers and duties:

- To advise the County Executive and Erie County Legislature on all matters related to fair housing within Erie County.
- To conduct hearings when a fair housing complaint is certified to the Board in accordance with Section 5(d) of this law.
- To render an annual written report to the County Executive and Erie County Legislature detailing the Board's activities and recommendations over the past year.

G) Complaints; Hearing.

Upon a finding by the County or its designee that there is probable cause to believe a discriminatory act under this local law has occurred, the Board shall convene a hearing within thirty (30) days wherein both the respondent and complainant are given the opportunity to be heard. At the conclusion of the hearing, the Board shall vote to either confirm or dismiss the complaint. In the event the Board votes to confirm the complaint, the matter shall be referred to the Erie County Attorney's Office. The County Attorney shall institute proceedings in a court of competent jurisdiction, seeking the imposition of penalties described in Section 7. If the Board votes to dismiss the complaint, the complainant may seek to pursue a private cause of action as described in Section 8.

SECTION 7: Penalties

Any person found to have violated any provision of this local law shall be subject to the following penalties:

- A fine of not more than five-thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for a respondent adjudged to have committed any prior discriminatory housing practice. The County may choose to designate a portion of any recovery to further the purposes of this local law; and/or
- Revocation or suspension of any license or permit necessary for the operation of the housing accommodation in question; and/or
- Payment of all costs, expenses and disbursements incurred by the County, necessary to obtain complete compliance by the respondent with the local law; and/or
- A restraining order or a temporary or permanent injunction necessary to obtain complete compliance with this local law; and/or
- Such other relief directed by a court of appropriate jurisdiction; and/or
- In lieu of, or in addition to a civil penalty, the County Attorney may refer the matter to the Erie County District Attorney for prosecution of the underlying offense. Said conduct shall be punishable as an offense, in which the offender may be sentenced to a term of incarceration, not to exceed thirty (30) days and/or a fine not to exceed five-thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for an offender adjudged to have committed any prior discriminatory housing practice, as determined by a court of competent jurisdiction.

SECTION 8: Private Cause of Action

Any person claiming to be aggrieved by an unlawful discriminatory practice as defined by this local law, may have a cause of action in any court of competent jurisdiction within one (1) year from the date of the occurrence, or when the aggrieved party became aware of the unlawful

discriminatory practice, for damages and such other remedies as may be appropriate and determined by the Court. The Court may:

- Award actual damages, including by not limited to mental anguish, embarrassment and humiliation;
- Award punitive damages;
- Award reasonable attorney's fees in the case of a prevailing plaintiff; and/or
- Grant as relief it deems appropriate any permanent or temporary injunction, temporary restraining order or other order. No bond shall be required prior to the issuance of injunctive relief.

SECTION 9: Other Remedies

Nothing in this local law shall be construed to limit the rights of the complainant to pursue, at any time prior to or after the filing of a complaint, any other remedies which the complainant may have under the laws of the State of New York, the United States or any applicable jurisdiction.

SECTION 10: Education and Promotion of Fair Housing Goals

Erie County shall continue to take steps to further promote fair housing through its community development programs.

Within one hundred and twenty (120) days of the enactment of this local law, the County shall commence educational activities intended to explain the law and help to promote the County's fair housing goals. Such activities shall continue while this law remains in force.

The following requirements shall be maintained:

- Housing providers or real estate brokers located within the County selling or renting twenty (20) or more dwelling units within a calendar year shall formulate an Affirmative Fair Housing Marketing Plan. At minimum, such Affirmative Fair Housing Marketing Plan shall include: (1) a statement of non-discrimination and (2) a marketing plan designed to attract a diverse pool of applicants. The Commissioner of the Department of Environment and Planning or his/her designee may request a copy of said plan.
- Housing providers and real estate brokers located within the County selling or renting twenty (20) or more dwelling units within a calendar year shall be required to use the equal opportunity logotype or the phrase equal opportunity housing on applications and marketing materials, including electronic media, and to display in rental or real estate offices a public notice of equal opportunity housing.

SECTION 11: Construction

Nothing in this local law shall be construed to invalidate or limit any laws of the State of New York, the United States, or any other jurisdiction that grants, guarantees or protects the same rights granted, guaranteed or protected by this local law.

SECTION 12: Severability

If any article, section, subsection, paragraph, phrase or sentence of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate distinct, independent provision and such holding shall not affect the validity of the remaining portion thereof.

SECTION 13: Effective Date

This local law shall become effective upon its filing with the Secretary of State.

Sponsors:

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