

FAIR HOUSING

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Section 9-1. Policy.

It is the policy of the Village to provide, within constitutional limitations, for fair housing throughout the Village.

History: Ord. No. 10-001, § 1, adopted 2-23-10.

Section 9-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning stated herein, unless the context clearly requires otherwise. The definitions stated herein are applicable to this chapter only, and shall not be construed to modify, redefine, or abridge the applicable definitions or the use of such terms in any other ordinance, resolution, or enactment of the Village.

Aggrieved person means any person who (i) claims to have been injured by a discriminatory housing practice, or (ii) believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur.

Complainant means any person who files a complaint under Section 9-10 of this Chapter.

Discriminatory housing practice means an act that is unlawful under Section 9-4, 9-5 or 9-6 of this Chapter.

Dwelling means any building, structure or portion thereof which is occupied as, designed for, or intended for occupancy as a residence by a family or families, in accordance with the land use ordinances of the Village, and also includes any vacant land which is offered for sale or lease for the purpose of the construction or location thereon of any such building, structure or portion thereof.

Familial status means one or more individuals (who have not attained the age of eighteen (18) years) being domiciled with (i) a parent or another person having legal custody of such individual or individuals, or (ii) the designee of such parent or other person having such custody, with the written permission of such parent or other person; provided, further, that the protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant, or who is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

Family includes a single individual.

Handicap means, with respect to a person, (i) a physical or mental impairment which substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment; provided, however, that such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. § 802).

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

Residential real-estate related transaction means any of the following:

- (a) The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing or maintaining a dwelling; or (ii) secured by residential real estate; or
- (b) The selling, brokering or appraising of residential real property.

Respondent means (i) the person or other entity accused in a complaint of a discriminatory housing practice, and (ii) any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under Section 9-10 of this Chapter.

To rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right occupy premises owned by another.

History: Ord. No. 10-001, § 2, adopted 2-23-10.

Section 9-3. Scope of prohibitions.

(a) *General.* The prohibitions against discrimination in the sale or rental of housing set forth in Section 9-4 of this chapter shall apply to all dwellings in the Village, except as otherwise provided in Subsection 9-3(b) or in Section 9-7 of this chapter.

(b) *Exceptions.* Nothing in Section 9-4 of this chapter shall apply to:

- a. Any single-family house sold or rented by a private individual owner thereof; provided (i) that such private individual owner does not own more than three (3) such single-family houses at any one time; and provided further (ii) that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale, or who was not the most recent resident of such house prior to such sale, the exemption granted by this Subsection 9-3(b)(a) shall apply only with respect to one such sale within any twenty-four (24) month period; and provided further (iii) that such bona fide private individual owner does not own any interest in, for is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one time; and provided further (iv) that the sale or rental of any such single-family house shall be excepted from the application of this Chapter under this Subparagraph 9-3(b)(a) only if such house is rented: (I) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesperson or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson or person, and (II) without the publication, posting or mailing, after notice of any advertisement or written notice in violation of Section 9-4(c) of this Chapter, but nothing in this clause 9-3(b)(a)(iv)(II) shall prohibit the use of attorneys, escrow agents, abstractors, title companies, or other such professional assistance as is necessary to perfect or transfer the title; or
- b. Rooms or units in dwellings constituting living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if permitted under the

land use ordinances of the Village, if the owner actually maintains and occupies one of such living quarters as the owner's residence.

(c) *Business of selling or renting.* For the purposes of Subsection 9-3(b) of this chapter, a person shall be deemed to be in the business of selling or renting dwellings if:

- a. Such person has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or interest therein; or
- b. Such person has, within the preceding twelve (12) months, participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or interest therein; or
- c. Such person is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.

History: Ord. No. 10-001, § 3, adopted 2-23-10.

Section 9-4. Discrimination in the sale or rental of housing prohibited.

As made applicable by Section 9-3 of this chapter and except as otherwise provided in Subsection 9-3(b) or Section 9-7 of this chapter, it shall be prohibited:

- (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, handicap, familial status or national origin.
- (b) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, handicap, familial status or national origin.
- (c) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin, or an intention to make any such preference, limitation or discrimination.
- (d) To represent to any person because of race, color, religion, sex, handicap, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- (e) To profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status or national origin.

History: Ord. No. 10-001, § 4, adopted 2-23-10.

Section 9-5. Discrimination in residential real estate-related transactions prohibited.

(a) *General.* It is prohibited for any person or other entity whose business include engaging in residential real-estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status or national origin.

(b) *Appraisal Exemption.* Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration in such appraisals factors other than race, color, religion, sex, handicap, familial status or national origin.

History: Ord. No. 10-001, § 5, adopted 2-23-10.

Section 9-6. Discrimination in the provision of brokerage services prohibited.

It is prohibited to deny any person access to or membership or participation in any multiple-listing service, real estate brokers organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status or national origin.

History: Ord. No. 10-001, § 6, adopted 2-23-10.

Section 9-7. Exemptions.

Nothing in this chapter shall prohibit a religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by, or in conjunction with, a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or handicap; nor shall anything in this Chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

History: Ord. No. 10-001, § 7, adopted 2-23-10.

Section 9-8. Interference, coercion or intimidation prohibited.

It is prohibited for any person to coerce, intimidate, threaten or interfere with any other person in that person's exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or 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 Section 9-3, 9-4, 9-5, or 9-6 of this Chapter.

History: Ord. No. 10-001, § 8, adopted 2-23-10.

Section 9-9. Administration.

(a) *Authority.* The Mayor shall have the primary authority and responsibility for administering this chapter.

(b) *Delegation.* The Mayor may delegate any of his functions, duties and powers under this Chapter to any officers or employees of the Village, at the Mayor's discretion. Such delegation of functions, duties and powers may include, but shall not necessarily be limited to, investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any matter pursuant to this chapter.

(c) *Village activities.* Activities and programs of the Village shall be conducted and administered in a manner affirmatively to further the purposes of this chapter; provided, however, that this provision shall not be construed to authorize, require or permit the Village or any officer or employee thereof to act in contravention of any provision of the Village's land use code or any other ordinance, rule, or regulation of the Village.

History: Ord. No. 10-001, § 9, adopted 2-23-10.

Section 9-10. Village enforcement procedure.

(a) *Complaint.* Any aggrieved person may file a complaint in the office of the Village Clerk, which the Clerk shall thereupon forward promptly to the Mayor or other officer or employee of the Village designated by the Mayor. Such complaint shall be in writing and shall include, as a minimum: the name, address and telephone number of the aggrieved person and the respondent; a detailed and complete description of the facts upon which the complaint is based and the discriminatory practice that the aggrieved person alleges has occurred or is about to occur; and the specific relief sought.

(b) *Response.* Upon receiving a complaint alleging a violation of this chapter, the Mayor shall promptly forward a copy of the complaint to the respondent, with notice to the respondent to either (i) submit a written response to the Village within fifteen (15) days following the respondent's receipt of the complaint, or (ii) voluntarily resolve the complaint by negotiation with the aggrieved person and report the resolution to the Village within fifteen (15) days following the respondent's receipt of the complaint.

(c) *Administrative action on complaint.* Within fifteen (15) days following receipt of the respondent's response, or within fifteen (15) days after the response was due if no response was then received by the Village, the Mayor shall determine whether the Village administration shall take any action related to the complaint, and shall notify the aggrieved person and the respondent accordingly. In determining whether to take any administrative action, the Mayor may, but shall not be required to, conduct such investigation or inquiries as the Mayor deems appropriate. Administrative action may include, but shall not necessarily be limited to (i) efforts to conciliate or reach a mediated settlement of the issues between the aggrieved party and the respondent; (ii) action in the Municipal Court seeking penalties for any violation of Village ordinance for which a penalty is provided under the Village's Code of Ordinances; or (iii) an enforcement action in the district court. The determination whether to pursue any action shall be in the Mayor's sole and absolute discretion, and shall not be subject to appeal to the Governing Body of the Village. The Mayor's decision on any complaint pursuant to this chapter shall be deemed the final Village action thereon.

(d) *Complaint to other authority.* An aggrieved person or respondent who is dissatisfied with any action of the Village or the Mayor pursuant to this chapter may at any time file a complaint with the Secretary of the Department of Housing and Urban Development of the United States or in a court of competent jurisdiction. Upon notice of such filing, the Mayor shall immediately cease any efforts to resolve the matter and, upon request or subpoena, shall make available the Village's records related thereto, in accordance with the New Mexico Inspection of Public Records Act and other applicable law.

(e) *Burden of proof.* In any complaint brought under this chapter, the burden of proof shall be on the aggrieved person.

History: Ord. No. 10-001, § 10, adopted 2-23-10.

Section 9-11. Enforcement by private persons.

The rights granted and recognized by Sections 9-3, 9-4, 9-5, 9-6 and 9-8 of this chapter may be enforced by a civil action in a court of competent jurisdiction, and any aggrieved person may pursue such action; provided, however, that the Village shall not be liable to suit and shall not be made a party to any such action unless it is shown or alleged that the Village or an employee thereof has actively engaged in, encouraged, or supported a prohibited discriminatory action as described in this chapter. The Village by adopting this chapter does not waive any rights, immunities, or privileges of the Village, nor does the Village warrant or undertake to guarantee that any other person or entity will act in accordance with the provisions of this Chapter. All rights, immunities and privileges of the Village, including its rights and

immunities under the New Mexico Tort Claims Act (Section 41-4-1 *et seq.*, NMSA 1978, as amended and supplemented) remain in full force and effect, notwithstanding any provision of this Chapter.

History: Ord. No. 10-001, § 11, adopted 2-23-10.