

16-20-11.1

*ADOPTION TO AMEND THE CODE OF THE COUNTY OF
FAIRFAX, VIRGINIA BY ADDING NEW CHAPTER 11.1
(HUMAN RIGHTS ORDINANCE)
TO THE 1976 CODE OF THE COUNTY OF FAIRFAX,
VIRGINIA*

At a regular meeting of the Board of Supervisors of Fairfax, County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, September 15, 2020, the Board, after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 11.1 (Human Rights Ordinance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to wit:

*BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA:*

*That the Code of the County of Fairfax, Virginia is amended by
adding Chapter 11.1 (Human Rights Ordinance) as follows:*

Human Rights and Fair Housing

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Article 1.1. In General.

Section 11.1-1-1. Purpose.

This Chapter codifies the Fairfax County Human Rights Ordinance and the Fairfax County Fair Housing Act. As such, it reflects the following decision the Board of Supervisors to:

- (a) Continue to enforce and amend the County Fair Housing Act in effect on January 1, 1991, as authorized by Virginia Code § 36.1-96.21, rather than merge the County's rules and regulations on housing discrimination into the Human Rights Ordinance; and
- (b) Designate the Fairfax County Human Rights Commission as responsible for furthering compliance with the Human Rights Ordinance and the Fair Housing Act, as authorized by Virginia Code §§ 15.2-823, 15.2-853, 15.2-965, and 36.1-96.21.

Section 11.1-1-2. Definitions.

The following definitions shall apply to this Chapter:

- (a) *Case file* shall mean the OHREP file on a complaint, including but not limited to, the complaint, any answer filed by the respondent, and information gathered during any investigation of the complaint.
- (b) *Commission* shall mean the Human Rights Commission, as established herein.
- (c) *County Attorney* shall mean the County Attorney for Fairfax County.
- (d) *Director* shall mean the Director of OHREP, or the Director's designated representative.
- (e) *OHREP* shall mean the Fairfax County Office of Human Rights and Equity Programs.

Section 11.1-1-3. Human Rights Commission established.

The Board of Supervisors establishes the Fairfax County Human Rights Commission.

Section 11.1-1-4. Membership; compensation; terms of office; chairperson and vice chairperson; bylaws.

- (a) The Commission shall consist of twelve (12) members who shall be residents of the County and broadly representative of the County's population.
- (b) The members of the Commission shall be appointed by the Board of Supervisors and shall be entitled to receive such compensation as the Board of Supervisors shall direct.

(c) Of the members of the Commission first appointed, four (4) shall be appointed for terms of three (3) years, four (4) shall be appointed for terms of two (2) years, and three (3) shall be appointed for terms of one (1) year. Thereafter, members shall be appointed for terms of three (3) years each. Any vacancy shall be filled by the Board of Supervisors for the unexpired portion of the term.

(d) The Commission shall establish bylaws, and make any subsequent amendments to such bylaws, in accordance with County policies and procedures.

Section 11.1-1-5. Legal counsel.

The County Attorney shall act as legal counsel to the Commission and shall authorize retention of outside legal counsel for the Commission where deemed appropriate for a particular complaint.

Section 11.1-1-6. Office of Human Rights and Equity Programs.

(a) OHREP shall have the following functions:

- (1) To provide administrative support for the Commission's activities;
- (2) To make studies to effectuate the purposes and policies of this Article and to make the results thereof available to the public;
- (3) To accept public grants or private gifts, bequests, or other payments, as appropriate under the law; and
- (4) To furnish technical assistance, upon request, to persons subject to this Article to further compliance with this Article or a recommendation made thereunder.

OHREP also may perform any other function as provided by this Chapter.

(b) The Board of Supervisors shall appoint the Director of OHREP upon the recommendation of the County Executive. The Director shall serve full time and be responsible for overseeing the day-to-day operations of OHREP.

Section 11.1-1-7. Right to representation.

A complainant and respondent each are entitled to be represented by counsel or by an authorized representative in any matter before the Commission.

Section 11.1-1-8. Effective date.

This Chapter shall take effect retroactive to July 1, 2020, and shall apply to all matters pending before the Commission on that date and to all matters arising before the Commission thereafter.

Article 2.1. Human Rights Ordinance.

Section 11.1-2-1. Authorization; short title.

(a) Under the authority of Virginia Code §§ 15.2-853 and 15.2-965, the Board of Supervisors enacts this Article prohibiting discrimination in employment, public accommodations, credit, and education on the basis of race, color, religion, sex, pregnancy, childbirth or related medical conditions, national origin, status as a veteran, age, marital status, sexual orientation, gender identity, or disability.¹

(b) This Article shall be known and cited as the Fairfax County Human Rights Ordinance.

Section 11.1-2-2. Definitions.

The following definitions shall apply to this Article:

(a) *Complainant* shall mean a person who claims to have been injured by an unlawful discriminatory practice.

(b) *Complaint* shall mean a written statement by a person, a member of the Commission, or the Commission alleging an act of discrimination prohibited by this Article.

(c) *Conciliation* shall mean the attempted resolution of issues raised by a complaint, or by the investigation of such complaint; through informal negotiations involving the complainant, the respondent, and the Director.

(d) *Party* shall mean a complainant or respondent.

(e) *Person* shall mean one or more individuals, labor unions, partnerships, corporations, associations, legal representatives, mutual companies, joint-stock companies, trusts or unincorporated organizations.

(f) *Respondent* shall mean a person against whom a complaint of violation of this Article is filed.

Section 11.1-2-3. Declaration of policy.

It is the policy of the County to:

- Safeguard all individuals within the County from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical

¹ As explained in Article 1 of this Chapter, Virginia Code 15.2-853 also authorizes the Board of Supervisors to prohibit unlawful discrimination in housing and real estate transactions. Under the authority of Virginia Code § 36-96.21, the Board has enacted a separate Fair Housing Act to prohibit such discrimination, which appears as Article 3.

conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability in places of public accommodation, including educational institutions, and with respect to credit;

- Safeguard all individuals within the County from unlawful discrimination in employment because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability;
- Preserve the public safety, health, and general welfare;
- Further the interests, rights, and privileges of individuals within the County; and
- Protect citizens of the County against unfounded charges of unlawful discrimination.

Section 11.1-2-4. Construction.

(a) The provisions of this Article shall be construed liberally for the accomplishment of its policies.

(b) Nothing in this Article shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, sexual orientation, gender identity, status as a veteran, or disability.

(c) Nothing in this Article shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented, or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

(d) Nothing in this Article shall be construed to affect any government program, law or activity differentiating between persons on the basis of age over the age of eighteen (18) years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the County for the general health, safety and welfare of the population at large.

Section 11.1-2-5. Unlawful discrimination.

(a) With the exception of matters relating to housing and residential real estate, conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, pregnancy, childbirth or related medical conditions, including lactation, age, disability, status as a veteran, or national origin shall be an "unlawful discriminatory practice" for purposes of this Article.

(b) It shall be a violation of this Article for any person to engage in an unlawful discriminatory practice.

Section 11.1-2-6. Commission jurisdiction.

(a) The Commission shall exercise jurisdiction to enforce this Article within the geographical boundaries of the County, including the Towns of Clifton, Herndon and Vienna, except for complaints of unlawful discrimination made against governmental entities, and the officers, employees and agents of such entities.

(b) If the Commission determines that a complaint is not within the Commission's jurisdiction, but possibly within the jurisdiction of one of the agencies with which the Commission has an interagency agreement, the complaint shall be sent to the appropriate agency within fifteen (15) working days of the determination. The complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the Commission shall close the case file. In the event the complaint is not under the jurisdiction of the agency to which it was referred, or if additional evidence is submitted, the case file will be reopened. The Commission delegates to the Director authority to make the determination and provide the notice required under this Subsection.

Section 11.1-2-7 Commission powers and duties.

Under this Article, the Commission shall promote policies to ensure that all persons in the County be afforded equal opportunity, serve as an agency for receiving, investigating, holding hearings, processing, and assisting in the voluntary resolution of complaints regarding unlawful discriminatory practices occurring within the County, and with the approval of the County Attorney, to seek, through appropriate enforcement authorities, prevention of or relief from a violation of any County ordinance prohibiting discrimination.

Section 11.1-2-8. Service.

Service by the Commission with respect to matters covered by this Article shall be either in person or by mail to the last-known address of the recipient appearing in OHREP's records. The complainant, respondent, counsel of record and any authorized representative shall be responsible for providing the Commission with prompt notice of any change in address.

Section 11.1-2-9. Filing of complaint.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice may file a complaint in writing under oath or affirmation with the Commission. The Commission or a member of the Commission may in a like manner file such a complaint.

(b) In the event that a complaint is filed on behalf of a person claiming to be aggrieved, the Director shall verify the complaint with the person on whose behalf the complaint is made.

(c) Where a person is entitled to file a complaint with the Commission, OHREP shall render assistance in the filing of a complaint.

(d) A complaint may be filed in person at or by mail to OHREP's office located at the Fairfax County Government Center, 12000 Government Center Parkway, Suite 318, Fairfax, Virginia 22035 during normal County business hours, by fax to 703-324-3570, or by email to EPDEmailComplaints@fairfaxcounty.gov. Telephone calls may be made to 703-324-2953, TTY 711, in order to receive information on how and where to file a complaint. Complaints shall not be accepted over the telephone.

(e) All complaints shall be dated and time-stamped upon receipt.

(f) The Commission may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential, or when required to do so by law.

Section 11.1-2-10. Form and contents of complaint.

(a) A complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged unlawful discriminatory practice. To ensure compliance with this requirement, it should contain the following information:

(1) The full name, address and telephone number of the person making the complaint;

(2) The full name, addresses and telephone number of the respondent; and

(3) A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practice.

(b) Notwithstanding the provisions of Subsection (a) of this Section, a complaint shall be considered filed when OHREP receives a written statement that identifies the parties and describes generally the actions or practices complained of.

(c) A complaint may be reasonably and fairly amended by the filing party at any time prior to a hearing. Except for purposes of notifying the respondent as specified in Subsection (d) of this Section, amended complaints shall be considered as having been made as of the original filing date.

(d) When an amendment is filed, OHREP shall forward a copy of the amendment to the respondent within five (5) working days of the amendment. The respondent shall within ten (10) working days after receiving the amendment file an answer to the amendment.

Section 11.1-2-11. Dismissal of complaint.

(a) The Commission shall dismiss a complaint for lack of jurisdiction.

(b) The Commission shall dismiss a complaint when the complainant fails to cure defects in its allegations or make required amendments within the time prescribed by OHREP.

(c) When the Commission determines that the complaint (1) is not timely or (2) fails to state a claim under this Article, it shall dismiss the complaint.

(d) Written notice of any dismissal pursuant to this Section shall be issued to the complainant and the respondent.

(e) The Commission delegates authority to the Director to dismiss complaints under this Section.

Section 11.1-2-12. Withdrawal of complaint.

(a) A complaint may only be withdrawn by the complainant and only with the consent of the Commission. The Commission hereby delegates authority to the Director to consent to a request to withdraw a complaint, where withdrawal of the complaint will not defeat the purposes of the statute or regulation alleged to have been violated.

(b) The Commission may withdraw any complaint filed by a member of the Commission whose term of office has expired or otherwise ended when it determines that the purposes of this Article are no longer served by processing the complaint.

(c) A complaint filed under this Article may not be withdrawn after a determination of reasonable cause has been made.

Section 11.1-2-13. Service and notice of complaint.

(a) Upon perfection of a complaint, the Commission shall timely serve the complaint on the respondent and provide all parties with written notice informing them of the complainant's rights, including the right to commence a civil action, and the dates within which the complainant may exercise such rights. The notice also shall notify the complainant that the complaint shall be dismissed with prejudice and with no right to further proceed if a written complaint is not timely filed with the appropriate general district or circuit court. Finally, the notice also shall advise the parties of the need for them to preserve all documents relevant to the complaint until final disposition of the complaint.

(b) The Commission delegates to the Director authority to serve the complaint and notice provided under this Section.

Section 11.1-2-14. Mediation.

(a) The complainant and respondent may agree voluntarily to submit the complaint to mediation without waiving any rights that are otherwise available to each party pursuant to this Article and without incurring any obligation to accept the result of the mediation process.

(b) Nothing occurring in mediation shall be disclosed by the Commission or OHREP. Nor shall it be admissible in evidence in any subsequent proceeding unless the complainant and the respondent agree in writing that such disclosure be made.

Section 11.1-2-15. Investigation.

(a) Unless the complaint on its face is subject to dismissal under Section 11-1-2-11, the Commission shall conduct an investigation sufficient to determine whether there is reasonable cause to believe the unlawful discriminatory practice alleged in the complaint has occurred or is occurring.

(b) The Commission delegates the authority to investigate the complaint to OHREP. As part of each investigation, OHREP:

(1) Shall accept a statement of position or evidence submitted by the complainant, the person making the complaint on behalf of the complainant, or the respondent;

(2) May require the complainant to provide a statement which includes: (i) a statement of each specific harm that the complainant has suffered and the date on which each harm occurred; (ii) for each harm, a statement specifying the act, policy or practice which is alleged to be unlawful; and (iii) for each act, policy, or practice alleged to have harmed the complainant, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory; and

(3) May submit a request for information to the respondent that, in addition to specific questions, may request a response to the allegations contained in the complaint.

(c) OHREP's authority to investigate a complaint is not limited to the procedures outlined in Subsection (b) of this Section.

Section 11.1-2-16. Subpoena power.

(a) The Commission has no power itself to issue subpoenas under this Article.

(b) Whenever OHREP has a reasonable cause to believe that any person has engaged in, or is engaging in, any violation of this Article, and, after making a good faith effort to obtain the data, information, and attendance of witnesses necessary to determine whether such violation has occurred, is unable to obtain such data, information, or attendance, it may request the County Attorney to petition the General District Court for Fairfax County for a subpoena against any such person refusing to produce such data and information or refusing to appear as a witness, and such court may, upon good cause shown, cause the subpoena to be issued.

(c) Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued by the Commission or OHREP.

(d) Any witness subpoena issued under this Section shall include a statement that any statements made will be under oath and that the respondent or other witness is entitled to be represented by an attorney.

(e) Any person failing to comply with a subpoena issued under this Section shall be subject to punishment for contempt by the court issuing the subpoena. Any person so subpoenaed may apply to the judge who issued a subpoena to quash it.

Section 11.1-2-17. Investigative report.

(a) Upon completion of the investigation, the Commission shall issue a written investigative report determining whether or not there is reasonable cause to believe a violation of this Article has occurred, and the facts supporting such determination. The report shall be a confidential document subject to review by the Director, authorized OHREP staff members, and the parties.

(b) The Commission delegates authority to the Director to prepare and issue written investigative reports.

Section 11.1-2-18. No cause determination.

(a) If the investigative report concludes that there is no reasonable cause to believe the alleged unlawful discrimination has been committed, the complaint shall be dismissed.

(b) The Commission delegates authority to the Director to issue no cause letters of determination and dismiss complaints pursuant to this Section.

(c) If the complainant disagrees with the no cause determination, the complainant may seek reconsideration by the Director or file an appeal with the Commission within ten (10) working days of receipt of the determination.

(d) Reconsideration shall only be granted when the complainant presents newly discovered evidence. After considering any such evidence, the Director shall (1) reaffirm the determination of no cause and dismiss the complaint, or (2) make a determination of reasonable cause.

(e) The Director shall provide a written notice to the complainant of the decision made on the request for reconsideration. In the event the Director reaffirms the no cause determination, this notice shall advise the complainant that the determination shall become final, unless within ten (10) business days of the letter's receipt, the complainant files an appeal with the Commission.

(1) The Commission shall only overturn the Director's no cause determination if it decides that (i) a factual finding underlying the determination is clearly erroneous, or (ii) the determination rests upon an incorrect legal conclusion.

(2) If the Commission affirms the Director's determination, it shall dismiss the complaint. When the Commission overturns the determination, it shall either: (i) vacate the determination and direct the Director to continue the investigation; or

(ii) reverse and determine that there is reasonable cause to believe that a violation of this Article has occurred or is occurring.

Section 11.1-2-19. Reasonable cause determination.

(a) If the investigative report concludes that there is reasonable cause to believe the alleged unlawful discriminatory practice has been committed, the complainant and respondent shall be notified of such determination.

(b) A determination finding reasonable cause shall be based on, and limited to, evidence obtained by during the investigation and does not reflect any judgment of the merits of the allegations not addressed in the determination.

(c) The Commission delegates to the Director, upon completion of the investigation, to make a reasonable cause determination, issue a cause letter of determination and serve a copy of the letter upon the parties.

Section 11.1-2-20. Conciliation.

(a) When a reasonable cause determination has been made, the Commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods such as conference, conciliation, negotiation, and persuasion.

(b) The Commission delegates to the Director the authority to enter into informal conciliation efforts, and to negotiate conciliation agreements.

(c) If the conciliation is successful, and agreed to by the vote of the Commission, the complaint shall be considered resolved, and the case file shall be closed. The terms of any settlement agreement resulting from the conciliation shall be reduced to writing and signed by the complainant, respondent, and the Commission. A copy of the agreement signed by parties and the Chair of the Commission or the Chair's designee shall be sent to the complainant and the respondent.

(d) When the Commission agrees in any negotiated settlement not to process the complaint further, the Commission's agreement shall be in consideration for the promises made by the other parties to the agreement. Such agreement shall not affect the processing of any other complaint, including, but not limited to, a complaint with allegations which are like or related to the individual allegations settled.

(e) When the Director determines that further endeavor to settle a complaint by conference, conciliation, negotiation, and persuasion is unworkable and should be bypassed, the Director shall so notify the complainant and the respondent in writing. Within 10 working days of receipt of this notice, the complainant may request referral of the complaint to the Commission for determination of whether to hold a public hearing. If the complainant makes no such request, the Commission shall close the case file.

Section 11.1-2-21. Determination whether to hold a public hearing.

The Commission shall determine whether to hold a public hearing on a complaint based upon the totality of circumstances, including how best to further the policies and purposes underlying this Article. If the Commission determines not to hold a public hearing, it shall close the case file.

Section 11.1-2-22. Confidentiality.

(a) No member of the Commission or member of OHREP shall make public, prior to a public hearing, as provided herein, investigative notes and other correspondence and information furnished to the Commission or OHREP in confidence with respect to an investigation, mediation, or conciliation process involving an alleged unlawful discriminatory practice under this Article; however, nothing in this Section shall prohibit the distribution of information taken from inactive reports in a form which does not reveal the identity of the parties involved or other persons supplying information.

(b) This Section does not apply to such disclosures to representatives of federal, state or local agencies as may be appropriate or necessary to carrying out the Commission's functions under this Article; provided, that the Commission may refuse to make disclosures to any such agency which does not maintain confidentiality of such endeavors in accordance with this Section or in any circumstances where the disclosures will not serve the purposes of effective enforcement of the law or regulation alleged to have been violated.

Section 11.1-2-23. Hearing before Commission.

(a) The Commission may hear appeals made following a no cause determination made under this Article; provided, however, that a member of the Commission who has filed the complaint at issue or otherwise has a personal interest in the matter giving rise to the complaint shall be disqualified from hearing the appeal.

(b) After hearing all of the evidence and arguments, the Commission shall vote to dismiss the complaint due to insufficient evidence of a violation of this Article or to find reasonable cause based upon evidence sufficient to establish a violation of this Article.

(c) Once the hearing has concluded, all administrative appeals and hearings shall have been exhausted, and the Commission shall close the case file.

Section 11.1-2-24. Hearing procedures.

(a) This Section applies to all hearings held before the Commission, including any panel of its members, under this Article.

(b) The Commission shall notify the parties of the time, date, and location of a hearing no later than twenty (20) working days prior to the date of the hearing. This notice also shall identify the issues to be considered at the hearing and, when applicable, specify the deadlines by which parties must submit motions, file exhibits, designate witnesses, and raise evidentiary objections. Motions to continue a hearing or extend a deadline shall be in writing with a copy to the opposing party and submitted to the Commission. The Commission may grant any such motion only where good cause is shown.

(c) All hearings shall be open to the public.

(d) Both the complainant and the respondent shall appear and be heard in person.

(e) All testimony shall be given under oath or affirmation.

(f) The order of presentation of evidence shall be established by the Commission with the burden of proof being placed on the complainant. The burden of proof shall be a preponderance of the evidence.

(g) The Commission shall rule on all motions, evidentiary issues, and procedural matters. It shall not be bound by statutory rules of evidence or technical rules of procedure.

(h) Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the Commission, be excluded. The rules of privilege shall be given effect.

(i) Documents and witness testimony not provided during the prior investigation shall not be admitted as evidence at the hearing, except for good cause shown or upon agreement of the parties.

(j) A party's exhibit and witness list for a hearing must be distributed to the Commission and the other party no later than five (5) working days prior to the hearing. Non-compliance with this rule shall result in the exclusion of the document or witness testimony left off the list, unless the Commission determines that good cause exists to allow it.

(k) At the start of the hearing, the Commission shall order the exclusion of witnesses so they cannot hear the testimony of other witnesses. This rule does not authorize excluding parties, or a person authorized to be present.

(l) Commission members may ask questions of the parties and witnesses.

(m) Before the hearing concludes, the parties shall be given an opportunity to present oral argument of their cases.

(n) After the parties have completed their presentations, the Commission's members shall cast their votes. After all members have voted, the Chair shall announce the Commission's decision and conclude the hearing.

Section 11.1-2-25. Remedies.

(a) If the respondent fails to adhere to any provision contained in any conciliation agreement or adequately to remedy a violation of this Article giving rise to a reasonable cause determination, the Commission, with the approval of the County Attorney, may seek through appropriate enforcement authorities the prevention of or relief from the violation.

(b) Upon finding a violation of this Article, the Commission may notify the County Purchasing Agent or any County agency providing financial support to the respondent of the violation.

(c) The Commission has no authority to award damages or grant injunctive relief under this Article.

(d) Nothing in this Article creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions.

Section 11.1-2-26. No waiver of other legal rights.

(a) Any person who is aggrieved by an unlawful discriminatory practice may bring an appropriate action in a court of competent jurisdiction, as provided for by any other applicable law.

(b) Nothing in this Chapter shall prevent any person from exercising any right or seeking any remedy to which the person might otherwise be entitled; nor shall any person be required to pursue any remedy set forth herein as a condition of seeking relief from any court or other agency, except as is otherwise provided by applicable Virginia or federal law.

Section 11.1-2-27. Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

ARTICLE 3. Fairfax County Fair Housing Act.

Section 11.1-3-1. Declaration of policy.

- (a) This Article shall be known and referred to as the Fairfax County Fair Housing Act.
- (b) It is the policy of the County of Fairfax to provide for fair housing throughout the County, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the County may be protected and ensured. This law shall be deemed an exercise of the police power of the County of Fairfax for the protection of the people of the County.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-2. Definitions.

For the purposes of this Article, unless the context clearly indicates otherwise:

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

Assistance animal means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability related functions, including guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability related need for such support. An assistance animal is not required to be individually trained or certified. While dogs are the most common type of assistance animal, other animals can also be assistance animals. An assistance animal is not a pet.

Complainant means a person, including the Human Rights Commission, who files a complaint under Section 11.1-3-10.

Conciliation means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal

negotiations involving the aggrieved person, the respondent, their respective authorized representatives, and the Human Rights Commission.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Disability means, with respect to a person, (i) a physical or mental impairment that 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. The term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For the purposes of this chapter, the terms "disability" and "handicap" shall be interchangeable.

Discriminatory housing practices means an act that is unlawful [under] Sections 11.1-3-4, 11.1-3-5, 11.1-3-6, or 11.1-3-7. Dwelling means any building, structure, or portion thereof, which is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Elderliness means an individual who has attained his or her fifty-fifth birthday.

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this Section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

Family includes a single individual, whether male or female.

Lending institution includes any bank, savings institution, credit union, insurance company, or mortgage lender.

Major life activities include any of the following functions: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Person means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

Physical or mental impairment includes any of the following: (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine or (ii) any mental or physiological disorder, such as an intellectual or developmental disability, organic brain syndrome, emotional or mental illness, or specific learning disability. "Physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; autism; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; human immunodeficiency virus infection; intellectual and developmental disabilities; emotional illness; drug addiction other than addiction caused by current, illegal use of a controlled substance, and alcoholism.

Prevailing Party has the same meaning as such term has in Section 1988 of Title 42 of the United States Code.

Respondent means any person or other entity alleged to have violated the provisions of this Article, as stated in a complaint filed under the provisions of this Chapter and any other person joined pursuant to the provisions of Section 11.1-3-10.

Restrictive covenant means any specification in any instrument affecting title to real property which purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability.

Source of funds means any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.

To rent means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-3. Exemptions.

- (a) Except as provided in Section 11.1-3-4(a)(3) and Section 11.1-3-7(a)-(c), this Article shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-

month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this Article only if the house is sold or 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, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this Article. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title.

- (b) Except for Section 11.1-3-4(a)(3), this Article shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.
- (c) Nothing in this Article 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 preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability. Nor shall anything in this Article apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging 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. Nor, where matters of personal privacy are involved, shall anything in this Article be construed to prohibit any private, state-owned, or state-supported educational institution, hospital, nursing home, religious, or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.

- (d) Nothing in this Article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.
- (e) It shall not be unlawful under this Article for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.
- (f) A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this Article shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.
- (g) Nothing in this Article limits the applicability of any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state, or federal restrictions. Nothing in this Article prohibits the rental application or similar document from requiring information concerning the number, ages, sex, and familial relationship of the applicants and the dwelling's intended occupants.
- (h) Nothing in this Article shall prohibit an owner or an owner's managing agent from denying or limiting the rental or occupancy of a rental dwelling unit to a person because of such person's source of funds, provided that such owner does not own more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice. However, if an owner, whether individually or through a business entity, owns more than a 10 percent interest in more than four rental dwelling units in the Commonwealth at the time of the alleged discriminatory housing practice, the exemption provided in this subsection shall not apply.
- (i) It shall be unlawful under this Article for an owner or owner's managing agent to deny or limit a person's rental or occupancy of a

rental dwelling unit based on the person's source of funds for that unit if such source is not approved within 15 days of the person's submission of the request for tenancy approval.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-4. Unlawful discriminatory housing practices.

- (a) It shall be an unlawful discriminatory housing practice for any person:
- (1) 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, national origin, sex, elderliness, source of funds, familial status, marital status, sexual orientation, gender identity, or status as a veteran;
 - (2) 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 the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, source of funds, familial status, marital status, sexual orientation, gender identity, or status as a veteran;
 - (3) 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 or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this Chapter that shall not be overcome by a general disclaimer. However, reference alone to places of worship including churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;
 - (4) To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

- (5) To deny any person access to membership in 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 such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability;
 - (6) To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;
 - (7) To induce or attempt to induce 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, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, source of funds, or disability;
 - (8) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a disability of (i) the buyer or renter; (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (iii) any person associated with the buyer or renter; or
 - (9) 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 a disability of (i) that person; (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available; or (iii) any person associated with that buyer or renter.
- (b) For the purposes of this Section, discrimination includes: (i) a refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the

interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

- (1) The public use and common use areas of the dwellings are readily accessible to and usable by disabled persons;
 - (2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - (3) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.
- (c) Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically disabled people shall be deemed to satisfy the requirements of Section 11.1-3-4(b)(3).
- (d) Nothing in this Chapter shall be construed to invalidate or limit any Virginia law or regulation that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this Chapter.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-4-1. Rights and responsibilities with respect to the use of an assistance animal in a dwelling.

- (a) A person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling shall comply with the rental agreement or any rules and regulations of the property

owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises. Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law. Nothing herein shall be construed to affect any cause of action against any resident for other damages under the laws of the County.

- (b) If a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability. If a person's disability is readily apparent or known to the person receiving the request but the disability-related need is not readily apparent or known, the person receiving the request may ask for additional verification to evaluate the requester's disability-related need.
- (c) A person with a disability, or a person associated with such person, may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. Subject to subsection B, the person receiving the request may ask the requester to provide reliable documentation of the disability and the disability-related need for an assistance animal, including documentation from any person with whom the person with a disability has or has had a therapeutic relationship.
- (d) Subject to subsection (b), a person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability and the disability-related need for the reasonable accommodation regarding an assistance animal.
- (e) For purposes of this Section, "therapeutic relationship" means the provision of medical care, program care, or personal care services, in good faith, to the person with a disability by (i) a mental health service provider as defined in Virginia Code § 54.1-2400.1; (ii) an individual or entity with a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (iii) a person from a peer support or similar group that does not charge service recipients a fee or impose any actual or implied financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver, reliable third party, or government entity with actual knowledge of the requester's disability.

Section 11.1-3-4-2. Reasonable accommodations; interactive process.

- (a) When a request for a reasonable accommodation establishes that such accommodation is necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the request for the accommodation is reasonable and shall be granted.

- (b) When a request for a reasonable accommodation may impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the person receiving the request shall offer to engage in a good-faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester. An interactive process is not required when the requester does not have a disability and a disability-related need for the requested accommodation. As part of the interactive process, unless the reasonableness and necessity for the accommodation has been established by the requester, a request may be made for additional supporting documentation to evaluate the reasonableness of either the requested accommodation or any identified alternative accommodations. If an alternative accommodation is identified that effectively meets the requester's disability-related needs and is reasonable, the person receiving the reasonable accommodation request shall make the effective alternative accommodation. However, the requester shall not be required to accept an alternative accommodation if the requested accommodation is also reasonable. The various factors to be considered for determining whether an accommodation imposes an undue financial and administrative burden include (a) the cost of the requested accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the financial resources of the person receiving the request; (c) the benefits that the accommodation would provide to the person with a disability; and (d) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

- (c) A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request. With respect to a

request for reasonable accommodation to maintain an assistance animal in a dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the benefit of the requester or (b) provide emotional support that alleviates one or more of the identified symptoms or effects of such requester's existing disability. In addition, as determined by the person receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced or eliminated by another reasonable accommodation.

Section 11.1-3-5. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.

- (a) It shall be unlawful for any person or other entity, including any lending institution, whose business includes 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, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability. It shall not be unlawful; however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.
- (b) As used in this Section, the term "residential real estate-related transaction" means any of the following:
 - (1) 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
 - (2) The selling, brokering, insuring or appraising of residential real property. However, nothing in this Article shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-6. Interference with enjoyment of rights of others under this Article.

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Article.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-7. Certain restrictive covenants void; instruments containing such covenants.

- (a) Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, marital status, sexual orientation, gender identity, status as a veteran, or disability, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of this County.
- (b) Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.
- (c) No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection (a). Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or \$500.00, plus reasonable attorney fees and costs incurred.
- (d) A family care home, foster home, or group home in which individuals with physical disabilities, mental illness, intellectual disabilities, or developmental disabilities reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single-family when construing any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single-family or to residential use or structure.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-8. Familial status protection not applicable to housing for older persons.

- (a) Nothing in this Article regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this Section, "housing for older persons" means housing: (i) provided under any federal, state, or local program that is lawfully determined to be specifically designed and operated to assist elderly persons, as defined in the federal, state or local program; or (ii) intended for, and solely occupied by, persons 62 years of age or older; or (iii) intended for, and solely occupied by at least one person 55 years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under subdivision (iii) of this Section:
 - (1) That at least 80 percent of the occupied units are occupied by at least one person 55 years of age or older per unit; and
 - (2) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (b) Housing shall not fail to meet the requirements for housing for older persons by reason of:
 - (1) Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of subdivisions (ii) and (iii) of subsection (a) of this Section, provided that new occupants of such housing meet the age requirements of those subdivisions; or
 - (2) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of subdivisions (ii) and (iii) of subsection (a) of this Section.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-9. Powers of the Human Rights Commission.

The Human Rights Commission has the power for the purposes of this Article to initiate and receive complaints, conduct investigations of any violation of this Article, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge, and refer it to the County Attorney for action. When conducting an investigation of a complaint filed under Article 3 of this Chapter the Commission or its designated subordinates shall have the power to issue and serve a subpoena as provided for by Section 11.1-3-11(b).

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-10. Procedures for receipt or initiation of complaint under Article 3 of this Chapter; notice to parties; filing of answer.

- (a) A complaint under this Article shall be filed with the Commission in writing within one year after the alleged discriminatory housing practice occurred or terminated.
- (b) Any person not named in such a complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Director explaining the basis for the Director's belief that such person is properly joined as a respondent
- (c) Any respondent may file an answer to such a complaint not later than ten business days after receipt of the notice described in Section 11.1-3-10(d) below. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Director requires. Complaints and answers may be reasonably and fairly amended at any time.
- (d) Upon the filing of a complaint under this Article 3 or initiation of such a complaint by the Director or its designee, the Commission shall provide written notice to the parties as follows:
 - (1) To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this Article; and
 - (2) To the respondent, not later than ten business days after such filing or the identification of an additional respondent under subsection (b), identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this Article with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-11. Procedures for investigation.

- (a) The Director shall commence proceedings with respect to a complaint filed under this Article within 30 days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless it is impracticable to do so. If the Director is unable to complete the investigation within 100 days after the receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

- (b) When conducting an investigation of a complaint filed under this Article, the Director shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons may be interviewed under oath. The Director or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Commission may petition for its enforcement in the Circuit Court for the County of Fairfax. The Circuit Court of Fairfax County will be requested to give these cases priority on the court docket.
- (c) At the end of each investigation under this Section, the Director shall prepare a final investigative report which may contain:
- (1) The names and dates of contacts with witnesses;
 - (2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
 - (3) A summary description of other pertinent records;
 - (4) A summary of witness statements; and
 - (5) Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

- (d) The Director shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Director's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-12. Reasonable cause determination and effect.

The Commission shall, within 100 days after the filing of a complaint under this Article, determine, based on the facts and after consultation with the Office of the County Attorney, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is

impracticable to do so or unless the Commission has approved a conciliation agreement with respect to the complaint. If the Commission is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-13. No reasonable cause determination and effect.

If the Commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint notifying the parties within 30 days of such determination. The Commission shall make public disclosure of each dismissal.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-14. Conciliation.

During the period beginning with the filing of such complaint under this Article and ending with the filing of a charge or a dismissal by the Director, the Director shall, to the extent feasible, engage in conciliation with respect to such complaint.

- (1) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent, the complainant, and the Commission, and shall be subject to approval by the Commission.
- (2) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.
- (3) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of this Chapter.
- (4) Whenever the Commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the Commission may refer the matter to the County Attorney with a recommendation that a civil action be filed under Section 11.1-3-18 for the enforcement of such agreement.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-15. Issuance of a charge.

Upon failure to resolve a complaint under this Article by conciliation and after consultation with the Office of the County Attorney, the Commission shall issue a charge on behalf of the Commission and the aggrieved person or persons and shall immediately refer the charge to the County Attorney, who shall proceed with the charge as directed by Section 11.1-3-17.

- (1) Such charge:
 - (A) Shall consist of a short and plain statement of the facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
 - (B) Shall be based on the final investigative report; and
 - (C) Need not be limited to the acts or grounds alleged in the complaint filed under Section 11.1-3-10.
- (2) Not later than ten business days after the Commission issues a charge under this Section, the Director shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

The Commission may not issue a charge under this Section regarding an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-16. Prompt judicial action.

If the Director concludes at any time following the filing of a complaint and after consultation with the Office of the County Attorney, that prompt judicial action is necessary to carry out the purposes of this Chapter, the Director may authorize a civil action by the County Attorney for appropriate temporary or preliminary relief. Upon receipt of such authorization, the County Attorney shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this Section shall not affect the initiation or continuation of administrative proceedings by the Commission under Section 11.1-3-9.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-17. Civil action by County Attorney upon referral of charge by the Human Rights Commission.

- (a) Not later than 30 days after a charge is referred by the Commission to the County Attorney under Section 11.1-3-15, the County Attorney, at County expense, shall commence and maintain a civil action seeking relief on behalf of the Commission and the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.
- (b) Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection (a) may intervene as of right.
- (c) In a civil action under this Section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under Section 11.1-3-19. Any relief so granted that would accrue to an aggrieved person under Section 11.1-3-19 shall also accrue to the aggrieved person in a civil action under this Section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this Section.
- (d) In any court proceeding arising under this Section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-18. Civil action by County Attorney; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement.

- (a) Whenever the County Attorney has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this Article, or that any group of persons has been denied any of the rights granted by this Article and such denial raises an issue of general public importance, the County Attorney may commence a civil action in the appropriate circuit court for appropriate relief.
- (b) In the event of a breach of a conciliation agreement by a respondent, the Commission may authorize a civil action by the County Attorney. The County Attorney may commence a civil action in any appropriate

circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of 90 days after the referral of such alleged breach.

- (c) The County Attorney, on behalf of the Commission, or other party at whose request a subpoena is issued, under this Article, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.
- (d) In a civil action under subsections (a) and (b), the court may:
 - (1) Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this Article as is necessary to assure the full enjoyment of the rights granted by this Article.
 - (2) Assess a civil penalty against the respondent (i) in an amount not exceeding \$50,000.00 for a first violation; and (ii) in an amount not exceeding \$100,000.00 for any subsequent violation. The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.
- (e) Upon timely application, any person may intervene in a civil action commenced by the County Attorney under subsection (a) or (b) which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under Section 11.1-3-19.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-19. Civil action; enforcement by private parties.

- (a) An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this Article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.
- (b) An aggrieved person may commence a civil action under Section 11.1-3-19(a) no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge or not later than two years after the occurrence or the termination of an

alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this Section whether or not a complaint has been filed under Section 11.1-3-10 and without regard to the status of any such complaint. If the Commission or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this Section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

- (c) In a civil action under subsection (a), if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection (d), may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.
- (d) Relief granted under subsection (c) shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer, or tenant, without actual notice of the filing of a complaint with the Commission or civil action under this Article.
- (e) Upon timely application, the County Attorney may intervene in such civil action, if the County Attorney certifies that the case is of general public importance. Upon intervention, the County Attorney may obtain such relief as would be available to the private party under subsection (c).

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-20. Witness fees.

Witnesses summoned by a subpoena under this Chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Commission.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-21. Promulgating regulations.

The Commission shall perform all acts necessary and proper to carry out the provisions of this Article and may promulgate and amend necessary regulations.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-22. Application of Article.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are severable.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-23. Construction of law.

Nothing in this Article shall abridge the federal Fair Housing Act of 1968, (42 U.S.C. § 3601 et seq.), as amended, or the Virginia Fair Housing Act (Va. Code Ann. § 36-96.1 et seq.) (Michie 1996) as amended.

(39-00-11; 46-02-11; 33-10-11.)

Section 11.1-3-24. Time Limitations.

- (a) A complaint filed under the provisions of this Article shall be dismissed by the Director if the complainant knew or should have known that the alleged violation of this Article ceased more than one year prior to the date of filing of the complaint.
- (b) If the Commission is unable to make a final disposition within 100 days after receipt of the complaint, the parties shall be notified in writing of the reasons for not doing so.

(33-10-11.)

This amendment shall become effective retroactive to July 1, 2020.

GIVEN under my hand this 15th day of September 2020.



Jill G. Cooper
Clerk for the Board of Supervisors