

# Hamburg Community Development

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Director of Community Development: Christopher Hull

Hamburg Town Board: Supervisor Steven J. Walters \* Councilman Thomas M. Best, Jr. \* Councilman Michael P. Quinn, Jr.



**Local Law #5; May 23, 2016**  
**Town of Hamburg Fair Housing Ordinance**  
**General Code of the Town of Hamburg - Chapter 109; Fair Housing**

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## Section 109 - 1: Policy:

It is the policy of the Town of Hamburg to provide for fair housing throughout the town.

## Section 109 - 2: Definitions:

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

- DISABILITY:** A disability is a physical or mental impairment which substantially limits one (1) or more major life activities, a record of such an impairment, or a condition regarded by others as such an impairment.
- MARITAL STATUS:** Shall mean single, married, divorced, separated or widowed.
- SOURCE OF INCOME:** Shall mean payments from any lawful occupation or employment, as well as other payments including, but not limited to, public assistance, public assistance security agreements, supplemental security income, pensions, annuities, unemployment benefits, government subsidies such as Section 8, or other housing subsidies.
- SEXUAL ORIENTATION:** Shall mean heterosexuality, homosexuality, bisexuality, asexuality, whether actual or perceived as well as a person's gender identity, self-image, appearance or expression.
- ADVERTISING:** Shall mean printing, circulating, placing or publishing or causing to be placed or published any written statement with respect to the availability for sale or rental of a dwelling.
- HOUSING UNIT:** Shall mean any building, structure, or portion thereof which is used or occupied as the home or residence of one or more persons maintaining a common household.
- MILITARY STATUS:** Shall mean a person's participation in the military service of the United States or the military service of the state including, but not limited to, the army national guard, the air national guard, the New York naval militia, the New York guard, and such additional forces as may be created by the federal or state government as authorized by law.

## Section 109 - 3: Unlawful Acts: It shall be unlawful:

- A:** To refuse to sell or rent or refuse to negotiate for the sale or rental or to deny any dwelling to any person because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, military status or because the person has a child or children.

- B: To discriminate against any person in the terms, conditions or provision of services or facilities in connection with the sale or rental of a dwelling because of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, military status or because the person has a child or children.
- C: To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry into the neighborhood of a person or persons of a particular race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, military status or because the person has a child or children.
- D: For a person offering residential property for sale or rent or anyone acting on behalf of such a person to print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for the sale or rental of a dwelling or to make any record or inquiry in connection with the sale or rental of a dwelling which expresses, directly or indirectly any limitation, specification or discrimination as to race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, military status or because the person has a child or children.

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

#### **Section 109 - 4: Applicability:**

This chapter shall apply to all residential structures located within the Town as well as land zoned for residential uses.

#### **Section 109 - 5: Exemptions:**

- A) The prohibitions of this chapter shall not apply to a religious institution or organization limiting the sale, rental or occupancy of dwellings which it owns or operates to persons of the same religion or giving preference to such persons, unless membership in such religion is restricted on account of race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, military status or because the person has a child or children.
- B) The prohibitions of this chapter against discrimination because of sex shall not apply to a residential building owned by a public body or private institution or organization and maintained, in whole or part, for the exclusive use of one (1) sex.
- C) The prohibitions of this chapter shall not apply to:
  - 1) The rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his immediate family reside in one of such housing accommodations and the rental has occurred without advertising;
  - 2) To the restriction of all rooms in a housing accommodation to individuals of the same sex;

or

- 3) To the rental of rooms in a housing accommodation if such rental is by the occupant of the housing accommodation or the owner of the housing accommodation and he or members of his family reside in such housing accommodation.
- 4) Solely with respect to age to the restriction of the sale, rental or lease of housing accommodations exclusively to persons fifty-five (55) years of age or older.

**Section 109 - 6: Enforcement:**

- A) Filing of complaints:
  - 1) The Town shall receive and investigate complaints under this chapter. The Supervisor shall designate the Director of Community Development of the Town to perform the function contained in this section and may also designate a not-for-profit fair housing organization to either assist the Director of Community Development in conducting investigations or to complete said function and investigations.
  - 2) Any person or organization, whether or not an aggrieved party, may file with the Supervisor's designee a complaint of a violation of this chapter.
  - 3) The Supervisor's designee may investigate individual instances and patterns of conduct prohibited by this chapter, even without a complaint from another person or organization, and may initiate complaints in connection therewith.
- B) Investigation: The Supervisor's designee shall notify the accused party, in writing, within thirty (30) days of the filing of any complaint. The designee shall make a prompt investigation in connection with the complaint and within one hundred (100) days after the complaint is filed, determine whether the Town has jurisdiction and, if so, whether there is probable cause to believe that the person named in the complaint (hereinafter referred to as the respondent), has engaged or is engaging in an unlawful discriminatory practice. If, during or after the investigation, the designee believes that appropriate action to preserve the status quo or to prevent irreparable harm is advisable, the designee shall advise the Town Attorney, in writing, to bring immediately in the name of the Town, any action necessary to preserve such status quo or to prevent such harm, including the seeking of temporary restraining orders and preliminary injunctions.
- C) Action: If, at the conclusion of the investigation, the Supervisor's designee shall determine that there is probable cause to credit the allegation of the complaint, the designee shall certify the matter to the Town Attorney, who shall institute proceedings in the name of the Town. In the event of a conflict of interest between Town personnel and the respondent(s), the Supervisor's designee may refer the matter to outside counsel providing notice to interested parties within 30 days of the date upon which the conflict was determined.
- D) Conciliation: If, in the judgment of the Supervisor's designee, a conciliation agreement would satisfactorily resolve the complaint, he/she shall seek to facilitate such an agreement which may include provisions requiring the respondent to refrain from unlawful discriminatory practices and pay such compensation and/or perform affirmative relief as is agreed upon by the parties. Conciliation agreements shall not be subject to confidentiality.

**Section 109 - 7: Penalties for offenses:**

- A) Any person found to have violated any provision of this chapter shall be subject to the following:

- 1) A fine of not more than five-thousand dollars (\$5,000) for the first violation and not more than ten thousand dollars (\$10,000) for a respondent adjudged to have committed any prior discriminatory housing practice. The Town may choose to designate a portion of any recovery to further the purposes of this chapter.
- 2) Revocation or suspension of any license or permit necessary for the operation of the dwelling unit in question.
- 3) Costs, expenses and disbursements incurred by the Town, necessary to obtain complete compliance by the respondent with the chapter; and/or restraining orders and temporary or permanent injunctions necessary to obtain complete compliance with this chapter.
- 4) Each day a violation continues shall constitute a separate violation of this chapter.
- 5) The Town Attorney may institute criminal action to punish a violation of this chapter by imprisonment for a term not exceeding thirty (30) days if the above proceeding does not result in compliance with this chapter.
- 6) The Town may choose to designate a portion of the penalties recovered to the further the purposes of this chapter, including: further public information; the engagement of a fair housing agency or agencies to further promote fair housing activities within the Town; the participation by the Town in/with any other organization whose principal goal is to provide fair housing and/or housing counseling activities; the offset of any fees and/or expenses originated with the pursuit of this chapter.

#### **Section 109 - 8: Court action:**

Any person claiming to be aggrieved by an unlawful discriminatory practice as defined by Section 109-A-3 of this chapter, shall have a cause of action in any court of competent jurisdiction within one (1) year from the date of the occurrence for damages and such other remedies as may be appropriate. The Court may:

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

#### **Section 109 - 9: Other remedies:**

Nothing in this chapter shall be construed to limit the rights of the complainant to pursue, at any time prior to or after the filing of a complaint, any other remedies which the complainant may have under the law of any state, the United States or any jurisdiction. Pursuit of one (1) or more remedies available under this chapter shall not preclude the pursuit of any other remedy available under this chapter.

#### **Section 109 - 10: Education and promotion of fair housing goals:**

Immediately after the enactment of this chapter, the Town shall commence educational activities which will explain the law and help to promote the Town's fair housing goals. Such activities shall continue while this chapter remains in force.

- A) Housing providers or real estate brokers located within the Town selling or renting twenty (20) or more dwelling units within a calendar year shall formulate an Affirmative Fair Housing Marketing Plan, which must be filed with the Director of Community Development or his designee. At minimum, such Affirmative Fair Housing Marketing Plan shall include: (1) a statement of non-discrimination and (2) a marketing plan designed to attract a diverse pool of applicants. The Town may require annual reports of housing providers' compliance with their plans.
- B) Housing providers and real estate brokers located within the Town selling or renting twenty (20) or more dwelling units within a calendar year shall be required to use the equal opportunity logotype on applications and marketing materials and to display in rental or real estate offices a public notice of equal opportunity housing.

**Section 109-11: Affirmatively furthering fair housing:**

It shall be the policy of the Town to affirmatively further fair housing by adopting zoning ordinances which promote the inclusion of affordable rental housing in all multi-family developments of eight or more units.

- (A) Affordable housing shall be defined as housing for which rent and utilities shall constitute no more than thirty percent of the gross annual income for a household whose income is greater than fifty percent but does not exceed eighty percent of the Erie County median income.
- (B) The Town shall offer a density bonus which allows the developer to increase the number of market-rate units permitted to be built on a site at a rate of one additional market-rate unit for each affordable unit.
- (C) In calculating the number of affordable units, the total number of proposed units shall be multiplied by ten percent. If the product produces a fraction, a fraction of 0.5 shall be rounded up to the next higher whole number and a fraction of less than 0.5 shall be rounded down to the next lower whole number.
- (D) In order to assure integration within a multi-family development, affordable units shall not be clustered, but mixed with market-rate units. Additionally, the exterior appearance of affordable units shall be made similar to market-rate units by the provision of exterior finishes and materials of substantially the same type and quality.
- (E) Developers shall be required to maintain affordability of designated units for a period of not less than thirty years from the date a certificate of occupancy is issued. In the event a multi-family development is sold, the new owner shall be responsible for maintaining affordability of units for the balance of the regulatory period.

**Section 109 - 12: Expedition of proceedings:**

Any court in which a proceeding under this chapter is instituted shall assign the case for hearing at the earliest practicable date and cause the case to be in every way expedited.

**Section 109 - 13: Construal of provisions:**

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