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LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1991

No. 39

Introduced by Council Member Horwitz (by request of the Mayor); also Council Members Foster, Maloney, Fields, Povman, Ward, Friedlander, Dryfoos, Alter, Eldridge, Michels, Spigner and Rivera. (Passed under a Message of Necessity from the Mayor.)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the human rights law.

Be it enacted by the Council as follows:

Section one. Chapter 1 of title 8 of the administrative code of the city of New York, subdivision 17 of section 8-102 and section 8-108.2 as added by local law number 59 for the year 1986, subdivisions 1, 1-a, 2, 3, 3-a, 4 and 5 of section 8-107 as amended by, and subdivision 18 of section 8-102 and subdivision 11 of section 8-107 as added by, local law number 52 for the year 1989, is amended to read as follows:

CHAPTER I

COMMISSION ON HUMAN RIGHTS

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§ 8-101 Policy. In the city of New York, with its great cosmopolitan population [consisting of large numbers of people of every race, color, creed, age, national origin and ancestry, many of them with physical handicaps], there is no greater danger to the health, morals, safety and welfare of the city [,] and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of *their actual or perceived differences [of] , including those based on race, color, creed, age, national origin, [ancestry or physical handicap] alienage or citizenship status, gender, sexual orientation, disability, marital status, whether children are, may be or would be residing with a person or conviction or arrest record*. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination [,in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space because of race, creed, color, age, national origin or physical handicap] *from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry and discrimination [because of race, creed, color, age or national origin,] as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.*

§ 8-102 Definitions. When used in this chapter:

1. The term "person" includes one or more [individuals], *natural persons, proprietorships, partnerships, associations, group associations, organizations, governmental bodies or agencies, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.*

2. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

3. The term "labor organization" includes any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection in connection with employment.

4. The term "unlawful discriminatory practice" includes only those practices specified in section 8-107 of this chapter.

5. [The] *For purposes of subdivisions one, two, and three of section 8-107 of this chapter, the term "employer" does not include any employer with fewer than four persons in his or her employ. For purposes of this subdivision, natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.*

[6. The term "employee" in this chapter does not include any individual employed by his or her parent, spouse or child, or in the domestic service of any person.]

[7] 6. The term "commission" unless a different meaning clearly appears from the text, means the city commission on human rights created by this chapter.

[8] 7. The term "national origin" shall, for the purposes of this chapter, include "ancestry."

8. *The term "educational institution" includes kindergartens, primary and secondary schools, academies, colleges, universities, professional schools, extension courses, and all other educational facilities.*

9. The term "place or provider of public accommodation"[, resort or amusement" shall include, except as hereinafter specified, all places included in the meaning of such terms as: inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants, or eating houses, or any place where food is sold for restaurants, or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectioneries, soda foundations, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; retail stores and establishments dealing with goods or services of any kind, dispensaries, clinics, hospitals, bathhouses, swimming pools, laundries and all other cleaning establishments, barber shops, beauty parlors, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard or pool parlors; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies, or bureaus; public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owners and one or more tenants] *shall include providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available.* Such term shall not include [public libraries, kindergartens, primary and secondary schools, academies, colleges and universities, extension courses, and all educational institu-

tions under the supervision of the regents of the state of New York; any such public library, kindergarten, primary and secondary school, academy, college, university, professional school, extension course, or other educational facility, supported in whole or in part by public funds or by contributions solicited from the general public; or] any [institution,] club [or place of accommodation] which proves that it is in its nature distinctly private. [An institution,] A club [or place or provider of accommodation] shall not be considered in its nature distinctly private if it has more than four hundred members, provides regular meal service and regularly receives payments for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of non-members for the furtherance of trade or business. For the purposes of this section a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law shall be deemed to be in its nature distinctly private.

No [institution,] club[, organization or place or provider accommodation] which sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements shall be deemed a private exhibition within the meaning of this section.

10. The term "housing accommodation" includes any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings. *Except as otherwise specifically provided, such term shall include a publicly-assisted housing accommodation.*

11. The term "publicly-assisted housing accommodations" shall include [all housing accommodations within the city of New York in]:

(a) [Public housing.] *Publicly-owned or operated housing accommodations.*

(b) Housing accommodations operated by housing companies under the supervision of the state commissioner of housing and community renewal, or the department of housing preservation and development.

(c) Housing accommodations constructed after July first, nineteen hundred fifty, and housing accommodations sold after July first, nineteen hundred ninety-one: [within the city of New York.]

(1) which [is] are exempt in whole or in part from taxes levied by the state or any of its political subdivisions,

(2) which [is] are constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of nineteen hundred forty-nine,

(3) which [is] are constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction, or

(4) for the acquisition, construction, repair or maintenance for which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance.

(d) Housing [which is located in a multiple dwelling] accommodations, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof [, provided that

such a housing accommodation shall be deemed to be publicly assisted only during the life of such loan and such guaranty or insurance].

[(e) Housing which is offered for sale by a person who owns or otherwise controls the sale of ten or more housing accommodations located on land that is contiguous (exclusive of public streets), if (1) the acquisition, construction, rehabilitation, repair or maintenance of such housing accommodation is, after July first, nineteen hundred fifty-five, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof, provided that such housing accommodation shall be deemed to be publicly assisted only during the life of such loan and guaranty or insurance, or (2) a commitment, issued by a government agency after July first, nineteen hundred fifty-five, is outstanding that acquisition of such housing accommodations may be financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.]

12. [The term "multiple dwelling," as herein used, means a dwelling which is occupied, as a rule, for permanent residence purposes and which is either rented, leased, let or hired out, to be occupied as the residence or home of three or more families living independently of each other. A "multiple dwelling" shall not be deemed to include a hospital, convent, monastery, asylum or public institution, or a fire-proof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families.] The term "family" as used [herein] *in subparagraph four of paragraph a of subdivision five of section 8-107 of this chapter*, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. A "boarder," "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

13. The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a [separate] business or professional unit or office in any building, structure or portion thereof.

14. The term "real estate broker" means any person[, firm or corporation] who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale at auction, or otherwise, exchange, purchase or rental of an estate or interest in real estate or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person[, partnership, association or corporation] employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

15. The term "real estate salesperson" means a person employed by or *authorized by* a licensed real estate broker to list for sale, sell or offer for sale at auction or otherwise to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rents for the use of real estate for or on behalf of such real estate broker.

16. (a) The term "[handicapped person] *disability*" [means any person who has or had a physical or mental impairment that substantially limits one or more major life activities, and has a record of such an impairment.

(b) The term "physical or mental impairment" means a 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 and endocrine; or a mental or psychological disorder, such as mental retardation, developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. It includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, alcoholism, substance abuse, and drug addiction.

(c) The term "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) The term "has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(e) The term "otherwise qualified person" means a handicapped person, who, with reasonable accommodation can satisfy the essential requisites of the job or benefit in question, and in the case of alcoholism, substance abuse and drug addiction, is recovering and currently free of abuse of same] *means any physical, medical, mental or psychological impairment, or a history or record of such impairment.*

(b) *The term "physical, medical, mental, or psychological impairment" means:*

(1) *an impairment of any system of the body; including, but not limited to: the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or*

(2) *a mental or psychological impairment.*

(c) *In the case of alcoholism, drug addiction or other substance abuse, the term "disability" shall only apply to a person who (1) is recovering or has recovered and (2) currently is free of such abuse, and shall not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.*

17. The term "covered entity" means a person required to comply with any provision of section 8-107 of this chapter.

18. The term "reasonable accommodation" means such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity's business. The covered entity shall have the burden of proving undue hardship. In making a determination

of undue hardship with respect to claims filed under subdivisions one or two of section 8-107 of this chapter, the factors which may be considered include but shall not be limited to:

- (a) the nature and cost of the accommodation;
- (b) the overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and
- (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

[17] 19. The term "occupation" means any lawful vocation, trade, profession or field of specialization.

20. The term "sexual orientation" means heterosexuality, homosexuality, or bisexuality.

[18] 21. The term "alienage or citizenship status" means:

- (a) the citizenship of any person, or
- (b) the immigration status of any person who is not a citizen or national of the United States.

22. The term "hate crime" means a crime that manifests evidence of prejudice based on race, religion, ethnicity, disability, sexual orientation, national origin, age, gender, or alienage or citizenship status.

§ 8-103 **Commission of human rights.** There is hereby created a commission on human rights. It shall consist of fifteen members, to be appointed by the mayor, one of whom shall be designated by the mayor as its chairperson and shall serve as such at the pleasure of the mayor. The chairperson shall devote his or her entire time to the chairperson's duties and shall not engage in any other occupation, profession or employment. Members other than the chairperson shall serve without compensation. Of the fifteen members first appointed, five shall be appointed for one year, five for two years and five for three years; thereafter all appointments to the commission shall be for a term of three years. In the event of the death or resignation of any member, his or her successor shall be appointed to serve for the term for which such members had been appointed.

§ 8-104 **Functions.** The functions of the commission shall be:

- (1) To foster mutual understanding and respect among all [racial, religious and ethnic groups] persons in the city of New York;
- (2) To encourage equality of treatment for, and prevent discrimination against, any [racial, religious and ethnic] group or its members;
- (3) To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions; and
- (4) To make such investigations and studies in the field of human relations as in the judgment of the commission will aid in effectuating its general purposes.

§ 8-105 **Powers and duties.** The powers and duties of the commission shall be:

- (1) To work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving har-

monious intergroup relations within the city of New York, *and engage in other anti-discrimination activities.*

- (2) To enlist the cooperation of [the] various [racial, religious and ethnic] groups, [community] *and* organizations, [labor organizations, fraternal and benevolent associations and other groups in New York city], in *mediation efforts*, programs and campaigns devoted to eliminating group prejudice, intolerance, *hate crimes*, bigotry and discrimination.
- (3) To study the problems of prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby in all or any fields of human relationship.
- (4) (a) To receive, investigate and pass upon complaints and to initiate its own investigations of:
 - [(a) Racial, religious and ethnic group] (i) *Group* tensions, prejudice, intolerance, bigotry and disorder occasioned thereby.
 - [(b)] (ii) Discrimination against any person [,] or group of persons[, organization or corporation, whether practiced by private persons, associations, corporations and, after consultation with the mayor, by city officials or city agencies] , *provided, however, that with respect to discrimination alleged to be committed by city officials or city agencies, such investigation shall be commenced after consultation with the mayor.* Upon its own motion, to make, sign and file complaints alleging violations of this chapter.
 - (b) *In the event that any investigation undertaken pursuant to paragraph a of this subdivision discloses information that any person or group of persons may be engaged in a pattern or practice that results in the denial to any person or group of persons of the full enjoyment of any right secured by this chapter, in addition to making, signing and filing a complaint upon its own motion pursuant to paragraph a of this subdivision, to refer such information to the corporation counsel for the purpose of commencing a civil action pursuant to chapter four of this title.*
- (5) (a) *To issue subpoenas in the manner provided for in the civil practice law and rules compelling the attendance of witnesses and requiring the production of any evidence relating to any matter under investigation or any question before the commission, and to take proof with respect thereto;*
- (b) *To hold hearings, [compel the attendance of witnesses,] administer oaths[,] and take testimony of any person under oath [and in connection therewith to require the production of any evidence relating to any material under investigation or any question before the commission, provided that the commission shall not require the production of names from a general membership list of any club that is a place of public accommodation.]; and*
- (c) *In accordance with applicable law, to require the production of any names of persons necessary for the investigation of any institution, club or other place or provider of accommodation.*
- (6) *In accordance with the provisions of subdivision b of section 8-114 of this chapter, to require any person or persons who are the subject of an investigation by the commission to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous year, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city.*

[(6)] (7) To issue publications and reports of investigations and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby.

[(7)] (8) To appoint [an executive director] *such employees and agents as it deems to be necessary to carry out its functions, powers and duties and to assign to such persons any of such functions, powers and duties; provided, however, that the commission shall not delegate its power to adopt rules, and, provided further, that the commission's power to order that records be preserved or made and kept pursuant to subdivision b of section 8-114 of this chapter and the commission's power to determine that a respondent has engaged in an unlawful discriminatory practice and to issue an order for such relief as is necessary and proper shall be delegated only to members of the commission.* The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury. *The commission's appointment and assignment powers as set forth in this subdivision may be exercised by the chairperson of the commission.*

[(8)] (9) To recommend to the mayor and to the council, legislation to aid in carrying out the purpose of this chapter.

[(9)] (10) To submit an annual report to the mayor and the council which shall be published in the City Record.

(11) *To adopt rules to carry out the provisions of this chapter and the policies and procedures of the commission in connection therewith.*

§ 8-106 **Relations with city departments and agencies.** So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective heads to the commission for the carrying out of the functions herein stated. The head of any department or agency shall furnish information in the possession of such department or agency when the commission [, after consultation with the mayor,] so requests. The corporation counsel, *upon request of the chairperson of the commission,* may assign counsel to assist the commission in the conduct of its [investigations or hearings] *investigatory or prosecutorial functions.*

§ 8-107 **Unlawful discriminatory practices.** 1. *Employment.* It shall be an unlawful discriminatory practice:

- (a) For an employer *or an employee or agent thereof,* because of the *actual or perceived* age, race, creed, color, national origin, [sex] *gender, disability, marital status, sexual orientation* or alienage or citizenship status of any [individual] *person,* to refuse to hire or employ or to bar or to discharge from employment such [individual] *person* or to discriminate against such [individual] *person* in compensation or in terms, conditions or privileges of employment.
- (b) For an employment agency *or an employee or agent thereof* to discriminate against any [individual] *person* because of such [individual's] *person's actual or perceived* age, race, creed, color, national origin, [sex] *gender, disability, marital status, sexual orientation* or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants for its services to an employer or employers.
- (c) For a labor organization *or an employee or agent thereof,* because of the *actual or perceived* age, race, creed, color, national origin, [sex] *gender, disability, marital status, sexual orientation* or alienage or citizenship status of any [individual] *person,* to exclude or expel from its membership such [individual] *person* or to discriminate in any way against any of its members or against any employer or any [individual] *person* employed by an employer.

- (d) For any employer, *labor organization* or employment agency or an *employee or agent thereof* to *declare*, print or circulate or cause to be *declared*, printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, [sex] *gender, disability, marital status, sexual orientation* or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination [, unless based upon a bona fide occupational qualification].
- (e) [For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter or because such person has filed a complaint, testified or assisted in any proceeding under this chapter.] *The provisions of this subdivision and subdivision two of this section: (i) as they apply to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the federal employment retirement income security act of nineteen hundred seventy-four that is in compliance with applicable federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act; (ii) shall not preclude the varying of insurance coverages according to an employee's age; (iii) shall not be construed to affect any retirement policy or system that is permitted pursuant to paragraph (e) and (f) of subdivision three-a of section two hundred ninety-six of the executive law; (iv) shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purposes of this chapter.*
- (f) *The provisions of this subdivision shall not govern the employment by an employer of his or her parents, spouse, or children; provided, however, that such family members shall be counted as persons employed by an employer for the purposes of subdivision five of section 8-102 of this chapter.*
- [1-a] 2. *Apprentice training programs.* It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs or an *employee or agent thereof*:
- (a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review.
- (b) To deny to or withhold from any person because of his or her *actual or perceived* race, creed, color, national origin, [sex] *gender, age, disability, marital status, sexual orientation* or alienage or citizenship status the right to be admitted to or participate in a guidance program, an [apprenticeship] *apprentice* training program, on-the-job training program, or other occupational training or retraining program.
- (c) To discriminate against any person in his or her pursuit of such [programs] *program* or to discriminate against such a person in the terms, conditions or privileges of such [programs] *program* because of *actual or perceived* race, creed, color, national origin, [sex] *gender, age, disability, marital status, sexual orientation* or alienage or citizenship status.
- (d) To *declare*, print or circulate or cause to be *declared*, printed or circulated any statement, advertisement or publication, or to use any form of application for such [programs] *program* or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to

race, creed, color, national origin, [sex] *gender, age, disability, marital status, sexual orientation* or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination [, unless based on a bona fide occupational qualification].

- [1-b] 3. *Employment; religious observance.* (a) It shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon [an individual] a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such [individual] person to violate, or forego a practice of, his or her creed or religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day or the observance of any religious custom or usage, and the employer shall make reasonable accommodation to the religious needs of such [individual] person. Without in any way limiting the foregoing, no [individual] person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such [individual's] person's religion, he or she observes as a sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided, however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time.
- (b) "Reasonable accommodation", as used in this subdivision, shall mean such accommodation to an employee's or prospective employee's religious observance or practice as shall not cause undue hardship in the conduct of the employer's business. The employer shall have the burden of proof to show such hardship.
- [2] 4. *Public accommodations.* a. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation[, resort or amusement], because of the *actual or perceived* race, creed, color, national origin, [sex] *age, gender, disability, marital status, sexual orientation* or alienage or citizenship status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to *make any declaration*, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, [sex] *age, gender, disability, marital status, sexual orientation* or alienage or citizenship status or that the patronage or custom [thereat] of any person belonging to [or], purporting to be, or *perceived to be*, of any particular race, creed, color, national origin, [sex] *age, gender, disability, marital status, sexual orientation* or alienage or citizenship status is unwelcome, objectionable or not acceptable, desired or solicited.
- b. Notwithstanding the foregoing, the provisions of this subdivision shall not apply, with respect to [sex] *age or gender*, to places or providers of public accommodation [, resort or amusement] where the commission grants an exemption based on bona fide considerations of public policy. [Any place of accommodation which is required as a result of this section to construct or reconstruct locker room, shower, or other facilities shall be allowed until May twenty-third, nineteen hundred eighty-five to complete such work, and prior to such date shall not be found to be in violation of the

provisions of this subdivision which apply to such facilities with regard to discrimination on account of sex. The commission, for good cause shown, may grant an extension not to exceed an additional ninety days after the date allowed such place of accommodation to complete such work.]

- c. *The provisions of this subdivision relating to discrimination on the basis of gender shall not prohibit any educational institution subject to this subdivision from making gender distinctions which would be permitted (i) for educational institutions which are subject to section thirty-two hundred one-a of the education law or any rules or regulations promulgated by the state commissioner of education relating to gender or (ii) under sections 86.32, 86.33 and 86.34 of title forty-five of the code of federal regulations for educational institutions covered thereunder.*
- d. *Nothing in this subdivision shall be construed to preclude an educational institution—other than a publicly-operated educational institution—which establishes or maintains a policy of educating persons of one gender exclusively from limiting admissions to students of that gender.*
- e. *The provisions of this subdivision relating to disparate impact shall not apply to the use of standardized tests as defined by section three hundred forty of the education law by an educational institution subject to this subdivision provided that such test is used in the manner and for the purpose prescribed by the test agency which designed the test.*
- f. *The provisions of this subdivision as they relate to unlawful discriminatory practices by educational institutions shall not apply to matters that are strictly educational or pedagogic in nature.*

[3. It shall be an unlawful discriminatory practice for the owner, lessee, sublessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

- (a) To refuse to rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color, national origin, sex, age, marital status or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.
- (b) To discriminate against any person because of such person's race, creed, color, national origin, sex, age, marital status or alienage or citizenship status or because children are, may be or would be residing with such person, in terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.
- (c) To cause to be made any written or oral inquiry or record concerning the race, creed, color, national origin, sex, age, marital status or alienage or citizenship status of such a person seeking to rent or lease any publicly-assisted housing accommodation, or to make any such inquiry or record as to whether children are, may be or would be residing with such a person, provided, however, that this paragraph shall not be construed to prohibit inquiries concerning family size or whether children are, may be or would be residing with a person if such inquiries are made to assist such person in meeting the needs of a child, including but not limited to the availability of educational and recreational facilities, and are not for the purpose of limitation or discrimination.

(d) Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the division grants an exemption based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups.

3-a It shall be an unlawful discriminatory practice:

- (a) For an employer or licensing agency, because an individual is between the ages of eighteen and sixty-five or because of any individual's alienage or citizenship status, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment.
- (b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination respecting individuals between the ages of eighteen and sixty-five or respecting any person's alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.
- (c) For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he or she has opposed any practices forbidden under this chapter or because such person has filed a complaint, testified or assisted in any proceeding under this chapter. But nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the termination of the employment of any person who is physically unable to perform his or her duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions; nor shall anything in said subdivisions be deemed to preclude the varying of insurance coverages according to an employee's age.

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, by reason of such person's race, creed, color, age, religion or alienage or citizenship status.]

5. *Housing accommodations, land, commercial space and lending practices.* (a) *Housing accommodations.* It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or *approve the sale, rental or lease of* a housing accommodation, constructed or to be constructed, or an interest therein, or any agency or employee thereof:

- (1) To refuse to sell, rent, lease, *approve the sale, rental or lease* or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the *actual or perceived* race, creed, color, national origin, [sex] gender, age, disability, sexual orientation, marital status or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or [persons, in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith] persons.
- (2) To discriminate against any person because of such person's *actual or perceived* race, creed, color, national origin, [sex] gender, age, disability, sexual orientation, marital

status or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation *or an interest therein* or in the furnishing of facilities or services in connection therewith.

- (3) To *declare*, print or circulate or cause to be *declared*, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation *or an interest therein* or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation *or an interest therein* which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.
- (4) The provisions of this paragraph (a) shall not apply:
- (1) to the rental of a housing accommodation, *other than a publicly-assisted housing accommodation*, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or a member of the owner's family reside in one of such housing accommodations, *and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public*; or
- (2) to the rental of a room or rooms in a housing accommodation, *other than a publicly-assisted housing accommodation*, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation, or
- (3) to the restriction of the rental of rooms in a rooming house, dormitory or residence hotel to one sex if such housing accommodation is regularly occupied on a permanent, as opposed to transient, basis by the majority of its guests].
- (b) *Land and commercial space*. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, *or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof*:
- (1) To refuse to sell, rent, lease, *approve the sale, rental or lease* or otherwise deny to or withhold from any person or group of persons [such commercial space because of the age of such person or persons; or such] land or commercial space *or an interest therein* because of the *actual or perceived* race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.
- (2) To discriminate against any person because of *actual or perceived* race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space [or because of such person's age in relation to such commercial space;] *or an interest therein* or in the furnishing of facilities or services in connection therewith.

- (3) To *declare*, print or circulate or cause to be *declared*, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space *or an interest therein* or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space *or an interest therein* which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status, or whether children are, may be or would be residing with such person, [or in relation to commercial space as to age;] or any intent to make any such limitation, specification or discrimination.
- (c) *Real estate brokers*. It shall be unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:
- (1) To refuse to sell, rent or lease any housing accommodation, land or commercial space *or an interest therein* to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space *or an interest therein* to any person or group of persons because of the *actual or perceived* race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons, or [in relation to commercial space because of the age of such person or persons, or] to represent that any housing accommodation, land or commercial space *or an interest therein* is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space *or an interest therein* or any facilities of any housing accommodation, land or commercial space *or an interest therein* from any person or group of persons because of the *actual or perceived* race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons[, or in relation to commercial space because of the age of such person or persons].
- (2) To *declare*, print or circulate or cause to be *declared*, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space *or an interest therein* or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space *or an interest therein* which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, [sex] *gender, age, disability, sexual orientation*, marital status or alienage or citizenship status, or to whether children are, may be or would be residing with a person, or [in relation to commercial space as to age; or] any intent to make such limitation, specification or discrimination.
- (3) To *induce or attempt to induce any person to sell or rent any housing accommodation, land or commercial space or an interest therein by representations, explicit or implicit, regarding the entry or prospective entry into the neighborhood or area of a person or persons of any race, creed, color, gender, age, disability, sexual orientation, marital status, national origin, alienage or citizenship*

status or a person or persons with whom children are, may be or would be residing.

- (d) *Lending practices.* It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city and if incorporated regardless of whether incorporated under the laws of the state of New York, the United States or any other jurisdiction, *or any officer, agent or employee thereof* to whom application is made for a *loan, mortgage or other form of financial assistance* for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space[, or any officer, agent or employee thereof] *or an interest therein:*
- (1) To discriminate against such applicant or applicants because of the *actual or perceived race, creed, color, national origin, [sex] gender, disability, sexual orientation, age, marital status or alienage or citizenship status of such applicant or applicants or of any member, stockholder, director, officer or employee of such applicant or applicants, or of the occupants or tenants or prospective occupants or tenants of such housing accommodations, land or commercial space, or because children are, may be or would be residing with such applicant or other person, in the granting, withholding, extending or renewing, or in the fixing of rates, terms or conditions of any such financial assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein.*
 - (2) To use any form of application for [such] *a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance, or in connection with the appraisal of any housing accommodation, land or commercial space or an interest therein, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, [sex] gender, disability, sexual orientation, age, marital status or alienage or citizenship status, or whether children are, may be, or would be residing with a person.*
- (e) *Real estate services.* It shall be an unlawful discriminatory practice to deny a person access to, or membership in or participation in, a multiple listing service, real estate brokers' organization, or other service because of the *actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, or alienage or citizenship status of such person or because children are, may be or would be residing with such person.*
- (f) *Real estate related transactions.* It shall be an unlawful discriminatory practice for any person whose business includes the appraisal of housing accommodations, land or commercial space or interest therein or an employee or agent thereof to discriminate in making available or in the terms or conditions of such appraisal on the basis of the *actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status or alienage or citizenship status of any person or because children are, may be or would be residing with such person.*
- [(f)] (g) *Applicability; persons under eighteen years of age.* The provisions of this subdivision, as they relate to *unlawful discriminatory practices in housing accommodations, land and commercial space or an interest therein and lending practices on the basis of age, shall not apply to unemancipated persons under the age of eighteen years.*

- [(g)] (h) *Applicability; discrimination against persons with children.* The provisions of this [chapter] subdivision with respect to discrimination against persons with whom children are, may be or would be residing shall not apply to [dormitories or to the rental of housing units insured, subsidized or guaranteed by the federal government that are specifically designed to provide accommodations for senior citizens] *housing for older persons as defined in paragraphs two and three of subdivision (b) of section thirty-six hundred seven of title forty-two of the United States code and any regulations promulgated thereunder.*
- (i) *Applicability; senior citizen housing.* The provisions of this subdivision with respect to discrimination on the basis of age shall not apply to the restriction of the sale, rental or lease of any housing accommodation, land or commercial space or an interest therein exclusively to persons fifty-five years of age or older. This paragraph shall not be construed to permit discrimination against such persons fifty-five years of age or older on the basis of whether children are, may be or would be residing in such housing accommodation or land or an interest therein unless such discrimination is otherwise permitted pursuant to paragraph (h) of this subdivision.
- (j) *Applicability; dormitory residence operated by educational institution.* The provisions of this subdivision relating to discrimination on the basis of gender in housing accommodations shall not prohibit any educational institution from making gender distinctions in dormitory residences which would be permitted under sections 86.32 and 86.33 of title forty-five of the code of federal regulations for educational institutions covered thereunder.
- (k) *Applicability; dormitory-type housing accommodations.* The provisions of this subdivision which prohibit distinctions on the basis of gender and whether children are, may be or would be residing with a person shall not apply to dormitory-type housing accommodations including, but not limited to, shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children.
- (l) *Exemption for special needs of particular age group in publicly-assisted housing accommodations.* Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the state division of human rights grants an exemption pursuant to section two hundred ninety-six of the executive law based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups; provided however, that this paragraph shall not be construed to permit discrimination on the basis of whether children are, may be or would be residing in such housing accommodations unless such discrimination is otherwise permitted pursuant to paragraph (h) of this section.
- (m) *Applicability; use of criteria or qualifications in publicly-assisted housing accommodations.* The provisions of this subdivision shall not be construed to prohibit the use of criteria or qualifications of eligibility for the sale, rental, leasing or occupancy of publicly-assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program, or to prohibit the use of statements, advertisements, publications, applications or inquiries to the extent that they state such criteria or qualifications or request information necessary to determine or verify the eligibility of an applicant, tenant, purchaser, lessee or occupant.

(n) Discrimination on the basis of occupation prohibited in housing accommodations.

Where a housing accommodation or an interest therein is sought or occupied exclusively for residential purposes, the provisions of this subdivision shall be construed to prohibit discrimination in the sale, rental, or leasing of such housing accommodation or interest therein and in the terms, conditions and privileges of the sale, rental or leasing of such housing accommodation or interest therein and in the furnishing of facilities or services in connection therewith, on account of a person's occupation.

6. *Aiding and abetting.* It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.

7. *Retaliation.* It shall be an unlawful discriminatory practice for any person engaged in any activity to which this [section] chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter [or such person] , (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, or (v) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 of this chapter.

8. *Violation of conciliation agreement.* It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section [8-109] 8-115 of this chapter to violate the terms of such agreement.

9. *Licenses and permits.* It shall be an unlawful discriminatory practice:

(a) *Except as otherwise provided in paragraph (c), for an agency authorized to issue a license or permit or an employee thereof to discriminate against an applicant for a license or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, disability, sexual orientation or alienage or citizenship status of such applicant.*

(b) *Except as otherwise provided in paragraph (c), for an agency authorized to issue a license or permit or an employee thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for a license or permit or to make any inquiry in connection with any such application, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, age, gender, marital status, disability, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.*

c. *Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license or permit from using age or disability as a criterion for determining eligibility for a license or permit when specifically required to do so by any other provision of law.*

10. *Criminal conviction.* (a) *It shall be unlawful discriminatory practice for any person to deny any license or permit or employment to any person by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-a of the correction law.*

(b) *Pursuant to section seven hundred fifty-five of the correction law, the provisions of this subdivision shall be enforceable against public agencies by a proceeding brought*

pursuant to article seventy-eight of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter five of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" shall have the meaning given such terms in section seven hundred fifty of the correction law.

11. Arrest record. It shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the person involved, any arrest or criminal accusation of such person not then pending against that person which was followed by a termination of that criminal action or proceeding in favor of such person, as defined in subdivision two of section 160.50 of the criminal procedure law, in connection with the licensing, employment or providing of credit to such person; provided, however, that the prohibition of such inquiries or adverse action shall not apply to licensing activities in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law.

[9] 12. Religious principles. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rentals of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

[10. The provisions of this section shall not be applicable for dormitory-type residences designed for occupancy by members of the same sex.]

13. Employer liability for discriminatory conduct by employee, agent or independent contractor. a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

- (1) the employee or agent exercised managerial or supervisory responsibility; or*
- (2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or*
- (3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.*

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

d. *Where liability of an employer has been established pursuant to this section and is based solely on the conduct of an employee, agent, or independent contractor, the employer shall be permitted to plead and prove that prior to the discriminatory conduct for which it was found liable it had:*

(1) Established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including but not limited to:

(i) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices;

(ii) A firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(iii) A program to educate employees and agents about unlawful discriminatory practices under local, state and federal law; and

(iv) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

(2) A record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

e. *The demonstration of any or all of the factors listed above in addition to any other relevant factors shall be considered in mitigation of the amount of civil penalties to be imposed by the commission pursuant to this chapter or in mitigation of civil penalties or punitive damages which may be imposed pursuant to chapter four or five of this title and shall be among the factors considered in determining an employer's liability under subparagraph three of paragraph b of this subdivision.*

f. *The commission may establish by rule policies, programs and procedures which may be implemented by employers for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors. Notwithstanding any other provision of law to the contrary, an employer found to be liable for an unlawful discriminatory practice based solely on the conduct of an employee, agent or person employed as an independent contractor who pleads and proves that such policies, programs and procedures had been implemented and complied with at the time of the unlawful conduct shall not be liable for any civil penalties which may be imposed pursuant to this chapter or any civil penalties or punitive damages which may be imposed pursuant to chapter four or five of this title for such unlawful discriminatory practice.*

[11.] 14. *Applicability; alienage or citizenship status.* Notwithstanding any other provision of this section, it shall not be an unlawful discriminatory practice for any person to discriminate on the ground of alienage or citizenship status, or to make any inquiry as to a person's alienage or citizenship status, or to give preference to a person who is a citizen or a national of the United States over an equally qualified person who is an alien, when such discrimination is required or when such preference is expressly permitted by any law or regulation of the United States, the state of New York or the city of New York, and when such law or regulation does not provide that state or local law may be more protective of aliens; *provided, however, that this provision shall not prohibit inquiries or determinations based on alienage or citizenship status when such actions are necessary to obtain the benefits of a federal pro-*

gram. An applicant for a license or permit issued by the city of New York may be required to be authorized to work in the United States whenever by law or regulation there is a limit on the number of such licenses or permits which may be issued.

[§ 8-108 Unlawful discriminatory practice—the handicapped. The provisions heretofore set forth in section 8-107 as unlawful discriminatory practices shall be construed to include an otherwise qualified person who is physically or mentally handicapped.]

15. Applicability; persons with disabilities.

- (a) *Requirement to make reasonable accommodation to the needs of persons with disabilities. Except as provided in paragraph (b), any person prohibited by the provisions of this section from discriminating on the basis of disability shall make reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.*
- (b) *Affirmative defense in disability cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.*
- (c) *Use of drugs or alcohol. Nothing contained in this chapter shall be construed to prohibit a covered entity from (i) prohibiting the illegal use of drugs or the use of alcohol at the workplace or on duty impairment from the illegal use of drugs or the use of alcohol, or (ii) conducting drug testing which is otherwise lawful.*

16. Applicability; sexual orientation. [Section 8-108.1 Unlawful discriminatory practices; sexual orientation. 1. The provisions heretofore set forth in section 8-107 as unlawful discriminatory practices shall be construed to include discrimination against individuals because of their actual or perceived sexual orientation.]

[2.] Nothing in this [section] chapter shall be construed to:

- a. Restrict an employer's right to insist that an employee meet bona fide job-related qualifications of employment;
- b. Authorize or require employers to establish affirmative action quotas based on sexual orientation or to make inquiries regarding the sexual orientation of current or prospective employees;
- c. Limit or override the present exemptions in the human rights law, including those relating to employment concerns [having] *employing fewer than four persons [employees]*, as provided in subdivision five of section 8-102; owner-occupied dwellings, as provided in paragraph (a) of subdivision five of section 8-107; or any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, as provided in subdivision [nine] *twelve* of section 8-107 of this chapter;
- d. Make lawful any act that violates the penal law of the state of New York; or
- e. Endorse any particular behavior or way of life.

[3. As used in this section, the term "sexual orientation" shall mean heterosexuality, homosexuality, or bisexuality.]

17. Disparate impact.

- a. *An unlawful discriminatory practice based upon disparate impact is established when:*

- (1) *the commission or a person who may bring an action under chapter four or five of this title demonstrates that a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any group protected by the provisions of this chapter; and*
- (2) *the covered entity fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to a significant business objective of the covered entity or does not contribute to the disparate impact; provided, however, that if the commission or such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, the commission or such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where the commission or such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available to the covered entity and the covered entity fails to prove that such alternative policy or practice would not serve the covered entity as well. "Significant business objective" shall include, but not be limited to, successful performance of the job.*
- b. *The mere existence of a statistical imbalance between a covered entity's challenged demographic composition and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.*
- c. *Nothing contained in this subdivision shall be construed to mandate or endorse the use of quotas; provided, however, that nothing contained in this subdivision shall be construed to limit the scope of the commission's authority pursuant to sections 8-115 and 8-120 of this chapter or to affect court-ordered remedies or settlements that are otherwise in accordance with law.*
18. *Unlawful boycott or blacklist. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, sexual orientation or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:*
- (a) *Boycotts connected with labor disputes;*
- (b) *Boycotts to protest unlawful discriminatory practices; or*
- (c) *Any form of expression that is protected by the First Amendment.*
19. *Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.*
20. *Relationship or association. The provisions of this section set forth as unlawful discriminatory practices shall be construed to prohibit such discrimination against a person because of the actual or perceived race, creed, color, national origin, disability, age, sexual*

orientation or alienage or citizenship status of a person with whom such person has a known relationship or association.

§ 8-108.2 **Unlawful discriminatory practices—occupation.** Where a housing accommodation is sought exclusively for residential purposes, the prohibition against unlawful discriminatory practices in relation to the sale, rental, or leasing of a housing accommodation as set forth in section 8-107 shall be construed to prohibit discrimination on account of a person's occupation.

§ 8-109 **Procedure.** 1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or herself or such person's attorney-at-law, make, sign and file with the commission a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission upon its own motion may, in like manner, make, sign, and file such complaint. In connection with the filing of such complaint, the commission is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. Any employer whose employees, or some of them, refuse or threaten to refuse to cooperate with the provisions of this chapter, may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

2. After the filing of any complaint, the commission shall make prompt investigation in connection therewith. If the commission shall determine after such investigation that probable cause does not exist for crediting the allegations of the complaint that the person named in the complaint, hereinafter referred to as the respondent, has engaged or is engaging in an unlawful discriminatory practice, the commission shall issue and cause to be served on the complainant an order dismissing such allegations of the said complaint as to such respondent. The complainant may, within thirty days of such service, apply for review of such action of the commission. Upon such application, the chairperson shall review such action and determine whether there is probable cause to credit the allegations of the complaint and accordingly shall enter an order affirming, reversing or modifying the determination of the commission, or remanding the matter for further investigation and action, a copy of which order shall be served upon the complainant. If the commission after such investigation shall determine that there is probable cause to credit the allegations of the complaint, or if the chairperson after such review, shall determine that there is probable cause, and if in complaints of discrimination in housing, the property owner or the owner's duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations for a period of ten days from the date of said finding of probable cause, the commission may cause to be posted for a period of ten days from the date of the said finding, on the door of said housing accommodations, a notice stating the said accommodations are the subject of a complaint before the commission and that prospective transferees will take said accommodations at their peril. Any destruction, defacement, alteration or removal of the said notice by the owner or the owner's agents, servants and employees, shall be a misdemeanor punishable on conviction thereof by a fine of not more than five hundred dollars or by imprisonment for not more than one year or both. If the commission after such investigation, shall determine that there is probable cause to credit the allegations of the complaint, or if the chairperson after such review, shall determine that there is such probable cause, the commission shall immediately endeavor to eliminate such unlawful discriminatory practice by proceeding in the following manner:

- (a) If in the judgment of the commission circumstances so warrant, it may endeavor to eliminate such unlawful discriminatory practice by conference, conciliation and persuasion. The terms of such conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and may contain such further provisions as may be agreed upon by the commission and the respondent, including a provision for the entry in court of consent decree embodying the terms of the conciliation agreement. The members of the commission and its staff shall not disclose what transpired in the course of such endeavors. Whenever a complaint is filed pursuant to paragraph (d) of subdivision five of section 8-107 of this chapter, no member of the commission nor any member of the commission staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where express permission has been first obtained in writing from the lender and the borrower to such publication; provided, however, that the name of any borrower and a specific description of the collateral for any loan to such borrower may, if otherwise relevant, be introduced in evidence in any hearing before the commission or any review by a court of competent jurisdiction of any order or decision by the commission.
- (b) In case of failure to eliminate such unlawful discriminatory practice complained of, or in advance thereof as determined by the commission, it shall cause to be issued and served in the name of the commission, a written notice, together with a copy of such complaint, as the same may have been amended, requiring the respondent or respondents to answer the charges of such complaint at a hearing before a hearing officer designated by the chairperson and sitting as the commission, at a time and place to be fixed by the chairperson and specified in such notice. The place of any such hearing shall be the office of the commission or such other place as may be designated by the chairperson. The case in support of the complaint shall be presented before the commission by one of its attorneys. Endeavors at conciliation by the commission shall not be received in evidence. The respondent may file a written verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant shall be allowed to intervene and present testimony in person or by counsel. The commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his or her answer. The commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.
- (c) If, upon all the evidence at the hearing, the commission, or such members as may be designated, shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this chapter, the commission shall state its findings of fact and shall issue and cause to be served upon such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons, evaluating

applications for membership in a club that is not distinctly private without discrimination based on race, creed, color, national origin or sex, payment of compensatory damages to the person aggrieved by such practice, as, in the judgment of the commission, will effectuate the purposes of this chapter, and including a requirement for report of the manner of compliance. If, upon all the evidence, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing said complaint as to such respondent. The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereof.

3. Any complaint filed pursuant to this section must be so filed within one year after the alleged act of discrimination.

4. At any time after the filing of a complaint alleging an unlawful discriminatory practice under subdivision three or under paragraphs (a), (b) or (c) or subdivision five of section 8-107 of this chapter, if the commission determines that the respondent is doing or procuring to be done any act tending to render ineffectual any order the commission may enter in such proceeding, the commission may direct the corporation counsel to apply in the name of the commission to the supreme court in any county within the city of New York where the alleged unlawful discriminatory practice was committed, or where any respondent resides or maintains an office for the transaction of business, or where the housing accommodation, land or commercial space specified in the complaint is located, for an order requiring the respondents or any of them to show cause why they should not be enjoined from selling, renting, leasing or otherwise disposing of such housing accommodation, land or commercial space to any one other than the complainant. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording all parties an opportunity to be heard, if the court deems it necessary to prevent the respondents from rendering ineffectual a commission order relating to the subject matter of the complaint, it may grant appropriate injunctive relief upon such terms and conditions as it deems proper.]

§ 8-108 Reserved.

§ 8-109 Complaint. a. Any person aggrieved by an unlawful discriminatory practice may, by himself or herself or such person's attorney, make, sign and file with the commission a verified complaint in writing which shall: (i) state the name of the person alleged to have committed the unlawful discriminatory practice complained of, and the address of such person if known; (ii) set forth the particulars of the alleged unlawful discriminatory practice; and (iii) contain such other information as may be required by the commission. The commission shall acknowledge the filing of the complaint and advise the complainant of the time limits set forth in this chapter.

(b) Any employer whose employee or agent refuses or threatens to refuse to cooperate with the provisions of this chapter may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

(c) Commission-initiated complaints. The commission may itself make, sign and file a verified complaint alleging that a person has committed an unlawful discriminatory practice.

(d) The commission shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent of his or her procedural rights and obligations as set forth herein.

- (e) *The commission shall not have jurisdiction over any complaint that has been filed more than one year after the alleged unlawful discriminatory practice occurred.*
- (f) *The commission shall not have jurisdiction to entertain a complaint if:*
- (i) *the complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice as defined by this chapter with respect to the same grievance which is the subject of the complaint under this chapter, unless such civil action has been dismissed without prejudice or withdrawn without prejudice; or*
 - (ii) *the complainant has previously filed and has an action or proceeding before any administrative agency under any other law of the state alleging an unlawful discriminatory practice as defined by this chapter with respect to the same grievance which is the subject of the complaint under this chapter; or*
 - (iii) *the complainant has previously filed a complaint with the state division of human rights alleging an unlawful discriminatory practice as defined by this chapter with respect to the same grievance which is the subject of the complaint under this chapter and a final determination has been made thereon.*
- (g) *In relation to complaints filed on or after September first, nineteen hundred ninety one, the commission shall commence proceedings with respect to the complaint, complete the investigation of the allegations of the complaint and make a final disposition of the complaint promptly and within the time periods to be prescribed by rule of the commission. If the commission is unable to comply with the time periods specified for completing its investigation and for final disposition of the complaint, it shall notify the complainant, respondent, and any necessary party in writing of the reasons for not doing so.*
- (h) *Any complaint filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended complaint with the commission and serving a copy thereof upon all parties to the proceeding.*
- (i) *Whenever a complaint is filed pursuant to paragraph (d) of subdivision five of section 8-107 of this chapter, no member of the commission nor any member of the commission staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where express permission has been first obtained in writing from the lender and the borrower to such publication; provided, however, that the name of any borrower and a specific description of the collateral for any loan to such borrower may, if otherwise relevant, be introduced in evidence in any hearing before the commission or any review by a court of competent jurisdiction of any order or decision by the commission.*

§ 8-110 Reserved.

§ 8-111 Answer. *a. Within thirty days after a copy of the complaint is served upon the respondent by the commission, the respondent shall file a written, verified answer thereto with the commission, and the commission shall cause a copy of such answer to be served upon the complainant and any necessary party.*

- b. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial.*

- c. *Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the commission unless good cause to the contrary is shown.*
- d. *All affirmative defenses shall be stated separately in the answer.*
- e. *Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended in accordance with the rules of the commission.*
- f. *Any necessary party may file with the commission a written, verified answer to the complaint, and the commission shall cause a copy of such answer to be served upon the complainant, respondent and any other necessary party.*
- g. *Any answer filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended answer with the commission and serving a copy thereof upon the complainant and any necessary party to the proceeding.*

§ 8-112 Withdrawal of complaints. *a. A complaint filed pursuant to section 8-109 of this chapter may be withdrawn by the complainant in accordance with rules of the commission at any time prior to the service of a notice that the complaint has been referred to an administrative law judge. Such a withdrawal shall be in writing and signed by the complainant.*

- b. *A complaint may be withdrawn after the service of such notice at the discretion of the commission.*
- c. *Unless such complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint shall be without prejudice:*
 - (i) *to the continued prosecution of the complaint by the commission in accordance with rules of the commission;*
 - (ii) *to the initiation of a complaint by the commission based in whole or in part upon the same facts; or*
 - (iii) *to the commencement of a civil action by the corporation counsel based upon the same facts pursuant to chapter four of this title.*

§ 8-113 Dismissal of complaint. *a. The commission may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:*

- (1) *commission personnel have been unable to locate the complainant after diligent efforts to do so;*
- (2) *the complainant has repeatedly failed to appear at mutually agreed upon appointments with commission personnel or is unwilling to meet with commission personnel, provide requested documentation, or to attend a hearing;*
- (3) *the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the commission;*
- (4) *the complainant is unwilling to accept a reasonable proposed conciliation agreement;*
- (5) *prosecution of the complaint will not serve the public interest; and*
- (6) *the complainant requests such dismissal, one hundred eighty days have elapsed since the filing of the complaint with the commission and the commission finds (a) that the complaint has not been actively investigated, and (b) that the respondent will not be unduly prejudiced thereby.*

- b. *The commission shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent, if the complainant requests such dismissal, unless the commission has conducted an investigation of the complaint or has engaged the parties in conciliation after the filing of the complaint.*
- c. *In accordance with the rules of the commission, the commission shall dismiss a complaint if the complaint is not within the jurisdiction of the commission.*
- d. *If after investigation the commission determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, the commission shall dismiss the complaint as to such respondent.*
- e. *The commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.*
- f. *The complainant or respondent may, within thirty days of such service, and in accordance with the rules of the commission, apply to the chairperson for review of any dismissal pursuant to this section. Upon such application, the chairperson shall review such action and issue an order affirming, reversing or modifying such determination or remanding the matter for further investigation and action. A copy of such order shall be served upon the complainant, respondent and any necessary party.*

§ 8-114 Investigations and investigative record keeping. a. *The commission may at any time issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence relating to any matter under investigation or any question before the commission. The issuance of such subpoenas shall be governed by the civil practice law and rules.*

- b. *Where the commission has initiated its own investigation or has conducted an investigation in connection with the filing of a complaint pursuant to this chapter, the commission may demand that any person or persons who are the subject of such investigation (i) preserve those records in the possession of such person or persons which are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city, and (ii) continue to make and keep the type of records made and kept by such person or persons in the ordinary course of business within the year preceding such demand which are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city. A demand made pursuant to this subdivision shall be effective immediately upon its service on the subject of an investigation and shall remain in effect until the termination of all proceedings relating to any complaint filed pursuant to this chapter or civil action commenced pursuant to chapter four of this title or if no complaint or civil action is filed or commenced shall expire two years after the date of such service. The commission's demand shall require that such records be made available for inspection by the commission and/or be filed with the commission.*
- c. *Any person upon whom a demand has been made pursuant to subdivision b of this section may, pursuant to procedures established by rule of the commission, assert an objection to such demand. Unless the commission orders otherwise, the assertion of an objection shall not stay compliance with the demand. The commission shall make a determination on an objection to a demand within thirty days after such an objection is filed with the commission, unless the party filing the objection consents to an extension of time.*

- d. Upon the expiration of the time set pursuant to such rules for making an objection to such demand, or upon a determination that an objection to the demand shall not be sustained, the commission shall order compliance with the demand.
- e. Upon a determination that an objection to a demand shall be sustained, the commission shall order that the demand be vacated or modified.
- f. A proceeding may be brought on behalf of the commission in any court of competent jurisdiction seeking an order to compel compliance with an order issued pursuant to subdivision d of this section.

§ 8-115 Mediation and conciliation. a. If in the judgment of the commission circumstances so warrant, it may at any time after the filing of a complaint endeavor to resolve the complaint by any method of dispute resolution prescribed by rule of the commission including, but not limited to, mediation and conciliation.

- b. The terms of any conciliation agreement may contain such provisions as may be agreed upon by the commission, the complainant and the respondent, including a provision for the entry in court of a consent decree embodying the terms of the conciliation agreement.
- c. The members of the commission and its staff shall not publicly disclose what transpired in the course of mediation and conciliation efforts.
- d. If a conciliation agreement is entered into, the commission shall embody such agreement in an order and serve a copy of such order upon all parties to the conciliation agreement. Violation of such an order may cause the imposition of civil penalties under section 8-124 of this chapter. Every conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not required to further the purposes of this chapter.

§ 8-116 Determination of probable cause. a. Except in connection with commission-initiated complaints which shall not require a determination of probable cause, where the commission determines that probable cause exists to believe that the covered entity has engaged or is engaging in an unlawful discriminatory practice, the commission shall issue a written notice to complainant and respondent so stating. A determination of probable cause is not a final order of the commission and shall not be administratively or judicially reviewable.

- b. If there is a determination of probable cause pursuant to subdivision a of this section in relation to a complaint alleging discrimination in housing accommodations, land or commercial space or an interest therein, or if a commission-initiated complaint relating to discrimination in housing accommodations, land or commercial space or an interest therein has been filed, and the property owner or the owner's duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations, land or commercial space or an interest therein for a period of ten days from the date of such request the commission may cause to be posted for a period of ten days from the date of such request, in a conspicuous place on the land or on the door of such housing accommodations or commercial space, a notice stating that such accommodations, land or commercial space are the subject of a complaint before the commission and that prospective transferees will take such accommodations, land or commercial space at their peril. Any destruction, defacement, alteration or removal of such notice by the owner or the owner's agents or employees shall be a misdemeanor punishable on conviction thereof by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both.

- c. *If a determination is made pursuant to subdivision a of this section that probable cause exists, or if a commission-initiated complaint has been filed, the commission shall refer the complaint to an administrative law judge and shall serve a notice upon the complainant, respondent and any necessary party that the complaint has been so referred.*

§ 8-117 Rules of Procedure. *The commission shall adopt rules providing for hearing and pre-hearing procedure. These rules shall include rules providing that the commission, by its prosecutorial bureau, shall be a party to all complaints and that a complainant shall be a party if the complainant has intervened in the manner set forth in the rules of the commission. These rules shall also include rules governing discovery, motion practice and the issuance of subpoenas. Wherever necessary, the commission shall issue orders compelling discovery. In accordance with the commission's discovery rules, any party from whom discovery is sought may assert an objection to such discovery based upon a claim of privilege or other defense and the commission shall rule upon such objection.*

§ 8-118 Noncompliance with discovery order or order relating to records. *Whenever a party fails to comply with an order of the commission pursuant to section 8-117 of this chapter compelling discovery or an order pursuant to section 8-114 of this chapter relating to records the commission may, on its own motion or at the request of any party, and, after notice and opportunity for all parties to be heard in opposition or support, make such orders or take such action as may be just for the purpose of permitting the resolution of relevant issues or disposition of the complaint without unnecessary delay, including but not limited to:*

- (a) *An order that the matter concerning which the order compelling discovery or relating to records was issued be established adversely to the claim of the noncomplying party;*
- (b) *An order prohibiting the noncomplying party from introducing evidence or testimony, cross-examining witnesses or otherwise supporting or opposing designated claims or defenses;*
- (c) *An order striking out pleadings or parts thereof;*
- (d) *An order that the noncomplying party may not be heard to object to the introduction and use of secondary evidence to show what the withheld testimony, documents, other evidence or required records would have shown; and*
- (e) *Infer that the material or testimony is withheld or records not preserved, made, kept, produced or made available for inspection because such material, testimony or records would prove to be unfavorable to the noncomplying party and use such inference to establish facts in support of a final determination pursuant to section 8-120 of this chapter.*

§ 8-119 Hearing. a. *A hearing on the complaint shall be held before an administrative law judge designated by the commission. The place of any such hearing shall be the office of the commission or such other place as may be designated by the commission. Notice of the date, time and place of such hearing shall be served upon the complainant, respondent and any necessary party.*

- b. *The case in support of the complaint shall be presented before the commission by the commission's prosecutorial bureau. The complainant may present additional testimony and cross-examine witnesses, in person or by counsel, if the complainant shall have intervened pursuant to rules established by the commission.*
- c. *The administrative law judge may, in his or her discretion, permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.*

- d. Evidence relating to endeavors at mediation or conciliation by, between or among the commission, the complainant and the respondent shall not be admissible.
- e. If the respondent has failed to answer the complaint within the time period prescribed in section 8-111 of this chapter, the administrative law judge may enter a default and the hearing shall proceed to determine the evidence in support of the complaint. Upon application, the administrative law judge may, for good cause shown, open a default in answering, upon equitable terms and conditions, including the taking of an oral answer.
- f. Except as otherwise provided in section 8-118 of this chapter, the commission by its prosecutorial bureau, a respondent who has filed an answer or whose default in answering has been set aside for good cause shown, a necessary party, and a complainant or other person who has intervened pursuant to the rules of the commission, may appear at such hearing in person or otherwise, with or without counsel, cross-examine witnesses, present testimony and offer evidence.
- g. The commission shall not be bound by the strict rules of evidence prevailing in courts of the state of New York. The testimony taken at the hearing shall be under oath and shall be transcribed.

§ 8-120 Decision and order. a. If, upon all the evidence at the hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the commission shall find that a respondent has engaged in any unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice. Such order shall require the respondent to take such affirmative action as, in the judgment of the commission, will effectuate the purposes of this chapter including, but not limited to:

- (1) hiring, reinstatement or upgrading of employees;
- (2) the award of back pay and front pay;
- (3) admission to membership in any respondent labor organization;
- (4) admission to or participation in a program, apprentice training program, on-the-job training program or other occupational training or retraining program;
- (5) the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges;
- (6) evaluating applications for membership in a club that is not distinctly private without discrimination based on race, creed, color, age, national origin, disability, marital status, gender, sexual orientation or alienage or citizenship status;
- (7) selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;
- (8) payment of compensatory damages to the person aggrieved by such practice; and
- (9) submission of reports with respect to the manner of compliance;

b. If, upon all the evidence at the hearing, and upon the findings of fact and conclusions of law recommended by the administrative law judge, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, and any necessary party and on any complainant who has not intervened an order dismissing the complaint as to such respondent.

§ 8-121 Reopening of proceeding by commission. The commission may reopen any proceeding, or vacate or modify any order or determination of the commission, whenever justice so requires, in accordance with the rules of the commission.

§ 8-122 Injunction and temporary restraining order. At any time after the filing of a complaint alleging an unlawful discriminatory practice under this chapter, if the commission has reason to believe that the respondent or other person acting in concert with respondent is doing or procuring to be done any act or acts, tending to render ineffectual relief that could be ordered by the commission after a hearing as provided by section 8-120 of this chapter, a special proceeding may be commenced in accordance with article sixty-three of the civil practice law and rules on behalf of the commission in the supreme court for an order to show cause why the respondent and such other persons who are believed to be acting in concert with respondent should not be enjoined from doing or procuring to be done such acts. The special proceeding may be commenced in any county within the city of New York where the alleged unlawful discriminatory practice was committed, or where the commission maintains its principal office for the transaction of business, or where any respondent resides or maintains an office for the transaction of business, or where any person aggrieved by the unlawful discriminatory practice resides, or, if the complaint alleges an unlawful discriminatory practice under paragraphs (a), (b) or (c) of subdivision five of section 8-107 of this chapter, where the housing accommodation, land or commercial space specified in the complaint is located. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording the commission, the person aggrieved and the respondent and any person alleged to be acting in concert with the respondent an opportunity to be heard, the court may grant appropriate injunctive relief upon such terms and conditions as the court deems proper.

§ [8-110] 8-123 Judicial review [and enforcement]. *a. Any complainant, respondent or other person aggrieved by [such] a final order of the commission issued pursuant to section 8-120 or section 8-126 of this chapter or an order of the chairperson issued pursuant to subdivision f of section 8-113 of this chapter affirming the dismissal of a complaint may obtain judicial review thereof [, and the commission may obtain an order of court for its enforcement,] in a proceeding as provided in this section.*

- b. Such proceeding shall be brought in the supreme court of the state within any county within the city of New York wherein the unlawful discriminatory practice which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or to take other affirmative action resides or transacts business.*
- c. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing, before the commission, and the issuance and service of a notice of motion returnable [at a special term of] before such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such [temporary] relief [or restraining order] as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order [enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part] annulling, confirming or modifying the order of the commission in whole or in part. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.*

- d. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon, provided such party shows reasonable grounds for the failure to adduce such evidence before the commission.
- e. The findings of the commission as to the facts shall be conclusive if supported by [sufficient] *substantial* evidence on the record considered as a whole.
- f. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and with the same effect as provided for appeals from a judgment in a special proceeding.
- g. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing.
- h. A proceeding under this section [when instituted by any complainant, respondent or other person aggrieved] must be instituted within thirty days after the service of the order of the commission.

§ 8-124 Civil penalties for violating commission orders. *Any person who fails to comply with an order issued by the commission pursuant to section 8-115 or section 8-120 of this chapter shall be liable for a civil penalty of not more than fifty thousand dollars and an additional civil penalty of not more than one hundred dollars per day for each day that the violation continues.*

§ 8-125 Enforcement. *a. Any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the commission pursuant to this chapter, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing penalties pursuant to section 8-124 of this chapter, or for such other relief as may be appropriate, may be initiated in any court of competent jurisdiction on behalf of the commission. In any such action or proceeding, application may be made for a temporary restraining order or preliminary injunction, enforcing and restraining all persons from violating any provisions of any such order, or for such other relief as may be just and proper, until hearing and determination of such action or proceeding and the entry of final judgment or order thereon. The court to which such application is made may make any or all of the orders specified, as may be required in such application, with or without notice, and may make such other or further orders or directions as may be necessary to render the same effectual.*

b. In any action or proceeding brought pursuant to subdivision a of this section, no person shall be entitled to contest the terms of the order sought to be enforced unless that person has timely commenced a proceeding for review of the order pursuant to section 8-123 of this chapter.

§ 8-126 Civil penalties imposed by commission for unlawful discriminatory practices. *a. Except as otherwise provided in subdivision thirteen of section 8-107 of this chapter, in addition to any of the remedies and penalties set forth in subdivision a of section 8-120 of this chapter, where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest, impose a civil penalty of not more than fifty thousand dollars. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act,*

the commission may, to vindicate the public interest, impose a civil penalty of not more than one hundred thousand dollars.

- b. A covered entity that is found liable for an unlawful discriminatory practice may, in relation to the determination of the appropriate amount of civil penalties to be imposed pursuant to subdivision a of this section, plead and prove any relevant mitigating factor.*
- c. In addition to any other penalties or sanctions which may be imposed pursuant to any other law, any person who knowingly makes a material false statement in any proceeding conducted, or document or record filed with the commission, or record required to be preserved or made and kept and subject to inspection by the commission pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars.*
- d. An action or proceeding may be commenced in any court of competent jurisdiction on behalf of the commission for the recovery of the civil penalties provided for in this section.*

§ 8-127 Disposition of civil penalties. a. Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the city.

b. Notwithstanding the foregoing provision, where an action or proceeding is commenced against a city agency for the enforcement of a final order issued by the commission pursuant to section 8-120 of the code after a finding that such agency has engaged in an unlawful discriminatory practice and in such action or proceeding civil penalties are sought for violation of such order, any civil penalties which are imposed by the court against such agency shall be budgeted in a separate account. Such account shall be used solely to support city agencies' anti-bias education programs, activities sponsored by city agencies that are designed to eradicate discrimination or to fund remedial programs that are necessary to address the city's liability for discriminatory acts or practices. Funds in such account shall not be used to support or benefit the commission. The disposition of such funds shall be under the direction of the mayor.

§ 8-128 Institution of actions or proceedings. Where any of the provisions of this chapter authorize an application to be made, or an action or proceeding to be commenced on behalf of the commission in a court, such application may be made or such action or proceeding may be instituted only by the corporation counsel, such attorneys employed by the commission as are designated by the corporation counsel or other persons designated by the corporation counsel.

[§ 8-111 Penal provision. Any] § 8-129 Criminal penalties. In addition to any other penalties or sanctions which may be imposed pursuant to this chapter or any other law, any person [, employer, labor organization or employment agency,] who [or which] shall wilfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of any duty under this chapter, or shall willfully violate an order of the commission issued pursuant to section 8-115 or section 8-120 of this chapter, shall be guilty of a misdemeanor and be punishable by imprisonment for not more than one year, or by a fine of not more than [five hundred] ten thousand dollars, or by both; but the procedure for the review of the order shall not be deemed to be such willful conduct.

[§ 8-112] § 8-130 Construction. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. [Nothing contained in this chapter shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state relating to discrimination because of race, creed, color or national origin; but, as to acts declared unlawful by section 8-107 of this chapter, the procedure herein provided shall, while

pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based upon the same grievance of the person concerned. If such person institutes any action based on such grievance without resorting to the procedure provided in this chapter, he or she may not subsequently resort to the procedure herein.]

§ 2. Title 8 of the administrative code of the city of New York is amended by adding four new chapters 4, 5, 6 and 7 to read, respectively, as follows:

CHAPTER 4
CIVIL ACTION TO ELIMINATE
UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-401 Legislative declaration. The council finds that certain forms of unlawful discrimination are systemic in nature rooted in the operating conditions or policies of a business or industry. The council finds that the existence of systemic discrimination poses a substantial threat to, and inflicts significant injury upon, the city that is economic, social and moral in character, and is distinct from the injury sustained by individuals as an incident of such discrimination. The council finds that the potential for systemic discrimination exists in all areas of public life and that employment, housing and public accommodations are among the areas in which the economic effects of systemic discrimination are exemplified. The existence of systemic discrimination impedes the optimal efficiency of the labor market by, among other things, causing decisions to employ, promote or discharge persons to be based upon reasons other than qualifications and competence. Such discrimination impedes the optimal efficiency of the housing market and retards private investments in certain neighborhoods by causing decisions to lease or sell housing accommodations to be based upon discriminatory factors and not upon ability and willingness to lease or purchase property. The council finds that the reduction in the efficiency of the labor, housing and commercial markets has a detrimental effect on the city's economy, thereby reducing revenues and increasing costs to the city. The council finds that such economic injury to the city severely diminishes its capacity to meet the needs of those persons living and working in, and visiting, the city. The council finds further that the social and moral consequences of systemic discrimination are similarly injurious to the city in that systemic discrimination polarizes the city's communities, demoralizes its inhabitants and creates disrespect for the law, thereby frustrating the city's efforts to foster mutual respect and tolerance among its inhabitants and to promote a safe and secure environment. The council finds that the potential consequences to the city of this form of discrimination requires that the corporation counsel be expressly given the authority to institute a civil action to enforce the city's human rights law so as to supplement administrative means to prevent or remedy injury to the city.

§ 8-402 Civil action to eliminate unlawful discriminatory practices. a. Whenever there is reasonable cause to believe that a person or group of persons is engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by chapter one of this title, a civil action on behalf of the commission or the city may be commenced in a court of competent jurisdiction, by filing a complaint setting forth facts pertaining to such pattern or practice and requesting such relief as may be deemed necessary to insure the full enjoyment of the rights described in such chapter, including, but not limited to, injunctive relief, damages, including punitive damages, and such other types of relief as are specified in subdivision a of section 8-120 of this title. Nothing in this section shall be construed to prohibit (i) an aggrieved person from filing a complaint pursuant to section 8-109 of chapter one of this title or from commencing a civil action pursuant to chapter five of this title based upon the same facts pertaining to such a pattern or practice as are alleged in the civil action, or (ii) the commission from filing a commission-initiated complaint pursuant to sec-

tion 8-109 of chapter one of this title alleging a pattern or practice of discrimination, provided that a civil action pursuant to this section shall not have previously been commenced.

- b. A civil action commenced under this section must be commenced within three years after the alleged discriminatory practice occurred.*
- c. Such action may be instituted only by the corporation counsel, such attorneys employed by the city commission on human rights as are designated by the corporation counsel or other persons designated by the corporation counsel.*

§ 8-403 Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to section 8-402 of this chapter, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

§ 8-404 Civil penalty. In any civil action commenced pursuant to section 8-402 of this chapter, the trier of fact may, to vindicate the public interest, impose upon any person who is found to have engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by chapter one of this title a civil penalty of not more than two hundred fifty thousand dollars. In relation to determining the appropriate amount of civil penalties to be imposed pursuant to this section a liable party may plead and prove any relevant mitigating factor. Any civil penalties so recovered pursuant to this chapter shall be paid into the general fund of the city. Nothing in this section shall be construed to preclude the city from recovering damages, including punitive damages, and other relief pursuant to section 8-402 of this chapter in addition to civil penalties.

CHAPTER 5

CIVIL ACTION BY PERSONS AGGRIEVED

BY UNLAWFUL DISCRIMINATORY PRACTICES

§ 8-502. Civil action by persons aggrieved by unlawful discriminatory practices.

a. Except as otherwise provided by law, any person claiming to be aggrieved by an unlawful discriminatory practice as defined in chapter one of this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice. For purposes of this subdivision, the filing of a complaint with a federal agency pursuant to applicable federal law prohibiting discrimination which is subsequently referred to the city commission on human rights or to the state division of human rights pursuant to such law shall not be deemed to constitute the filing of a complaint under this subdivision.

- b. Notwithstanding any inconsistent provision of subdivision a of this section, where a complaint filed with the city commission on human rights or the state division on human rights is dismissed by the city commission on human rights pursuant to subdivisions a, b, or c of section 8-113 of chapter one of this title, or by the state division of human rights pursuant to subdivision nine of section two hundred ninety-seven of the executive law for administrative convenience, an aggrieved person shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed.*
- c. Prior to commencing a civil action pursuant to subdivision a of this section, the plaintiff shall serve a copy of the complaint upon the city commission on human rights and the corporation counsel.*

- d. *A civil action commenced under this section must be commenced within three years after the alleged unlawful discriminatory practice occurred. Upon the filing of a complaint with the city commission on human rights or the state division of human rights and during the pendency of such complaint and any court proceeding for review of the dismissal of such complaint, such three year limitations period shall be tolled.*
- e. *Notwithstanding any inconsistent provision of this section, where a complaint filed with the city commission on human rights or state division of human rights is dismissed for administrative convenience and such dismissal is due to the complainant's malfeasance, misfeasance or recalcitrance, the three year limitation period on commencing a civil action pursuant to this section shall not be tolled. Unwillingness to accept a reasonable proposed conciliation agreement shall not be considered malfeasance, misfeasance or recalcitrance.*
- f. *In any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party costs and reasonable attorney's fees.*

CHAPTER 6

DISCRIMINATORY HARASSMENT

§ 8-602 Civil action to enjoin discriminatory harassment; equitable remedies. *a. Whenever a person interferes by threats, intimidation or coercion or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any person of rights secured by the constitution or laws of the United States, the constitution or laws of this state, or local law of the city because of the person's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, whether children are, may or would be residing with such person, marital status, disability, or alienage or citizenship status as defined in chapter one of this title, the corporation counsel, at the request of the city commission on human rights or on his or her own initiative, may bring a civil action on behalf of the city for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.*

- b. *An action pursuant to subdivision a may be brought in any court of competent jurisdiction.*
- c. *Violation of an order issued pursuant to subdivision a of this section may be punished by a proceeding for contempt brought pursuant to article nineteen of the judiciary law and, in addition to any relief thereunder, a civil penalty may be imposed not exceeding ten thousand dollars for each day that the violation continues.*

§ 8-603 Discriminatory harassment; civil penalties. *a. No person shall by force or threat of force, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the constitution or laws of this state or by the constitution or laws of the United States or local law of the city because of the other person's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, disability or alienage or citizenship status, as defined in chapter one of this title.*

- b. *No person shall knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city because of the other person's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, marital status, or whether children are, may*

be, or would be residing with such person, disability or alienage or citizenship status, as defined in chapter one of this title.

- c. Any person who violates subdivision a or b of this section shall be liable for a civil penalty of not more than fifty thousand dollars for each violation, which may be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction.

§ 8-604 Disposition of civil penalties. Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the city.

CHAPTER 7 DISCRIMINATORY BOYCOTTS

§ 8-701 Legislative declaration. Boycotts or blacklists that are based on a person's race, color, creed, age, national origin, alienage or citizenship status, marital status, gender, sexual orientation, or disability pose a menace to the city's foundation and institutions. In contrast to protests that are in reaction to an unlawful discriminatory practice, connected with a labor dispute or associated with other speech or activities that are protected by the first amendment discriminatory boycotts cause havoc, divide the citizenry and do not serve a legitimate purpose. The council declares that discriminatory boycotts are a dangerously insidious form of prejudice and hereby establishes a procedure for expeditiously investigating allegations of this type of prejudice, assuring that the council and mayor are duly alerted to the existence of such activity and combating discriminatory boycotts or blacklists.

§ 8-702 Definitions. When used in this chapter

- (1) The term "discriminatory boycott or blacklist" means any act that is an unlawful discriminatory practice under subdivision eighteen of section 8-107 of chapter one of this title.
- (2) The term "commission" means the New York city commission on human rights.
- (3) The term "council" means the council of the city of New York.

§ 8-703 Investigative reporting requirements. The following requirements shall apply to all complaints alleging that a discriminatory boycott or blacklist is occurring:

- (1) The commission shall begin an investigation within twenty-four hours of the filing of a complaint which alleges that a discriminatory boycott or blacklist is occurring.
- (2) Within three days after initiating such an investigation, the commission shall file a written report with the mayor. The report shall state:
 - (a) the allegations contained in the complaint;
 - (b) whether the commission has reason to believe a discriminatory boycott or blacklist is taking place; and
 - (c) steps the commission has taken to resolve the dispute.
- (3) If it is stated within the report described in subdivision two of this section that the commission has reason to believe that a discriminatory boycott or blacklist has taken place, within thirty days after filing such report, the commission shall file a second report with the mayor and the council. This second report shall contain:
 - (a) a brief description of the allegations contained in the complaint;
 - (b) a determination of whether probable cause exists to believe a discriminatory boycott or blacklist is taking place;
 - (c) a recitation of the facts that form the basis of the commission's determination of probable cause; and
 - (d) if the boycott or blacklist is continuing at the date of the report, a description of all actions the commission or other city agency has taken or will undertake to resolve the dispute.

(4) *If a finding of probable cause is not contained in the report required by subdivision three of this section and the boycott or blacklist continues for more than twenty days subsequent to the report's release, then, upon demand of the mayor or council the commission shall update such report. Report updates shall detail:*

- (a) *whether or not the commission presently has probable cause to believe a discriminatory boycott or blacklist is taking place; and*
- (b) *all new activity the commission or other city agency has taken or will undertake to resolve the dispute.*

(5) *If the commission determines that the disclosure of any information in a report required by this section may interfere with or compromise a pending investigation or efforts to resolve the dispute by mediation or conciliation, it shall file the report without such information and state in the report the reasons for omitting such information.*

§ 3. a. Within one hundred eighty days after the date of enactment of this local law, the New York city commission on human rights shall conduct a hearing to consider whether the city's human rights law should be amended to authorize such commission to require persons or classes of persons to make and keep additional records relevant to the determination of whether unlawful discriminatory practices have been or are being committed and make such reports therefrom as the commission shall prescribe by rule as are reasonable, necessary and appropriate for the enforcement of chapter 1 of title 8 of the administrative code of the city of New York as amended by section one of this local law, and shall submit to the mayor and the council recommendations, if any, with respect thereto.

b. Within twelve months after the enactment of this local law, the corporation counsel and the chairperson of the city commission on human rights shall issue a report to the council on the operation and results of the procedures implemented by the corporation counsel and such chairperson relating to the effective legal representation of the commission and the enforcement of the city human rights law, and relating to the prevention of any potential conflicts of interest.

§ 4. This local law shall take effect on the ninetieth day after the date of its enactment into law, provided, however, that:

- (1) Paragraph a of subdivision 4 of section 8-107 of the administrative code of the city of New York, as amended by section one of this local law, as it relates to discrimination on the basis of age by places and providers of public accommodation shall take effect on the effective date of rules promulgated by the New York city commission on human rights setting forth exemptions based on bona fide considerations of public policy;
- (2) Sections 8-102, 8-107, 8-113 and 8-126 of such administrative code, as added or amended by section one of this local law, shall apply to violations committed on or after such effective date.
- (3) Sections 8-112, 8-115, 8-116 and 8-122 of such administrative code, as added by section one of this local law, shall apply to complaints filed with the New York city commission on human rights on or after such effective date and to complaints filed with such commission prior to such effective date pursuant to the provisions of section 8-109 of such administrative code in effect prior to such effective date;
- (4) Sections 8-109, 8-111, 8-119 and 8-120 of such administrative code, as added by section one of this local law, shall apply to complaints filed with the New York city commission on human rights on or after such effective date;

- (5) Sections 8-118, 8-123, 8-124, 8-125 and 8-129 of such administrative code, as added or amended by section one of this local law, shall apply to orders issued by the New York city commission on human rights on or after such effective date;
- (6) Sections 8-402, 8-404, 8-502, 8-602 and 8-603 of such administrative code, as added by section two of this local law, shall apply to causes of action arising on or after such effective date;
- (7) No action pursuant to chapter 5 of title 8 of such administrative code, as added by section two of this local law, shall be commenced prior to the two hundred and seventieth day after such effective date;
- (8) The New York city commission on human rights may take any actions necessary for the implementation of this local law prior to such effective date including, but not limited to, the adoption of any necessary rules.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, S.S.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on June 5, 1991, and approved by the Mayor on June 18, 1991.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed local law (Local Law 39 of 1991, Council Int. No. 465-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on June 5, 1991: 34 for, 1 against.

Was approved by the Mayor on June 18, 1991.

Was returned to the City Clerk on June 19, 1991.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel