

ORDINANCE NO. 94-5
FAIR HOUSING ORDINANCE

This ordinance is an amendment to Ordinance No. 91-6, specifically adding the word "sex" to the discriminative terms used throughout Ordinance No. 91-6. It is the policy of the County of Torrance to provide, within constitutional limitations, for fair housing throughout the county, and therefore:

BE IT ENACTED BY THE BOARD OF COUNTY COMMISSIONERS OF TORRANCE COUNTY,
"An Ordinance providing for fair housing throughout the County of Torrance".
This Ordinance shall be known as the "Fair Housing Ordinance".

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ADOPTED BY THE GOVERNING BODY OF TORRANCE COUNTY THIS 13th
DAY OF June 1994. TO BECOME EFFECTIVE THE 13th
DAY OF July 1994.

BOARD OF COUNTY COMMISSIONERS
TORRANCE COUNTY, NEW MEXICO

Bill With
Chairman

Attest:

Carla Clayton
Clerk of the Board

Bill Carter
Member

Roy Spencer
Member

COUNTY OF TORRANCE
ORDINANCE NO. 945
FAIR HOUSING ORDINANCE

SECTION 1. POLICY

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

SECTION 2. DEFINITIONS

- (a) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- (b) "Family" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.
- (c) "Person" includes a single individual.
- (d) "To Rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises owned by the occupant.
- (e) "Discriminatory Housing Practice" means an act that is unlawful under Sections 4,5 or 6.

SECTION 3. UNLAWFUL PRACTICE

Subject to the provisions of subsection (b) and Section 7, the prohibitions against discrimination in the sale or rental of housing set forth in Section 3 shall apply to:

- (a) All dwellings except as exempted by subsection (b).
- (b) Nothing in Section 4 shall apply to:
 - (1) Any single-family house sold or rented by an owner:

Provided, that such private individual owner does not own more than three such single-family houses at any one time;

Provided further, that in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period.

Provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time;

Provided further, that the sale or rental of any such single-family house shall be excepted from the application of this title only if such house is sold or rented;

- (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesperson, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson, or person; and
 - (B) without the publication, posting or mailing, after notice of any advertisement or written notice in violation of Section 4 (c) of this ordinance, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or
- (2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.
- (c) For the purpose of subsection (b), a person shall be deemed to be in the business of selling or renting dwellings if:
- (1) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or
 - (2) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

- (3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

SECTION 4. DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

As made applicable by Section 3 and except as exempted by Sections 3 (b) and 7, it shall be unlawful:

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

SECTION 5. DISCRIMINATION IN THE FINANCING OF HOUSING

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of race, color, sex, religion, national origin, handicap or familial status. Such person or any person associated with him/her in connection with such loan or other financial assistance, or of the present or prospective owners,

lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given:

Provided, that nothing contained in this section shall impair the scope or effectiveness of the exception contained in Section 3 (b).

SECTION 6. DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

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

SECTION 7. EXEMPTION

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

SECTION 8. ADMINISTRATION

- (a) The authority and responsibility for administering this Act shall be the Torrance County Commissioners.
- (b) The Commissioners may delegate any of these functions, duties, and powers to employees of the county or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this ordinance. The Commissioners shall by rule prescribe such rights of appeal from the decisions of their hearing examiners to other hearing examiners or to officers in the County, to boards of officers or to themselves, as shall be appropriate and in accordance with law.
- (c) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to

further the purposes of this ordinance and shall cooperate with the Commissioners to further such purposes.

SECTION 9. EDUCATION AND CONCILIATION

Immediately after the enactment of this ordinance, the Commissioners shall commence such educational and conciliatory activities as will further the purposes of this ordinance. They shall call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this ordinance and their suggested means of implementing it, and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement.

SECTION 10. ENFORCEMENT

- (a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur (hereinafter "person aggrieved") may file a complaint with the Commissioners. Complaints shall be in writing and shall contain such information and be in such form as the Commissioners require. Upon receipt of such complaint, the Commissioners shall furnish a copy of the same to the person or persons who allegedly committed or about to commit the alleged discriminatory housing practice. Within thirty days after receiving a complaint, or within thirty days after the expiration of any period of reference under subsection (c), the Commissioners shall investigate the complaint and give notice in writing to the person aggrieved whether they intend to resolve it. If the Commissioners decide to resolve the complaints, they shall proceed to try to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under this ordinance without the written consent of the persons concerned. Any employee of the Commissioners who shall make public any information in violation of this provision shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$300.00 or imprisoned not more than 90 days.
- (b) A complaint under subsection (a) shall be filed within one hundred and eighty days after the alleged discriminatory housing practice occurred. Complaints shall be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him/her and with the leave of the Commissioners, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both Complaints and answers shall be verified.

- (c) If within thirty days after a complaint is filed with the Commissioners, the Commissioners have been unable to obtain voluntary compliance with this ordinance, the person aggrieved may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The Commissioners will assist in this filing.
- (d) If the Commissioners have been unable to obtain voluntary compliance within thirty days of the complaint, the person aggrieved may, within thirty days hereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this ordinance, insofar as such rights relate to the subject of the complaint. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate.
- (e) In any proceeding brought pursuant to this section, the burden of proof shall be on the complaint.
- (f) Whenever an action filed by an individual shall come to trial, the Commissioners shall immediately terminate all efforts to obtain voluntary compliance.

SECTION 11. INVESTIGATIONS; SUBPOENA; GIVING OF EVIDENCE

- (a) In conducting an investigation the Commissioners shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation:

Provided, however, that the Commissioners first comply with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The Commissioners may issue subpoenas to compel their access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Commissioners may administer oaths.
- (b) Upon written application to the Commissioners, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Commissioners to the same extent and subject to the same limitations as subpoenas issued by the Commissioners themselves. Subpoenas issued at the request of a respondent shall show on their face the name and address of such respondent and shall state that they were issued at his her request.

- (c) Witnesses summoned by subpoena of the Commissioners shall be entitled to the same witness and mileage fees as are witnesses in proceedings in New Mexico district courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by him/her.
- (d) Within five days after service of a subpoena upon any person, such person may petition the Commissioners to revoke or modify the subpoena. The Commissioners shall grant the petition if they find that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.
- (e) In case of contumacy or refusal to obey a subpoena, the Commissioners or other person at whose request it was issued may petition for its enforcement in the Magistrate or State court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.
- (f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if in his power to do so, in obedience to the subpoena or lawful order of the Commissioners shall be fined not more than \$300.00 or imprisoned not more than 90 days, or both. Any person who, with intent thereby to mislead the Commissioners shall make or cause to be made any false entry or statement of fact in any report, account, record, or any other document submitted to the Commissioners pursuant to their subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than \$300.00 or imprisoned not more than 90 days, or both.
- (g) The County Attorney shall conduct all litigation in which the Commissioners participate as a party or as amicus pursuant to this ordinance.

SECTION 12. ENFORCEMENT BY PRIVATE PERSONS

- (a) The rights granted by Section 3,4 5 and 6 may be enforced by civil actions in State or local courts of general jurisdiction. A civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred:

Provided, however, that the court shall continue such civil case brought pursuant to this Section or Section 10 (d) from time to time before bringing it to trial if the court believes that the conciliation efforts of the Commissioners are likely to

result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Commissioners and which practice forms the basis for the action in court:

And provided, however, that any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of this ordinance, and involving a bona fide purchaser, encumbrance, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this ordinance shall not be affected.

- (b) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order, and may award to the plaintiff actual damages and not more than \$1,000.00 punitive damages, together with court costs and reasonable attorney fees in the case of a prevailing plaintiff:

Provided, that the said plaintiff in the opinion of the court is not financially able to assume said attorney's fees.

SECTION 13. INTERFERENCE, COERCION, OR INTIMIDATION

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by Sections 3,4,5 or 6. This Section may be enforced by appropriate civil actions.

SECTION 14. SEPARABILITY OF PROVISIONS

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SECTION 15. PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES

Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with:

- (a) Any person because of his race, color, sex, religion, national origin, handicap or familial status and because he/she is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or

- (b) Any person because he/she is or has been, or in order to intimidate such person or any other person or any class of persons from:
 - (1) Participating, without discrimination on account of race, color, sex, religion, national origin, handicap or familial status, in any of the activities, services, organizations or facilities described in subsection 15 (a); or
 - (2) Affording another person or class of persons opportunity or protection so to participate; or

- (c) Any citizen because he/she is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, sex, religion, national origin, handicap or familial status, in any of the activities, services, organizations or facilities described in subsection 15 (a), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate:

Shall be fined not more than \$300.00, or imprisoned not more than 90 days, or both.

STATE OF NEW MEXICO
 County of Torrance
 I hereby certify that this instrument was
 filed for record on the 20 day
 of June A.D. 19 94
 at 12:57 o'clock P M and duly
 recorded in book 269 at page 230-239
 Witness my hand and Seal of office
Cecilia Clayton
 County Clerk Torrance Co., N.M.
Cecilia Clayton Deputy

