

LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 1993

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No. 11

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Introduced by Council Member Freed, the Speaker (Council Member Vallone), Council Members Horwitz, Pagan, DiBrienza, Duane, Eldridge, Esland, Fisher, Linares, Marshall, Robles, White, Millard, Cerullo, Robinson, Watkins, Spigner, Leffler, Koslowitz, Cruz, Fields, Rivera, and Michels; also Council Members Clarke, Alter, Malave-Dilan, Povman, Sabini, Williams, McCaffrey, Ward, Foster, Warden and Woolen.

**A LOCAL LAW**

**To amend the Administrative Code of the City of New York, in relation to remedies for incidents of bias-related violence and harassment in the human rights law.**

*Be it enacted by the Council as follows:*

Section 1. Section 8-101 of the city of New York, as amended by local law 39 for the year 1991, is hereby amended to read as follows:

§8-101 Policy. In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, 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, including those based on race, color, creed, age, national origin, 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, bias-related violence or harassment 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 from playing any role in actions relating to employments, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, [and] discrimination and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§2. Section 8-109 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

§8-109 Complaint, a. Any person aggrieved by an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter six of this title may,

by himself or herself or such persons 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 or act of discriminatory harassment or violence complained of, and the address of such person if known;(ii) set forth the particulars of the alleged unlawful discriminatory practice or act of discriminatory harassment or violence, 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 or an act of discriminatory harassment or violence as set forth in chapter six of this title.

(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 the jurisdiction over any complaint that has been filed more than one year after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title 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 in this chapter or an act of discriminatory harassment or violence as set forth in chapter six of this title 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 or an act of discriminatory harassment or violence as set forth in chapter six of this title 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 or an act of discriminatory harassment or violence as set forth in chapter six of this title 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 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 of decision by the commission.

§3. Subdivision d of section 8-113 of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

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 or an act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall dismiss the complaint as to such respondent.

§4. Subdivision a of section 8-116 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

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] respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter six of this title, 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.

§5. Section 8-120 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

§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 or any act of discriminatory harassment or violence as set forth in chapter six of this title, 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 and discriminatory harassment or violence. Such order shall require the respondent to take such affirmative action as, in the judgement 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 or act; 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 unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, or any necessary party and on any complainant who has not intervened an order dismissing the complaint as to such respondent.

§6. Section 8-122 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

§8-122 Injunction and temporary restraining order. At any time after the filing of a complaint alleging an unlawful discriminatory practice under this chapter or an act of discriminatory harassment or violence as set forth in chapter six of this title, 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 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 or act of discriminatory harassment or violence 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 or act of 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.

§7. Subdivision b of section 8-123 of the administrative code of the city of New York,

as amended by local law 39 for the year 1991, is hereby amended to read as follows:

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 or act of discriminatory harassment or violence as set forth in chapter six of this title 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 act of discriminatory harassment or violence or to take other affirmative action resides or transacts business.

§8. Section 8-126 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

§8-126 Civil penalties imposed by commission for unlawful discriminatory practices or acts of discriminatory harassment or violence, a. Except as otherwise provided in subdivision thirteen of section 8-107 of this chapter, in addition to any remedies and penalties set forth in subdivision a of section 8-120 of this chapter, where the commission finds that a person 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 where the commission finds that an act of discriminatory harassment or violence as set forth in chapter six of this title has occurred, the commission may, to vindicate the public interest, impose a civil penalty of not more than one hundred thousand dollars.

b. A [covered entity] respondent that is found liable for an unlawful discriminatory practice or act of discriminatory harassment or violence, as set forth in chapter six of this title, 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 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.

§9. Chapter 1 of title 8 of the administrative code of the city of New York, as amended by local law 39 for the year 1991, is hereby amended by this addition of a new section 8-131 to read as follows:

§8-131 Applicability. The provisions of this chapter which make acts of discriminatory harassment or violence as set forth in chapter 6 of this title subject to the jurisdiction of the commission shall not apply to act committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty.

§10. Subdivision a of section 8-502 of the administrative code of the city of New York, as added by the local law 39 for the year 1991, is hereby amended to read as follows:

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 or by an act of discriminatory harassment or violence as set forth in chapter six 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 or act of discriminatory harassment or violence. 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.

§11. Section 8-502 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended by the addition of a new subdivision e to read as follows:

e. The provisions of this section which provide a cause of action to persons claiming to be aggrieved by an act of discriminatory harassment or violence as set forth in chapter six of this title shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty.

§ 12. Subdivision d of section 8-502 of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby amended to read as follows:

d. A civil action commenced under this section must be commenced within three years after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter six of this title 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.

§ 13. Chapter six of title eight of the administrative code of the city of New York, as added by local law 39 for the year 1991, is hereby renamed and amended to read as follows:

#### CHAPTER 6

#### DISCRIMINATORY HARASSMENT OF VIOLENCE

§ 8-602 Civil action to enjoin discriminatory harassment or violence; 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] and such interference or attempted interference is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual orientation, age, whether children are, may or would be residing with such [person] victim, 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 be 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 local law of the city [because of the other person's] when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim'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] when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim'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] victim, 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 [fifth] one hundred 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 by the corporation counsel pursuant to this chapter shall be paid into the general fund of the city.

§ 14. This local law shall take effect immediately.

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 January 6, 1993, and approved by the Mayor on January 22 1993

CARLOS CUEVAS. City Clerk, Clerk of the City.