

ORDINANCE NO. 193

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA PROVIDING FOR A DECLARATION OF TOWN POLICY TO PROHIBIT DISCRIMINATION IN HOUSING ON THE BASIS OF RACE, COLOR, ANCESTRY, NATIONAL ORIGIN, RELIGION, SEX, MARITAL STATUS, FAMILIAL STATUS, HANDICAP, OR AGE; PROVIDING DEFINITIONS, DESIGNATING AS UNLAWFUL CERTAIN DISCRIMINATORY HOUSING PRACTICES IN THE SALE OR RENTAL OF HOUSING AS WELL AS IN ADVERTISING IN CONNECTION THEREWITH, IN THE FINANCING OF HOUSING, AND IN BROKERAGE SERVICES RELATED TO HOUSING; PROVIDING FOR CERTAIN EXEMPTIONS AND EXCEPTIONS; PROVIDING FOR AN ADMINISTRATOR TO BE DESIGNATED BY THE CHIEF ELECTED OFFICIAL AND PRESCRIBING THE GENERAL POWERS AND DUTIES OF SUCH ADMINISTRATOR; PRESCRIBING ACTION UPON A DETERMINATION OF PROBABLE CAUSE, AND AUTHORIZING THE PROMULGATION OF FORMS AND REGULATIONS; MAKING PROVISION FOR THE FILING OF COMPLAINTS AND RESPONSES THERETO, AND THE PROCESSING THEREOF BY THE ADMINISTRATOR; PROVIDING FOR ADDITIONAL REMEDIES; INFORMATION; PROHIBITING UNTRUTHFUL COMPLAINTS OR FALSE TESTIMONY; AND PROVIDING FOR PENALTIES FOR VIOLATION OF SUCH ORDINANCE.

SECTION 1. DECLARATION OF POLICY.

It is the policy of the Town of Cinco Bayou, in keeping with the laws of the United States of America and the spirit of the Constitution of the State of Florida, to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain housing of such person's choice in this City, without regard to race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age, and, to that end, to prohibit discrimination in housing by any person.

SECTION 2. DEFINITIONS.

The terms as used herein shall be defined as follows:

1. Administrator - That person appointed by the Chief Elected Official pursuant to Section 6 hereof;
2. Age - Unless the context clearly indicates otherwise, the work age as used herein shall refer exclusively to persons who are 18 years of age or older;
3. Discriminatory housing practice - An act that is unlawful under Section 4 hereof;
4. Family - One or more persons living together as a single housekeeping unit in a dwelling;
5. Handicap - A person who has a physical or mental impairment which substantially limits one or more major life activities, or who has a record of having, or is regarded as having, such physical or mental handicap, or a person who has a developmental disability as defined in F. S. 393.063;

6. Familial Status - Is established when an individual who has not obtained the age of 18 years is domiciled with: (1) a parent or other person having legal custody of such individual, or (2) a designee of a parent or other person having legal custody, with the written permission of such parent or other person;
7. Housing or housing accommodation - Any building, structure, or portion thereof, mobile home or trailer, or other facility 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, mobile home or trailer or other facility;
8. Lending Institution - Any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money, guaranteeing loans, or sources of credit information, including but not limited to credit bureaus;
9. Owner - Any person, including but not limited to a lessee, sublessee, assignee, manager, or agent, and also including the Town and its departments or other sub-units, having the right of ownership or possession or the authority to sell or lease any housing accommodation;
10. Person - One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mortgage companies, joint stock companies, trusts, unincorporated organizations, or public corporations, including but not limited to the Town or any department or sub-unit thereof;
11. Real Estate Agent - Any real estate broker, any real estate salesman, or any other person, employee, agent, or otherwise; engaged in the management or operation of any real property;
12. Real Estate Broker or Salesman - A person, whether licensed or not, who for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself or herself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these;
13. Real Estate Transaction - Includes the sale, purchase, exchange, rental or lease of real property, and any contract pertaining thereto;
14. Rent - Includes lease, sublease, assignment and/or rental, including any contract to do any of the foregoing, or otherwise granting for a consideration the right to occupy premises that are not owned by the occupant;
15. Respondent - Any person against whom a complaint is filed pursuant to this ordinance;
16. Sale - Includes any contract to sell, exchange, or to convey, transfer or assign legal or equitable title to, or a beneficial interest in real property.

SECTION 3. UNLAWFUL HOUSING PRACTICES.

(1) Unlawful housing practices - Sale or Rental and Advertising in connection therewith.

Except as provided in Section 4 hereof, it shall be unlawful and a discriminatory housing practice for an owner, or any other person engaging in a real estate transaction, or for a real estate broker, as defined in this ordinance, because of race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age:

1. To refuse to engage in a real estate transaction with a person or otherwise make unavailable or rent housing to any person;
2. To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith, or because of such person's exercise of his or her right to free association;
3. To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
4. To refuse to negotiate for a real estate transaction with a person;
5. To represent to a person that housing is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to such person's attention, or refuse to permit him or her to inspect the housing;
6. To steer any person away from or to any housing;
7. To make, print, publish, circulate, post, mail, or cause to be made, printed, published or circulated, any notice, statement, advertisement or sign, or to use a form of application or photograph for a real estate transaction or, except in connection with a written affirmative action plan, to make a record or oral written inquiry in connection with a prospective real estate transaction, which indicates directly or indirectly an intent to make a limitation, specification, or discrimination with respect thereto;
8. To offer, solicit, accept, use or retain a listing of housing with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;
9. To induce or attempt to induce any person to transfer an interest in any housing by representation regarding the existing or potential proximity of housing owned, used or occupied by any person protected by the terms of this ordinance;
10. To make any misrepresentations concerning the listing for sale or rental, or the anticipated listing for sale or rental or the sale or rental of any housing in any area in the Town for the purpose of inducing or attempted to induce any such listing or any of the above transactions;
11. To retaliate or discriminate in any manner against any person because of his or her opposing a practice declared unlawful by this ordinance, or because he or she has filed a complaint,

testified, assisted or participated in any manner in any investigation, proceeding or conference under this ordinance;

12. To aid, abet, incite, compel, or coerce any person to engage in any of the practices prohibited by the provisions of this ordinance, or to obstruct or prevent any person from complying with the provisions of this ordinance, or any conciliation agreement entered into thereunder;
13. By canvassing to compel any unlawful practices prohibited by the provisions of this ordinance;
14. Otherwise to deny to, or withhold, any housing accommodations from a person;
15. To promote, induce, influence or attempt to promote, induce or influence by the use of postal cards, letters, circulars, telephone, visitation or any other means, directly or indirectly, a property owner, occupant, or tenant to list for sale, sell, remove from, lease, assign, or otherwise dispose of any housing by referring as a part of a process or pattern of inciting neighborhood unrest, community tension, or fear of racial, color, religious, nationality or ethnic change in any street, block, neighborhood, or any other area, to the race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap or age, of actual or anticipated neighbors, tenants or other prospective buyers of any housing;
16. To cause to be made any untrue or intentionally misleading statement or advertisement, or in any other manner, attempt as part of a process or pattern of inciting neighborhood unrest, community tension or fear of racial, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age, or ethnic change in any street, block, neighborhood, or any other area, to obtain a listing of any housing for sale, rental, assignment, transfer or other disposition where such statement, advertisement or other representation is false or materially misleading, or where there is sufficient basis to judge its truth or falsity to warrant making the statement or to make any other material misrepresentations in order to obtain such listing, sale, removal from, lease, assignment, transfer or other disposition of said housing;
17. To place a sign or display any other device either purporting to offer for sale, lease, assignment, transfer or other disposition or tending to lead to the belief that a bona fide offer is being made to sell, lease, assign, transfer or otherwise dispose of any housing that is not in fact available or offered for sale, lease, assignment, transfer or other disposition.

(1) Unlawful housing practices - Financing

It shall be unlawful and a discriminatory housing practice for any lending institution, as defined herein, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining housing, or to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age of such person or of any person associated with such person in connection with such loan or other financial assistance or for purposes of such loan or other assistance, or of the present or prospective owners, lessees, tenants or occupants of the housing in relation to which such loan or other financial assistance is to be made or given; provided, that nothing contained in the subsection shall impair the scope or effectiveness of the exceptions contained in Section 4 of this ordinance.

(2) Unlawful housing practices - Brokerage Services

It shall be unlawful and a discriminatory housing practice to deny any person access to or membership or participation in any multiple listing service, organization, or facility related to the business of selling or renting housing, or to discriminate against such person in the terms or conditions of such access, membership or participation because of race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age.

(3) Nothing in Section 4 hereof shall be construed to require any person renting or selling a dwelling to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

Section 4. EXEMPTIONS AND EXCEPTIONS.

(1) Nothing contained in Section 3 hereof shall prohibit a religious organization, association, or society, or any nonprofit charitable or educational institution or organization operated, supervised or controlled by, or in conjunction with, a religious organization, association, or society, from limiting or from advertising the sale, rental or occupancy of housing which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. 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 lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(2) Nothing in Section 3 hereof, other than subsection (g) of subsection (1) thereof, 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 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 such owner's behalf, under any express or voluntary agreement, title to or any rights 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 owner sells or rents such housing: (1) 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 housing, or of any employee or agency of any such broker, agent, salesperson, or person, and (2) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (g) of subsection (1) of Section 3 hereof, 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 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 such owner's residence, provided that the owner sells or rents such rooms

or units: (1) 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 business of selling or renting housing, or of any employee or agency of any such broker, agent salesperson, or person, and (2) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (g) of subsection (1) of Section 3 hereof, 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. For the purpose of this subsection (2), a person shall be deemed to be in the business of selling or renting housing if: (1) he has, within the preceding twelve months, participated as principal, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in three or more transactions involving the sale or rental of any housing 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 housing or any interest therein; or (3) he is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(1) Nothing in Section 3 hereof shall be construed to:

1. bar any person from restricting sales, rentals, leases or occupancy, or from giving preference, to persons of a given age for bona fide housing intended solely for minors;
2. make it an unlawful act to require that a person have legal capacity to enter into a contract or lease;
3. bar any person from advertising or from refusing to sell or rent any housing which is planned exclusively for, and occupied exclusively by, individuals of one sex, to any individual of the opposite sex;
4. bar any person from selling, renting, or advertising any housing which is planned exclusively for, and occupied exclusively by, unmarried individuals to unmarried individuals only;
5. bar any person from advertising or from refusing to sell or rent any housing which is planned exclusively for married couples without children or from segregating families with children to special units of housing;
6. bar any person from refusing to sell or rent any housing to unmarried individuals cohabiting contrary to law;
7. bar any person from refusing a loan or other financial assistance to any person whose life expectancy, according to generally accepted mortality tables, is less than the term for which the loan is requested.

SECTION 5. ADMINISTRATOR - AUTHORITY AND RESPONSIBILITIES:

(1) Chief Elected Official to Appoint.

The authority and responsibility for administering this ordinance shall be vested in the Chief elected Official who shall appoint an administrator.

(2) General Powers and Duties.

The administrator shall:

1. Receive written complaints as hereinafter provided in Section 6 relative to alleged unlawful acts under this ordinance when a complainant seeks the administrator's good office to conciliate;
2. Upon receiving a written complaint, make such investigations as the administrator deems appropriate to ascertain facts and issues;
3. Utilize methods of persuasion, conciliation, and mediation or information for adjustment of grievances;
4. Establish, administer or review programs at the request of the Chief Elected Official and make reports on such programs to the Chief Elected Official;
5. Bring to the attention of the Chief Elected Official items that may require the Town Council's notice or action to resolve;
6. Render to the Chief Elected Official annual written reports of his activities under the provisions of this ordinance along with such comments and recommendations as he may choose to make;
7. Cooperate with and render technical assistance to federal, state, local, and other public and private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this ordinance.

(1) Determination of Probable Cause.

Whenever the administrator determines that there is probable cause to believe that there has been a violation of the provisions of this ordinance, but only after having fully processed the complaint in which such violation is alleged in the manner hereinafter provided, he shall refer the matter, along with the facts he has gathered in his investigations, to the proper City, State or Federal authorities for appropriate legal action.

(2) Promulgation of Forms and Regulations.

The administrator shall promulgate, publish and distribute the necessary forms, rules, and regulations to implement the provisions of this ordinance.

SECTION 6. COMPLAINTS

(1) A person who claims that another person has committed a discriminatory housing practice against him may report that offense to the administrator by filing an informal complaint within sixty (60) days of the date of the alleged discriminatory housing practice and not later.

(2) The administrator shall treat a complaint referred by the Secretary of Housing and

Urban Development or the Attorney General of the United States under the Fair Housing Act of 1968, Public Law 90-284, as an informal complaint filed under subsection (1).

(3) An informal complaint must be in writing, verified or affirmed, on a form to be supplied by the administrator and shall contain the following:

1. identity and address of the offending party;
2. date of the offense and date of filing the informal complaint;
3. general statements of facts of the offense including the basis of the discrimination (race, color, ancestry, national origin, religion, sex, marital status, familial status, handicap, or age);
4. name and signature of the complainant.

(1) Each complaint shall be held in confidence by the administrator unless and until the complainant and the offending party(ies) consent in writing that it shall be public.

(2) Within fifteen (15) days after the filing of the informal complaint, the administrator shall transmit a copy of the same to each respondent named therein by certified mail, return receipt requested. Thereupon, the respondent(s) may file a written, verified, informal answer to the informal complaint within twenty (20) days of the date of receipt of the informal complaint.

(3) An informal complaint or answer may be amended at any time, and the administrator shall furnish a copy of each amended informal complaint or answer to the offending party(ies) or complainant, respectively, as promptly as practicable.

(4) The administrator shall assist complainants or offending parties when necessary in the preparation and filing of informal complaints or answers or any amendments thereto.

SECTION 7. PROCESSING COMPLAINTS

(1) Within thirty (30) days after the filing of an informal complaint, the administrator shall make such investigations as he deems appropriate to ascertain facts and issues. If the administrator shall deem that there are reasonable grounds to believe that a violation has occurred and can be resolved by conciliation, he shall attempt to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done in the course of the informal conference with the individuals to resolve the dispute may be made public or used as evidence in a subsequent proceeding by either party without the written consent of both the complainant and the offending party(ies). The administrator or any employee of the administrator who shall make public any information in violation of this provision shall be deemed guilty of a violation of a Town ordinance and shall be subject to penalty as set forth in Section 11 of this ordinance.

(2) If the parties desire to conciliate, the terms of the conciliation shall be in writing in the form approved by the administrator and must be signed and verified by the complainant and the offending party(ies) and approved by the administrator. The conciliation agreement is for conciliation

purposes only and does not constitute an admission by any party that the law has been violated.

(3) If the administrator deems that there is not probable cause to believe that a particular alleged discriminatory housing practice has been committed, the administrator shall take no further action with respect to the alleged offense.

(1) If the administrator, with respect to any matter which involves a contravention of this ordinance: a. fails to conciliate a complaint after the parties in good faith have attempted such conciliation; or b. determines that the violation alleged in the complaint cannot be resolved by conciliation, he shall notify both the complainant and the offending party(ies) within thirty (30) days of the failure or the determination, and he shall proceed as provided in Paragraph (3) of Section 5 herein above.

SECTION 8. ADDITIONAL REMEDIES.

The procedures prescribed by this ordinance do not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this ordinance shall be deemed to modify, impair or otherwise affect any right or remedy conferred by the Constitution or laws of the United States or the State of Florida, and the provisions of this ordinance shall be in addition to those provided by such other laws.

SECTION 9. EDUCATION AND PUBLIC INFORMATION.

The administrator may conduct educational and public informational activities that are designed to promote the policy of this ordinance.

SECTION 10. UNTRUTHFUL COMPLAINTS OR TESTIMONY.

It shall be a violation of this ordinance for any person knowingly and willfully to make false or untrue statements, accusations or allegations in a complaint filed hereunder or to give false testimony concerning violations of this ordinance.

SECTION 11. PENALTY.

Any person who violates any provisions of this ordinance shall be subject, upon conviction, to a fine up to but not exceeding the sum of Five Hundred Dollars (\$500.00), or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

SECTION 12. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decisions shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional, and all ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

PASSED FIRST READING BY THE TOWN COUNCIL THIS 13TH OF JUNE, 2002.

PASSED BY TOWN COUNCIL ON FINAL READING AFTER FULL PUBLIC HEARING THIS 11th DAY OF July, 2002.

ADOPTED THIS 13th DAY OF JUNE 2002

APPROVED:

Sara H. Carroll
Sara Carroll, Mayor



ATTEST:

Nell Webb
Nell Webb, Town Manager/Clerk