

Be it remembered that at a regular meeting of the Luna County Board of Commissioners in Deming, New Mexico, on the 7<sup>th</sup> day of April, 2016, the following among the proceedings were had and entered of record.

RESOLUTION NO. 16-24  
AUTHORIZATION AND APPROVING THE  
IMPLEMENTATION OF A FAIR HOUSING POLICY  
IN LUNA COUNTY

WHEREAS, this resolution is a requirement for funding through the Community Development Block Grant program;

NOW, THEREFORE, let it be known that the County of Luna will abide by the following fair housing mandate.

Section 1. POLICY

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

Section 2. DEFINITIONS

- A. "Aggrieved Person" includes any person who:
  - 1. Claims to have been injured by a discriminatory housing practice; or
  - 2. Believes that they will be injured by a discriminatory housing practice that is about to occur.
  
- B. "Chief Elected Official" means the person who holds the highest elected position of the local unit of government and who is signatory to the Small Cities Community Development Block Grant agreement with the Local Government Division.
  
- C. "Complainant" means the person (including the chief elected official) who files a complaint under Section 10.
  
- D. "Discriminatory housing practice" means an act that is unlawful under Section 4, 5, or 6 of this resolution.
  
- E. "Dwelling" means any building, structure or portion thereof which is occupied as, designed or intended for occupancy as a residence by one or more families, and any vacant land that

is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

- F. "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with –
1. A parent or another person having legal custody of such individual or individuals; or
  2. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant, or is in the process of securing legal custody of any individual who has not attained the age of 18 years.
- G. "Family" includes a single individual.
- H. "Handicap" means, with respect to a person –
1. A physical or mental impairment which substantially limits one or more of such person's major life activities.
  2. A record of having such an impairment; or
  3. Being regarded as having such an impairment, but such term does not include current illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act [21 U.S.C. 802]).
- I. "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts and unincorporated organizations, and trustees, trustees in bankruptcy, receivers, and fiduciaries.
- J. "Respondent" means –
1. The person or other entity accused in a complaint of an unfair housing practice; and
  2. Any other person or entity identified in the course of investigation and notified as required with respect to respondents so identified under Section 10.
- K. "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.

Section 3. UNLAWFUL PRACTICE

Subject to the provisions of Section 3(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 Section 3(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. 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 that the bona fide private individual owner does not own any interest in, nor is there any interest owned or reserved on his behalf, under any express or voluntary agreement, title to, or 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. The sale or rental of any such single-family house shall be excepted from the application of this resolution only if such house is sold or rented, without the use in any manner of the sales/rental facilities or the sales/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. This further includes any employee or agent of any such broker, agent, salespersons, as well as the publication, posting or mailing of any advertisement or written notice that would be in violation of Section 4(C) of this resolution. Nothing in this proviso 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 contained living quarters occupied or intended to be occupied by no more than four families living independently or each other, if the owner actually maintains and occupies one of such living quarters as their residence.
- C. For the purposes of Section 3(B), a person shall be deemed to be in the business of selling or renting dwellings if:
  1. they have, 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. they have, within the preceding twelve months, participated as agent, other than in the sale of their 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. they are 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, religion, sex, handicap, familial status, national origin, or sexual orientation.
- 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, religion, sex, handicap, familial status, national origin, or sexual orientation.
- 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 to discrimination based on race, color, religion, sex, handicap, familial status, national origin, or sexual orientation or an intention to make any such preference, limitation or discrimination.
- D. To represent to any person because of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation 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, religion, sex, handicap, familial status, national origin, or sexual orientation.

#### Section 5. DISCRIMINATION IN RESIDENTIAL REAL ESTATE –RELATED TRANSACTIONS

- A. In general, it shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

- B. Definition – As used in this Section, the term “residential real estate-related transaction” means any of the following:
1. The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling, or secured by residential real estate.
  2. The selling, brokering or appraising of residential real property.
- C. Appraisal Exemption – Nothing in this resolution prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

#### 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 them in the terms or conditions of such access, membership or participation because of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation.

#### Section 7. EXEMPTION

Nothing in this resolution 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 with regard to race, color, national origin, handicap, or sexual orientation. Nor shall anything in this resolution 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 resolution shall be in the chief elected official of the County of Luna.
- B. The chief elected official may delegate any of these functions, duties and powers to employees of the County of Luna or to boards having expertise and experience in administering housing policies, 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 resolution. From this point forward in this document, "chief elected official" refers to the chief elected official or his/her designee.

- C. All departments and agencies under the auspices of the County of Luna shall administer their programs and activities relating to housing and community development in a manner affirmatively to further the purposes of this resolution and shall cooperate with the chief elected official to further such purposes.

#### Section 9. EDUCATION AND CONCILIATION

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

#### Section 10. ENFORCEMENT.

- A. Any person who claims to have been injured by a discriminatory housing practice or who believes that they will be irrevocably injured by a discriminatory housing practice that is about to occur (hereafter "aggrieved person") may file a complaint with the chief elected official. Complaints shall be in writing and shall contain such information, and be in such form, as the chief elected official requires. Upon receipt of such a complaint, the chief elected official shall furnish a copy of the same to the person or persons, who have committed, or are 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 reference under Section 10(C), the chief elected official shall investigate the complaint and give notice in writing to the aggrieved person whether they intend to resolve it. If the chief elected official decides 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 resolution without the written consent of the persons concerned. Any employee of the chief elected official 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 \$1,000 or imprisoned not more than one year.
- B. A complaint under Section 10(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 and with the leave of the chief elected official, 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 chief elected official and the same has been unable to obtain voluntary compliance with this resolution, the aggrieved person may, within thirty days thereafter, file a complaint with the Secretary of the Department of Housing and Urban Development. The chief elected official will assist in this filing.
- D. If the chief elected official has been unable to obtain voluntary compliance within thirty days of the complaint, the aggrieved person may, within thirty days thereafter commence a civil action in any appropriate court, against the respondent named in the complaint, to enforce the rights granted or protected by this resolution, 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 complainant.
- F. Whenever an action filed by an individual comes to trial, the chief elected official shall immediately terminate all efforts to obtain voluntary compliance.

#### SECTION 11. INVESTIGATIONS/SUBPOENAS/GIVING OF EVIDENCE.

- A. In conducting an investigation, the chief elected official 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 or the investigation, provided, however, that the chief elected official first complies with the provisions of the Fourth Amendment relating to unreasonable searches and seizures. The chief elected official 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 chief elected official may administer oaths.
- B. Upon written application to the chief elected official, a respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the chief elected official to the same extent and subject to the same limitations as subpoenas issued by the chief elected official. 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 their request.

- C. Witnesses summoned by subpoena of the chief elected official shall be entitled to the same witness and mileage fees, as are witnesses in proceedings in United States District Courts. Fees payable to a witness summoned by a subpoena issued at the request of a respondent shall be paid by the respondent.
- D. Within five days after service of a subpoena upon any person, such person may petition the chief elected official to revoke or modify the subpoena. The chief elected official 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 a refusal to obey a subpoena, the chief elected official or other person at whose request it was issued, may petition for its enforcement in the municipal 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 chief elected official shall be fined not more than \$1,000 or imprisoned not more than one year or both. Any person who, with intent thereby to mislead the chief elected official, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the chief elected official pursuant to his 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 \$1,000 or imprisoned not more than one year, or both.
- G. The attorney of record to the County of Luna shall conduct all litigation in which the chief elected official participates as a party or as amicus pursuant to this resolution.

#### SECTION 12. ENFORCEMENT BY PRIVATE PERSONS.

- A. The rights granted by Sections 3, 4, 5, and 6 may be enforced by civil actions in the appropriate United States district, state or local court. 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 chief elected official are likely to result in satisfactory settlement of the alleged discriminatory housing practice complained of in the complaint made to the chief elected official 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 resolution and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the filing of a complaint or civil action under the provisions of this resolution 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 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 INTIMINATION.

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 exercised or enjoyed, 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 of this resolution. This Section may be enforced by appropriate civil action.

#### SECTION 14. SEPARABILITY OF PROVISIONS.

If any provision of this resolution or the application thereof to any person or circumstances is held invalid, the remainder of the resolution 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 their race, color, religion, sex, handicap, familial status, national origin, or sexual orientation and because they are or have 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 they are or have been, or in order to intimidate such person or any other person or any class of persons from:

1. Participating, without discrimination because of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation or 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 they are or have 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, religion, sex, handicap, familial status, national origin, or sexual orientation 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 \$1,000, or imprisoned not more than one year or both; and if bodily injury results shall be fined not more than \$10,000, or imprisoned not more than ten years or both; and if death results, shall be subject to imprisonment for any term of years or for life and/or to other applicable local/state/federal laws.

NOW, THEREFORE, be it resolved that the Luna County Board of Commissioners have authorized a fair housing policy for Luna County, as required by the Community Development Block Grant rules and regulations.

Done at Deming, New Mexico this 7<sup>th</sup> day of April, 2016.

LUNA COUNTY BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Joe L. Milo, Jr., Member

  
\_\_\_\_\_  
Linda M. Smrkovsky, Member

  
\_\_\_\_\_  
R. Javier Diaz, Chairman

ATTEST:  
  
\_\_\_\_\_  
Andrea Rodriguez, County Clerk

