

CITY OF BRADENTON, FLORIDA, ORDINANCE NO. 2641

AN ORDINANCE OF THE CITY OF BRADENTON, FLORIDA, AMENDING, IN PART, ARTICLES I AND II OF CHAPTER 46 OF THE CODE OF ORDINANCES OF THE CITY OF BRADENTON, AS AMENDED BY ORDINANCE NO. 2592, IN ACCORDANCE WITH THE PROVISIONS OF TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, AS AMENDED BY THE FAIR HOUSING AMENDMENTS ACT OF 1988 (THE FAIR HOUSING ACT), AND AS FURTHER AMENDED BY THE HOUSING FOR OLDER PERSONS ACT OF 1995; PROVIDING FOR EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, AS FOLLOWS:

WHEREAS, the City Council of the City of Bradenton finds that in the City of Bradenton, with its population consisting of people of both sexes, married and unmarried, the physically and mentally disabled and people of every race, age, color, creed, national origin, and ancestry, of different education, social and economic status, the existence of people in groups prejudiced against each other and antagonistic to each other because of these differences is of great danger to the health, morals, safety and welfare of the City and its inhabitants; and

WHEREAS, the City Council of the City of Bradenton finds that Ordinance No. 2592 should be amended in order that the City's Fair Housing Ordinance complies with the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendment of 1988 (the Fair Housing Act), and as amended by the Housing for Older Persons Act of 1995; and

WHEREAS, the City Council of the City of Bradenton declares that the provisions of Ordinance No. 2592, as amended by this Ordinance, shall serve the dual purposes of providing for execution within the City of the policies embodied in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments of 1988 (the Fair Housing Act), and as further amended by the Housing for Older Persons Act of 1995, and of securing for all individuals within the City the freedom from discrimination because of race, color, religion, national origin, sex, familial status, or handicap, in connection with housing.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the City Council of the City of Bradenton, Florida, in session duly assembled that Articles I and II of Chapter 46 of the Code of Ordinances of the City of Bradenton are hereby amended, in part, as follows:

Section 1. Article I, Section 46-2, Definitions, Respondent, of Chapter 46 of the Code of Ordinances of the City of Bradenton is hereby amended in its entirety to read as follows:

"Respondent means the person accused of a violation of a provision of this Chapter, and any person identified as an additional or substitute respondent and an agent of an additional or substitute respondent."

Section 2. Article II, Section 46-32(1)(c), Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(c) This section does not prohibit conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)."

Section 3. Article II, Section 46-32(5)(c)3.c., Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"3.c. All premises within the dwelling contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathrooms to allow later installation of grab bars; and usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space. Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, is sufficient to satisfy the requirements of this subsection c. (Reference: Fair Housing Act, Section 3604(f)(3))."

Section 4. Article II, Section 46-32(9)(a), Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(9)(a) This Ordinance shall not affect or supersede any reasonable restriction imposed by law or rule on the maximum number of occupants permitted to occupy a dwelling."

Section 5. Article II, Section 46-33(3), Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended in its entirety as follows:

"(3) Housing for elderly exempted.

(a) The provisions of Section 46-32 relating to familial status do not apply to housing intended for, and occupied solely by, persons 62 years of age or older. Such housing qualifies for this exemption even though:

1. There were persons residing in such housing on September 13, 1988, who were under 62 years of age, provided that all those who became occupants after September 13, 1988, are persons 62 years of age or older;

2. There are unoccupied units, provided that all such units are reserved for occupancy by persons 62 years of age or older;

3. There are units occupied by employees of the housing, and family members residing in the same unit, who are under 62 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The provisions of Section 46-32 relating to familial status shall not apply to housing intended and operated for persons 55 years of age or older. Housing qualifies for this exemption if:

1. The alleged violation occurred before December 28, 1995 and the housing community or facility complied with the U.S. Department of Housing and Urban Development regulations in effect at the time of the alleged violation; or

2. The alleged violation occurred on or after December 28, 1995 and the housing community or facility complies with:

i. Section 807(b)(2)(c) (42 U.S.C. 3607(b)) of the Fair Housing Act as amended; and

ii. Section 46-33(3)(c), (d) and (e), of this Ordinance.

For purposes of this subsection, *housing facility or community* means any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to:

- (1) a condominium association;
- (2) a cooperative;
- (3) a property governed by a homeowners' or resident association;
- (4) a municipally zoned area;
- (5) a leased property under common private ownership;
- (6) a mobile home park; and
- (7) a manufactured housing community.

For purposes of this subsection, *older person*, means a person 55 years of age or older.

(c) 1. In order for a housing facility or community to qualify as housing for older persons under Section 46-33(3)(b), at least 80% of its occupied units must be occupied by at least one person 55 years of age or older.

2. For purposes of this subsection, *occupied unit* means:

i. a dwelling unit that is actually occupied by one or more persons on the date that the exemption is claimed; or

ii. a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

3. For purposes of this subsection, *occupied by at least one person 55 years of age or older* means that on the date the exemption for housing

designed for persons who are 55 years of age or older is claimed:

i. at least one occupant of the dwelling unit is 55 years of age or older; or

ii. if the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date on which the unit was temporarily vacated was 55 years of age or older.

4. Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25% of the units are occupied. For purposes of this section, newly constructed housing includes a facility or community that has been wholly unoccupied for at least 90 days prior to reoccupancy due to renovation or rehabilitation.

5. Housing satisfies the requirements of this section even though:

i. On September 13, 1988, under 80% of the occupied units in the housing facility or community are occupied by at least one person 55 years of age or older, provided at least 80% of the units occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

ii. There are unoccupied units, provided that at least 80% of the occupied units are occupied by at least one person 55 years of age or older.

iii. There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age, provided the employee performs substantial duties related to the management or maintenance of the facility or community.

iv. There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents as required by Section 46-32 and who are under the age of 55 years of age.

v. For a period expiring one year from the effective date of this final regulation, there are insufficient units occupied by at least one person 55 years of age or older, but the housing facility or community, at the time the exemption is asserted:

(aa) has reserved all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80% of the units are occupied by at least one person who is at least 55 years of age or older; and

(bb) meets the requirements of Section 46-33(3)(b), (d), and (e).

6. For purposes of the transition provision described in Section 46-33(3)(c)5., a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children who reside in the facility or community in order to achieve occupancy of at least 80% of the occupied units by at least one person 55 years of age or older.

7. Where application of the 80% rule results in a fraction of a unit that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

8. Each housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person 55 years of age or older, so long as the housing facility or community complies with the provisions of Section 46-33(3)(d).

(d) 1. In order for a housing facility or community to qualify as housing designed for persons who are 55 years of age or older, it must publish and adhere to policies and procedures that demonstrates its intent to operate as housing for persons 55 years of age or older. The following factors, among others, are considered relevant in determining whether the housing facility or community has complied with this requirement:

i. The manner in which the housing facility or community is described to prospective residents;

ii. Any advertising designed to attract prospective residents;

iii. Lease provisions;

iv. Written rules, regulations, covenants, deed or other restrictions;

v. The maintenance and consistent application of relevant procedures;

vi. Actual practices of the housing facility or community; and

vii. Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

2. Phrases such as "adult living", "adult community", or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

3. If there is language in deed or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older housing, the office of community relations shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section in conjunction with other evidence of intent.

4. A housing facility or community may allow occupancy by families with children as long as it meets the requirements of (3)(c) and (3)(d)1. of this Section.

(e) 1. In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this Ordinance, verification of compliance with (3)(c) through reliable surveys and affidavits.

2. A facility or community shall within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of

each unit, including the identification of whether one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

3. The procedures described in subsection 2. must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years. A survey may include information regarding whether any units are occupied by persons described in (3)(c)5.i, iii, and iv.

4. Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community:

- i. Driver's license;
- ii. Birth certificate;
- iii. Passport;
- iv. Immigration Card;
- v. Military identification;
- vi. Any other state, local, national or international official document containing a birth date of comparable reliability; or
- vii. A certification in a lease, application, affidavit, or other document signed by any member of a household age 18 or older asserting that at least one person in the unit is 55 years of age or older.

5. A facility or community shall consider any one of the forms of verification identified above as adequate for verification of age, provided that it contains specific information about current age or date of birth.

6. The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this section.

7. If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person 55 years of age or older. Such evidence may include:

i. Government records or documents, such as a local household census;

ii. Prior forms or applications; or

iii. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

8. Survey and verification procedures which comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

9. A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(f) 1. A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified for a housing for older persons exemption under this subpart.

2. i. A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies for a housing for older persons exemption.

ii. Before the date on which the discrimination is claimed to have occurred, a community or facility, through its authorized representatives, must certify, in writing and under oath or affirmation, to the person subsequently claiming the defense that it complies with the requirements for such an exemption as housing for persons 55 years of age or older in order for such person to claim the defense.

iii. For purposes of this section, an authorized representative of a housing facility or community means the individual, committee, management company, owner, or other entity having the responsibility for adherence to the requirements established by this subpart.

iv. For purposes of this section, a person means a natural person.

v. A person shall not be entitled to the good faith defense if the person has actual knowledge that the housing facility or community does not, or will not, qualify as housing for persons 55 years of age or older. Such a person will be ineligible for the good faith defense regardless of whether the person received the written assurance described in paragraph 2 of this section."

Section 6. Article II, Section 46-34(2)(b), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended in its entirety as follows:

"(b) A complaint shall be in writing, in the form prescribed by the community relations board, shall allege the discriminatory housing practice, and shall be executed under oath or affirmation."

Section 7. Article II, Section 46-34(3)(a), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended in its entirety as follows:

"(a) Serve the complainant or aggrieved person notice that the complaint has been filed, and advise the complainant or aggrieved person of the time limits and choice of forums under this section".

Section 8. Article II, Section 46-34(3)(b)2, of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"2. A copy of the original complaint and any amended complaints."

Section 9. Article II, Section 46-34(5)(d), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(d) If the office of community relations is unable to complete an investigation, make a determination regarding probable cause, issue a charge or dismiss the complaint, or make a final administrative disposition of a complaint within the time periods prescribed in subsection (c) of this subsection, the office of community relations shall notify the complainant, aggrieved person, and respondent in writing of the reasons for the delay."

Section 10. Article II, Section 46-34(14)(b), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(b) The person making the election shall give written notice thereof within 20 days after the date of receipt by the electing person of service of a copy of the charge or, in the case of the community relations board, not later than 20 days after the charge was issued. Such notice of election shall be given to the office of community relations and to all other complainants, aggrieved persons, and respondents to whom the complaint relates."

Section 11. Article II, Section 46-34(16)(b), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(b) The community relations board shall, in every case, arrange for the hearing to be conducted by the hearing office from the state division of administrative hearings. The hearing shall commence no later than 120 days following the issuance of the charge, unless it is impractical to do so. If the hearing officer is unable to commence the hearing officer shall notify the Director, the aggrieved person on whose behalf the charge is filed, and the respondent, in writing of the reasons for not doing so."

Section 12. Article II, Section 46-34(16), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended to add a subsection (h), as follows:

"(h) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued."

Section 13. Article II, Section 46-35(2)(b), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(b) After a finding that a particular charge has been sustained, the community relations board may assess a civil penalty against the respondent in an amount that does not exceed:

1. Eleven thousand dollars if the respondent has not been adjudged by order of the community relations board or a court to have committed a prior discriminatory housing practice;

2. Except as provided in subsection (2)(c) of this section, \$27,500.00 if the respondent has been adjudged by order of the community relations board or a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charge; and

3. Except as provided by subsection (2)(c) of this section, \$55,000.00 if the respondent has been adjudged by order of the community relations board or a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge."

Section 14. Article II, Section 46-35(3)(b), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by Ordinance No. 2592, is hereby amended as follows:

"(b) An aggrieved person may file an action regardless of whether he or she has filed a complaint, and regardless of the status of any complaint filed under this section, unless:

1. The office of community relations has obtained a conciliation agreement with the consent of the aggrieved person; or

2. An administrative law judge has commenced a hearing on the record with respect to the charge."

Section 15. Article II, Section 46-35(3), of Chapter 46 of the Code of Ordinances of the City of Bradenton, as amended by

Ordinance No. 2592, is hereby amended to add a subsection (e), as follows:

"(e) If a complainant or respondent is unable to pay the costs of an attorney, the court may appoint an attorney on behalf of the complainant or respondent or authorize the commencement or continuation of the civil action without payment of fees, costs, or security, if in the opinion of the court such person is financially unable to bear the costs of such action."

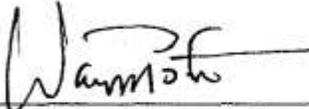
Section 16. Effective Date. This Ordinance shall take effect on the 13th day of December, 2000.

PASSED AND DULY ADOPTED, by an affirmative vote of not less than a majority of the total membership of the City Council of the City of Bradenton, Florida, this 13th day of December 2001.

ATTEST: CARL CALLAHAN
City Clerk

CITY OF BRADENTON, FLORIDA, BY
AND THROUGH THE CITY COUNCIL
OF THE CITY OF BRADENTON

By: 
Clerk/Deputy Clerk

By: 
Wayne H. Poston, Mayor

~~First Publication:~~ _____, 2000
~~First Public Hearing:~~ ^{READING} November 29, 2000
~~Second Publication:~~ ^{FIRST} December 3, 2000
~~Second Public Hearing:~~ December 13, 2000

