Payson
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MEMORANDUM

Date: October 16, 2014

To: Mayor and Council Members

From: Tim Wright, Town Attorney

Re: Systematic Town Code Review – Title IX, CHAPTER 96: FAIR HOUSING STANDARDS (Ordinance 858/Resolution 2803)

This is part 13 of the Systematic Town Code Review. Chapter 96 (Fair Housing Standards) has been reviewed and changes recommended. The only substantive change for the entire chapter is that the reference to the Town's "enforcement committee" has been eliminated. I have spoken with several staff members who have confirmed that such a committee has never existed. Because most fair housing issues are handled at either the State or Federal level, such a committee would be unnecessary today. Therefore, the reference to this committee has been eliminated. All other changes are non substantive in nature. Insertions are noted with a double underline and deletions are noted by strikeout.

96.01 DECLARATION OF POLICY.

It is declared to be among the civil rights of the people of the Town of Payson to be free from discrimination in housing, and is to be contrary to the policy of the town and unlawful to discriminate against any person because of sex, race, color, creed, national origin or ancestry in housing.

§ 96.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply, unless the context clearly indicates or requires a different meaning.

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DISCRIMINATE or DISCRIMINATION. To make, directly or indirectly, any distinction with respect to any person or persons based on sex, race, color, religion or national origin or ancestry.

FINANCIAL INSTITUTION. Any person as defined herein engaged in the business of lending money or guaranteeing losses.

HOUSING.

(1) Any parcel of real property or lands, or any interest therein, whether contiguous or noncontiguous, located in the town, used for the building or the placing of one or more housing or rooming units owned by, or otherwise subject to the control of, one or more persons.

(2) Any real property, or any interest therein, located in the town.

(3) Any single-family dwelling or multiple-family dwelling or trailer house or trailer space or any portion thereof, including a housing unit or a rooming unit, or any interest therein, located in the town, which is used or occupied, or intended, arranged, assigned or designated to be used or occupied, as the home, homesite, residence or sleeping place of one or more persons.

(4) A single room, suite of rooms or apartment with or without cooking and kitchen facilities, occupied, or intended for occupancy as living quarters, by a person, by a family or by a group of persons living together.

OWNERS. A lessee, sublessee, co-tenant, assignee, managing agent or other person having the right of ownership or possession or the right to sell, rent or lease any housing.

PERSON. An individual and a group of any one or more persons such as, but not limited to, labor unions, joint apprenticeship committees, partnerships, associations, corporations, unincorporated organizations, mutual companies, joint stock companies, trusts, legal representatives, trustees in bankruptcy, receivers, any individuals acting in a financial or representative capacity either appointed by a court or otherwise, the town or any of its agencies, and any other legal governmental or commercial entity, as well as a natural person or persons. The term PERSONS, when applied to any of the foregoing, includes members, representatives, officers and Directors, agents and employees.

REAL ESTATE BROKER or REAL ESTATE SALESPERSON. An individual, whether licensed or not, who, for a fee, commission, salary or for other valuable consideration, or who with the intention or expectation of receiving or collecting same, lists, sells, purchases, exchanges, rents or leases any housing accommodation, including options thereupon, or who negotiates or attempts to negotiate such activities; or who advertises or holds himself/herself out as engaged in such activities; or who negotiates or attempts to negotiate a loan, secured by a mortgage or other encumbrance, upon transfer to any housing accommodation; or who is engaged in the business or charging an advance fee or contracting for collection of a fee in connection with a contract whereby he/she undertakes to promote the sale, purchase, exchange, rental or lease of any housing accommodation through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of any of these.

§ 96.03 RESERVED. ~~ENFORCEMENT COMMITTEE.~~

~~(A) The town shall establish a Housing Committee appointed by the Mayor and Council.~~

~~(B) Each Committee member shall serve for a term of one year and until his/her successor is appointed. One of the members of the Committee shall be elected by the members of such Committee to be Chair of the Committee.~~

~~(C) All communications authorized or required to be lodged with the Committee shall be furnished to the Chair of the Committee or, in his/her absence, any one of the Committee members.~~

~~(D) Any orders or findings issued by the Committee may be over the signature of any one of the members.~~

~~(E) A quorum of the Committee shall be necessary for the conducting of any vote. A quorum shall consist of a majority number of the members of the Committee.~~

~~(F) A majority of the full Committee shall be required on any vote taken for any proposed action to be effective.~~

~~(G) All findings or orders of the Committee shall be filed with the Town Attorney's office and, upon filing, shall be deemed public records of the town.~~

~~(H) This Committee shall be considered to be a subcommittee of the town, and must comply with the State of Arizona open meeting laws.~~

§ 96.04 PROHIBITED ACTS.

(A) It is a prohibited act for any person~~s, including but not limited to owners, lessees, agents, real estate brokers, real estate salespersons, trustees, mortgagees, financial institutions, title companies or insurance companies~~ to do any of the following:

(1) To discriminate against any person ~~because of sex, race, color, religion, ancestry or national origin~~ in the sale, lease, rental or other transfer of interest in housing.

(2) To ~~so~~ discriminate in the extension of loans, credit, insurance or other services relating to the transfer of interest in housing.

(3) To print or circulate, or cause to be printed or circulated, any publication, or to use any form of application, or to make any inquiry in connection with prospective sales, leases, rentals or other transfers of interest in housing, or the extension of credit, loans, insurance or other services relating to the transfer of interest in housing, which expresses directly or indirectly any limitation, specification or discrimination~~s as to sex, race, color, religion, ancestry or national origin~~, or expresses any intent to make any such limitation, specification or discrimination.

(4) To refuse to receive or transmit a bona fide offer to sell, purchase, exchange, rent or lease any housing from or to a person because of his/her sex, race, color, religion, ancestry or national origin.

(5) To refuse to negotiate for the sale, purchase, exchange, rental or lease of any housing to a person because of his/her sex, race, color, religion, ancestry or national origin.

(6) To represent to a person that any housing is not available for inspection, sale, purchase, exchange, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing because of his/her sex, race, color, religion, ancestry or national origin.

(7) For any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this section or to attempt to do so.

(8) For any person to go upon the premises of another, for the purpose of abusing the occupant ~~thereof~~ by the use of language or conduct which reflects unfavorably on the occupant's sex, color, religion, ancestry or national origin.

(B) Division (A)(8) shall not be a violation of the town code unless and until the Town Attorney ~~or his duly appointed agent~~ has sent a prior written notice to the person charged with going upon the property of another and committing the above described acts, the notice advising the offending party that he/she is unwelcome on the occupant's property and that he/she may be charged under this section if he/she, after receipt of the notice, commits acts which are in violation of this section.

(C) Division (B) of this section does not preclude the offending party from being charged with a violation of any offense that he/she might have committed not covered herein merely because the offending party did not receive written notice.

§ 96.05 ADMINISTRATIVE PROVISIONS.

The town ~~and the appropriate committee thereof~~ shall have the following powers:

(A) To make rules and regulations which promote the administration of and compliance with the provisions of this chapter, such rules and regulations to become effective upon their approval by the town.

(B) The Town Attorney is empowered to take all necessary action in the appropriate court to secure the production of all records, documents or other evidence necessary to assist in the enforcement of ~~the Housing Committee in carrying out~~ the provisions of this chapter.

§ 96.06 GRIEVANCE PROCEDURES.

(A) The Town Attorney ~~or the Housing Committee~~ may authorize the town staff to effectuate conciliations between an aggrieved person and an alleged violator prior to a formal finding of any unlawful practices when the facts and circumstances properly indicate such action. If the finding is made that an unlawful practice has been or is being committed, the Town ~~Committee~~ shall endeavor to eliminate the unlawful practice by conference, conciliation and persuasion. If the Town ~~Committee~~ fails thereby to eliminate the unlawful practice it may take either of the following actions:

(1) In the case of a violation of § 96.04, it shall issue an order to the violator within the aforesaid 30 day period, to cease and desist from further violations of this section and shall promptly mail a copy of the order to the violator.

(2) In the case of a violation of any other provision under § 96.04, it shall file a criminal complaint with the Town Attorney for appropriate action.

(B) If the Town ~~Committee~~ finds that no unlawful practice has been or is being committed, a copy of the finding shall be promptly mailed to the grievant. The grievant shall thereafter have the right to request ~~file a criminal complaint with~~ the Town Attorney file a Court ~~for appropriate~~ action.

(C) If the Town ~~Committee~~ fails to file its findings or a statement setting forth valid reasons for not having done so with the town attorney within 60 days after a grievance is filed with the Town ~~Housing Committee~~, the grievant shall thereafter have the right to request ~~file~~ a criminal complaint.

(D) If another grievance is filed against a person, after a cease and desist order pursuant to division (A)(1) of this section has been issued by the Town ~~Committee~~ against the person and, upon investigation, the Town ~~Committee~~ finds that the person has committed any further violation of this chapter, a criminal complaint may be requested of ~~filed with~~ the Town Attorney ~~by the aggrieved person or by the Committee~~.

(E) No criminal complaint for the enforcement of any provisions of this section may be filed unless and until the filing is specifically authorized by this section.

(F) All complaints alleging violations of § 96.04 shall be in writing and filed with the Town ~~Housing Committee~~. The complaints shall be filed within 30 working days from the date of violation. All complaints shall be resolved within 120 days from the time they are filed. ~~The Housing Committee shall cause a summary of complaints to be given to the Chairperson of the Committee.~~ In carrying out the above provisions, the Town ~~Housing Committee~~ shall have full authority to investigate and resolve complaints.

§ 96.07 CONCILIATION AGREEMENT VIOLATIONS.

(A) If the Town ~~Attorney or Housing Committee~~ and a person accused of a violation of this chapter ~~shall~~ reach agreement and execute a conciliation agreement, and that person shall then violate any terms and conditions of the conciliation agreement, it shall be as if the agreement had never been executed.

(B) In such an event, the Town Attorney may ~~shall~~ file such criminal charges as are proper under this chapter, and further may ~~shall~~ take any other civil or criminal action as may be permitted under the Arizona Revised Statutes.

§ 96.08 POWER OF SUBPOENA.

(A) The Town ~~Attorney or the Housing Committee~~ may subpoena witnesses at hearings and compel their attendance, administer oaths, take the testimony of any person under oath and, when deemed necessary, record testimony, and require the production for examination of books and paper relating to an alleged violation. ~~any matter before the Housing Committee.~~ Failure to obey a subpoena issued pursuant to this section shall constitute a contempt punishable upon action of the Town Attorney before the superior court.

(B) Any person appearing pursuant to this section shall have the right to be represented by legal counsel.