

**CITY OF CALLAWAY
BOARD OF COMMISSIONERS
AGENDA ITEM SUMMARY**

DATE: JULY 26, 2016

ITEM: ORDINANCE No. 969 – FAIR HOUSING – 2ND READING – PUBLIC HEARING

1. PLACED ON AGENDA BY:

J. Michael Fuller, City Manager

2. AGENDA:

- PRESENTATION
- PUBLIC HEARING
- CONSENT
- OLD BUSINESS
- REGULAR

3. IS THIS ITEM BUDGETED (IF APPLICABLE)?: YES NO

N/A

4. BACKGROUND: (WHY, WHAT, WHO, WHERE, WHEN, HOW, & IDENTIFY ALL ATTACHMENTS)

The City is beginning the process of applying for Community Development Block Grant (“CDBG”) funding for housing rehabilitation in FY2017. In order to have the best chance for approval, staff is recommending Commission adopt certain policies relating to housing. Many of these policies were added in 2010, during the City’s first application cycle.

One such policy is a fair housing policy or code. In 2010, the City adopted Resolution #10-41 stating an employee would be designated to address fair housing matters. However, it will bolster (add additional points) to the City’s CDBG application to adopt a fair housing code by Ordinance.

Ordinance No. 969 will establish the City of Callaway Fair Housing Code, which promotes fair, orderly and lawful opportunity for each person desiring to obtain housing. The Ordinance declares it unlawful to discriminate in the sale, rental, advertising, financing, and brokerage of housing in the City. The Ordinance establishes an Administrator (the City Manager or designee) to process, investigate, and report complaints of discriminatory housing practices.

The City’s Fair Housing Code is a good practice to adopt, doing so will have the added benefit of bolstering the City’s CDBG grant application.

Attachment(s):

- Ordinance No. 969

5. REQUESTED MOTION/ACTION: Staff recommends approval of Ordinance No. 969 upon the second reading and roll-call vote.

ORDINANCE NO. 969

AN ORDINANCE OF THE CITY OF CALLAWAY, FLORIDA, ADOPTING "THE CITY FAIR HOUSING CODE", ARTICLE XIII, CHAPTER 5 CALLAWAY CODE OF ORDINANCES; PROVIDING FOR A DECLARATION OF 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 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 EXCEPTIONS; PROVIDING FOR AN ADMINISTRATOR TO BE DESIGNATED BY THE CITY 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 PROVISIONS FOR THE FILING OF COMPLAINTS AND RESPONSES THERETO, AND THE PROCESSING THEREOF BY THE ADMINISTRATOR; PROVIDING FOR ADDITIONAL REMEDIES; PROVIDING FOR PROHIBITING UNTRUTHFUL COMPLAINTS OR FALSE TESTIMONY; PROVIDING FOR PENALTIES FOR VIOLATION OF SUCH CODE; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Callaway (the "City") wishes to provide the opportunity for its citizens to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, age, or source of income; and

WHEREAS, state and federal law protect individuals against discrimination in housing based on race, color, sex, religion, disability, familial status or national origin; and

WHEREAS, the City seeks to establish a policy recognizing the inalienable rights of each individual to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, age, or source of income; and

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF CALLAWAY, FLORIDA THAT:

SECTION 1. TITLE.

Article XIII, Chapter 5 (Sections 5-240 through 5-249) of the City of Callaway Code of Ordinances is hereby created which shall be known and referred to as the "the City Fair Housing Code."

SECTION 2. DECLARATION OF POLICY.

It is the policy of the City of Callaway (the "City") 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 jurisdiction 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 3. DEFINITIONS. The terms as used herein shall be defined as follows:

Administrator: The City Manager or his/her designee.

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.

Discriminatory Housing Practice: An act that is unlawful under Section 4 hereof.

Family: One or more persons living together as a single housekeeping unit in a dwelling.

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.

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.

Owner: Any person, including, but not limited to a lessee, sublease, assignee, manager, or agent having the right of ownership or possession or the authority to sell or lease any housing accommodation.

Person: One or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mortgage companies, joint stock companies, trusts, unincorporated organizations, or public corporations.

Real Estate Agent: Any real estate broker, any real estate salesperson, or any other person, employee, agent, or otherwise, engaged in the management or operation of any real property.

Real Estate Broker or Salesperson: 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.

Real Estate Transaction: Includes the sale, purchase, exchange, rental or leases of real property, and any contract pertaining thereto.

Rent: Includes leases, 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.

Respondent: Any person against whom a complaint is filed pursuant to this ordinance.

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 4. UNLAWFUL HOUSING PRACTICES.

- (1) Unlawful housing practices: *Sale or rental and advertising* in connection therewith. Except as provided in Section 5 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:
- a. To refuse to engage in a real estate transaction with a person or to otherwise make unavailable or deny housing to any person.
 - b. 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.
 - c. To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person.
 - d. To refuse to negotiate for a real estate transaction with a person.
 - e. 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 to refuse to permit him or her to inspect the housing.
 - f. To steer any person away from or to any housing.
 - g. To make, print, publish, circulate, post or 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 or 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.
 - h. 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.

- i. To induce or attempt to induce any person to transfer an interest in any housing by representations regarding the existing or potential proximity of housing owned, used or occupied by any person protected by the terms of this ordinance.
- j. 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 City for the purpose of inducing or attempting to induce any such listing or any of the above transactions.
- k. 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.
- l. 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 there under.
- m. By canvassing to compel any unlawful practices prohibited by the provisions of this ordinance.
- n. Otherwise to deny to, or withhold, any housing accommodations from a person.
- o. 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, transfer, or otherwise dispose of any housing by referring as a part of a process or pattern of indicating 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, religion, neighbors, tenants or other prospective buyers of any housing.
- p. 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.

(2) Unlawful housing practices: *Financing*

It shall be unlawful and a discriminatory housing practice for any lending institution, 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

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 this subsection shall impair the scope or effectiveness of the exceptions contained in Section 5 of this ordinance.

(3) 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, real estate brokers organization or other 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 or age.

SECTION 5. EXEMPTIONS AND EXCEPTIONS.

(1) Nothing contained in Section 4 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 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.

(2) Nothing in Section 4 hereof, other than subsection (g) of subsection (1) thereof, shall apply to:

a. 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 one such sale within any twenty-four month period; provided, further, that it 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 4 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

- b. Rooms or units in housing 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 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 in violation of subsection (g) of subsection (1) of Section 4 hereof, but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstracters, title companies, and other such professional assistance as necessary to perfect or transfer the title.

(3) For the purpose of this subsection a person shall be deemed to be in the business of selling or renting housing if:

- a. He or she has, within the preceding twelve months, participated as principal, other than in the sale of his or her 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
- b. He or she has, within the preceding twelve months, participated as agent, other than in the sale of his or her 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
- c. He or she is the owner of any housing designed or intended for occupancy by, or occupied by, five or more families.

(4) Nothing in Section 4 hereof shall be construed to:

- a. 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 the elderly or bona fide housing intended solely for minors.
- b. Make it an unlawful act to require that a person have legal capacity to enter into a contract or lease.
- c. 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.
- d. 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.

- e. 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.
- f. 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 6. ADMINISTRATOR AUTHORITY AND RESPONSIBILITIES.

- (1) The authority and responsibility for administering this ordinance shall be vested in the Administrator.
- (2) General Powers and Duties. The administrator shall:
 - a. Receive written complaints as hereinafter provided in Section 7 relative to alleged unlawful acts under this ordinance when a complaint seeks the administrator's good offices to conciliate.
 - b. Upon receiving written complaint, make such investigations as the administrator deems appropriate to ascertain facts and issues.
 - c. Utilize methods of persuasion, conciliation, and mediation or information adjustment of grievances.
 - d. Establish, administer or review programs at the request of the City Commission and make reports on such programs to the City Commission.
 - e. Bring to the attention of the City Commission items that may require public notice or action to resolve.
 - f. Render to the City Commission annual written reports of his or her activities under the provisions of this ordinance along with such comments and recommendations as he or she may choose to make.
 - g. 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.
- (3) Determination of Probable Cause. If after fully processing the complaint in the manner hereafter provided, the administrator determines that there is probable cause to believe that there has been a violation of the provisions of this ordinance, the administrator shall refer the matter, along with the facts he or she has gathered in the investigations, to the proper county, state or federal authorities for appropriate legal action.
- (4) 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 7. COMPLAINTS.

- (1) A person who claims that another person has committed a discriminatory housing practice against him or her may report that offense to the administrator by filing an informal complaint within forty-five (45) days after 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:
 - a. Identity and address of the respondent.
 - b. Date of offense and date of filing the informal complaint.
 - c. General statement 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).
 - d. Name and signature of the complainant.
- (4) Each complaint shall be held in confidence by the administrator unless and until the complainant and the respondent(s) consent in writing that it shall be made public.
- (5) 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 the receipt of the informal complaint.
- (6) 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 respondent(s) complaint, respectively, as promptly as practicable.
- (7) The administrator shall assist complainants or respondents when necessary in the preparation and filing of informal complaints or answers or any amendments thereto.
- (8) The administrator shall advise complainants of their rights and options provided in Section 760.34, Florida Statutes.

SECTION 8. PROCESSING COMPLAINTS.

- (1) Within thirty (30) days after the filing of an informal complaint, the administrator shall make such investigation as is deemed 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, the administrator shall attempt to conciliate

the matter by methods of initial conference and persuasion with all interested parties 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 public or used as evidence in a subsequent proceeding by either party without the written consent of both the complainant and the respondent(s). The administrator or employee of the administrator who shall make public any information in violation of this provision shall be deemed guilty of a violation of a city ordinance and shall be subject to penalty as set forth in Section 12 of this ordinance.

- (2) If the parties desire to conciliate, the terms of the conciliation shall be reduced to writing in the form approved by the administrator and must be signed and verified by the complainant and respondent(s) and approved by the administrator. The conciliation agreement shall be for conciliation purposes only and shall 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 the alleged discriminatory housing practice has been committed, the administrator shall take no further action with respect to the alleged offense.
- (4) If the administrator, with respect to any matter involves a contravention of this ordinance by failure to conciliate a complaint after the parties, in good faith, have attempted such conciliation; or determining that the violation alleged in the complaint cannot be resolved by conciliation, the administrator shall notify both the complainant and the respondent(s) within thirty (30) days of the failure or the determination, and then shall proceed as provided in Paragraph (3) of Section 6 herein above.

SECTION 9. ADDITIONAL REMEDIES.

The procedure prescribed by this ordinance does 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 10. EDUCATION AND PUBLIC INFORMATION.

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

SECTION 11. 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 12. 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 and no/100 Dollars (\$500.00), or imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

SECTION 13. REPEALED.

All Codes, Ordinance and/or Resolutions or parts of Codes, Ordinance and/or Resolutions in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 14. SEVERABILITY.

If any section or portion of this Ordinance shall be determined to be unconstitutional or invalid for any reason, the remaining provision shall remain in full force and effect.

SECTION 15. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED and ADOPTED as of this 26th day of July, 2016.

CITY OF CALLAWAY, FLORIDA

By: _____
Bob Pelletier, Mayor

ATTEST: _____
Janice L. Peters, MMC, City Clerk

PASSED ON FIRST READING: JUNE 28, 2016
NOTICE PUBLISHED ON: JULY 15, 2016
PASSED ON SECOND READING: _____

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE CITY OF CALLAWAY
ONLY:

Kevin D. Obos, City Attorney

VOTE OF COMMISSION:

Covey _____
Fairbanks _____
Henderson _____
Pelletier _____
Townsend _____