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FOOTNOTE(S):

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**Editor's note—** Ordinance No. 97-17, § 1, adopted February 25, 1997, repealed Chapter 11A in its entirety and added a new Chapter 11A set out herein. Formerly, such chapter pertained to similar provisions and derived from Ord. No. 95-67, § 1, 4-18-95; Ord. No. 77-2, §§ 1—4, 1-4-77; Ord. No. 90-32, § 1, 4-3-90; Ord. No. 91-142, §§ 1, 2, 12-17-91; Ord. No. 92-24, § 1, 4-7-92; Ord. No. 93-118, §§ 1, 2, 11-3-93. [(Back)](#BK_F2037274F2F48689D739F3F9A48A42B0)

**Cross reference—** Community Relations Board, § 2-204 et seq.; Commission on the Status of Women, § 2-264 et seq.; Commission for the Advancement of the Physically Handicapped, § 2-311 et seq. [(Back)](#BK_F2037274F2F48689D739F3F9A48A42B0)

### ARTICLE I. GENERAL PROVISIONS

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[Sec. 11A-9. Remedial action.](#BK_F41B98A64A7D412D610F8DEB39B55AAB)

[Sec. 11A-10. General unlawful practices.](#BK_89812B7F983088E1F31839E24A44E892)

Sec. 11A-1. Declaration of policy and scope.

(1) *Policy.* It is hereby declared to be the policy of Miami-Dade County, in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status or sexual orientation. It is further hereby declared to be the policy of Miami-Dade County to eliminate and prevent discrimination in housing based on source of income.

(2) *Jurisdiction and area of application.*

(a) The provisions of this chapter shall not apply to any complaint naming Miami-Dade County, the State of Florida, the federal government, or any of their agencies or employees as a respondent.

(b) This chapter is applicable in both the incorporated and unincorporated areas of Miami-Dade County, Florida.

(c) All violations shall be prosecuted in the court of appropriate jurisdiction of Miami-Dade County, Florida.

(d) The provisions of this chapter shall be cumulative and in addition to and not in derogation of any and all other provisions or laws prohibiting discrimination in employment, family leave, public accommodations, credit and financing practices and housing.

(3) *Preservation of substantive rights.* Any substantive rights created by [Chapter 11A](../level2/PTIIICOOR_CH11ADI.docx#PTIIICOOR_CH11ADI) as it existed prior to the enactment of Ordinance Number 90-32 are preserved as to any cases pending on the effective date of the creation of the Miami-Dade County Commission on Human Rights.

(4) *Deferment by other enforcement agencies.* The Director of the Commission on Human Rights, subject to approval by the County Commission, and upon written agreement with the United States Department of Housing and Urban Development, the United States Equal Employment Opportunity Commission or any other federal, state or local agencies may accept written, sworn and signed complaints of violations of this chapter deferred to the Commission on Human Rights by such agency for investigation and resolution; however, the Director of the Commission on Human Rights may waive such deferment.

(5) *Ex parte communications.* Except for ex parte applications for subpoenas pursuant to this chapter, no person shall make any ex parte communication, relative to any pending case before the Commission on Human Rights, to any Commission member, or at any stage of a proceeding after the filing of a charge or complaint, by any party to the proceeding, or by any person who has a direct or indirect interest in the proceeding, or by any authorized representative or counsel. Any violation of this section shall be reported, in writing, by the Commission member affected; and the report, which shall include a description of the substance of the communication, any response, and a copy of any written communication, shall be part of the record.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 06-179, § 1, 12-5-06; Ord. No. 09-53, § 1, 6-30-09)

Sec. 11A-2. Definitions.

The definitions set out herein shall apply to articles II, III, IV and V:

(1) *Age* shall mean the chronological age of any individual who is eighteen (18) years or older.

(2) *Commission* shall mean the Miami-Dade County Commission on Human Rights or its successor.

(3) *Complaint* shall mean any written allegation of a discriminatory act or practice prohibited by this chapter.

(4) *Complainant* shall mean any person or persons alleging a discriminatory act or practice prohibited by this chapter that has occurred or is about to occur and who has filed a written complaint.

(5) *Conciliation Agreement* shall mean a written agreement resolving or otherwise disposing of a complaint and which is entered into by the parties and the Director prior to a hearing in front of the board.

(6) *County* shall mean Miami-Dade County.

(7) *Director* shall mean the Director of the Miami-Dade County Commission on Human Rights or his or her designee.

(8) *Discrimination* shall mean any difference, distinction or preference in treatment, access or impact because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or source of income.

(9) *Familial status* is established when:

(a) An individual who has not attained the age of eighteen (18) years is domiciled with a parent or other person having legal custody of such individual; or

(b) An individual who has not attained the age of eighteen (18) years is domiciled with a designee of a parent or other person having legal custody of such individual with the written permission of such parent or other person; or

(c) An individual becomes pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years.

(10) *Family* shall include a single individual.

(11) *Finding related to probable cause* shall mean the conclusion reached by the Director after completion of an investigation as to whether or not the discriminatory act or practice alleged in the complaint occurred and shall consist of the final investigative report and recommended order.

(12) *Marital status* shall mean the state of being married, unmarried, single, divorced, separated or widowed, and the conditions that may be associated therewith, including pregnancy or parenthood.

(13) *National origin* shall include citizenship status, ancestry, place of birth, and language characteristics thereof.

(14) *Person* shall mean one (1) or more natural persons, individuals, employees, employers, employment agencies, owners, businesses, government, government agencies, government departments, unions, joint apprenticeship committees, firms, associations, joint ventures, partnerships, estates, trusts, trustees, trustees in bankruptcy, legal representative, mutual companies, joint-stock companies, receivers, syndicates, fiduciaries, corporations, unincorporated organizations, and all other groups or combinations.

(15) *Person with a disability*

(a) "Person with a disability" shall mean:

(i) An individual with a physical or mental impairment which substantially limits one (1) or more of that individual's major life activities;

(ii) An individual who has a record of such impairment; or

(iii) An individual who is perceived or regarded as having such an impairment.

(b) "Physical or mental impairment" shall include:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: neurological, musculo-skeletal, special sense organs, cardiovascular, reproductive, digestive, genitourinary, hemic or lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities; or

(iii) Any degree of paralysis, epilepsy, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness, speech impediment or persons who rely upon a seeing eye dog, wheelchair or other remedial method, appliance or device.

(c) "Major life activities" shall include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, learning and working.

(d) A "record of such impairment" shall include having a history of, or having been misclassified as having a history of, physical or mental impairment which substantially limits one (1) or more major life activities.

(e) "Individual who is perceived as or regarded as having a disability" shall mean any individual who:

(i) Has a physical or mental impairment that does not substantially limit one (1) or more major life activities but such impairment is treated by others as constituting such a limitation;

(ii) Has a physical or mental disability that substantially limits one (1) or more major life activities only as a result of the attitude of others toward such impairment; or

(iii) Has no impairment defined in this subsection but is treated by another as having such an impairment.

(f) "Disability" does not include current, illegal use of or addiction to a controlled substance as defined in Chapter 893, Florida Statutes, as amended.

(16) *Religion* shall mean any belief protected by the free exercise clause of the First Amendment of the United States Constitution.

(17) *Respondent* shall mean person or persons alleged to have engaged in a discriminatory act or practice prohibited by this chapter.

(18) *Sexual orientation* shall mean heterosexuality, homosexuality or bisexuality whether such orientation is real or perceived.

(19) *Mediation* shall mean an informal conference held with a neutral third party to help the parties resolve their disputes prior to the investigation of the complaint, or at any time during the investigation of the complaint.

(20) *Hearing officer* shall mean an employee of the Division of Administrative Hearings within the State of Florida, Department of Administration, employed to conduct hearings pursuant to F.S. chapter 120, or other person selected by the Chairperson of the Commission on Human Rights, or his or her designee, to conduct a hearing pursuant to this chapter from a pool of hearing officers, who are members of the Florida Bar in good standing. The hearing officers shall serve for a term of two (2) years and shall not be entitled to compensation; however, they shall receive reimbursement for parking in county garages and for mileage for any hearing-related business. Such reimbursement shall be consistent with County policy.

(21) *Prevailing party* shall have the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 06-179, § 2, 12-5-06; Ord. No. 09-53, § 2, 6-30-09; Ord. No. 13-83, § 5, 9-17-13)

Sec. 11A-3. Office of Director established.

(1) The position of Commission on Human Rights Director is hereby created and established. The Director shall be appointed by and serve at the will of the County Manager. The position shall be exempt from the classified service of the County.

(2) The duties, functions, powers and responsibilities of the Director include but are not limited to, the following:

(a) Enforcing the provisions of this chapter and any rules and regulations promulgated thereunder;

(b) Receiving, initiating, investigating, mediating, dismissing, waiving, and determining complaints received under this chapter;

(c) Facilitating settlement or conciliation of a complaint alleging a discriminatory act or practice prohibited by this chapter;

(d) Completing investigative reports on complaints filed under this chapter.

(e) Issuing a finding related to probable cause which may include findings, conclusions and recommendations addressing liability, reasonable accommodation, affirmative action, quantifiable relief, costs, attorney's fees, interest and such other appropriate remedies as in the judgment of the Director shall carry out the purposes of this chapter. The remedies may include the remedies enumerated in [Section 11A-5](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-5DUPOCO)(6)—(11);

(f) Providing assistance and direction in all matters relating to discrimination in housing, credit and finance, public accommodations, employment, family leave and domestic violence leave;

(g) Publishing and disseminating information and educational materials relating to discrimination in housing, credit and finance, public accommodations, employment, family leave and domestic violence leave;

(h) Issuing notice of a complainant's private right to sue under Article II, III, IV, V and VIII of this chapter upon a written request from complainant received not sooner than one hundred eighty (180) days after the filing of a charge or amended charge of a violation of this chapter;

(i) Performing such other administrative duties as may be assigned by the County Manager.

(3) When necessary to vindicate the public interest, the Director may, with the approval of the County Attorney, have the County designated as a party in any proceeding under this chapter, and in connection therewith, shall be governed by the same procedures applicable to any other party to a charge of violation of this chapter. In any proceeding in which the County participates as a party, the Director, with the approval of the County Attorney, may hire special counsel.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 3, 12-5-06; Ord. No. 09-53, § 3, 6-30-09)

Sec. 11A-4. Commission on Human Rights established.

(1) *Creation of the Commission.* The Miami-Dade County Commission on Human Rights is hereby created and established. The Commission shall consist of twenty-six (26) members appointed by the Board of County Commissioners. Each member of the Board of County Commissioners may appoint two persons to the Commission on Human Rights.

(2) *Qualifications of members.* Members of the Commission on Human Rights shall be permanent residents and electors of Miami-Dade County, Florida. Of at least one of the two appointments by each County Commissioner, consideration for membership may be given to representatives from the following fields:

(a) an attorney who is a member in good standing of the Florida Bar;

(b) a member of the business community;

(c) a representative of the real estate industry;

(d) a member of a non-profit civil rights organization;

(e) a small business owner;

(f) a representative of municipal government;

(g) a representative of an employee organization;

(i) a representative of persons with disabilities; and (j) a representative of the banking industry.

Membership shall be made on the basis of civic pride, integrity, experience and interest in the area of equal opportunity, and be representative of the County's population and reflective of the racial and ethnic make-up of Miami-Dade County, in addition to geographic, economic and gender considerations.

(3) *Term of office.* The term of office of members of the Board shall be as specified in [Section 2-11.38.2](../level3/PTIIICOOR_CH2AD_ARTIBSTCRREBOGE.docx#PTIIICOOR_CH2AD_ARTIBSTCRREBOGE_S2-11.38.2TEOF) of the Code of Miami-Dade County.

(4) *Organization of the Commission.* The members of the Commission shall elect the Chairperson, and such other Officers as may be deemed necessary, who shall serve a term of two (2) years with the possibility of reelection. At least three (3) members of the Commission shall constitute a hearing panel for the purposes of conducting a hearing and approving final orders on complaints. At least five (5) members of the Commission shall constitute a quorum to hold a meeting for any other purposes. A majority vote of those present at a duly constituted meeting shall be sufficient for all actions.

(5) *Compensation.* Members shall serve without compensation but shall be entitled to reimbursement for necessary expenses including but not limited to, training and travel, subject to approval by the County Commission. Training in equal opportunity shall be provided to all Commission Members at least once each year.

(6) *Meetings.* Meetings of the Commission shall be held monthly or as needed to hear and dispose of the pending cases. Notice of the time and place of meetings shall be given to all members of the Commission and to all parties scheduled to be heard. The Chairperson may call an emergency meeting of the Commission. Three (3) members may also call an emergency meeting upon written request to the Director.

(7) *Minutes.* Minutes shall be kept of all meetings of the Commission. All meetings shall be public and all minutes shall be subject to public inspection except where prohibited by law.

(8) *County Manager.* The County Manager shall provide such adequate and competent administrative, technical and clerical personnel as may be reasonably required by the Commission for the proper performance of its duties. The County Manager shall provide a regular meeting place for the Commission.

(9) *County Attorney.* The County Attorney shall provide counsel to the Commission.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 4, 12-5-06; Ord. No. 09-53, § 4, 6-30-09)

Sec. 11A-5. Duties and powers of the Commisssion.

The Commission on Human Rights shall have the following duties, functions, powers and responsibilities:

(1) To apply to the appropriate court on behalf of the County for such temporary or permanent injunctive relief as the Commission, or a Hearing Panel thereof, believe is necessary to preserve the status quo or to prevent irreparable harm and to carry out the purposes of this chapter;

(2) To adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this chapter following a public hearing and subject to approval by the County Commission;

(3) To issue an adjudicative final order upon the authority of the Chairperson following approval by the appropriate Hearing Panel. Such an adjudicative final order may review and uphold, modify or reverse recommended final orders issued by the Director or his or her designated representative in accordance with the provisions of this chapter;

(4) To administer oaths;

(5) To compel, by subpoena issued by the Chairperson of the Commission, the attendance of witnesses and the production of evidence for discovery, investigation, hearing or deposition for the preservation of testimony;

(6) To issue remedial orders requiring cessation of violations of this chapter;

(7) To issue such other final orders as, in the judgment of the Hearing Panel, will carry out the purposes of this chapter, including but not limited to:

(a) Hiring, reinstatement or promotion of employees with accrued seniority, with accrued benefits and with back pay;

(b) Taking affirmative action and making corrections; and

(c) Requiring reasonable accommodation;

(d) Awarding of front pay, to the extent that the calculation of any such front pay is quantifiable and reasonably definite.

(8) To issue final orders dismissing the complaint;

(9) To award quantifiable relief to a prevailing complainant for injuries incurred as a proximate result of an act prohibited by this chapter or to apply to the appropriate court for such an award, provided that such damages are not prohibited by state or federal law;

(10) To award costs and Attorney's fees to a prevailing party or to apply to the appropriate court for such an award; provided, however, that such an award is not contrary to the purposes of this chapter.

(11) To award prejudgment interest to a prevailing party upon a finding of employment discrimination and post judgment interest to a prevailing party upon a finding of any type of discrimination, or to apply to the appropriate court for such an award;

(12) At the conclusion of a hearing and upon a finding of housing discrimination in violation of Article II of this chapter, to recommend that the County Attorney commence a civil action on behalf of the County for fines pursuant to [Section 11A-17](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-17CIFI)

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 5, 12-5-06; Ord. No. 09-53, § 5, 6-30-09)

Sec. 11A-6. Discretionary review; request for rehearing.

(1) Within fifteen (15) days following the issuance of the final adjudicative order, a party may file a written request for rehearing of a case or amendment of a final order by the Commission on Human Rights. A request for rehearing shall state with particularity the factors overlooked or misapprehended by the original hearing panel, and shall not reargue the merits of the case. The nonmoving party may file a written response within ten (10) days of receipt of the written request for rehearing.

(2) At the first regularly scheduled meeting following the receipt of such a request, the members of the original Hearing Panel shall vote on whether to grant the request for rehearing.

(3) If the request for rehearing is granted, the Commission shall expeditiously schedule a hearing. At least five (5) members shall constitute a Hearing Panel for the purpose of such rehearing.

(4) Upon the conclusion of rehearing, the rehearing panel shall issue a new adjudicative final order which may affirm, modify, rescind or reverse the final adjudicative order issued by the original Hearing Panel.

(5) The filing of a request for rehearing shall toll the time for commencing an appeal pursuant to [Section 11A-8](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-8AP)

(6) No appeal to the Commission shall be had from a denial of a request for rehearing.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 6, 12-5-06; Ord. No. 09-53, § 6, 6-30-09)

Sec. 11A-7. Enforcement of final order.

If the Commission determines that any respondent has committed an unlawful act prohibited by this chapter, and said respondent refuses to comply with or obey the final order of the Commission or Director, the Commission on behalf of the County or the complainant may petition the court of competent jurisdiction for enforcement of the final order.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 7, 12-5-06; Ord. No. 09-53, § 7, 6-30-09)

Sec. 11A-8. Appeals.

(1) The Commission's final order shall be subject to review in accordance with the Florida Rules of Appellate Procedure. For purposes of such review, any original jurisdictional notices required to be filed under the Florida Rules of Appellate Procedure shall be filed with the Director. The Commission shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee may be charged by the Commission for the preparation and transmission of the record on appeal to the court of competent jurisdiction. Such fee may be waived by the Director if the party requesting the record is indigent.

(2) Costs or fees may not be assessed against the Commission in any appeal from a final order issued by the Commission pursuant to this chapter.

(3) Miami-Dade County shall be named a party to any judicial proceeding involving a challenge to the validity of this chapter. Services of process upon Miami-Dade County shall be accomplished as provided by Section 48.111, Florida Statutes.

(4) Unless specifically ordered by the Commission or by a court of competent jurisdiction, the commencement of an appeal does not suspend or stay a final order of the Commission.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 09-53, § 8, 6-30-09)

Sec. 11A-9. Remedial action.

If at any time after a complaint has been filed, the Director or the Commission upon conferring with the County Attorney, has reasonable cause to believe that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Director or the Commission shall refer the complaint to the County Attorney, who may, at his or her discretion and a determination that the complaint raises a matter of great public importance, commence a civil action to preserve the status quo or to prevent irreparable harm. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Florida Rules of Civil Procedure. The commencement of a civil action under this chapter shall be in addition to all remedies otherwise available under federal and state law, municipal ordinances and this chapter.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 8, 12-5-06; Ord. No. 09-53, § 9, 6-30-09)

Sec. 11A-10. General unlawful practices.

It shall be an unlawful practice to:

(1) Retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this chapter, or because he or she has supported a person or persons protected by this chapter or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing, or conference conducted under the authority of this chapter; or

(2) Aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this chapter or obstruct or prevent any person from complying with the provisions of this chapter.

(Ord. No. 97-17, § 1, 2-25-97)

### ARTICLE II. HOUSING [[2]](#BK_80D6D337CAC4EBCAB544620BBDD76480)

[Sec. 11A-11. Definitions.](#BK_470EA0ED170F972D78234661A8964EE2)

[Sec. 11A-12. Unlawful housing practices.](#BK_53F4629D65BDC04483C38931883CDA77)

[Sec. 11A-13. Exceptions to unlawful housing practices.](#BK_6F04DBC4CCF20B08679049668E63C5A6)

[Sec. 11A-14. Procedures for housing discrimination complaint..](#BK_A05D624B537D96CCB51536C6BC71008C)

[Sec. 11A-15. Enforcement by private persons.](#BK_4DE4D6735A6FD086EF9DF60A736AA86B)

[Sec. 11A-16. Election of judicial determination.](#BK_6F5EA2DF7FA13393BE2D54F1B77590BC)

[Sec. 11A-17. Civil fines.](#BK_DAF88E4EC3B560C65E8F1CDFDA3CDCE4)

[Sec. 11A-18. Real Estate Salespersons and Brokers, report to Real Estate Commission.](#BK_F0DE810FE80EF08262FBE44073635A64)

Sec. 11A-11. Definitions.

The definitions set out in [Section 11A-2](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-2DE) shall apply to this article in addition to the definition set forth below. As used in this article:

(1) *Dwelling or dwelling unit* shall mean any building, mobile home, trailer, structure or portion thereof which is occupied, designed, arranged or intended for occupancy as a home, residence or sleeping place of one (1) or more persons, or vacant land which is offered for sale or lease for the construction or location of any building, mobile home, trailer or structure or portion thereof.

(2) *Financial institution* shall include any bank, insurance company, savings and loan association, credit union, mortgage company or any other person or organization engaged in the business of lending money, guaranteeing loans, or extending credit.

(3) *Mortgage broker* shall mean an individual who is engaged in or performs the business or services of a mortgage broker as defined in Chapter 494, Florida Statutes, as amended.

(4) *Owner* shall include a lessor, lessee, sublessee, co-tenant, assignee, managing agent, manager or other person having the right to sell, rent, lease or control any housing or office accommodation.

(5) *Premises* shall mean the interior or exterior spaces, parts, components or elements of a building including individual dwelling units and the public and common use areas of a building.

(6) *Real estate broker* or *real estate salesperson* shall include any individual or agent thereof who is engaged in or performs the business or the services of a real estate broker or salesperson as defined in Chapter 475, Florida Statutes, as amended.

(7) *Real property* includes buildings, portions of buildings, structures, lands, tenements, leaseholds, cooperatives, condominiums or any interest therein.

(8) *Single-family dwelling* shall include a single-family home, mobile home, apartment, townhouse unit, cooperative unit or condominium unit.

(9) *To rent* shall mean to lease, sublease, let or otherwise grant for consideration the right to occupy premises not owned by the occupant.

(10) *Conciliation* shall mean the attempted resolution of issues raised by a complaint or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the Director.

(11) *Person* shall mean one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under [Title 11](../level2/PTIIICOOR_CH11CO.docx#PTIIICOOR_CH11CO) [of the United States Code], receivers, and fiduciaries.

(12) *Source of income* shall mean the lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant, including, but not limited to, Section 8 Housing Choice Vouchers, Supplemental Security Income, Social Security, pensions and other retirement benefits.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 9, 12-5-06; Ord. No. 09-53, § 10, 6-30-09)

Sec. 11A-12. Unlawful housing practices.

(1) *Discrimination in sale or rental of housing and other prohibited practices.* It shall be unlawful for any person, owner, financial institution, real estate broker, real estate agent or any representative of the above to engage in any of the following acts because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation of a prospective buyer, renter, lessee or any person associated with a prospective buyer, renter or lessee:

(a) To refuse to sell, purchase, rent, lease, finance, negotiate or otherwise deny to or withhold any dwelling or to evict a person; or

(b) To discriminate against a person in the terms, conditions, or privileges of the sale, purchase, rental or lease or any dwelling, or in the furnishing of facilities or services in connection therewith; or

(c) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any dwelling; or

(d) To represent to a person that any dwelling is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any dwelling; or

(e) To refuse to lend money, whether or not secured by mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, improvement, repair or maintenance of any dwelling, to impose different terms or conditions of such financing or refuse to provide title or insurance relating to the ownership or use of any interest in any dwelling, or to refuse to provide appraisal or brokerage services; or

(f) To refuse to purchase loans, debts, or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling or which are secured by residential real estate or to impose different terms or conditions for such purchases; or

(g) To make, publish, print, circulate, post, mail, or cause to be made, published, printed, circulated, posted or mailed, any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any dwelling, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation which indicates any discrimination, any discriminatory preference, any intent to discriminate or any intent to make a discriminatory preference; or

(h) To discriminate in any financial transaction involving real property because of its location, or to "red-line"; or

(i) To offer, solicit, accept or use a listing of any dwelling for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental, lease, or the furnishing of facilities or services in connection therewith; or

(j) To directly or indirectly induce or attempt to induce for profit, the sale, purchase, rental, lease or the listing for any of the above, of any dwelling by representing that the presence or anticipated presence of a person of a particular race, color, religion, national origin, age, sex, disability, familial status, marital status or sexual orientation will or may result in blockbusting, such as but not limited to:

(i) The lowering of property values in the area;

(ii) An increase in criminal or anti-social behavior in the area; or

(iii) A decline in the quality of the schools or other services or facilities in the area; or

(k) To make any representations concerning the listing for sale, purchase, rental, or lease, or the anticipated listing of any sale, purchase, rental, or lease of any dwelling for the purpose of inducing or attempting to induce any such listing for any of the above transactions; or

(l) To engage in or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play upon fear with the purpose of either discouraging or inducing, or attempting to induce, the sale, purchase, rental, lease or listing of any dwelling on any basis prohibited by this chapter; or

(m) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this chapter, or to obstruct or prevent any person from complying with the provisions of this chapter or any other issued thereunder; or

(n) To resist, prevent, impede or interfere with the Commission on Human Rights, its members and/or representatives in the lawful performance of their duties under this chapter; or

(o) To canvas to commit any unlawful practice prohibited by this chapter; or

(p) To deny or withhold any dwelling from a person on any basis prohibited by this chapter, or

(q) To deny any qualified person access to or membership in 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 such person in the terms or conditions of such access, membership, or participation on any basis prohibited by this chapter; or

(r) To coerce, intimidate, make threats, or harass people who have aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this article.

(2) *Reasonable modification and reasonable accommodation for disabled.* It shall be a discriminatory housing practice to:

(a) Refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises occupied or to be occupied by such disabled person if such modifications may be necessary to afford such persons full enjoyment of the premises; except that in the case of a rental a landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) Refuse to make a reasonable accommodation in rules, policies, practices or services, when such an accommodation may be necessary to afford a disabled person equal opportunity to use and enjoy the dwelling unit;

(c) In connection with the design and construction of covered multifamily dwellings submitted for building permit on or after January 13, 1990 to fail to design and construct those housing accommodations in such a manner, that:

(i) The public use and common use portions of such dwellings are readily accessible to and usable by disabled persons;

(ii) All the doors designed to allow passage into and within all premises within such housing accommodations are sufficiently wide to allow passage by persons in wheelchairs; and

(iii) All premises within such accommodations contain the following features of an adaptive design:

(I) An accessible route into and throughout the dwelling, unless it is impracticable to do so because of the terrain or unusual characteristics of the site;

(II) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

(III) Reinforcements in the bathroom walls to allow later installation of grab bars; and

(IV) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(iv) As used in this section, "covered multifamily dwelling" means a building which consists of four (4) or more dwelling units and has one (1) or more elevators; or the ground floor dwelling units of a building which consists of four (4) or more dwelling units and does not have an elevator.

(v) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped persons, commonly cited as "ANSI A117.1 (1986)" suffices to satisfy the requirements of this Subsection (c). Public areas shall also comply with the standards set forth in the Americans with Disabilities Act Accessibility Guidelines.

(d) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(3) *Parking accessibility for disabled.*

(a) If parking is provided at the dwelling site then designated accessible parking at the dwelling unit or parking most convenient to the entrance served, shall be provided on request of residents with disabilities on the same terms and with the full range of choices (for example surface parking or garage) that are provided for other residents of the dwelling site. Accessible parking on a route accessible to wheelchairs shall be in a number at least equal to one (1) and not less than two (2) percent of the total number of covered dwelling units. Accessible visitor parking shall be provided sufficient to provide access to grade level entrances of covered multifamily dwellings and accessible parking at facilities (for example, swimming pools) that serve accessible buildings shall also be provided.

(b) To meet the requirements of this chapter, those accessible resident spaces required in new construction must meet the width requirements specified for accessible spaces under Section 316.1955, Florida Statutes, as amended, or its successor and be adjacent to a five-foot access aisle on the same level. The slope of the spaces, and the portion of the access aisles adjacent to the spaces, shall not exceed two (2) percent in any direction. It shall not be required that the spaces be outlined in blue nor is it required to have a sign stating "parking by disabled permit only," unless such signs and striping are necessary to effectively reserve those spaces for the individuals to whom they are assigned. The spaces may be temporarily assigned to persons who do not have disabilities. A written policy must be provided to all residents who purchase or rent dwelling units stating that those spaces will be assigned or reassigned as a reasonable accommodation to residents with disabilities on the basis of need.

(c) When the space is assigned to a resident with a disability the space must be marked in a manner that will effectively reserve that space for the individual to whom it is assigned. Where visitor or guest parking is provided at a residential building, parking for persons with disabilities shall be provided in the same numbers and with the same configuration and specifications as required in Section 316.1955, Florida Statutes, with the following exceptions. Where all of the spaces provided for visitors provide relatively equal convenience to the building served, are level, meet the width requirements specified for accessible spaces under Section 316.1955, Florida Statutes, are on an accessible route to the building, and have an adjacent access aisle at least five (5) feet wide on the same level, then no visitor spaces need to be marked or signed or otherwise reserved for visitors with disabilities.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 06-179, § 10, 12-5-06; Ord. No. 09-53, § 11, 6-30-09)

Sec. 11A-13. Exceptions to unlawful housing practices.

(1) *Private individual owner.*

(a) Dwelling site. The provisions of this article shall not apply to the rental, lease or sale of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of one another, if the owner actually maintains and occupies one (1) of the living quarters as his or her residence.

(2) The provisions of this article shall not apply to any private individual owner who sells or rents a single-family dwelling when the following conditions exist:

(i) The private individual owner does not own more than three (3) such single-family dwellings at any one (1) time; and

(ii) 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 the sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four-month period; and

(iii) The private individual owner does not own any interest in, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family houses at any one (1) time; and

(iv) The sale or rental of any such single-family residence occurs without the use of sales or rental facilities or services of any real estate agent, broker or salesperson or his or her employee or agent or any person in the business of selling or renting dwellings and without the publication, posting or mailing, after notice of any advertisement or written notice in violation of this article.

However, nothing in this subsection shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title.

(2) *Religious organization.* Nothing in this article shall prohibit a religious organization, association, society or any non-profit 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 person, unless that religious organization, association or society restricts membership based on race, color, national origin, ancestry, or disability. Furthermore, nothing in this article relating to unlawful housing practices based on sexual orientation shall pertain to any religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(3) *Private club.* Nothing in this article shall 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.

(4) *Maximum occupancy laws.* Nothing in this article limits the applicability of any reasonable state law, County ordinance or municipal ordinance or restriction regarding the maximum number of occupants permitted to occupy a dwelling.

(5) *Housing for older persons.* Nothing in this article regarding familial status shall apply to housing for older persons. As used in this article, "housing for older persons" means housing:

(a) Under any state or federal government program that the Secretary of the United States Department of Housing and Urban Development or his or her designee or successor determines is specifically designed and operated to assist elderly persons as defined in the state or federal program; or

(b) Intended for and solely occupied by persons sixty-two (62) years of age or older; or

(c) Intended and operated for occupancy by persons fifty-five (55) years of age or older; and

(i) At least eighty (80) percent of the occupied dwelling units are occupied by at least one (1) person who is fifty-five (55) years of age or older; and

(ii) The dwelling facility or community complies with rules issued by the Secretary of Housing and Urban Development or his or her designee for verification of occupancy.

(d) A dwelling facility shall not fail to meet the requirements for "housing for older persons" by reason of:

(i) Persons residing in such housing as of October 1, 1989 who do not meet the age requirements of [Section 11A-13](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-13EXUNHOPR)(5)(b) or (c) provided that new occupants of such housing shall meet the age requirements of [Section 11A-13](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-13EXUNHOPR)(5)(b) or (c); or

(ii) Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of [Section 11A-13](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-13EXUNHOPR)(5)(b) or (c).

(6) *Furnishing appraisals.* Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, familial status, marital status, national origin or sexual orientation.

(7) *Conviction for illegal manufacture or distribution of controlled substance.* Nothing in this chapter prohibits conduct against any person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 893.03, Florida Statutes, as amended, or its successor statute.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98)

Sec. 11A-14. Procedures for housing discrimination complaint..

(1) *Filing a housing discrimination complaint.* Any person aggrieved by an unlawful housing practice prohibited by this article must file a written, signed complaint with the Director within one (1) year after the alleged unlawful practice has occurred or terminated. The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent. Such complaint may be amended; however, the amended complaint must be filed within one (1) year after the alleged unlawful practices occurs.

(2) *Director's actions upon receipt of housing discrimination complaint.* Upon the filing of such complaint, the Director shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits provided under this article including procedural rights and obligations. In a case of a housing discrimination complaint filed under Title VIII of the Civil Rights Act of 1968, as amended, the complainant shall also be advised of the choice of forums provided under the Act.

(3) *Respondent.*

(a) Within ten (10) days of the filing of the complaint, the Director shall serve a copy of the complaint and a written notice on the respondent identifying the alleged discriminatory housing practice and setting forth the rights and obligations of the parties including, but not limited to the right to a fair and full hearing on the matter before the Commission on Human Rights or a Hearing Officer. Such service shall be by certified mail.

(b) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of an investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Director. Notice shall be served upon such additional or substitute respondent within ten (10) days of such joinder or substitution and shall explain the basis for the Director's belief that the person to whom the notice is addressed is properly joined as a respondent.

(c) The respondent may file an answer to the complaint, not later than ten (10) days after receipt of the complaint and notice from the Director.

(4) *Investigation of housing discrimination complaint.*

(a) The Director shall commence the investigation of a housing discrimination case within thirty (30) days of the filing of the complaint.

(b) In conducting an investigation of any housing complaint, the Director shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence relevant to the complaint and may examine, record, photograph and copy such materials and take and record the testimony or statements of such persons and issue such interrogatories as are reasonably necessary for the furtherance of the investigation. The Commission may enter an order compelling answers to interrogatories. The Commission may issue subpoenas to compel access to or the production of materials, or appearance of persons, to the same extent and subject to the same limitations as all other subpoenas issued by the County Court of Miami-Dade County, Florida.

(5) *Subpoenas.*

(a) Witnesses summoned by subpoena of the Commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay due to indigence, shall be paid by the Commission.

(b) Within ten (10) days after service of a subpoena upon any person, such person may petition the Commission to revoke or modify the subpoena. The Commission shall grant the petition if it finds 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.

(c) In the case of the contumacy or refusal to obey a subpoena, the Commission or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Miami-Dade County, Florida.

(d) In any enforcement proceeding authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedure;

(e) 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 or her power to do so, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(f) Any person who, with intent thereby to mislead the Commission or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Commission pursuant to its 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, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(6) *Applicability of Florida Rules of Civil Procedure; applicable to all complaints.*

(a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this article or by rules, regulations or orders adopted pursuant to this article.

(b) All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

(7) *Finding related to probable cause.*

(a) The Director shall make a finding related to probable cause not later than one hundred (100) days from receipt of the complaint or amended complaint; provided, however, if the Director is unable to make a finding related to probable cause within one hundred (100) days after the filing of the complaint, the Director shall notify the complainant and the respondent in writing of the reasons for not doing so.

(b) At the end of any investigation under this chapter, the Director shall prepare a finding related to probable cause consisting of a final investigative report and recommended order. The Director's final investigative report and recommended order shall contain:

(i) The names and dates of contacts with witnesses;

(ii) A summary and the dates of correspondence and other contracts with the complainant and the respondent;

(iii) A summary description of other pertinent records;

(iv) A summary of witness statements;

(v) Any responses to requests for discovery; and

(vi) Recommendations including, but not limited to the issues of liability for a violation of this article, affirmative action, reasonable accommodation, quanitifiable damages, costs, attorney's fees, interest and civil fines.

(c) The Director's recommended order shall become final twenty (20) days after issuance, unless a hearing is requested in writing as provided in [11A-14](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-14PRHODICO)(9)(a). The investigative report and final order may be amended if additional evidence is later discovered and if amended shall become final ten (10) days thereafter.

(d) If the Director determines that no probable cause exists to believe that a violation of this chapter has occurred or is about to occur, the Director shall promptly dismiss the complaint. The Director shall publicly disclose each such dismissal.

(8) *Conciliation.*

(a) It is the policy of the Director and the Commission to encourage conciliation of complaints. The Director will work with the parties in an attempt to conciliate the complaint. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director. Consistent with federal fair housing laws, a conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Director determines that disclosure is not required to further the purpose of the federal Fair Housing Act or this article.

(b) Whenever the Director has reasonable cause to believe that a party has breached a conciliation agreement, the Director shall refer the matter to the County Attorney with a recommendation that a civil action be filed in a court of competent jurisdiction for enforcement of such agreement.

(c) Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying complaint of unlawful conduct.

(9) *Hearing in front of Commission on Human Rights or Hearing Officer.*

(a) If within twenty (20) days after receipt of the Director's finding related to probable cause under Title VIII of the Civil Rights Act of 1968 as amended, the complainant or respondent does not elect to have the findings decided in a civil action by a court of competent jurisdiction as prescribed in [11A-16](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-16ELJUDE) and a conciliation agreement has not been reached, then the Director shall provide an opportunity for a hearing before the Commission or a Hearing Officer.

(b) The written request for a hearing shall be made by the complainant or respondent within twenty (20) days after receipt of the Director's determination. A written request for a hearing submitted more than twenty (20) days after receipt of the Director's determination may be granted only upon showing of good cause. The Director shall have the final authority in deciding whether a good cause has been shown. No hearing may be had from a Director's decision that good cause has not been shown. No hearing may be had from the Director's finding of lack of jurisdiction.

(c) The hearing shall commence no later than one hundred twenty (120) days after the issuance of the Director's finding related to probable cause, unless it is impracticable to do so. If the Commission is not able to commence the hearing within one hundred twenty (120) days after the issuance of the Director's finding, the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(d) The Commission shall make findings of fact and conclusions of law within sixty (60) days after completion of the hearing, unless it is impracticable to do so. If the Commission does not make findings of fact and conclusions of law within sixty (60) days, then the Commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(e) The Commission shall not continue to conduct a hearing after the commencement of a trial of civil action by the complainant seeking relief with respect to the discriminatory housing practice which was the basis of the hearing.

(f) In any hearing before the Commission or Hearing Officer pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath. Upon written application to the Commission, a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition in connection with a hearing. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the County Court of Miami-Dade County, Florida.

(g) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

(h) The Chairperson may direct that the parties to submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.

(i) Upon the conclusion of the hearing, an adjudicative final order shall be issued and serviced upon the parties.

(j) In any proceeding under this article, the burden of proof rests upon the complainant.

(k) Copies of current rules of procedures shall be available at the office of the Director.

(10) *Final administrative disposition.* The Commission or Director shall make a final administrative disposition of a complaint within one (1) year of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission or Director is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 11, 12-5-06; Ord. No. 09-53, § 12, 6-30-09)

Sec. 11A-15. Enforcement by private persons.

(1) A complainant may file a civil action in a court of competent jurisdiction no later than two (2) years after the alleged discriminatory housing practice has occurred or terminated or after a breach of a conciliation agreement. A person aggrieved by an alleged housing discrimination practice or breach may file a civil action regardless of whether he or she has filed a complaint under this article and regardless of the status of any complaint filed under this article.

(2) Any sale, encumbrance or rental consummated prior to the filing of a complaint of discrimination pursuant to this chapter, and involving a bona fide purchaser, encumbrance or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this chapter shall not be affected.

(3) If, in a private enforcement proceeding under this chapter, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable Attorney's fees, interest, costs or other order.

(4) Upon request of the Commission, the County Attorney may intervene on behalf of the County in an action brought under the provisions of this article, if the Commission certifies that the case is of public importance to the citizens of Miami-Dade County.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 12, 12-5-06; Ord. No. 09-53, § 13, 6-30-09)

Sec. 11A-16. Election of judicial determination.

(1) This section shall pertain only to those housing discrimination complaints filed under Title VIII of the Civil Rights Act of 1968, as amended that result in the Director issuing a finding that probable cause exists to believe that a discriminatory act has occurred or is about to occur.

(2) When the Director issues a finding that probable cause exists to believe that a discriminatory act has occurred or is about to occur under Title VIII of the Civil Rights Act of 1968, as amended, the complainant may elect to have the discrimination findings decided in a civil action by a court of competent jurisdiction in lieu of a hearing by the Commission as prescribed in [Section 11A-14](../level3/PTIIICOOR_CH11ADI_ARTIIHO.docx#PTIIICOOR_CH11ADI_ARTIIHO_S11A-14PRHODICO)(9).

(3) The decision to elect a civil action in lieu of a hearing by the Commission or a Hearing Officer must be made not later than twenty (20) days after the receipt of the Director's finding related to probable cause. The person who elects to pursue a civil action shall give notice of this election to the Commission, and to all other complainants and respondents to whom the complaint relates.

(4) If the decision to elect a civil action is made, then the Commission shall authorize the election, and the Director shall provide complainant with an Attorney without cost to the complainant. Such Attorney shall commence a civil action on behalf of the complainant not later than thirty (30) days after election for civil action is made.

(5) Any person aggrieved by the alleged discriminatory housing practices to be determined in the civil action may intervene as of right in that civil action.

(6) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the complainant actual and punitive damages, court costs and reasonable Attorney fees and may grant any relief such as permanent or temporary injunction, temporary restraining order, or other order as may be appropriate.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 09-53, § 14, 6-30-09)

Sec. 11A-17. Civil fines.

(1) At the conclusion of a hearing and upon a finding of housing discrimination in violation of Title VIII of the Civil Rights Act of 1968 as amended, the Board may recommend that the County Attorney commence a civil action for fines without cost to the complainant. Such civil action shall be commenced within ninety (90) days of the issuance of the final order by the Board. If such civil action is brought the court may impose the following fines:

(a) Up to ten thousand dollars ($10,000.00) if the respondent has not previously been found guilty of a violation of this article;

(b) Up to twenty-five thousand dollars ($25,000.00) if the respondent has been found guilty of one (1) prior violation of this article within the preceding five (5) years prior to filing of a complaint;

(c) Up to fifty thousand dollars ($50,000.00) if the respondent has been found guilty of two (2) or more violations of this article within the preceding seven (7) years prior to filing of a complaint.

(2) In imposing a fine under this section, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of this article, the financial circumstances of the respondent and the goal of deterring future violations of this article.

(3) All fines imposed pursuant to this article shall be paid to the Board of County Commissioners.

(Ord. No. 97-17, § 1, 2-25-97)

Sec. 11A-18. Real Estate Salespersons and Brokers, report to Real Estate Commission.

If a Real Estate Broker or any representative or employee thereof fails to comply with any order issued by the Director or Board or a designated representative thereof, or has been found to have committed an unlawful practice in violation of this chapter, the Director shall, in addition to the other procedures and penalties set forth herein, report the Real Estate Broker to the Real Estate Commission of the State of Florida.

(Ord. No. 97-17, § 1, 2-25-97)

FOOTNOTE(S):

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**Cross reference—** Housing generally, Ch. 17. [(Back)](#BK_5D69A74F904BB999E7F32F16ED3DB0F8)

### ARTICLE III. PUBLIC ACCOMMODATIONS

[Sec. 11A-19. Unlawful public accommodations practices.](#BK_BACED218E7E4C1CE135D46E90DD52F27)

[Sec. 11A-20. Places of public accommodation.](#BK_8B255CFD07626A5A233A968BF33F0101)

[Sec. 11A-20.1. Accessibility Requirements.](#BK_0C6E03F2A85CEA10CEE9E0879E92BF9D)

[Sec. llA-20.2. Penalties.](#BK_44F27FDC5E57299597D2B1636EE85686)

[Sec. 11A-21. Fair pricing.](#BK_39BB57E33C4F3ABB866556C1E454E264)

[Sec. 11A-22. Exceptions to unlawful public accommodations practices.](#BK_AFA7E4D6D8850F34BF3E578518F52173)

[Sec. 11A-23. Procedures for public accommodations complaint.](#BK_9BD9E6B7889D1661F5E1EC548946CC92)

[Sec. 11A-24. Enforcement by private persons.](#BK_72EB01422D9D0CDAA53A7DFC0CE703BF)

[Sec. 11A-24.1. Civil Fines.](#BK_D13C07485E80F15D1AA012634C8D60A5)

Sec. 11A-19. Unlawful public accommodations practices.

It shall be an unlawful practice for any person to engage in any of the following acts because of the race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation of any individual or of any person associated with that individual:

(1) To refuse, withhold or deny to a person any services, access, advantages, goods, facilities or privileges of a public accommodation including the extension of credit; or

(2) To publish, circulate, issue, display, post or mail any communication, notice or advertisement to the effect that accommodations, services, goods, advantages, facilities or privileges of a public accommodation shall be refused, withheld or denied to a person or that the patronage of such person is unwelcome, objectionable, or unacceptable; or

(3) To fail to make reasonable accommodation for the disabled which includes:

(a) The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations, unless such criteria can be shown to be necessary from the provision of the goods, services, facilities, privileges, advantages or accommodations being offered;

(b) Failure to make reasonable modifications in policies, practices or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, service, facilities, privileges, advantages or accommodations;

(c) Failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage or accommodation being offered or would result in an undue burden;

(d) Failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(e) Where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable. The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(A) The nature and cost of the action needed under this chapter;

(B) The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of its facilities; and

(D) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(f) In determining responsibility for reasonable accommodation, the landlord shall be held responsible for making readily achievable changes and providing auxiliary aids, and services in common areas and for modifying policies, practices or procedures applicable to all tenants. The tenant shall be responsible for readily achievable changes, provision of auxiliary aids, and modification of policies within its own place of public accommodation. The responsibility for particular obligations may be determined by contract.

(4) To segregate any public accommodation except where such segregation is caused by barriers to accessibility which are not required to be eliminated through reasonable accommodation.

(5) To fail or refuse to prominently display a sign, decal or sticker, as described above; or

(6) To fail to ensure the telephone number indicated on the sign, decal or sticker is operational and answered by an employee of the gas station retailer during hours the gas station retailer is open for business to the public; or

(7) To fail to provide refueling assistance to any motor vehicle properly displaying an exemption parking permit as provided in Section 316.1958 or 320.0848, Florida Statutes, as may be amended, or a license plate issued pursuant to Section 320.084, 320.0842, 320.0843 or 320.0845, Florida Statutes, as may be amended, when the person to whom such permit has been issued is the operator of the vehicle and such service is requested during the hours the gas station retailer is open to the public unless there is only one attendant on duty at the time of the request; or

(8) Failure of a Respondent alleged to have violated this [Section 11A-19](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-19UNPUACPR)(5), (6) or (7), and who fails to abide by any provision of a Conciliation Agreement entered into by such Respondent. If Respondent fails to abide by more than one provision of a Conciliation Agreement, each such failure shall be a separate violation of this section.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 12-48, § 1, 7-3-12)

Sec. 11A-20. Places of public accommodation.

*Places of public accommodations* shall mean any establishment, service, place or building which offers, sells or otherwise makes available to the public any good, service, facility, privilege or advantage. Each of the following establishments which services the public is a place of public accommodation within the meaning of this article:

(a) An inn, hotel, motel or other place of lodging, except for an establishment located within a building that contains not more than five (5) rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(b) A restaurant, bar or other establishment serving food or drink;

(c) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(d) An auditorium, convention center, lecture hall or other place of public gathering.

(e) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(f) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment;

(g) A terminal, depot or other station used for specified public transportation including but not limited to taxis, limousines and buses.

(h) A museum, library, gallery or other place of public display or collection;

(i) A park, zoo, amusement park or other place of recreation;

(j) A nursery, elementary, secondary, undergraduate or postgraduate private school, or other place of education;

(k) A day care center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment; and

(l) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(m) Any area or structure provided for the purpose of storing personal property.

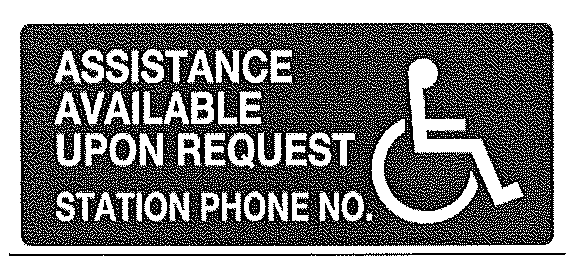
(n) Gas station retailers. For purposes of this article, "gas station retailer" shall mean any full service gasoline station; or any self-service gasoline station that has two or more attendants on duty at any given time during the hours the station is open for business to the public.

(o) A gasoline station. For purposes of this article, "gas station" shall mean that portion of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from fixed, approved dispensing equipment into fuel tanks of motor vehicles by any person.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 13, 12-5-06; Ord. No. 12-48, § 2, 7-3-12)

Sec. 11A-20.1. Accessibility Requirements.

(1) Within ninety (90) days of enactment of this Ordinance, all gas station retailers shall be required to prominently display a sign, decal or sticker, no smaller than fifteen (15) square inches, on the front of all gasoline pumps clearly stating the telephone number for that gas station retailer, the international symbol of accessibility ("ISA), and wording such as "Call for Assistance" or "Assistance Available upon Request," in substantially the form pictured below. The sign, decal or sticker must also be on a blue background. The telephone number indicated on the sign decal or sticker shall be operational and answered directly by an employee of the gas station retailer is open for business to the public.



(2) The gas station retailer shall require an attendant to provide refueling assistance to any motor vehicle properly displaying an exemption parking permit as provided in Section 316.1958 or 320.0848, Florida Statutes, as may be amended, or a license plate issued pursuant to Sections 320.084, 320.0842, 320.0843, or 320.0845, Florida Statutes, as may be amended, when the person to whom such permit has been issued is the operator of the vehicle and such service is requested during the hours the gas station retailer is open for business to the public.

(3) However, should such assistance be requested during times when a second attendant is not present at a self-service gasoline station, the gas station retailer is not required to provide the requested assistance. In such case, if a remote or electronic means of communication with the requester exists, the one attendant on duty shall inform the person that he or she is unable to provide such assistance as a result of having only one attendant on duty.

(Ord. No. 12-48, § 3, 7-3-12)

Sec. llA-20.2. Penalties.

[Section 11A-19](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-19UNPUACPR)(5)—(8) shall be enforceable in accordance with the provisions of [Chapter 8CC](../level2/PTIIICOOR_CH8CCCOEN.docx#PTIIICOOR_CH8CCCOEN) of this Code. Violations of [Section 11A-19](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-19UNPUACPR)(5)—(8) shall also be punishable by a fine not to exceed five hundred dollars ($500.00) or by imprisonment in the county jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment, in the discretion of the county court. Pursuant to [Section 11A-23](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-23PRPUACCO) and as described more fully therein, within fifteen (15) days after receipt of the Director's finding related to probable cause in the case of the respondent or no probable cause in the case of the complainant either party may submit a written request for a hearing to contest the Director's findings. Upon a determination by the Director pursuant to [Section 11A-23](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-23PRPUACCO) or the Commission pursuant to [Section 11A-5](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-5DUPOCO) of the Code that any respondent has committed an unlawful act or engages in a continuing violation of [Section 11A-19](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-19UNPUACPR)(5)—(8), and said respondent refuses to comply with or obey the final order of the Commission or Director, the Commission or the Director on behalf of the County or the complainant may petition the court of competent jurisdiction for enforcement of the final order.

(Ord. No. 12-48, § 3, 7-3-12)

Sec. 11A-21. Fair pricing.

In any place of public accommodation as defined in [Section 11A-20](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-20PLPUAC)(c), the distribution of ticket prices for seating reserved for persons with a disability, wherever located, shall be equal in proportion to the distribution of ticket prices available in the facility as a whole, provided, however, that the maximum price for tickets for disabled seating shall be no greater than the maximum price charged for other types of seating in the same area of the facility.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 14, 12-5-06)

Sec. 11A-22. Exceptions to unlawful public accommodations practices.

(1) The provisions of this article shall not apply to a club or other establishment not in fact open to the public which proves it is in its nature distinctly private except as provided below.

(2) An institution, club facility or place of accommodation shall not be considered in its nature distinctly private if it has more than four hundred (400) members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business.

(3) Any place of accommodation which is required as a result of this section to construct or reconstruct locker room, shower, or other facilities shall be allowed until October 1, 1990 to complete such work, and prior to such date shall not be found guilty of sex discrimination. The board, for good cause shown, may grant an extension not to exceed an additional ninety (90) days after the date allowed such place of accommodation to complete such work.

(4) The foregoing provisions notwithstanding, this article shall not apply, with respect to sex, to places of public accommodation where the Board of County Commissioners grants an exemption based on bona fide considerations of public policy.

(5) Nothing in this article shall apply with respect to a religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with any such group, from limiting its goods, facilities, services, privileges or advantages to persons of the same religion or from giving preference to any such person, however, that religious organization, association or society shall not restrict membership based on race, color, national origin, ancestry, sex, pregnancy, age, marital status, familial status or disability. Furthermore, nothing in this article relating to unlawful public accommodation practices based on sexual orientation shall pertain to any religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(6) It is not the policy of Miami-Dade County to prohibit bona fide discount programs based on age classification so long as such programs are not designed, intended or used to deny an individual or group either access to the premises, the right to reside on the premises, or the right to patronize the premises.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 06-179, § 15, 12-5-06)

Sec. 11A-23. Procedures for public accommodations complaint.

(1) *Filing a public accommodations complaint.* Any person aggrieved by an unlawful public accommodation prohibited by this article must file a written, signed complaint with the Director within one hundred eighty (180) days after the alleged unlawful practice occurs. The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent. Such complaint may be amended; however, the amended complaint must be filed within the one hundred and eighty (180) days after the alleged unlawful practice occurs.

(2) *Director's action upon receipt of complaint of public accommodations discrimination.* Upon the filing of any complaint, the Director shall send notice upon the complainant acknowledging such filing and advising the complainant of the time limits provided under this article.

(3) *Respondent.*

(a) Upon the filing of any complaint, the Director shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited to the right to a fair and full hearing on the matter before the Commission on Human Rights or a Hearing Officer. Such service shall be by certified mail.

(b) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Director. Notice shall be served upon such additional or substitute respondent within ten (10) days of such joinder or substitution and shall explain the basis for the Director's belief that the person to whom the notice is addressed is properly joined as a respondent.

(c) Each respondent may file an answer to the complaint, not later than ten (10) days after receipt of the complaint and notice from the Director.

(4) *Investigation of public accommodations discrimination complaint.* In conducting an investigation of a complaint, the Director shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence relevant to the complaint and may examine, record, photograph and copy such materials and take and record the testimony or statements of such persons and issue such interrogatories as are reasonably necessary for the furtherance of the investigation. The Board may enter an order compelling answers to interrogatories. The Board may issue subpoenas to compel access to or the production of materials, or appearance of persons, to the same extent and subject to the same limitations as all other subpoenas issued by the County Court of Miami-Dade County, Florida.

(5) *Subpoenas.*

(a) Witnesses summoned by subpoena of the Board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay due to indigence, shall be paid by the Board.

(b) Within ten (10) days after service of a subpoena upon any person, such person may petition the Board to revoke or modify the subpoena. The Board shall grant the petition if it finds 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.

(c) In the case of the contumacy or refusal to obey a subpoena, the Board or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Miami-Dade County, Florida;

(d) In any enforcement proceeding authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedure;

(e) 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 or her power to do so, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(f) Any person who, with intent thereby to mislead the Board or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Board pursuant to its 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, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(6) *Applicability of Florida Rules of Civil Procedure.*

(a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this chapter or by rules, regulations, or orders adopted pursuant to this chapter.

(b) All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

(7) *Finding related to probable cause.*

(a) The Director shall make a finding related to probable cause, so far as practicable, no later than one hundred eighty (180) days after receipt of the complaint or amended complaint.

(b) At the end of the investigation under this chapter, the Director shall prepare a finding related to probable cause consisting of a final investigative report and recommended order. The Director's finding shall be served upon the complainant and the respondent. The Director's final investigative report and recommended order shall contain:

(i) The names and dates of contacts with witnesses;

(ii) A summary and the date of correspondence and other contacts with the complainant and the respondent;

(iii) A summary description of other pertinent records;

(iv) A summary of witness statements;

(v) Any responses to requests for discovery; and

(vi) Recommendations including, but not limited to the issues of liability for a violation of this chapter, affirmative action, reasonable accommodation, quantifiable damages, costs, Attorney's fees, interest and civil fines.

(c) The Director's recommended order shall become final ten (10) days after issuance, unless a hearing is requested pursuant to [Section 11A-23](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-23PRPUACCO)(9)(a). The final investigative report and final order may be amended if additional evidence is later discovered and if amended shall become final ten (10) days thereafter.

(d) If the Director determines that no probable cause exists to believe that a violation of this chapter has occurred or is about to occur, the Director shall promptly dismiss the complaint. The Director shall publicly disclose each such dismissal.

(8) *Conciliation.*

(a) It is the policy of the Director and the Board to encourage conciliation of charges. The Director will work with the parties to in an attempt to conciliate the complaint. If possible, a written conciliation agreement resolving the dispute between the complainant and the respondent shall be executed prior to determination. Any time until final hearing by the Board, the Director will work with the parties in an attempt to conciliate the complaint.

(b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director.

(c) Whenever the Director has reasonable cause to believe that a party has breached a conciliation agreement, the Director shall refer the matter to the County Attorney with a recommendation that a civil action be filed in a court of competent jurisdiction for enforcement of such agreement.

(d) Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying charge of unlawful conduct.

(9) *Hearing in front of Commission on Human Rights or Hearing Officer.*

(a) Within fifteen (15) days after receipt of the Director's finding related to probable cause the respondent or the complainant may submit a written request for a hearing before the Commission, or before a Hearing Officer. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Officer shall have the power to administer oaths, issue subpoenas, compel the production of and receive evidence. The determination of the Hearing Officer shall be subject to appeal to a court of competent jurisdiction in the same manner as a Final Order issued by the members of the Commission on Human Rights. If a hearing before the Commission on Human Rights is requested, such hearing shall be held in accordance with [Section 11A-23](../level3/PTIIICOOR_CH11ADI_ARTIIIPUAC.docx#PTIIICOOR_CH11ADI_ARTIIIPUAC_S11A-23PRPUACCO) of this chapter, and the Commission's Hearing Procedures. A written request for a hearing submitted more than fifteen (15) days after receipt of the Director's finding may be granted only upon a showing of good cause. The Director shall have the final authority in deciding whether good cause has been shown. No hearing may be had from the Director's decision that good cause has not been shown. No hearing may be had from the Director's finding of lack of jurisdiction.

(b) In any hearing before the Commission pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party.

(c) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

(d) The Chairperson may direct that the parties submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.

(e) Upon the conclusion of the hearing, an adjudicative final order shall be issued and served upon the parties.

(f) In any proceeding under this article, the burden of proof rests upon the complainant.

(g) Copies of current rules of procedures shall be available at the office of the Director.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 16, 12-5-06; Ord. No. 09-53, § 15, 6-30-09)

Sec. 11A-24. Enforcement by private persons.

(1) If within one hundred eighty (180) days after a complaint is filed alleging discrimination, the Director has been unable to obtain voluntary compliance with the provisions of this chapter, the complainant may demand a notice of right-to-sue from the Director, the issuance of which shall terminate the jurisdiction of the Director and the Board over such complaint. Not later than ninety (90) days following receipt of the notice of right-to-sue, the complainant may commence a civil action in a court of competent jurisdiction against the respondent named in the complaint.

(2) If, in a private enforcement proceeding under this chapter, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable Attorney's fees, interest, costs or other order.

(3) Upon request of the Board, the County Attorney may intervene on behalf of the County in an action brought under the provisions of this article, if the Board certifies that the case is of public importance to the citizens of Miami-Dade County.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 16, 12-5-06)

Sec. 11A-24.1. Civil Fines.

(1) At the conclusion of a hearing and upon a finding of public accommodations discrimination, the Board may consider fines without cost to the complainant. The Board may impose the following fines:

(a) Up to then thousand dollars ($10,000.00) if the respondent has not previously been found guilty of a violation of this article;

(b) Up to twenty-five thousand dollars ($25,000.00) if the respondent has been found guilty of one (1) prior violation of this article within the preceding five (5) years prior to filing of a complaint;

(c) Up to fifty thousand dollars ($50,000.00) if the respondent has been found guilty of two (2) or more violations of this article within the preceding seven (7) years prior to filing of a complaint.

(2) In imposing a fine under this section, the Board shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of this article, the financial circumstances of the respondent and the goal of deterring future violations of this article.

(3) All fines pursuant to this article shall be paid to the Board of County Commissioners.

(Ord. No. 06-179, § 18, 12-5-06)

### ARTICLE IV. EMPLOYMENT

[Sec. 11A-25. Definitions.](#BK_ADD016B8C4BD7A5C3D7F8A9D72BC27C1)

[Sec. 11A-26. Unlawful employment practices.](#BK_597A7C6714DD5A839181655409BA861E)

[Sec. 11A-27. Exception to jurisdiction; Miami-Dade County employees.](#BK_05CC0048B5C1E7197A19345BC2974DBA)

[Sec. 11A-28. Procedures for employment discrimination complaints.](#BK_B38C2F50928918B1485B378AC5FE09C5)

Sec. 11A-25. Definitions.

The definitions set out in [Section 11A-2](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-2DE) shall apply to this article in addition to the definitions set forth below. As used in this article:

(1) *Employee* shall mean an individual employed by an employer.

(2) *Employer* shall mean any person who in the regular course of business has five (5) or more employees in Miami-Dade County in each of four (4) or more calendar weeks in the current calendar year and any agent, acting manager, contractor or subcontractor of such person, but such term does not include:

(a) The United States or a corporation wholly owned by the government of the United States;

(b) The State of Florida;

(c) Miami-Dade County;

(d) An Indian Tribe; or

(e) A bona fide private membership club.

(3) *Employment agency* shall mean any person or agent thereof, regularly undertaking, with or without compensation, to recruit for prospective employees, opportunities to work for an employer on any basis, including, full-time, part-time, temporary, permanent or any combination thereof.

(4) *Labor organization* shall include any union, association, joint committee, board or other combination, or any agent thereof, which bargains or deals with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

(Ord. No. 97-17, § 1, 2-25-97)

Sec. 11A-26. Unlawful employment practices.

(1) It shall be unlawful for any employer to engage in any practices described below on account of the race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status or sexual orientation of any individual or any person associated with such individual:

(a) To fail or refuse to hire or to otherwise discriminate against any individual;

(b) To print or circulate or cause to be printed or circulated, any advertisement, statement or publication or to use an application form or to make an inquiry in connection with prospective employment which expresses a limitation, preference, specification or to otherwise discriminate against an individual on any of the grounds specified in this article, or because of any such reason to discharge an employee or to discriminate with respect to training, hire, tenure, promotion, transfer, terms, conditions, wages, benefits or privileges of employment or in any other matter related to employment;

(c) To utilize any employment agency or company providing employees which the prospective employer knows or has reasonable cause to know discriminates against individuals on any basis prohibited by this article;

(d) To fail or refuse to make reasonable accommodation for a disabled individual. "Reasonable accommodation" in employment shall require every employer to make necessary adaptations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the employer can demonstrate that the adaptation would impose an undue hardship on the operation of its business.

(i) Reasonable accommodation may include:

(I) Making facilities used by employees readily accessible to and usable by persons with a disability; and

(II) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of readers or interpreters, and other similar actions.

(ii) In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include:

(I) The overall size of the employer with respect to number of employees, number and type of facilities, and size of budget;

(II) The type of the employer's operation, including the composition and structure of the employer's work force; and

(III) The nature and cost of the accommodation needed.

(iii) An employer may not deny any employment opportunity to a qualified disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation for the physical or mental limitations of the employee or applicant.

(e) To limit, segregate, advertise, recruit or classify any employee or applicant for employment in any way which would deprive any individual of employment opportunities or otherwise adversely affect the individual's employment opportunities or status as an employee on any basis prohibited by this article.

(2) It shall be unlawful for any employment agency or company providing employees to engage in any of the practices described below on account of any individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation:

(a) To fail or refuse to hire or refer for employment or to otherwise discriminate against any individual;

(b) To comply with an employer's request which directly or indirectly indicates a preference or any discrimination against any individual;

(c) To classify or to refer for employment any individual;

(d) To print or circulate or cause to be printed or circulated, a statement, advertisement or publication, to use a form of application or to make an inquiry in connection with prospective employment, which expresses directly or indirectly a limitation, specification or otherwise to discriminate against any individual.

(3) It shall be an unlawful employment practice for a labor organization to engage in any of the practices described below on account of any individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation:

(a) To exclude, to expel from its membership, or otherwise to discriminate against any individual;

(b) To limit, or segregate or classify its membership, or applicants for membership, or to fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise to discriminate against any member or applicant for membership or otherwise to adversely affect his or her status as an employee or as an applicant for employment;

(c) To cause or attempt to cause an employer to discriminate against an individual in violation of this article;

(d) To fail or refuse to reasonably accommodate an individual's disability.

(4) It shall be unlawful employment practice for any employer to discriminate against any of his or her employees or applicants for employment, for an employment agency or similar organization to discriminate against any individual, or for a labor organization to discriminate against any member or applicant for membership because he or she has opposed any practice made unlawful by this article or because he or she has testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this article.

(5) Exemptions to unlawful employment practices.

(a) Notwithstanding any other provision of this article it shall not be an unlawful employment practice:

(i) For a school, college, university, or other educational institution or institution of learning to hire and employ individuals of a particular religion if: such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society, or if the curriculum of such school, college, university or other educational institution of learning is directed toward the propagation of a particular religion and; the employment opportunity sought by the employee or applicant is directly or indirectly related propagating that religion.

(ii) For an employer to hire and employ individuals, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his or her religion, sex or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Additionally, nothing in this article shall apply with respect to a religious organization, association, society or any not for profit institution or organization operated, supervised or controlled by or in conjunction with any religious organization from limiting its employment to persons of the same religion or from giving preference to any such person; however, that religious organization, association or society shall not restrict membership based on race, color, national origin, ancestry or disability. Furthermore, nothing in this article relating to unlawful employment practices based on sexual orientation shall pertain to any religious organization, association, society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(iii) For any employer to apply different standards of compensation, or different terms, conditions, benefits, privileges of employment pursuant to a bona fide, written seniority or merit system or piece-work system or a system which measures earnings by quantity provided that such difference does not discriminate because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation.

(iv) For an employer or employment agency or representative of either to give or to act upon the results of any professionally validated ability test provided that such test, its administration or action upon the result is not designed, intended or used to discriminate because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status or sexual orientation.

(b) Nothing contained in this article shall apply to any business or enterprise on or near an Indian Tribe reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation.

(c) Nothing contained in this article shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, marital status, familial status or sexual orientation of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, marital status, familial status or sexual orientation in any community, section or other area of the county or in the available work force in any community, section or other area of the county.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 06-179, § 19, 12-5-06)

Sec. 11A-27. Exception to jurisdiction; Miami-Dade County employees.

(1) Any employee of Miami-Dade County who believes he or she has been aggrieved by a violation of this article may file a complaint with the Fair Employment Practices Director.

(2) The Fair Employment Practices Director shall have jurisdiction to resolve any complaint of violation of this article, which is filed within three hundred sixty-five (365) days of the alleged discriminatory employment action by or on behalf of an employee of Miami-Dade County, and in connection therewith, the Fair Employment Practices Director may exercise any and all powers granted to him or her by Article VI of this chapter.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 13-39, § 1, 5-7-13)

Sec. 11A-28. Procedures for employment discrimination complaints.

(1) *Filing an employment discrimination complaint.* Any person aggrieved by an unlawful employment action prohibited by this article must file a written, signed complaint with the Director within one hundred eighty days (180) after the alleged unlawful practice occurs.

(2) *The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent.* Such complaint may be amended; however, the amended complaint must be filed within the period one hundred and eighty (180) days after the alleged unlawful practice occurs.

(3) *Respondent.*

(a) Upon the filing of any complaint, the Director shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited to, the right to a fair and full hearing on the matter before the Commission on Human Rights or a Hearing Officer. Such service shall be by certified mail.

(b) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Director. Notice shall be served upon such additional or substitute respondent within ten (10) days of such joinder or substitution and shall explain the basis for the Director's belief that the person to whom the notice is addressed is properly joined as a respondent.

(c) Each respondent may file an answer to the complaint, not later than twenty (20) days after receipt of the complaint and notice from the Director.

(4) *Investigation of employment discrimination complaint.*

(a) In conducting an investigation of a complaint, the Director shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence relevant to the complaint and may examine, record, photograph and copy such materials and take and record the testimony or statements of such persons and issue such interrogatories as are reasonably necessary for the furtherance of the investigation. The Board may enter an order compelling answers to interrogatories. The Board may issue subpoenas to compel access to or the production of materials, or appearance of persons, to the same extent and subject to the same limitations as all other subpoenas issued by the County Court of Miami-Dade County, Florida.

(5) *Subpoenas.*

(a) Witnesses summoned by subpoena of the Board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay due to indigence, shall be paid by the Board.

(b) Within ten (10) days after service of a subpoena upon any person, such person may petition the Board to revoke or modify the subpoena. The Board shall grant the petition if it finds 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.

(c) In the case of the contumacy or refusal to obey a subpoena, the Board or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Miami-Dade County, Florida;

(d) In any enforcement proceedings authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedures;

(e) 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 or her power to do so, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(f) Any person who, with intent thereby to mislead the Board or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Board pursuant to its 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, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(6) *Applicability of Florida Rules of Civil Procedure.*

(a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this chapter or by rules, regulations, or orders adopted pursuant to this chapter.

(b) All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

(7) *Finding related to probable cause.*

(a) The Director's finding related to probable cause shall be made, so far as practicable, no later than one hundred eighty (180) days after receipt of the complaint or amended complaint.

(b) At the end of the investigation under this chapter, the Director shall prepare a finding related to probable cause consisting of a final investigative report and recommended order. The Director's determination shall be served upon the complainant and the respondent. The Director's final investigative report and recommended order shall contain:

(i) The names and dates of contracts with witnesses;

(ii) A summary and the dates of correspondence and other contacts with the complainant and the respondent;

(iii) A summary description of other pertinent records;

(iv) A summary of witness statements;

(v) Any responses to requests for discovery; and

(vi) Recommendations including, but not limited to the issues of liability for a violation of this chapter, affirmative action, reasonable accommodation, quantifiable damages, costs, attorney's fees, interest and civil fines.

(c) The Director's recommended order shall become final fifteen (15) days after issuance, unless a hearing is requested pursuant to [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO)(9). The final investigative report and final order may be amended if additional evidence is later discovered and if amended shall become final fifteen (15) days thereafter.

(d) If the Director determines that no probable cause exist to believe that a violation of this chapter has occurred or is about to occur, the Director shall promptly dismiss the complaint. The Director shall publicly disclose each such dismissal.

(8) *Conciliation.*

(a) It is the policy of the Director and the Board to encourage conciliation of charges. The Director will work with the parties in an attempt to conciliate the agreement. If possible, a written conciliation agreement resolving the dispute between the complainant and the respondent shall be executed prior to a finding related to probable cause. Any time until final hearing by the Board, the Director will work with the parties in an attempt to conciliate the complaint.

(b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director.

(c) Whenever the Director has reasonable cause to believe that a party has breached a conciliation agreement, the Director shall refer the matter to the County Attorney with a recommendation that a civil action be filed in a court of competent jurisdiction for enforcement of such agreement.

(d) Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying charge of unlawful conduct.

(9) *Hearing in front of Equal Opportunity Board or Hearing Examiner.*

(a) Within fifteen (15) days after receipt of the Director's finding related to probable cause the respondent or the complainant may submit a written request for a hearing before the Board or a Hearing Officer. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Officer shall have the power to administer oaths, issue subpoenas, compel the production of and receive evidence. The determination of the Hearing Officer is subject to appeal in a court of competent jurisdiction in the same manner as a Final Order issued by the members of the Equal Opportunity Board. If a hearing before the Equal Opportunity Board is requested, such hearing shall be held in accordance with [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO) of this chapter, and the Board's Hearing Procedures. A written request for a hearing submitted more than fifteen (15) days after receipt of the Director's finding may be granted only upon a showing of good cause. The Director shall have the final authority in deciding whether good cause has been shown. No hearing may be had from the Director's decision that good cause has not been shown. No hearing may be had from the Director's finding of lack of jurisdiction.

(b) In any hearing before the Board pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party.

(c) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

(d) The chairperson may direct that the parties submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.

(e) Upon the conclusion of the hearing, an adjudicative final order shall be issued and served upon the parties.

(f) In any proceeding under this article, the burden of proof rests upon the complainant.

(g) Copies of current rules of procedures shall be available at the office of the Director.

(10) *Enforcement by private persons.*

(a) If within one hundred eighty (180) days after a complaint is filed alleging discrimination, the Director has been unable to obtain voluntary compliance with the provisions of this Article, the aggrieved person may demand a notice of right-to-sue from the Director, the issuance of which shall terminate the jurisdiction of the Director and the Board over such a complaint. Not later than ninety (90) days following receipt of the notice of right-to-sue, the aggrieved person may commence a civil action in a court of competent jurisdiction against the respondent named in the complaint.

(b) If, in a private enforcement proceeding under this Article, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable attorney's fees, interest, costs or other appropriate relief.

(c) Upon request of the Board, the County Attorney may intervene on behalf of the County in an action brought under the provisions of this Article, if the Board certifies that the case is of great public importance to the citizens of Miami-Dade County.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 20, 12-5-06; Ord. No. 09-53, § 16, 6-30-09)

### ARTICLE V. FAMILY LEAVE

[Sec. 11A-29. Legislative findings and purpose.](#BK_B09E26C71DE439790D4F1E35AE17864D)

[Sec. 11A-30. Definitions.](#BK_88D55B10C5023E7D9483FFBCA995D033)

[Sec. 11A-31. Entitlement to leave.](#BK_03E0DDEB18E9F288B729781E3086F35A)

[Sec. 11A-32. Exemption for governmental employers that provide equivalent leave rights.](#BK_12A1DAB6CDA347243B0C2820A9733404)

[Sec. 11A-33. Procedures for family leave complaint.](#BK_3A9ED73F1AEB95ED541303FF29B4E26C)

Sec. 11A-29. Legislative findings and purpose.

(1) The County Commission finds that the number of families within the County in which both parents or a single parent is employed outside the home has increased significantly within recent years. Due to a lack of employment policies designed to accommodate working parents, many individuals are forced to choose between job security and parenting or providing care for ill family members. The Commission further finds that it is necessary to promote the economic security of families by guaranteeing jobs to wage earners who choose to take a period of leave upon the birth or placement for adoption of a child or serious health condition of a family member. The Commission also recognizes that unrestricted leave by an employee may interfere with an employer's legitimate business needs. The Commission, therefore, declares that it is the policy of the County to balance the demands of the workplace with the needs of families, to promote stability and economic security in families and to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse or other close relative who has a serious health condition. The County further declares that employees should be entitled to take such leave without risk of termination of employment or retaliation by employers.

(2) The County Commission finds that the enactment of the Family and Medical Leave Act of 1993, Public Law No. 103-3 (29 U.S.C. § 2611 et seq.) fulfills many of the purposes for which this chapter was originally intended. In order to avoid imposing possibly conflicting burdens on employers and unduly confusing employees about their family leave rights, the Commission believes it appropriate to make the County ordinance consistent with the federal act and intends that the ordinance be so interpreted. In enacting this revised chapter, the County Commission intends to provide employees in the County with an efficient alternative means of enforcing their rights to family medical leave through the Commission on Human Rights.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 09-53, § 17, 6-30-09)

Sec. 11A-30. Definitions.

As used in this article:

(1) *Commission* shall mean the Miami-Dade County Commission on Human Rights.

(2) *Director* shall mean the Director of the Miami-Dade County Commission on Human Rights or his or her designee.

(3) *Employer* shall mean a person as defined in [Section 11A-2](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-2DE)(9) of this chapter which has in the regular course of business fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year.

(4) *Employee* shall mean a person who has been employed in Miami-Dade County by the employer with whom leave is requested for at least twelve (12) months and for at least one thousand two hundred and fifty (1,250) hours of service with such employer during the previous twelve-month period.

(5) *Grandparent* shall mean any grandparent of an employee for whom the employee has assumed primary financial responsibility.

(6) All other terms shall be defined as in the Family and Medical Leave Act of 1993, Public Law No. 103-3 (29 U.S.C. § 2611 et seq.) and any amendments thereto.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 21, 12-5-06; Ord. No. 09-53, § 18, 6-30-09)

Sec. 11A-31. Entitlement to leave.

Employees, as defined in this article, shall be entitled to take leave on the same terms and conditions as are provided in Sections 102, 103, 104 and 108 of the Family and Medical Leave Act of 1993, Public Law No. 103-3, any amendments thereto, except:

(1) An employee may also take leave under this chapter to care for a grandparent with a serious health condition on the same terms and conditions as leave is permitted under the Family and Medical Leave Act to care for a parent with a serious health condition.

(2) Nothing in this chapter shall be construed to affect any employee benefit plan that the employer may otherwise provide.

(Ord. No. 97-17, § 1, 2-25-97)

Sec. 11A-32. Exemption for governmental employers that provide equivalent leave rights.

This article shall not apply to any municipality, special district, or other local government entity that maintains a leave policy that:

(a) Provides employees with at least the same rights to leave as are provided by this article; and

(b) Includes an administrative procedure for its employees to enforce such rights.

(Ord. No. 97-17, § 1, 2-25-97)

Sec. 11A-33. Procedures for family leave complaint.

The procedures for a family leave complaint shall be the same as the procedures outlined in [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO).

(Ord. No. 97-17, § 1, 2-25-97)

### ARTICLE VI. OFFICE OF FAIR EMPLOYMENT PRACTICES

[Sec. 11A-34. Declaration of policy.](#BK_001436F4E7D40D9970449DA933ED75BE)

[Sec. 11A-35. Definitions.](#BK_8E1B2E45E61BE3A549F48DFFD66B9201)

[Sec 11A-36. Miami-Dade County Office of Fair Employment Practices recognized; office of Director established.](#BK_67EC86DEA21C4539A034C468A5AFAE68)

[Sec. 11A-37. Duties and powers.](#BK_95BF2262FDCA36D9B59452C5F2E936E2)

[Sec. 11A-37.1. Appeals process.](#BK_6067F7D3719F522E9DE56C9DB485960F)

Sec. 11A-34. Declaration of policy.

(1) It has been and is the policy of Miami-Dade County to provide equal employment opportunity for all without regard to race, sex, color, national origin, religion, age, disability, ancestry, marital status, pregnancy, sexual orientation or veteran's status and to prohibit unlawful discrimination on such basis.

(2) It is further the policy of Miami-Dade County to ensure equal opportunity within the County employment system by engaging in voluntary affirmative action to promote diversity within the County work force and employ a representative work force. However, nothing in this section shall be interpreted to require the County to grant preferential treatment to any individual because of sexual orientation.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98)

Sec. 11A-35. Definitions.

When used herein:

(a) *Affirmative action* shall mean a program to ensure equal employment opportunity and treatment for all qualified individuals without regard to race, color, religion, national origin, age, disability, sex, marital status, pregnancy, veteran's status or sexual orientation, and to every extent possible, eliminate areas of underutilization in employment of minorities, women and persons with disabilities. However, nothing in this section shall be interpreted to require the County to grant preferential treatment to any individual because of sexual orientation.

(b) *Office* shall mean the Miami-Dade County Office of Fair Employment Practices, a division of the Office of the County Manager.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98)

Sec 11A-36. Miami-Dade County Office of Fair Employment Practices recognized; office of Director established.

(a) The position of Director of the Office of Fair Employment Practices is hereby created and established. The Director shall be appointed by and will serve at the will of the County Mayor. The position shall be exempt from the classified service of the County. The County Mayor shall appoint such assistants to the Director as may be necessary, subject to budgetary limitations.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 13-39, § 2, 5-7-13)

Sec. 11A-37. Duties and powers.

The duties, functions, powers and responsibilities of the Office and its Director shall include the following:

(1) Pursuant to [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO), jurisdiction over complaints of employment discrimination by county employees and applicants arising under Article IV of this chapter.

(2) Enforcement of the provisions of this article and rules and regulations promulgated hereunder.

(3) Overall jurisdiction in the development implementation and monitoring of fair employment guidelines as they relate internally to Miami-Dade County.

(4) Subject to the approval of the County Mayor or County Mayor's designee and the County Attorney, review and approve department affirmative action plans which address underutilization of minorities, women and the disabled.

(5) Monitor County hiring and employment practices to ensure compliance with federal and state employment discrimination legislation. Reports of noncompliance shall be forwarded to the County Mayor or County Mayor's designee and the County Commission for review and determination.

(6) Establish rules and procedures for processing and resolving complaints of employment discrimination by County employees.

(7) Promulgation of rules and regulations to ensure fair employment practices within the County's employment system.

(8) Assure that information and technical assistance is provided to all County administrators, County employees, and applicants for employment, concerning fair employment practices.

(9) Publish and disseminate public information and materials relating to equal employment opportunities and fair employment practices, including serving as a fair employment resource to the community at large.

(10) Make annual reports to the County Mayor or County Mayor's designee and the County Commission concerning the status of Miami-Dade County employment system as it relates to fair employment practices, the enforcement of the provisions of this article and recommendations concerning methods by which to improve the County's fair employment practices.

(11) Perform such other administrative duties as may be assigned by the County Mayor.

(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 13-39, § 3, 5-7-13)

Sec. 11A-37.1. Appeals process.

(1) Any County employee or applicant protected by [Section 11A-27](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-27EXJUMIDECOEM) may file an appeal of an adverse determination of the Director within fifteen (15) days of receipt of the determination, unless the complaint involves the discipline of an employee with a right to appeal under [Section 2-47](../level4/PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM.docx#PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM_S2-47SUDIREGRAP) of the Code. If the complaint involves the discipline of an employee with the right to appeal, any issue of discrimination or retaliation shall be resolved through the process established under [Section 2-47](../level4/PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM.docx#PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM_S2-47SUDIREGRAP) of the Code of Miami-Dade County or, to the extent available under any applicable collective bargaining agreement, through grievance and arbitration. County employees and applicants with the right to appeal the Director's determination shall have the right to have a hearing examiner appointed under this article, subject to budgetary appropriations by the Board of County Commissioners, to review the determination of the Director. The hearing examiner shall conduct an evidentiary hearing and make findings of fact and a recommendation as to whether there has been a violation of [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO) and if so shall recommend an appropriate remedy.

(2) Any hearing examiner appointed pursuant to this article shall be sufficiently independent to assure that no external interference or influence adversely affects the independence and objectivity of the hearing officer. Accordingly, there will be no external influence on the hearing examiner in the performance of his or her duties from any persons, including the Mayor or any member of the administrative staff, and that no Commissioner or employee of a Commissioner shall take part in the appointment or removal of officers and employees in the administrative services of the County, as such external influence would adversely affect the independence and objectivity of the hearing examiner.

(3) Upon receipt of a request for an appeal, the Director shall refer the appeal request to a hearing examiner available to serve as such under [Section 2-47](../level4/PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM.docx#PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM_S2-47SUDIREGRAP). Subject to budgetary appropriations by the Board of County Commissioners, such hearing examiners may be paid a fee for their services, but shall not be deemed County officials or employees within the purview of Sections [2-10.2](../level3/PTIIICOOR_CH2AD_ARTIINGE.docx#PTIIICOOR_CH2AD_ARTIINGE_S2-10.2COBO), [2-11.1](../level3/PTIIICOOR_CH2AD_ARTIINGE.docx#PTIIICOOR_CH2AD_ARTIINGE_S2-11.1COINCOETOR) or otherwise. The hearing examiner shall conduct a hearing after notice to the County employee or applicant and the County department involved. The hearing shall be conducted in accordance with the procedures applicable to hearings under [Section 2-47](../level4/PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM.docx#PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM_S2-47SUDIREGRAP), except as may be provided herein. Any interested party may procure the attendance of witnesses and the production of records at such hearing in the manner provided by [Section 2-50](../level4/PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM.docx#PTIIICOOR_CH2AD_ARTIVPE_DIV2CISECOEM_S2-50OATEPRRE). All hearings requested pursuant to this paragraph shall be commenced insofar as is practicable within one hundred twenty (120) days of the Director's determination, except that the Director shall have the authority to extend such time for reasonable cause.

(4) The hearing examiner shall transmit his or her findings of facts, and any recommendations, including any proposed remedies as set forth in subsection (5) of this section, together with a transcript of all evidence taken before him or her and all exhibits received by him or her to the Mayor or Mayor's designee for a final decision. The Mayor or Mayor's designee may sustain, reverse or modify the Director's decision. In any case in which the hearing examiner finds that the employee filed a frivolous complaint in bad faith, the hearing examiner may recommend and the Mayor or Mayor's designee may direct the employee to pay the costs of the hearing, including the County's attorney's fees.

(5) Remedies. In the event the hearing examiner finds that there has been a violation of [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO), he or she may recommend the following remedies, and no others:

(a) Hiring of the applicant or promotion of the employee with accrued seniority, with accrued benefits and with back pay;

(b) Reinstatement of the employee to the same position held before the adverse action was commenced or to an equivalent position, or award reasonable front pay as alternative relief;

(c) Reinstatement of the employee's fringe benefits and seniority rights, as appropriate;

(d) Compensation of the employee, if appropriate, for lost wages, benefits or other lost remuneration caused by the adverse action; and/or

(e) Requiring reasonable accommodation.

(6) The Mayor or the Mayor's designee's final order shall be subject to review in accordance with the Florida Rules of Appellate Procedure. For purposes of such review, any original jurisdictional notices required to be filed under the Florida Rules of Appellate Procedure shall be filed with the Director. The Director shall provide the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee may be charged by the Director for the preparation and transmission of the record on appeal to the court of competent jurisdiction. Such fee may be waived by the Director if the party requesting the record is indigent.

(7) Any County employee found to have discriminated or retaliated against another County employee or applicant in violation of this section shall be considered to have committed a violation of the section and shall be subject to disciplinary action up to and including dismissal from County employment.

(8) A career service employee, except in the case of disciplinary action, shall have the option of utilizing an unfair labor practice procedure, or a grievance procedure established under Section 447.101 of the Florida Statutes or the procedures set forth in this Article VI, but such employee is precluded from availing himself or herself to more than one of these procedures. Applicants shall have the option of utilizing an unfair labor practice procedure or the procedures set forth in this Article VI, but such applicant is precluded from availing himself or herself to more than one of these procedures. Once an employee or applicant has selected a forum for his or her appeal to be heard, he/she is bound by that decision and cannot seek to be reheard in another forum.

(9) The Mayor or the Mayor's designee shall provide an annual report to the Board of County Commissioners with regard to the number of cases filed under this Article VI and the disposition of said cases.

(Ord. No. 13-39, § 4, 5-7-13)

### ARTICLE VII. CONTRACTING, PROCUREMENT BONDING AND FINANCIAL SERVICES ACTIVITIES

[Sec. 11A-38. Definitions.](#BK_4243F39EBD4C577611809D2BAA08A473)

[Sec. 11A-39. Duties and responsibilities of the Director of the Department of Business Development (as they relate to discrimination in contracting, procurement, bonding and financial services activities).](#BK_7E00151D835B89A5E0F4C18ED94D51C5)

[Sec. 11A-40. Qualifications of Hearing Officers and removal; organization.](#BK_9B6D65537B900DF382196533EE792794)

[Section 11A-41. Burden of proof in disparate impact cases.](#BK_D6C42E04ED407FE1542DDE811D3F484D)

[Sec. 11A-42. Unlawful practices exception.](#BK_3DEA7E993860E9DC84342BB354A09CAD)

[Sec. 11A-43. Unlawful practices.](#BK_400E0E1A9ABA67BF07D399E682273FD8)

[Sec. 11A-44. Procedures.](#BK_6D6E9979A63239897A595A8C643725CE)

[Sec. 11A-45. Enforcement of final order.](#BK_B633BE6368A0B1EE71B7B0EB4602DA7E)

[Sec. 11A-46. Appeals.](#BK_CBB992BCCF742047D8A2D23AE1C0A665)

[Section 11A-47. Complaints.](#BK_51FEDBC17403E7DB0E30B0CA8FE43232)

[Section 11A-48. Enforcement by private persons.](#BK_EA7602607E127270AAF021DA5DC6ADB7)

[Sec. 11A-49. Conflicting laws repealed.](#BK_4A00971C74E7819A99EF0D6AEF1F9362)

[Sec. 11A-50. Article's provisions; areas of application; additional to other laws.](#BK_78C0EC6192F6109AC60246EBE8043CBB)

[Sec. 11A-51. Civil fines.](#BK_5469DB91075F7993EA5B1390F908BF13)

[Sec. 11A-52. Sanctions/penalties.](#BK_C4BE5C77B040F72186F98ED3AB2B5545)

[Secs. 11A-53—11A-59. Reserved.](#BK_8FCC8FDE9BA83E92B618B44C98DA9EF0)

Sec. 11A-38. Definitions.

The definitions set out in [Section 11A-2](../level3/PTIIICOOR_CH11ADI_ARTIGEPR.docx#PTIIICOOR_CH11ADI_ARTIGEPR_S11A-2DE) shall apply to this article in addition to the definitions set forth below. As used in this article:

*Bid* means a quotation, proposal, letter of interest or offer by any bidder in response to any kind of invitation, request or public announcement to submit such quotation, proposal, letters of interest or offer to perform the contract.

*Bidder* means any person, partnership, corporation or other business entity that submits a bid.

*Complaint* shall mean any written charge alleging an unlawful practice prohibited by this article.

*Complainant* shall mean any person, persons or business entities alleging an unlawful practice prohibited by this article.

*Conciliation* or *settlement* shall mean a written agreement resolving or otherwise disposing of a complaint and which is entered into by the parties and the Director prior to final resolution of the complaint.

*Construction* means the building, maintaining, painting, altering, or repairing of a public or private improvement.

*Contract* means an agreement that may include, but is not limited to those proposed by the County or Public Health Trust staffs or approved by the County Commission or Public Health Trust in any of the following classes:

(1) Procurement of goods and services not included in the subsections (2), (3), and (4) below;

(2) Construction of a public or private improvement;

(3) Professionals subject to Section 287.055, Florida Statutes and Section 2-10.4 of the Code of Miami-Dade County; or

(4) Other professional services including but not limited to accounting, legal, health care, consulting and management services.

*Determination* shall mean a final investigative report issued by the Director of DBD or his or her designee.

*Director of DBD,* as used in this article, shall mean the Director of the Miami-Dade County Department of Business Development (hereinafter known as DBD) or his or her designee.

*Discrimination* shall mean any difference, distinction or preference in treatment, access or impact because of race, color, religion, ancestry, national origin, gender, pregnancy, age, or disability which is prohibited by this article. Discrimination also includes sexual harassment of any sort.

(1) *Disparate treatment* means intentional treatment of a person or business in a discriminatory manner which is prohibited by this article or by State or Federal law.

(2) *Disparate impact* means intentional or unintentional activities or practices which have a discriminatory impact on a group protected under this article.

*Financial institution* shall include any bank, insurance company, bonding company, savings and loan association, credit union, mortgage company or any other person or organization engaged in the business of lending money, guaranteeing loans, or extending credit.

*Good* means any tangible product, material or supply that is not a service.

*Hearing Officer* is the person designated to hold hearings on complaints of discriminatory activities.

*Labor organization* shall include any union, association, joint committee, board or other combination, or any agent thereof which bargains or deals with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

*Respondent* shall mean person, persons or business entities alleged to have engaged in an unlawful practice prohibited by this article or by State or Federal law.

"Right to sue letter" is a letter that would allow the charging party to initiate a civil action in a court of appropriate jurisdiction.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-39. Duties and responsibilities of the Director of the Department of Business Development (as they relate to discrimination in contracting, procurement, bonding and financial services activities).

(a) The duties, functions, powers and responsibilities of the Director of DBD include but are net limited, to the following:

(1) Enforcing the provisions of this article and any rules and regulations promulgated thereunder.

(2) Receiving, initiating, investigating, and determining charges of violations of this article.

(3) Facilitating settlement or conciliation of alleged violations of this article or State or Federal laws.

(4) Issuing final investigative reports which shall include findings, and conclusions of the Director of DBD as the result of investigations of complaints of discriminatory activities in contracting, procurement, bonding and financial services.

(5) Providing assistance and direction in all matters relating to discrimination in contracting, procurement, bonding and financial services activities.

(6) Publishing and disseminating information and educational materials relating to discrimination in contracting, procurement, bonding and financial services activities.

(7) Issuing notice of a complainants private right to sue under this article upon a written, request from complainant received not sooner than one hundred eighty (180) days after the filing of a charge or amended charge of a violation of this article.

(8) Performing such other administrative duties as may be assigned by the County Manager relating to discrimination in contracting, procurement bonding or financial services activities.

(b) When necessary to vindicate the public interest, the Director of DBD may, with the approval of the County Attorney, be designated a party in any proceeding under this article, and in connection therewith, shall be governed by the same procedures applicable to any other party to a charge of violations of this article. In any proceeding in which the Director participates as a party, the Director, with the approval of the County Attorney, may hire special counsel.

(c) Miami-Dade County shall be named a party to any judicial proceeding involving a challenge to the validity of this article. Services of process upon Miami-Dade County shall be accomplished as provided by Section 48.111, Florida Statutes.

(d) If at any time after a complaint has been filed, the Director of DBD or the Hearing Officer believe that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Director of DBD or the Hearing Officer shall refer the complaint to the county attorney, and request that the county attorney take appropriate civil action to preserve the status quo or to prevent irreparable harm. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Florida Rules of Civil Procedure. The commencement of a civil action under this article shall be in addition to all remedies otherwise available under Federal and State law, municipal ordinances and this article.

(e) Subject to the approval of the County Manager, the Director of DBD shall have the authority to adopt, promulgate, amend and rescind rules and regulations necessary to effectuate the purposes and provisions of this article following a public hearing and subject to approval by the County Commission.

(f) The Director of DBD shall certify the final order of the Hearing Officer. Such an adjudicative final order may review and uphold, modify or reverse recommended orders issued by the Director of DBD or his or her designated representative in accordance with the provisions of this article.

(g) The Director of DBD shall have the authority to administer oaths.

(h) The Director of DBD shall have the authority to compel, by subpoena, the attendance of witnesses and the production of evidence for discovery, investigation, hearing or deposition for the preservation of testimony.

(i) The Director of DBD shall have the authority to issue remedial orders requiring cessation of violations of this article.

(j) The Director of DBD shall have the authority to issue such other orders as, in the judgment of the Hearing Officer, will carry out the purposes of this article, including but not limited to:

(1) Taking affirmative action and making corrections; and

(2) Requiring penalties and/or sanctions and to award quantifiable relief to a prevailing complainant for injuries incurred as a proximate result of an act prohibited by this article or to apply to the appropriate court for such an award, provided that such damages are not prohibited by state or federal law;

(3) To issue final orders dismissing the complaint.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-40. Qualifications of Hearing Officers and removal; organization.

(1) Hearing Officers shall be residents of Miami-Dade County who possess outstanding reputations for civic pride, interest, integrity, responsibility, and business or professional ability. Appointments shall be made by the County Manager or his or her designee. Qualifications for Hearing Officers should include retired judges who are licensed and admitted to practice law in the State of Florida, or arbitrators or mediators certified by the Circuit Court or State Bar Associations. Additional qualifications include but not limited to experience in equal opportunity, anti-discrimination, contracting, procurement, bonding or financial services activities. Such appointments shall be submitted to the Clerk of the Board of County Commissioners for ratification by the Clerk. The Clerk shall submit an annual report to the Board on the number of women who have served as hearing examiners.

(2) The County Manager or his or her designee shall appoint as many Hearing Officers as are deemed necessary. Appointments shall be made for a term of one (1) year. Any Hearing Officer may be reappointed at the discretion of the County Manager, subject to ratification by the Clerk of the Board of County Commissioners. There shall be no limit on the number of reappointments that may be given to any individual Hearing Officer; provided, however, that a determination as to reappointment must be made for each Hearing Officer at the end of each of his one-year terms. The County Manager shall have authority to remove Hearing Officers at any time. Appointments to fill a vacancy shall be for the remainder of the unexpired term.

(3) Hearing Officers shall not be County employees but shall be compensated at a rate to be determined by administrative order.

(4) The Miami-Dade County Attorney's Office shall serve as general counsel to the Hearing Officers.

(Ord. No. 97-67, § 1, 6-3-97)

Section 11A-41. Burden of proof in disparate impact cases.

(1) (a) An unlawful contracting, procurement, bonding and/or financial services practice based on disparate impact is established under this subchapter only if:

(i) A complaining party demonstrates that a respondent uses a particular contracting, procurement, bonding and/or financial services practice that causes a disparate impact on the basis of race, color, religion, gender, pregnancy, age, disability or national origin and the respondent fails to demonstrate that the challenged practice is consistent with business necessity; or

(ii) The complaining party demonstrates that there is a non-discriminatory alternative contracting, procurement, bonding or financial services practice and the respondent refuses to adopt such alternative contracting, procurement, bonding and/or financial services practice.

(b) (i)  
With respect to demonstrating that a particular contracting, procurement, bonding and/or financial services practice causes a disparate impact as described in subparagraph (a)(i), the complaining party shall demonstrate that each particular challenged contracting, procurement, bonding and/or financial services practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one contracting, procurement, bonding and/or financial services practice.

(ii) If the respondent demonstrates that a specific contracting, procurement, bonding and/or financial services practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(iii) A demonstration that a contracting, procurement, bonding and/or financial services practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(2) Except as otherwise provided in this subchapter, an unlawful contracting, procurement, bonding and/or financial services practice is established when the complaining party demonstrates that race, color, religion, gender, pregnancy, age, disability, or national origin was a motivating factor for any contracting, procurement, bonding and/or financial services practice, even though other factors also motivated the practice.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-42. Unlawful practices exception.

Nothing contained in this article or any amendments hereto shall require any person to enter into a voidable contract with any person lacking the legal competency to enter into contracts.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-43. Unlawful practices.

It shall be an unlawful practice to:

(1) Retaliate or discriminate in any manner against a person because he or she has opposed a practice declared unlawful by this article, or because he or she has supported a person, persons or business entities protected by this article or because he or she has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference conducted under the authority of this article; or

(2) Aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article or obstruct or prevent any person from complying with the provisions of this article.

(3) It shall be an unlawful and discriminatory practice for any person or business (including a financial institution) involved in public or private contracting, procurement, bonding or financial services activities, or any other person or business, because of race, color, religion, gender, pregnancy, age, national origin, age, disability, or handicap:

(a) To refuse to contract with a bona fide prime contractor or subcontractor on a construction contract; or

(b) To discriminate against a person of: business in the terms, conditions, or privileges or participation in contracting, procurement, bonding or financial services activities; or

(c) To cause to be made any untrue or intentionally-misleading statements or advertisements regarding availability of contracting, procurement, bonding or financial services activities; or

(d) 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 section or any agreement entered into thereunder.

(e) To engage in disparate treatment of any person or business in a manner which is prohibited by this article.

(f) To engage in actions, or to cause others to engage in actions, which result in, or cause, a disparate impact on persons or businesses in a manner which is prohibited by this article.

(g) Sexual harassment of any sort is also considered an unlawful contracting, procurement, bonding or financial services practice under this subchapter.

(4) It shall be an unlawful practice to engage in any of the following acts because of an individual's race, color, religion, ancestry, national origin, age, gender, pregnancy, age or disability:

(a) To refuse, withhold or deny to a person any services, access, advantages, goods, facilities or privileges associated with contracting, procurement, bonding or financial services activities including the extension of credit; or

(b) To withhold, deny or make misleading statements in regards to payments on a contract after receipt of approved billing has been made to the contractor on those amounts not in dispute; or

(c) To refuse to provide bonding or financing or to charge amounts ford such bonding or financing which is at a higher rate of cost than charge to other similarly-situated persons or businesses; or

(d) To fail or refuse to provide or to otherwise discriminate against any person or business in the providing of necessary information required to properly evaluate or consider any proposed contract or bid on a contracting, procurement, bonding or financing opportunity. This shall include, but is not limited to, sharing of information unevenly, or not giving the same information to all parties requesting such information. Contractors bidding on county contracts shall be required to keep logs of phone calls to, and from, subcontractors, noting time and date of call, persons contacted, and subject of the call. For phone calls relating to bids, the information required on the log shall include name of person and/or firm, description of work that is being bid (including the description and/or contract number of the prime contract) and the dollar amount of the bid. Such logs shall be made available to Miami-Dade County personnel and may serve as evidence as to whether discriminatory activities have occurred in the providing of information; or

(e) To refuse to provide price quotations for materials or supplies, or to provide price quotations for such materials or supplies at higher costs than those quoted to other similarly situated persons or businesses. Suppliers shall be required to maintain logs of phone calls related to requests for price quotations from bidders for County contracts; such logs shall contain information on the time and date of the call, persons calling and contacted, and subject of the call. For phone calls relating to price quotations, the information required on the log shall include name of person and/or firm, description of material that is being quoted (including the description and/or contract number of the prime contract) and the dollar amount of the bid and the prices quoted. Such logs shall be made available to County personnel and may serve as evidence as to whether discriminatory activities have occurred relating to the providing of price quotations; or

(f) To cause to be made, aid, abet or engage in any acts that applies unequal evaluation of performance on a contracting or procurement contract; or

(g) To refuse to provide financial services or to charge amounts for such financial services which is at a higher rate of cost or interest than charged to other similarly situated persons or businesses.

(5) Exceptions. Contracting, procurement, bonding or financial services activities.

(a) The provisions of this article may not apply to contractual agreements that have specific requirements such as labor agreements or need for specific qualifications and/or licenses.

(b) The provisions of this article shall not limit the applicability of any federal law, state law or county ordinance or other law regarding contracting, procurement, bonding or financial services activities.

(6) Exemption of Business Enterprise Programs. Nothing contained in this ordinance shall prohibit Miami-Dade County from adopting, implementing or enforcing any program to encourage the involvement of small, minority and women-owned businesses in Miami-Dade County contracting, procurement, bonding and financial services activities to the extent that such programs are otherwise permissible under applicable State and Federal law.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-44. Procedures.

(1) Any person aggrieved by an unlawful contracting, procurement, bonding or financial services practice prohibited by this article must file a written, signed complaint with the Director of DBD within one hundred eighty (180) days after the alleged unlawful practice occurs.

(2) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent. Such complaint may be amended; however, the amended complaint must be filed within the period prescribed by [Section 11A-44](../level3/PTIIICOOR_CH11ADI_ARTVIICOPRBOFISEAC.docx#PTIIICOOR_CH11ADI_ARTVIICOPRBOFISEAC_S11A-44PR)(1).

(3) Upon the filing of such a complaint, the Director of DBD shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits provided under this article.

(4) Upon the filing of a complaint, the Director of DBD shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited, the right to a fair and full hearing on the matter before a Hearing Officer. Such service shall be by certified mail.

(5) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Director of DBD. Notice shall be served upon such additional or substitute respondent within ten (10) days of such joinder or substitution and shall explain the basis for the Director of DBD's belief that the person to whom the notice is addressed is properly joined as a respondent.

(6) Each respondent may file an answer to the complaint, no later than twenty (20) days after receipt of complaint and notice from the Director of DBD.

(7) In conducting an investigation of a complaint, the Director of DBD shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence relevant to the complaint and may examine, record, photograph and copy such materials and take and record the testimony or statements of such persons and issue such interrogatories as are reasonably necessary for the furtherance of the investigation. The Director of DBD may enter an order compelling answers to interrogatories. The Director of DBD may issue subpoena's to compel access to or the production of materials, or appearance of persons, to the same extent and subject to the same limitations as all other subpoenas issued by the county court of Miami-Dade County, Florida.

(8) In conducting investigations of discriminatory activities, if the Director of DBD has reason to believe that a "pattern or practice" of discrimination exists, the Director of DBD shall have the ability to initiate complaints and to obtain information and/or evidence from other persons or businesses in the effort to determine whether a "pattern or practice" of discriminatory activities has, or is, occurring, even though specific complaints have not been filed against those other persons or businesses. Such ability will include all of the powers available to the Director of DBD as provided for in Article VII herein, including subpoena powers.

(9) Subpoenas.

(a) Upon written application to the Director of DBD, a party shall be entitled to the issuance of a reasonable number of subpoenas to compel the attendance of witnesses and/or the production of documents at a hearing or at a deposition. Subpoenas issued at the request of a party shall show on their face the name and address of such party, shall state that they were issued at the party's request and shall be subject to the same limitations as subpoenas issued by the County Court of Miami-Dade County, Florida.

(b) Witnesses summoned by the subpoena of the Director of DBD shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay, shall be paid by the Director of DBD.

(c) Within ten (10) days after service of a subpoena upon any person, such person may petition the Director of DBD to revoke or modify the subpoena. The Director of DBD shall grant the petition if it finds 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.

(d) In the case of the contumacy or refusal to obey a subpoena, the Director of DBD or any party may seek enforcement of a subpoena issued under the authority of this article by filing a petition for enforcement in the County Court of Miami-Dade County, Florida.

(e) In any enforcement proceeding authorized by this article, the court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedure.

(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 or her power to do so, shall be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(g) Any person who, with the intent thereby to mislead the Director of DBD or the Hearing Officer, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Director of DBD pursuant to its 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 false any documentary evidence, shall be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars ($500.00) or imprisoned not more than sixty (60) days or both.

(h) The Director of DBD shall have the ability to initiate complaints and to issue subpoenas as provided for in this section to persons or businesses if there is a belief or evidence that a "pattern or practice" of discrimination appears to exist.

(10) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this article or by rules, regulations, or orders adopted pursuant to this article.

(11) All papers or pleadings required by this article to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rule of Civil Procedure.

(12) In the case of a complaint of contracting, procurement, bonding or financial services discrimination, the Director of DBD shall make a determination consisting of a final investigative report and issue a "cause" or "no cause" determination not later than one hundred eighty (180) days from receipt of the complaint or amended complaint. Provided, however, if the Director of DBD is unable to make a determination of the alleged discriminatory contracting, procurement, bonding or financial services practice within one hundred eighty (180) days after the filing of the complaint, the Director shall notify the complainant and the respondent in writing of the reasons for not being able to make a determination of discriminatory practice.

(13) If the Director of DBD has not issued a finding within one hundred eighty (180) days, the complainant may request a right to sue letter.

(14) At the end of any investigation under this article, the Director of DBD shall prepare a determination consisting of a final investigative report. The complainant has fourteen (14) calendar days to request a hearing before a Hearing Officer, or to request a right to sue letter. In a case where a right to sue letter has been issued, the complainant has ninety (90) days to pursue legal action in a court of appropriate jurisdiction. If a hearing is requested, the complainant must submit a written request to the Director of DBD within fourteen (14) days of receipt of the final investigative report.

(15) Upon receipt of a written request for a hearing, the Director of DBD shall forward the final investigative report to a Hearing Officer. The Director's investigative report shall contain:

(a) The names and dates of contacts with witnesses;

(b) A summary and the dates of correspondence and other contacts with the complainant and the respondent;

(c) A summary description of other pertinent records;

(d) A summary of witness statements;

(e) Any responses to requests for discovery; and

(f) Recommendations including, but not limited to the issues of liability for a violation of this article, affirmative action, reasonable accommodation, quantifiable damages, costs, attorney's fees, interest, civil fines, and other sanctions or penalties as outlined in Article VII.

(16) The Director of DBD shall send a complete copy of the final investigative report by first class mail to all parties. In addition, the entire investigative file prepared by the Director of DBD or his or her designee shall be forwarded to the Hearing Officer and shall become part of the record of any hearing pursuant to this ordinance. However, the Hearing Officer may exclude any portions of the investigative file as deemed appropriate.

(17) Scheduling and conduct of hearings:

(a) Upon receipt of a final investigative report from the Director of DBD wherein the Director of DBD has made a determination of "cause," the Hearing Officer shall set the matter down for hearing on the next regularly scheduled hearing date or as soon thereafter as possible or as mandated herein.

(b) The Hearing Officer shall send a notice of hearing by first class mail to the named violator at his last known address. The notice of hearing shall include but not be limited to the following:

(1) Name of the Hearing Officer who issued the notice.

(2) Factual description of alleged violation(s).

(3) Date(s) of alleged violation(s).

(4) Section of this article allegedly violated.

(5) Place, date and time of the hearing.

(6) Right of violator to be represented by a lawyer.

(7) Right of violator to present witnesses and evidence.

(8) Notice that failure of violator to attend hearing may result in civil penalty and/or other penalties or sanctions being assessed.

(9) Notice that requests for continuances will not be considered if not received by the Hearing Officer at least ten (10) calendar days prior to the date set for hearing.

(c) The Hearing Officers shall call hearings on a monthly basis or upon the request of the Clerk of the Board of County Commissioners. No hearing shall be set sooner than twenty (20) calendar days from the date of service of the notice of violation.

(d) A hearing date shall not be postponed or continued unless a request for continuance, showing good cause for such continuance, is received in writing by the Hearing Officer at least ten (10) calendar days prior to the date set for the hearing.

(e) All hearings of the Hearing Officer shall be open to the public. All testimony shall be under oath. A hearing may proceed in the absence of the named violator provided proper notice has been given as required by this section.

(f) The proceedings at the hearing shall be recorded and may be transcribed at the expense of the party requesting the transcript.

(g) The Clerk of the Board of County Commissioners shall provide clerical and administrative personnel as may be reasonably required by each Hearing Officer for the proper performance of his duties.

(h) Each case before a Hearing Officer shall be presented by the parties.

(i) The hearing need not be conducted in accordance with the formal rules relating to evidence and witnesses. Any relevant evidence shall be admitted if the Hearing Officer finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(j) Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.

(k) The Hearing Officer shall make findings of fact based on the evidence in the record. In order to make a finding upholding the Director of DBD's determination, the Hearing Officer must find by a preponderance of the evidence that the named violator was responsible for the violation of the relevant section of this article as charged.

(l) If the named violator is found to have committed the violation, it may be held liable for the reasonable costs of the administrative hearing, at the discretion of the Hearing Officer.

(m) The fact-finding determination of the Hearing Officer shall be limited to whether the violation alleged occurred and, if so, whether the person named in the violation can be held responsible for that violation. Based upon this fact-finding determination, the Hearing Officer shall either affirm or reverse the determination of the Director of DBD as to the responsibility of the named violator for violation of this article. If the Hearing Officer affirms the determination of the Director of DBD, the Hearing Officer, pursuant to this article, shall determine civil fine(s) and/or sanctions or penalties as appropriate. If the Hearing Officer reverses the determination of the Director of DBD and finds the named violator not responsible for the violation alleged in the final investigatory report, the named violator shall not be liable for the payment of any civil penalty or other sanction or penalty or administrative costs, absent reversal of the Hearing Officer's findings pursuant to this article. If the decision of the Hearing Officer is to affirm, the following elements shall be included:

(1) Amount of civil penalty.

(2) Amount, and/or type, of other sanctions or penalties as indicated in Section 11A-53 herein.

(3) Administrative costs of hearing.

(n) The Hearing Officer shall have the power to:

(1) Take testimony under oath.

(2) Assess and order the payment of civil penalties as provided herein. Assess and order other penalties and/or sanctions as provided herein.

(18) In the case of a complaint of contracting, procurement, bonding or financial services discrimination, the Hearing Officer's final order shall become final ten (10) days after issuance. The final investigative report and final order may be amended if additional evidence is discovered within ten (10) days, and if amended, shall become final ten (10) days thereafter.

(19) In all complaints filed pursuant to this article the Director of DBD's determination, and the Hearing Officer's final order, shall be served upon the complainant and the respondent.

(20) If the Director of DBD determines that no reasonable cause exists to believe that a violation of this article has occurred or is about to occur, the Director of DBD shall promptly dismiss the complaint. The Director of DBD shall publicly disclose each such dismissal.

(21) It is the policy of the Director of DBD and the Hearing Officer to encourage conciliation or settlement of charges. If possible, a written settlement agreement resolving the dispute between the aggrieved party and the respondent shall be executed prior to determination and any time until final hearing by the Hearing Officer; the Director of DBD will work with the parties in an attempt to conciliate the charge.

(22) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director of DBD and the Hearing Officer.

(23) Whenever the Director of DBD has reasonable cause to believe that a party has breached a conciliation agreement, the Director of DBD or the Hearing Officer shall refer the matter to the county attorney with a recommendation that a civil action be filed in a court of competent jurisdiction for enforcement of such agreement.

(24) Nothing said or done in the course of attempting conciliation under this article may be used as evidence in any subsequent proceeding under this article or otherwise without the written consent of the parties to the underlying charge of unlawful conduct.

(25) No hearing may be had where the Director of DBD finds a lack of jurisdiction or cause. However, following receipt of a right to sue letter, the complainant may file a private action with a court of proper jurisdiction.

(26) If after the Hearing Officer issues a determination finding discrimination, the respondent fails to comply with the Hearing Officer's order and if efforts at conciliation have failed and the respondent has not timely requested a hearing before the Hearing Officer, then the Hearing Officer or the Director of DBD or the complainant may file a civil action in the appropriate court of Miami-Dade County, Florida, seeking enforcement of the order.

(27) In any proceeding under this article, the burden of proof rests upon the complainant.

(28) Copies of current rules of procedure shall be available at the office of the Director of DBD.

(29) The Director of DBD, subject to approval by the county commission, and upon written agreement with federal, state or local agencies may accept written, sworn and signed complaints of violation of this article deferred to the Director of DBD by such agency for investigation or resolution; however, the Director of DBD may waive such deferment.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-45. Enforcement of final order.

If the Director of DBD and/or the Hearing Officer determines that any respondent has committed an unlawful act prohibited by this article, and said respondent refuses to comply with or obey the final order of the Hearing Officer, the Director of DBD or the Hearing Officer or the complainant may petition the court of appropriate jurisdiction for enforcement of the final order.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-46. Appeals.

(a) The named violator or any aggrieved party may appeal a final order of the Hearing Officer for all violations by filing a notice of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with the procedures and within the time provided by the Florida Rules of Appellate Procedure for the review of administrative action.

(b) Unless the findings of the Hearing Officer are overturned in a proceeding held pursuant to this section, all findings of the Hearing Officer shall be admissible in any proceeding to collect unpaid penalties.

(Ord. No. 97-67, § 1, 6-3-97)

Section 11A-47. Complaints.

It shall be unlawful for any person to initiate any complaint under the provisions of this article for the purpose of harassment. Any person convicted in a court of appropriate jurisdiction for the violation of this provision shall be subject to fine not to exceed five hundred dollars ($500.00) or imprisonment in the county jail for not more than sixty (60) days or both. Provision of this remedy is cumulative to and not in derogation of any civil action for malicious prosecution. Costs, including a reasonable attorney's fees, may be assessed upon a finding that any complaint was filed for the purpose of harassment. Payment of such costs may be considered in mitigation of the penalties hereinabove provided.

(Ord. No. 97-67, § 1, 6-3-97)

Section 11A-48. Enforcement by private persons.

(1) If in a private enforcement proceeding under this article, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable attorney's fees, interest, costs, or other order.

(2) Upon request of the Director of DBD or the Hearing Officer, the County Attorney may intervene in an action brought under the provisions of this Article, if the Director of DBD or the Hearing Officer certifies that the case is of public importance to the citizens of Miami-Dade County.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-49. Conflicting laws repealed.

All county and municipal ordinances and resolutions or any general law which the Board of County Commissioners is authorized by the Constitution of the State of Florida to supersede, nullify or amend, or any part of any such ordinance, resolution or law in conflict with any provision of this article, is hereby repealed.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-50. Article's provisions; areas of application; additional to other laws.

(1) This article is applicable in both the incorporated and unincorporated areas of Miami-Dade County. All violations shall be prosecuted in the court of appropriate jurisdiction of Miami-Dade County, Florida.

(2) The provisions of this article shall be cumulative and additional to and not in derogation of any and all other provisions or laws prohibiting discrimination in contracting, procurement, bonding or financial services activities.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-51. Civil fines.

(1) At the conclusion of a hearing and upon a finding of discrimination in contracting, procurement, bonding or financial services activities in violation of this article, the Hearing Officer may recommend that the county attorney commence a civil action for fines. Such civil action shall be commenced within ninety (90) days of the issuance of the final order of the Hearing Officer. If such civil action is brought by the county attorney, the court may impose the following fines:

(a) Up to three hundred dollars ($300.00) per instance of identified discriminatory action if the respondent has not previously been found guilty of a violation of this article; or

(b) Up to three hundred seventy-five dollars ($375.00) per instance of identified discriminatory action if the respondent has been found guilty of one prior violation of this article within the preceding five (5) years prior to filing of a complaint; or

(c) Up to five hundred dollars ($500.00) per instance of identified discriminatory action if the respondent has been found guilty of two or more violations of this article within the preceding seven (7) years prior to filing of a complaint.

(2) In imposing a fine under this article, the court shall consider the nature and circumstances of the violation including whether the discriminatory actions constitute disparate treatment or disparate impact, the degree of culpability, the history of prior violations of this article, the financial circumstances of the respondent and the goal of deterring future violations of this article.

(3) All fines imposed pursuant to this article shall be paid to the Board of County Commissioners.

(Ord. No. 97-67, § 1, 6-3-97)

Sec. 11A-52. Sanctions/penalties.

(1) At the conclusion of a hearing and upon a finding of discrimination in contracting, procurement, bonding or financial services activities in violation of this article, the Hearing Officer may recommend sanctions and/or penalties including, but not limited to, the following:

(a) Paying the aggrieved party for any profit and/or overhead lost as a result of the discriminatory act; or

(b) Exclusion of the person or business including its individual officers, shareholders with significant interests and affiliated businesses from participating in contracting, procurement, bonding, financial services activities with Miami-Dade County for a specified period of time, not to exceed five (5) years.

(Ord. No. 97-67, § 1, 6-3-97)

Secs. 11A-53—11A-59. Reserved.

### ARTICLE VIII. DOMESTIC LEAVE

[Sec. 11A-60. Definitions.](#BK_2DF7D3E2FB698B107C17A129132795A7)

[Sec. 11A-61. Entitlement to domestic leave.](#BK_A5842A50C85D426175E8CE0E01A2BA76)

[Sec. 11A-62. Certification and confidentiality.](#BK_9192C9969DCAE2AE0F9F1C62979DC10C)

[Sec. 11A-63. Employment and benefits protection.](#BK_7451BE6A9560472F8361732821C24286)

[Sec. 11A-64. Prohibited acts.](#BK_05D005F84C9DF968593A737B0EA84251)

[Sec. 11A-65. Procedures for domestic leave complaint.](#BK_A698561BC5C212FEFF392DA81FA9189E)

[Sec. 11A-66. Domestic leave for County and Public Health Trust employees.](#BK_EDA81733084CF24BCF9DEF95828E604A)

[Sec. 11A-67. Clerk of the Court to report perpetrators.](#BK_8904D9315142622661BC0BB163EA87F8)

[Secs. 11A-68, 11A-69. Reserved.](#BK_286F97BA87C4C767F7184E868FA35AF3)

Sec. 11A-60. Definitions.

As used in this article:

(1) *Commission* shall mean the Miami-Dade County Commission on Human Rights.

(2) *Director* shall mean the Director of Miami-Dade County Commission on Human Rights.

(3) *Domestic violence* shall mean a pattern of coercive behavior used by one (1) person to control another such as but not limited to: physical, sexual, emotional and psychological violence and abuse; threats; intimidation; verbal abuse; economic control; and stalking; and as defined in Sections 741.28, 784.046 and 784.048 of Florida Statutes.

(4) *Employee* shall mean a person who has been employed by the employer in Miami-Dade County for at least ninety (90) days and for at least three hundred and eight (308) hours of service with such employer during the previous ninety (90) days.

(5) *Employer* shall mean a person defined in [11A-29](../level3/PTIIICOOR_CH11ADI_ARTVFALE.docx#PTIIICOOR_CH11ADI_ARTVFALE_S11A-29LEFIPU) of this Chapter which has in the regular course of business fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year.

(6) *Perpetrator* shall mean a person who engages in domestic or repeat violence against another person(s).

(7) *Victim of domestic or repeat violence* shall mean a person who is subjected to domestic or repeat violence by a perpetrator.

(Ord. No. 99-05, §1, 1-21-99; Ord. No. 09-53, § 19, 6-30-09)

Sec. 11A-61. Entitlement to domestic leave.

(1) Employees, as defined in this article, shall be entitled to a total of thirty (30) work days of unpaid domestic leave during any twelve (12) month period for one (1) or more of the following:

(a) To obtain and receive medical and/or dental assistance for a medical and/or dental problem resulting from domestic or repeat violence, including obtaining such services for the employee's dependent children;

(b) To obtain and receive legal assistance relating to domestic or repeat violence, including but not limited to criminal prosecution, a protective order, divorce, custody of children, and child support;

(c) To attend court appearances relating to domestic or repeat violence, including but not limited to criminal prosecution, protective order, divorce, custody of children and child support;

(d) To attend counseling or support services, including counseling or support services for dependent children;

(e) Any other arrangements necessary to provide for the safety and well-being of an employee subject to domestic or repeat violence.

(2) Domestic leave under this section may be taken by an employee intermittently or on a reduced leave schedule. However, if an employee requests intermittent leave or reduced leave that is foreseeable based on a planned schedule, the employer may require such employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits, and better accommodates recurring periods of leave.

(3) Domestic leave may be taken in addition to the family leave allowed under Article V of this Chapter.

(4) Prior to requesting domestic leave, an employee must exhaust all paid vacation leave and/or personal leave.

(Ord. No. 99-05, §1, 1-21-99)

Sec. 11A-62. Certification and confidentiality.

(a) An employer may require that a request for leave under [Section 11A-61](../level3/PTIIICOOR_CH11ADI_ARTVIIIDOLE.docx#PTIIICOOR_CH11ADI_ARTVIIIDOLE_S11A-61ENDOLE) be supported by certification issued by an authorized person from a health care provider, attorney of record, counselor, law enforcement agency, clergy, domestic violence advocacy agency, domestic violence center, or domestic violence shelter. The certification shall be sufficient if it indicates that the employee is being subjected to domestic or repeat violence and needs time off to attend to one (1) of the matters described in [11A-61](../level3/PTIIICOOR_CH11ADI_ARTVIIIDOLE.docx#PTIIICOOR_CH11ADI_ARTVIIIDOLE_S11A-61ENDOLE)(a) through (e).

(b) To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting domestic leave under this article.

(Ord. No. 99-05, §1, 1-21-99)

Sec. 11A-63. Employment and benefits protection.

(1) Any eligible employee who takes domestic leave, shall on return from leave, be entitled to:

(a) Restoration by the employer to the position of employment held by the employee when leave commenced; or

(b) Restoration to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

(2) The taking of leave shall not result in the loss of any employment benefits accrued prior to the date on which the leave commenced.

(3) Nothing in this article shall be construed to entitle any restored employee to:

(a) The accrual of any seniority or employment benefits during any period of leave; or

(b) Any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

(4) Nothing in this section shall be construed to prohibit any employer from requiring any employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(5) During any period when the eligible employee takes leave, the employer shall maintain coverage under any group health plan for the duration of such leave at the level and under the conditions coverage that would have been provided if the employee had continued in employment continuously for the duration of such leave. However, the employer may recover the premium that the employer paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave if:

(a) The employee fails to return from leave after the period of leave to which the employee is entitled has expired; and

(b) The employees fails to return to work for a reason other than continuance or recurrence of domestic or repeat violence or other circumstances beyond the control of the employee.

(Ord. No. 99-05, §1, 1-21-99)

Sec. 11A-64. Prohibited acts.

(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under this article.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful under this section.

(Ord. No. 99-05, §1, 1-21-99)

Sec. 11A-65. Procedures for domestic leave complaint.

The procedures for a domestic leave complaint shall be the same as the procedures outlined in [Section 11A-28](../level3/PTIIICOOR_CH11ADI_ARTIVEM.docx#PTIIICOOR_CH11ADI_ARTIVEM_S11A-28PREMDICO).

(Ord. No. 99-05, §1, 1-21-99)

Sec. 11A-66. Domestic leave for County and Public Health Trust employees.

The Miami-Dade County employee leave manual and the Public Health Trust employee leave manual shall include provisions consistent with the requirements of this article for domestic leave.

(Ord. No. 99-05, §1, 1-21-99)

Sec. 11A-67. Clerk of the Court to report perpetrators.

(1) Upon a final conviction for a domestic violence related crime, the Clerk of the Court shall forward a copy of such final conviction to the employer of record of the perpetrator.

(2) For purposes of this section, "employer" shall mean any person, entity, corporation, partnership that employees any employee regardless of length of time or whether full or part-time.

(Ord. No. 99-05, §1, 1-21-99)

Secs. 11A-68, 11A-69. Reserved.

### ARTICLE IX. DOMESTIC PARTNERS AND FAMILY HEALTH COVERAGE

[Sec. 11A-70. Legislative findings and purpose.](#BK_7C5C0BC5BC61202934EE83C1EC3A1A08)

[Sec. 11A-71. Definitions.](#BK_56446BDF8252F99574DD19261E3F8088)

[Sec. 11A-72. Registration of domestic partnerships.](#BK_EBF93B5BCAED8B6D405291570D7F3003)

[Sec. 11A-73. Termination of registered domestic partnership relationship.](#BK_A8301EB3943B429492DCBA2EDBFDD0FE)

[Sec. 11A-74. Maintenance of records; filing fees.](#BK_C7EE24CFFC3108E56B0C797344722368)

[Sec. 11A-75. Extension of benefits to domestic partners of County employees.](#BK_A598FE0637135A182D6AB8E8D7C68B86)

[Sec. 11A-76. Health care facility visitation rights.](#BK_6329F32CDA4EF8EF9FDE8DF0EAF5DC82)

[Sec. 11A-77. Visitation rights at county correctional and juvenile detention facilities.](#BK_AC9084D230ED170346E7878843EC19CB)

[Sec. 11A-78. Recognition of domestic partnerships, civil unions and similar legal relationships registered in other jurisdictions.](#BK_6336BCE9F9EB4C1EF923359E80CE5481)

[Sec. 11A-79. Enforcement.](#BK_0A64B6BC50D5A2C6B8EEA540C1ACFDCA)

Sec. 11A-70. Legislative findings and purpose.

(a) The Miami-Dade County Board of County Commissioners finds that a significant number of Miami-Dade residents establish and maintain important personal, emotional, and economic relationships with persons to whom they are not married. Individuals forming such domestic partnerships often live in a committed family relationship. Domestic partners may be denied the right to visit each other or their children or parents when hospitalized or incarcerated for lack of a system that establishes rights of visitation in such circumstances. Also, partners in domestic relationships may be denied public and private sector benefits because there is no established system for such relationships to be registered or recognized. In addition, because of the status of their relationship, domestic partners in many cases are not extended certain employment benefits that are otherwise made available to other employees.

(b) The Miami-Dade County Board of County Commissioners finds that employment benefits form an essential portion of the compensation provided to County employees.

(c) The Miami-Dade County Board of County Commissioners acknowledges that in 1994 over three million (3,000,000) Americans identified themselves as living in a domestic partnership. As a result, employers have begun to provide domestic partner benefits in greater numbers.

(d) The Miami-Dade County Board of County Commissioners finds that the provision of domestic partner benefits promotes employee recruitment, employee retention, and employee loyalty. Furthermore, the provision of such benefits promotes fairness and serves to address the discriminatory effect of practices which deny such benefits solely upon the basis of an employee's familial or marital status.

(e) The rules developed to implement the provisions of this ordinance shall be liberally construed to accomplish the policies and purposes of the ordinance. However, this ordinance shall not be construed to supersede any federal, state, or county laws or regulations, nor shall this ordinance be interpreted in a manner as to bring it into conflict with federal, state, or other county laws. Nothing in this ordinance shall be construed as recognizing or treating a domestic partnership as a marriage.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-71. Definitions.

For purposes of this Act:

(a) *County employee* means any employee of Miami-Dade County, including employees of the Miami-Dade Public Health Trust and all other agencies and instrumentalities of the County.

(b) *Domestic partners* means only two adults who are parties to a valid domestic partnership relationship and who meet the requisites for a valid domestic partnership relationship as established pursuant to [section 11A-72](../level3/PTIIICOOR_CH11ADI_ARTIXDOPAFAHECO.docx#PTIIICOOR_CH11ADI_ARTIXDOPAFAHECO_S11A-72REDOPA)

(c) *Declaration of Domestic Partnership* means a sworn form under penalty of perjury, which certifies that two (2) domestic partners meet the requirements of a domestic partnership relationship as described in [section 11A-72](../level3/PTIIICOOR_CH11ADI_ARTIXDOPAFAHECO.docx#PTIIICOOR_CH11ADI_ARTIXDOPAFAHECO_S11A-72REDOPA)

(d) *Jointly responsible* means each domestic partner mutually agrees to provide for the other partner's basic food and shelter living expenses while the domestic partnership relationship is in effect, except that partners need not contribute equally or jointly to said basic food and shelter.

(e) *Health care facility* means any hospital, convalescent facility, walk-in clinic, doctor's office, mental health care facility and any other short-term or long-term health care facility located within Miami-Dade County.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-72. Registration of domestic partnerships.

(a) A valid domestic partnership relationship may be registered by any two (2) persons by filing a declaration of domestic partnership with the Miami-Dade County Consumer Services Department, which declaration shall comply with all requirements set forth in this ordinance for establishing such domestic partnership. Upon payment of any required fees, the Consumer Services Department shall file the declaration of domestic partnership and issue a certificate reflecting the registration of the domestic partnership relationship in Miami-Dade County.

(b) A declaration of domestic partnership shall contain the name and address of each domestic partner, the signature of each partner, and each partner shall swear or affirm under penalty of perjury that:

(1) Each person is at least eighteen (18) years old and competent to contract;

(2) Neither person is married under Florida law, a partner to another domestic partnership relationship or a member of another civil union;

(3) They are not related by blood;

(4) Each person considers himself or herself to be a member of the immediate family of the other partner and to be jointly responsible for maintaining and supporting the registered domestic partnership.

(5) Each person agrees to immediately notify the Consumer Services Department, in writing, if the terms of the Registered Domestic Partnership are no longer applicable or one (1) of the domestic partners wishes to terminate the domestic partnership.

(6) The partners reside in the same primary residence.

(c) Any partner to a domestic partnership may file an amendment to the domestic partnership certificate issued by the Consumer Services Department to reflect a change in his or her legal name or address, or to add or delete children.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-73. Termination of registered domestic partnership relationship.

(a) Either partner to a registered domestic partnership relationship may terminate such relationship by filing a notarized declaration of termination of domestic partnership relationship with the Consumer Services Department. Upon the payment of the required fee, the Consumer Services Department shall file the declaration and issue a certificate of termination of domestic partnership relationship to each partner of the former relationship. The termination shall become effective 30 days from the date the certificate of termination is issued.

(b) If any partner to a domestic partnership relationship enters into a legal marriage, the domestic partnership relationship shall terminate automatically, and all rights, benefits, and entitlements thereunder shall cease as of the effective date of the marriage. The marrying domestic partner shall file a declaration terminating the domestic partnership relationship within 10 days after entering into a legal marriage.

(c) The death of either domestic partner shall automatically terminate the domestic partner relationship.

(d) If either member of the domestic partnership ceases to be responsible for the other's basic food and shelter, the domestic partnership shall be considered terminated.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-74. Maintenance of records; filing fees.

(a) The Miami-Dade County Mayor shall by administrative rule prescribe the form of all declarations, amendments, and certificates required to be filed under this Act. The Consumer Services Department shall maintain a record of all declarations, amendments, and certificates filed pursuant to this ordinance.

(b) Filing Fees. The Mayor is authorized to establish fees for the filing of any declarations, amendments, and the issuance of any certificates required by this act, subject to the approval of the County Commission. The fees shall be included within a Miami-Dade County Administrative Order. Any fees established under this section shall be commensurate with the actual costs of administering the provisions of this ordinance.

(c) The Mayor is authorized and directed to take all actions necessary to implement the provisions of this section within ninety (90) days after this ordinance is enacted.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-75. Extension of benefits to domestic partners of County employees.

(a) Any County employee who is a party to a registered domestic partnership relationship under this ordinance shall be entitled to elect insurance coverage for his or her domestic partner or the children of such domestic partner on the same basis in which any County employee may elect insurance coverage for his or her spouse or children. A County employee's right to elect insurance coverage for his or her domestic partner, or the partner's children, shall extend to all forms of insurance provided by the County to the spouses and children of County employees, unless such coverage is prohibited by state or federal law or the terms of a collective bargaining agreement. All elections of coverage shall be made in accordance with the requirements of applicable county ordinances, administrative rules, county policies and applicable collective bargaining agreements. However, in no event shall an employee make an election for coverage of a domestic partner more than two (2) times in a plan year.

(b) Any County employee who is a party to a registered domestic partnership relationship under this ordinance shall be entitled to use all forms of leave provided by the County including, but not limited to, sick leave, annual leave, funeral leave and family leave to care for his or her domestic partner or the children or parents of the domestic partner as applicable. The use of leave authorized in this section shall be consistent with the applicable requirements in county ordinances, administrative rules, and collective bargaining agreements.

(c) Unless prohibited by state or federal law or the terms of a collective bargaining agreement, all other benefits available to the spouses and children of County employees shall be made available on the same basis to the domestic partner, or child of such domestic partner, of a County employee who is a party to a registered domestic partnership relationship pursuant to this ordinance.

(d) Any County employee who obtains or attempts to obtain benefits under this provision fraudulently shall be subject to discipline, up to and including termination.

(e) The Mayor is authorized and directed to take all actions necessary to implement the provisions of this section within ninety (90) days after this ordinance is enacted.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-76. Health care facility visitation rights.

Whenever a domestic partner is a patient in a health care facility in Miami-Dade County, the health care facility shall afford:

(a) The domestic partner of the patient the same right to visit the patient as the facility would provide to the spouse of a patient;

(b) The parent of the domestic partner of the patient the same right to visit the patient as the facility would provide to the parent of a spouse of a patient.

(c) The children of a domestic partner of the patient the same right to visit the patient as the facility would provide to the children of a spouse of a patient.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-77. Visitation rights at county correctional and juvenile detention facilities.

(a) Any person who is a party to a registered domestic partnership relationship, pursuant to [section 11A-72](../level3/PTIIICOOR_CH11ADI_ARTIXDOPAFAHECO.docx#PTIIICOOR_CH11ADI_ARTIXDOPAFAHECO_S11A-72REDOPA), shall be entitled to visit his or her domestic partner, or other family member of the domestic partner, who is an inmate at a county correctional facility or a juvenile detention facility, upon the same terms and conditions under which visitation is afforded to spouses, children, or parents of inmates. Visitation rights provided by this section shall extend to any children of the domestic partners, and the domestic partners of an inmate's parents or children.

(b) In any situation providing for mandatory or permissible notification of family members of inmates, including notification of family members in an emergency, or when permission is granted to inmates to contact family members, "notification of family" shall include domestic partners.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-78. Recognition of domestic partnerships, civil unions and similar legal relationships registered in other jurisdictions.

All rights, privileges and benefits provided to domestic partners registered under this ordinance shall be extended to persons legally registered as domestic partners, partners in a civil union, or partners in any similar relationship that is recognized as legal in another country or in another jurisdiction within the United States.

(Ord. No. 08-61, § 1, 5-20-08)

Sec. 11A-79. Enforcement.

County employees who believe the County has violated any right established by this ordinance shall have the right to file a complaint with the Office of Fair Employment Practices in accordance with [section 11A-37](../level3/PTIIICOOR_CH11ADI_ARTVIOFFAEMPR.docx#PTIIICOOR_CH11ADI_ARTVIOFFAEMPR_S11A-37DUPO) and the rules promulgated by that Office. The terms of this ordinance may be enforced by persons other than County employees, and by County employees against private businesses, through the filing of a private action in any court of competent jurisdiction for declaratory or injunctive relief or both.

(Ord. No. 08-61, § 1, 5-20-08)