Commission on Human Rights

Testimony of Carmelyn P. Malalis
Commissioner and Chair
New York City Commission on Human Rights
Before the Committee on Civil Rights
December 9, 2015

Int. No. 814 - In relation to construction of the New York city human rights law.

Int. No. 818 - In relation to the provision of attorney's fees under the city human rights law.

Int. No. 819 - In relation to the repeal of subdivision 16 of section 8-107 of such code relating to the applicability of provisions of the human rights law regarding sexual orientation.

Int. No. 1012 - In relation to repealing and replacing title 8 of the administrative code of the city of New York and making related improvements to clarify and strengthen the human rights law.

Good afternoon, Chair Mealy and members of the Civil Rights Committee, and thank you for convening today's hearing. I am Carmelyn P. Malalis, Commissioner and Chair of the New York City Commission on Human Rights. Today I am joined by Melissa S. Woods, my First Deputy Commissioner and General Counsel, and Dana Sussman, Special Counsel to the Office of the Chairperson.

Before I turn to the four bills that are the subject of today's hearing, I want to provide you with a brief update of the Commission's ongoing agency restructuring and expansion. Thanks to the support of the Council and the Administration, we have continued to build our ranks with new staff members experienced in working with New York City's diverse communities in different languages and/or using the City's anti-discrimination protections to assist vulnerable communities. We have also been able to further develop our existing staff with trainings and

other initiatives to strengthen our own internal cultural competency skills. Since I last testified before you in October, we have on-boarded seven new agency attorneys, increasing our language capacity in the Law Enforcement Bureau by seven languages; a new and bilingual Director of Training and Development to develop and supervise our Community Relation Bureau's training programs; a Policy Counsel to focus on drafting interpretative legal guidance and proposed rules, and provide support for the Office of the Chairperson; and other key staff members in Human Resources and Operations. We will be on-boarding several key staff members in the new calendar year, including an Assistant Commissioner for Law Enforcement focusing on Commission-initiated investigations and taking a primary role in coordinating our testing program.

We have continued our outreach and training efforts to increase visibility of the protections enforced by the Commission. Two major campaigns – the Stop Credit Discrimination in Employment Act and the Fair Chance Act – included radio ads in multiple languages on ethnic media, social media ads, subway and bus shelter ads, PSAs, the publication of interpretative legal guidance, factsheets, and brochures, and regularly scheduled free trainings in all five boroughs. The Commission continues to work with sister agencies to cross-train staff and develop strategic collaborations on education and outreach. Finally, next year we will be unveiling a new, user-friendly website with streamlined procedures for submitting tips and complaints.

Today, as always, my testimony reflects the Commission's desire to safeguard the integrity of the City Human Rights Law in accomplishing its "uniquely broad and remedial purposes," over and above what is provided under federal or New York State civil and human rights laws, a promise codified in the law's construction provision as well as the Civil Rights

Restoration Act of 2005. My testimony also prioritizes the goals of the Commission as it continues its transition and expansion with the goals of creating a more credible venue of justice for all New Yorkers; improving transparency of Commission processes by publishing interpretative legal guidance, engaging in agency rulemaking, and making Commission materials more accessible to the public; creating an efficient and effective Law Enforcement Bureau that maximizes impact through strategic enforcement; and developing a responsive Community Relations Bureau that educates both the small business and housing provider communities on their responsibilities under the law and members of the public on their rights under the law. With these ends in mind, my staff and I considered our conversations with colleagues in the Administration, our City Council colleagues, community stakeholders, and their advocates who would be affected by the proposed legislation in formulating my testimony on these four bills.

I. Intro. No. 814: In relation to construction of the New York City Human Rights Law

The proposed bill would amend the construction provision of the City Human Rights Law by specifically articulating that "exceptions to and exemptions from" the City Human Rights Law "shall be construed narrowly in order to maximize deterrence of discriminatory conduct." The Commission supports this proposition. The bill also identifies three cases, one Court of Appeals decision and two Appellate Division decisions, as having "correctly interpreted and applied" the broad construction provision under Section 8-130 of the City Human Rights Law. On this point, the Commission believes a more straightforward approach provides greater accessibility to the public.

This bill serves to emphasize the mandate found in the City Human Rights Law's construction provision, which demands broad interpretation of the law. The construction provision reads: "The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York

State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title have been so construed." N.Y.C. Admin. Code § 8-130. The bill is also reflective of the mandate of the Civil Rights Restoration Act of 2005, which instructs tribunals to construe the City Human Rights Law independently from similar or identical provisions of New York state or federal statutes, such that "similarly worded provisions of federal and state civil rights laws [must be considered] a floor below which the City's Human Rights law cannot fall, rather than a ceiling above which the local law cannot rise." Local Law 85 (2005), § 1. The Commission supports broad interpretation of the City Human Rights Law's protections, and therefore, supports the intent of this bill.

Codifying three judicial decisions whole cloth, as is also proposed in this bill, may make the City Human Rights Law more confusing to the general public. The Commission is not aware of any other circumstance in which proposed legislation has sought to codify whole judicial decisions in this manner, and I believe that it makes the law less accessible instead of more accessible to the general public. Rather that reading a straightforward statement of what is intended, as currently exists in the construction provision and the Civil Rights Restoration Act of 2005, practitioners, *pro se* litigants, and advocates will have to discern the meaning and intent of three separate judicial decisions. While students are taught how to read case law in law school, it is not easy for non-lawyers to understand judicial decisions, which inherently reference other judicial decisions.

Instead of incorporating the three judicial decisions as proposed in the bill, the Commission believes it can accomplish the same objective of emphasizing the relevant holdings from the decisions by publishing straightforward information and guidance, similar to what the Commission has done for the Stop Credit Discrimination in Employment Act and the Fair

Chance Act. For these reasons, the Commission supports the intent of the bill and believes there are more practical and less confusing ways to accomplish the intent of Intro. No. 814 than incorporating the three judicial decisions into the City Human Rights Law.

II. Intro. No. 818: In relation to the provision of attorney's fees under the City Human Rights Law

The proposed bill will make complainants' attorneys' fees, expert fees, and other costs available at the Commission when cases are brought to the Commission and are subject to a final Decision and Order, relief that is not currently available at the Commission. The proposed bill also requires that, to the extent a complainant's attorney's fee award is based on the attorney's hourly rate, the Commission must "apply the highest hourly market-rate fee charged by attorneys of similar skill and experience within all of the jurisdictions located within the city." Because the Commission is located in Manhattan, and courts generally consider Manhattan rates at higher level than other jurisdictions, this provision confirms that the Commission would consider such levels in determining the hourly rate of attorneys' fees.

The Commission supports this provision because it represents a significant step in creating a credible venue of justice for New Yorkers. Currently, attorneys' fees are available in state court for claims under the City Human Rights Law, but not at the Commission. The great majority of complainants at the Commission are *pro se*. It is hardly surprising that few attorneys in the private bar bring cases to the Commission, intervene on behalf of complainants, or assist complainants in filing claims at the Commission. Making reasonable attorneys' fees available for complainant's attorneys where they prevail at the final stage in the Commission's adjudicatory process will ensure that the Commission is a viable venue for justice, resulting in more administrative decisions and orders addressing a wider variety of claims and situations the

City Human Rights Law is intended to cover, and will encourage the private bar to represent clients with City Human Rights Law claims.

The proposed bill also instructs courts, in cases involving the City Human Rights Law, to apply the "highest hourly market-rate fee charged by attorneys of similar skill and experience within all of the jurisdictions within the city when determining a reasonable hourly rate." Because this provision speaks to cases brought under the City Human Rights Law in state or federal court, and not at the Commission, the Commission does not take a position on this provision.

III. Intro. No. 819: In relation to the repeal of Subdivision 16 of Section 8-107 of such code relating to the applicability of provisions of the Human Rights Law regarding sexual orientation

The Commission supports this bill, which would remove antiquated language regarding sexual orientation discrimination from the City Human Rights Law. Specifically, the bill would remove subdivision 16 from Section 8-107 of the City Human Rights Law, which, among other things, sought to ensure that the sexual orientation discrimination protections could not be construed to "make lawful any act that violates the penal law of New York," and "endorse any particular way of life." The removal of this antiquated and offensive language is long overdue and the Commission strongly supports doing so.

IV. Intro. No. 1012: In relation to repealing and replacing Title 8 of the Administrative Code of the City of New York and making related improvements to clarify and strengthen the Human Rights Law

The proposed bill will completely reorganize and renumber the entire City Human Rights Law, which is over one hundred pages long, and will make some non-substantive changes to the law to correct inconsistencies and errors. The Commission supports the Council's efforts to make the City Human Rights Law more organized and easier to understand and wants to applaud

the Council for its leadership in this area. We look forward to a thorough examination of the proposed reorganization bill with the Council, external stakeholders, and sister agencies to ensure that the bill achieves its goals of better informing New Yorkers of their rights and responsibilities under the law, and ensures that the reorganization does not unintentionally undermine the City Human Rights Law's broad protections. So that this committee understands the laudable investment of time that the Council has devoted to this bill, and the equally important investment of time and resources the Commission would need to spend to make sure there are no unintended consequences in this massive undertaking, I think it may be helpful to explain the impact of such a reorganization on the Commission from both a practical standpoint and a legal standpoint.

From a practical standpoint, the reorganization of the law would lengthen Law Enforcement Bureau investigations during an indefinite transition period while Bureau attorneys and counsel acclimate to the new provisions. The City Human Rights Law has existed for well over half a century. Lawyers and advocates committed to civil rights and human rights have become quite familiar with its provisions, and will understandably need some time to acclimate to a different statutory schema. Since the new statutory citations would not match up with the citations found in well-established City Human Rights Law cases or other case law supporting parties' positions, Law Enforcement Bureau attorneys and private litigants will need to spend more time on briefings and matters generally reconciling the different statutory citations.

Also, as this committee is well aware, the Commission has been undergoing its own reorganization and transformation since I assumed my role in February. Thanks to the investment of funding and support from the Council and the Administration, the Commission has been in the process of reviewing, revising, updating and creating internal and external

procedures, mechanisms, programming and initiatives to better serve New York City. This agency-wide review process has been undertaken so that the Commission can follow through on its mandates of enforcing the many and broad protections of the City Human Rights Law through law enforcement, and providing education and outreach through community relations initiatives. My office, the Office of the Chairperson, and our Office of Communications and Marketing has also been revamped to amplify outreach efforts across the agency and increase transparency of agency operations. Over the past eight months, we have undertaken and invested in a comprehensive review of legal templates, internal and external trainings and procedures, guidance, the agency's website, communications and public relations materials, and other materials, and have been rapidly developing new and revised content for existing protections and programs as well as new protections raised by the Stop Credit Discrimination in Employment Act and Fair Chance Act. In line with the Commission's priority of making our materials accessible to the City's diverse communities, we have invested in translating many of our materials into seven to ten languages.

In the midst of this activity, the proposed reorganization, without a thorough process in place, will force the Commission to divert personnel, time and financial resources from its agency review. The Commission will need to re-train staff on the new provisions and in understanding well-established case law in the context of new statutory cites; update, translate and re-publish new interpretative enforcement guidance and supporting materials; update and translate internal and external training materials and presentations; update legal templates, forms and correspondence sent to the public; and revise newly developed training manuals and on-boarding materials for staff. As the Office of the Chairperson is primed to undertake its first rule-making process in several decades on the Fair Chance Act, with plans to engage in rule-

making in several others areas, that process will also need to be put on hold if an immediate reordering and reorganization of the entire City Human Rights Law begins. In short, the reorganization will require the Commission, in this pivotal time of transformational change, to divert resources away from its critical substantive work unless there is ample time to think through the reorganization and implement it.

The proposed bill also seeks to make some non-substantive corrections to the City Human Rights Law. The Commission supports and applauds the Council's efforts to correct some of these changes and wants to further the impact of this reorganization by also taking the opportunity to correct many other drafting errors and inconsistencies within the City Human Rights Law. To this end, the Commission has identified several key areas that can be corrected as part of the overhaul, and wants to work with the Council to make sure they are included in the bill. The Commission also wants to work with the Council to make sure that new provisions in the proposed legislation do not inadvertently cause harm to the City Human Rights Law. As you can see from the sheer number of pages in this bill – 137 – such a critical undertaking warrants a long-term structured review process, with input from stakeholders, to ensure a comprehensive review of both the reorganization itself and a full accounting of the non-substantive corrections and revisions that should not be overlooked.

I think it is also worth noting that the City Council has proposed several bills to amend the City Human Rights Law. In the spirit of conserving resources and efficiency, we suggest that the Council consider timing some of these bills in the context of this long-term reorganization to avoid duplicative work in drafting and re-drafting and implementing legislation.

I want to reiterate that the Commission appreciates the Council's work on this incredible undertaking and looks forward to working with the Council on this bill. We are supportive of the

Council's efforts to improve the organization and consistency of the City Human Rights Law, and look forward to investing in a drafting process consistent with the bill's broad scope. We want to map out a thoughtful process to continue thinking through and revising the bill over the next year so that we can work together with the Council as well as stakeholders who also have an interest in streamlining the City Human Rights Law and making it more accessible. The Commission can work with the Council on a thorough process that generates regular input and feedback from community stakeholders, our partners in the Administration, and the Law Department in shaping this bill.

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The Commission thanks Chair Mealy and the members of the Committee for calling this hearing. We look forward to continuing our dialogue on how to strengthen the Commission and the City Human Rights Law to ensure respect and dignity for all New Yorkers. I welcome your questions and comments. Thank you.

Proposed Outline, Title 8

ADMINISTRATIVE CODE, TITLE 8
CIVIL RIGHTS

Chapter 1 General Provisions.
Chapter 2 Unlawful Practices.
Chapter 3 Investigation and Enforcement.
Chapter 4 Damages, Penalties and Other Relief.

CHAPTER 1
GENERAL PROVISIONS

Subchapter 1 Policy and Rules of Construction.
Subchapter 2 Additional Declarations of Policy for Certain Provisions Recodified in 2015.

Subchapter 1
Policy and Rules of Construction

§ 8-1001 Short title.
§ 8-1002 Policy.
§ 8-1003 Definitions.
§ 8-1004 Construction.
§ 8-1005 Explanation of structure and order of provisions.
§ 8-1006 Effect of 2016 recodification.

Subchapter 2
Additional Declarations of Policy for Certain Provisions Recodified in 2016

§ 8-1051 General principles.
§ 8-1052 Declaration of policy; certain unlawful real estate practices.
§ 8-1053 Declaration of policy; civil rights demonstration protection.
§ 8-1054 Declaration of policy; systemic discrimination.
§ 8-1055 Declaration of policy; discriminatory boycotts and blacklists.

CHAPTER 2
UNLAWFUL PRACTICES

Subchapter 1 Unlawful Discriminatory Practices.
Subchapter 2 Other Unlawful Practices.

Subchapter 1

Unlawful Discriminatory Practices

Article 1 General Principles.
Article 2 Generally Applicable Unlawful Discriminatory Practices.
Article 3 Employment and Related Matters.
Article 4 Public Accommodations.
Article 5 Housing, Real Estate and Financing.
Article 6 Licenses, Registrations and Permits.
Article 7 Commercial Activity.

Article 1
General Principles

§ 8-2001 Alienage or citizenship status; limitation.
§ 8-2002 Religious principles; limitation.
§ 8-2003 Sexual orientation; limitation.
§ 8-2004 Employer liability for discriminatory conduct by employee, agent or independent contractor.
§ 8-2005 Disparate impact; liability.
§ 8-2006 Domestic violence, sex offenses and stalking; acts of perpetrator.
§ 8-2007 Persons with disabilities; use of drugs or alcohol.
§ 8-2008 Reasonable accommodation; burden of proof and affirmative defense.
- a. Undue hardship; burden of proof.
- b. Effective accommodation affirmative defense.

Article 2
Generally Applicable Unlawful Discriminatory Practices

§ 8-2051 Aiding and abetting.
- a. Unlawful discriminatory practice.
- b. Other requirements.
  - 1. (Open.)

§ 8-2052 Retaliation.
- a. Unlawful discriminatory practice.
- b. Other requirements.
  - 1. Adverse change; deterrence.

§ 8-2053 Interference with protected rights.
- a. Unlawful discriminatory practice.
- b. Other requirements.
  - 1. (Open.)

§ 8-2054 Failure to provide reasonable accommodations to a person with disabilities; any covered person.
- a. Unlawful discriminatory practice.
- b. Other requirements.
  - 1. (Open.)

Article 3
Employment and Related Matters
Part 1 – General Provisions

Part 2 – Unlawful Discriminatory Practices in Employment

Part 3 – Employment Related Unlawful Discriminatory Practices

Article 4
Public Accommodations

Article 5
Housing, Real Estate and Financing

Article 6

Licenses, Registrations and Permits

Article 7
Commercial Activity

Subchapter 2
Other Unlawful Practices

Article 1

Unlawful Real Estate Practices

§ 8-2701 Aiding and abetting.
§ 8-2702 Real estate brokers and dealers.
§ 8-2703 Real estate non-solicitation areas.

Article 2
Discriminatory Harassment and Violence

§ 8-2751 Discriminatory harassment or violence.
§ 8-2752 Discriminatory harassment.

Article 3
Civil Rights Protests

§ 8-2801 Removal of disability or disqualification.

CHAPTER 3
INVESTIGATION AND ENFORCEMENT

Subchapter 1 Human Rights Commission.
Subchapter 2 Civil Action by Corporation Counsel.
Subchapter 3 Private Right of Action.

Subchapter 1
Human Rights Commission

Article 1 General Provisions.
Article 2 Rulemaking by Commission.
Article 3 Investigations and Findings.
Article 4 Commission Proceedings.
Article 5 Court Proceedings.

Article 1
General Provisions

§ 8-3001 Jurisdiction of commission.
§ 8-3002 Commencement of actions or proceedings.
§ 8-3003 Reporting.

Article 2
Rulemaking by the Commission

§ 8-3051 Rules of procedure.
§ 8-3052 Establishment of policies, programs, procedures.

§ 8-3053 Rules regarding unlawful real estate practices.

Article 3
Investigations and Findings

§ 8-3101 Investigations and investigative record keeping.
§ 8-3102 Investigative reporting requirements for discriminatory boycott or blacklist.
§ 8-3103 Findings and designation of non-solicitation areas.
- a. Designation.
- b. Extension.
- c. Notice.
- d. Termination.

Article 4
Commission Proceedings

§ 8-3151 Complaint.
- a. General commission duties.
- b. Initiating complaints.
  - 1. Complaint by person aggrieved.
  - 2. Complaint by employer.
  - 3. Commission-initiated complaints.
- c. Service of complaint.
- d. Amendment of complaint.
- e. Confidentiality regarding lending practice complaints.

§ 8-3152 Answer.
- a. Verified answer.
- b. Specificity of answer.
- c. Affirmative defenses.
- d. Extension.
- e. Amendments.

§ 8-3153 Withdrawal of complaints.
§ 8-3154 Dismissal of complaint.
- a. Administrative convenience.
- b. Lack of jurisdiction.
- c. Lack of probable cause.
- d. Notice.
- e. Review.

§ 8-3155 Determination of probable cause.
§ 8-3156 Hearing.
§ 8-3157 Intervention and joinder of parties.
§ 8-3158 Decision and order.
§ 8-3159 Discovery orders.
§ 8-3160 Noncompliance with discovery order or with order relating to records.
§ 8-3161 Reopening of proceeding by commission.
§ 8-3162 Mediation and conciliation.

CHAPTER 4
DAMAGES, PENALTIES AND OTHER RELIEF

Int. No.

By the Speaker (Council Member Mark-Viverito)

A LOCAL LAW

To amend the New York city charter and the administrative code of the city of New York, in relation to repealing and replacing title 8 of the administrative code of the city of New York and making related improvements to clarify and strengthen the human rights law

Be it enacted by the Council as follows:

Section 1. It is the intent of the council in adopting this local law (i) to amend the New York city charter to reflect certain powers of the corporation counsel with respect to enforcement of the New York city human rights law and further to reflect amendments that have been made to certain provisions of the administrative code of the city of New York but have not been made to duplicative provisions of the New York city charter; (ii) to re-designate, without making any substantive change, chapters 8 through 11 of title 8 of the administrative code of the city of New York to other titles of such code where the placement of each re-designated chapter is more appropriate with respect to its subject matter; and (iii) to repeal title 8 of the administrative code of the city of New York and recodify such title to provide clearer organization of the New York city human rights law. No movement of or technical change to a provision augments or diminishes any right or authority possessed by a person or agency immediately before the effective date of this local law.

§ 2. Section 394 of the New York city charter is amended by adding a new subdivision d to read as follows:

d. Except as otherwise provided in this chapter or other law, the corporation counsel may institute an action in a court of competent jurisdiction alleging that a person or group of persons has engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by subchapter 1 of chapter 2 of title 8 of the administrative code. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of such an action, and in connection therewith the corporation counsel has the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary. Except as otherwise provided in this chapter or other law, the corporation counsel may institute an action on behalf of the city, in a court of competent jurisdiction, for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured by the constitution or laws of the United States, the constitution or laws of this state, or a local law of the city against interference or attempted interference motivated in whole or in part by the victim's actual or perceived defined protected status, as defined in section 8-1003 of the administrative code, or whether children are, may be or would be residing with such victim.

§ 3. Sections 900, 901, 902, 903, 904, 905 and 906 of the New York city charter, as added by a vote of the electors on November 6, 2001, are amended to read as follows:

§ 900. Declaration of intent. It is [hereby declared as]the public policy of the city [of New York]to promote equal opportunity and freedom from unlawful discrimination [through the

provisions of the city's human rights law, chapter 1 of title 8 of the administrative code of the city of New York]this chapter and title 8 of the administrative code.

§ 901. Enforcement by executive order. The mayor may issue such executive orders as [he or she]the mayor deems appropriate to provide for city agencies and contractors to act in accordance with the policy set forth in this chapter.

§ 902. Commission on human rights. a. The New York city commission on human rights is hereby established and continued.

b. The commission [shall have]has the power to eliminate and prevent unlawful discrimination by enforcing[the provisions of] the New York city human rights law, and [shall have]it has general jurisdiction and power for such purposes. It may, in addition, take such other actions as may be provided by law against prejudice, intolerance, bigotry and unlawful discrimination.

§ 903. Commission membership; chairperson; appointment; vacancy. The commission shall consist of [fifteen]15 members, to be appointed by the mayor, one of whom shall be designated by the mayor as its chairperson and shall serve as such at the pleasure of the mayor. The chairperson shall devote his or her entire time to the chairperson's duties and shall not engage in any other occupation, profession or employment. Members other than the chairperson shall serve without compensation for a term of three years. In the event of the death or resignation of any member, his or her successor shall be appointed to serve for the unexpired portion of the term for which such member had been appointed.

§ 904. Functions. The functions of the commission [shall be]are:

a. [to]To foster mutual understanding and respect among all persons in the city[of New York];

b. [to]To encourage equality of treatment for, and prevent discrimination against, any group or its members;

c. [to]To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions; and

d. [to]To make such investigations and studies in the field of human relations as in the judgment of the commission will aid in effectuating its general purposes.

§ 905. Powers and duties. The powers and duties of the commission [shall be]are:

[9. to]a. Rules. To adopt rules to carry out[the provisions of] this chapter and the policies and procedures of the commission in connection therewith[.];

[6. to]b. Appointments. To appoint such employees and agents as it deems to be necessary to carry out its functions, powers and duties[: provided, however,] and to assign to such persons any of such functions, powers and duties, except that the commission shall not delegate its power to adopt rules, and [provided further,]also except that the commission's power to order that records be preserved or made and kept and the commission's power to determine that a respondent has engaged in an unlawful discriminatory practice and to issue an order for such relief as is necessary and proper shall be delegated only to members of the commission. The expenses for the carrying on of the commission's activities shall be paid out of the funds in the city treasury. The commission's appointment and assignment powers as set forth in this subdivision may be exercised by the chairperson of the commission;

[d. (1) to]c. Investigations and complaints. 1. To receive, investigate and pass upon complaints and to initiate its own investigation of[:] (i) [group-tensions,]group tensions, prejudice, intolerance, bigotry and disorder occasioned thereby[,] and (ii) unlawful discrimination against any person or group of persons, [provided, however,]except that with

respect to discrimination alleged to [be]have been committed by city officials or city agencies, such investigation shall be commenced after consultation with the mayor[.];

2. Upon its own motion, to make, sign and file complaints alleging violations of the city's human rights law; and

[(2) in]3. In the event that any such investigation discloses information that any person or group of persons may be engaged in a pattern or practice that results in the denial to any person or group of persons of the full enjoyment of any right secured by the city's human rights law, in addition to making, signing and filing a complaint upon its own motion pursuant to paragraph [a]2 of this subdivision, to refer such information to the corporation counsel for the purpose of commencing a civil action pursuant to [chapter four of]section 394 of this charter and title [eight]8 of the administrative code;

[e.]d. Hearings and evidence. 1. [to]To issue subpoenas in the manner provided for in the civil practice law and rules compelling the attendance of witnesses and requiring the production of any evidence relating to any matter under investigation or any question before the commission, and to take proof with respect thereto;

2. [to]To hold hearings, administer oaths and take testimony of any person under oath; [and]

3. To require, in accordance with applicable law,[to require] the production of any names of persons necessary for the investigation of any institution, club or other place or provider of accommodation[.]; and

4. To require, in accordance with applicable law,[to require] any person or persons who are the subject of an investigation by the commission to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business [within]during the previous year, [which]when such records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices and other unlawful practices under title 8 of the administrative code with respect to activities in the city;

[8. to]e. Reporting. 1. To submit an annual report to the mayor and the council, as provided in section 8-3003 of the administrative code, which report shall be published in The City Record; and

[4. The chairperson shall]2. To report to the secretary of state of New York all violations of [this chapter]article 1 of subchapter 2 of chapter 2 of title 8 of the administrative code by real estate brokers and salespersons[.];

[a. to]f. Public education. 1. To work together with federal, state and city agencies in developing courses of instruction, for presentation to city employees and in public and private schools, public libraries, museums and other suitable places, on techniques for achieving harmonious [inter-group]intergroup relations within the city[of New York,] and on types of bias-related harassment and repeated hostile behavior including conduct or verbal threats, taunting, intimidation, abuse and cyberbullying and to engage in other anti-discrimination activities;

2. To develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employment agencies and job applicants about their rights and responsibilities under articles 1 and 2 of subchapter 1 of chapter 2 of the administrative code as such articles apply to discrimination on the basis of unemployment; and

3. To develop courses of instruction and conduct ongoing public education efforts as necessary to inform four-plus employers as defined in section 8-1003 of the administrative code,

employees, employment agencies and job applicants about their rights and responsibilities under section 8-2055 of the administrative code;

[b. to]g. Cooperation with groups and organizations. To enlist the cooperation of various groups and organizations[,] in mediation efforts, programs and campaigns devoted to eliminating group prejudice, intolerance, hate crimes, bigotry and discrimination;

[c. to]h. Studies. To study the problems of prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby in all or any fields of human relationship;

[5. to]i. Publications and research. To issue publications and reports of investigation and research designed to promote good will and minimize or eliminate prejudice, intolerance, bigotry, discrimination and disorder occasioned thereby; and

[7. to]j. Recommendations. To recommend to the mayor and to the council legislation to aid in carrying out the purposes of this chapter[;].

§ 906. Relations with city departments and agencies. So far as practicable and subject to the approval of the mayor, the services of all other city departments and agencies shall be made available by their respective [head]heads to the commission for the carrying out of the functions [herein] stated in this chapter. The head of any department or agency shall furnish information in the possession of such department or agency when the commission so requests. The corporation counsel, upon request of the chairperson, may assign counsel to assist the commission in the conduct of its investigative or prosecutorial functions.

§ 4. Section 1-112 of the administrative code of the city of New York is amended by adding a new subdivision 22 to read as follows:

22. The term "national origin" includes ancestry.

§ 5. Section 4-116 of the administrative code of the city of New York is amended to read as follows:

§ 4-116 Discrimination in housing. Every deed, lease or instrument made or entered into by the city, or any agency thereof, for the conveyance, lease or disposal of real property or any interest therein for the purpose of housing construction pursuant to the provisions of article fifteen of the general municipal law and laws supplemental thereto and amendatory thereof shall provide that no person seeking dwelling accommodations in any structure erected or to be erected on such real property shall be discriminated against because of race, color, religion, or national origin[or ancestry].

§ 6. Chapter 8 of title 8 of the administrative code of the city of New York is re-designated as a new chapter 9 of title 10 of the administrative code of the city of New York and amended to read as follows:

[§ 8-801]§ 10-901 Short title. This [local law]chapter shall be known and may be cited as the "access to reproductive health care facilities [act."]law".

[§ 8-802]§ 10-902 Definitions. [For the purposes of]As used in this chapter, the following terms have the following meanings: [a. "Reproductive health care facility" shall mean any building, structure or place, or any portion thereof, at which licensed, certified, or otherwise legally authorized persons provide health care services or health care counseling relating to the human reproductive system.]

[b. "Person" shall mean]Person. The term "person" means an individual, corporation, not-for-profit organization, partnership, association, group or any other entity.

[c. "Premises of a reproductive health care facility" shall mean]Premises of a reproductive health care facility. The term "premises of a reproductive health care facility" means the driveway, entrance, entryway, or exit of a reproductive health care facility and the

building in which such facility is located and any parking lot in which the facility has an ownership or leasehold interest.

Reproductive health care facility. The term "reproductive health care facility" means any building, structure or place, or any portion thereof, at which licensed, certified, or otherwise legally authorized persons provide health care services or health care counseling relating to the human reproductive system.

[§ 8-803.]§ 10-903 Prohibition of activities to prevent access to reproductive health care facilities. a. Unlawful conduct. It [shall be]is unlawful for any person:

[(1) to]1. To knowingly physically obstruct or block another person from entering into or exiting from the premises of a reproductive health care facility by physically striking, shoving, restraining, grabbing, or otherwise subjecting a person to unwanted physical contact, or attempting to do the same;

[(2) to]2. To knowingly obstruct or block the premises of a reproductive health care facility, so as to impede access to or from the facility, or to attempt to do the same;

[(3) to]3. To follow and harass another person within 15 feet of the premises of a reproductive health care facility;

[(4) to]4. To engage in a course of conduct or repeatedly commit acts within 15 feet of the premises of a reproductive health care facility when such behavior places another person in reasonable fear of physical harm, or to attempt to do the same;

[(5) to]5. To physically damage a reproductive health care facility so as to interfere with its operation, or to attempt to do the same; or

[(6) to]6. To knowingly interfere with the operation of a reproductive health care facility, or attempt to do the same, by activities [including]that include, but are not limited to, interfering with, or attempting to interfere with (i) medical procedures being performed at such facility or (ii) the delivery of goods to such facility.

b. [Violations.]Penalties. Any person who [shall violate]violates any provision of subdivision a of this section [shall be]is guilty of a misdemeanor punishable by a fine not to exceed [one thousand dollars]$1,000 or imprisonment not to exceed six months, or both, for a first conviction under this section. For a second and each subsequent conviction under this section, the penalty shall be a fine not to exceed [five thousand dollars]$5,000 or imprisonment not to exceed one year, or both.

[§ 8-804]§ 10-904 Civil cause of action. Where there has been a violation of subdivision a of section [8-803]10-903, any person whose ability to access a reproductive health care facility has been interfered with, and any owner or operator of a reproductive health care facility or owner of a building in which such a facility is located, may bring a civil action in any court of competent jurisdiction for any or all of the following relief:

[1. injunctive]a. Injunctive relief;

[2. treble]b. Treble the amount of actual damages suffered as a result of such violation, including, where applicable, damages for pain and suffering and emotional distress, or damages in the amount of [five thousand dollars]$5,000, whichever is greater; and

[3. attorneys']c. Attorney's fees and costs.

[§ 8-805.]§ 10-905 Civil action by city [of New York]to enjoin interference with access to reproductive health care facilities. The corporation counsel may bring a civil action on behalf of the city in any court of competent jurisdiction for injunctive and other appropriate equitable relief in order to prevent or cure a violation of subdivision a of section [8-803]10-903.

[§ 8-806]§ 10-906 Joint and several liability. If it is found, in any action brought pursuant to the provisions of this chapter, that two or more of the named defendants acted in concert pursuant to a common plan or design to violate any provision of subdivision a of section [8-803]10-903, such defendants shall be held jointly and severally liable for any fines or penalties imposed or any damages awarded.

[§ 8-807]§ 10-907 Construction. a. [No provision of this chapter shall be construed or interpreted so as to]This chapter does not limit the right of any person or entity to seek other available criminal penalties or civil remedies. The penalties and remedies provided under this chapter [shall be]are cumulative and are not exclusive.

b. [No provision of this chapter shall be construed or interpreted so as to]This chapter does not prohibit expression protected by the [First Amendment]first amendment of the [Constitution]constitution of the United States or section [eight]8 of article [one]1 of the [Constitution]constitution of the [State]state of New York.

c. [No provision of this chapter shall be construed or interpreted so as to]This chapter does not limit the lawful exercise of any authority vested in the owner or operator of [the]a reproductive health care facility, the owner of the premises in which such a facility is located, or a law enforcement officer of [New York City]the city, the state of New York[State] or the United States acting within the scope of his or her official duties.

§ 5. Chapter 9 of title 8 of the administrative code of the city of New York is re-designated as a new chapter 10 of title 10 of the administrative code of the city of New York and amended to read as follows:

[§ 8-901]§ 10-1001 Short [Title]title. This [local law]chapter shall be known and may be cited as the "Victims of Gender-Motivated Violence Protection [Act."]Law".

[§ 8-902]§ 10-1002 Declaration of [Legislative Findings and Intent]legislative findings and intent. Gender-motivated violence inflicts serious physical, psychological, emotional and economic harm on its victims. Congressional findings have documented that gender-motivated violence is widespread throughout the United States, representing the leading cause of injuries to women ages 15 to 44. Further statistics have shown that three out of four women will be the victim of a violent crime sometime during their lives, and as many as [four million]4,000,000 women [a]per year are victims of domestic violence. Senate hearings, various task forces and the United States [Department]department of [Justice]justice have concluded that victims of gender-motivated violence frequently face a climate of condescension, indifference and hostility in the court system and have documented the legal system's hostility towards sexual assault and domestic violence claims. Recognizing this widespread problem, [Congress]congress in 1994 provided victims of gender-motivated violence with a cause of action in federal court through the [Violence Against Women Act]violence against women act (VAWA) ([42 USC §]section 13981 of title 42 of the United States code). In a May 15, 2000, decision, the United States [Supreme Court]supreme court held that the [Constitution]constitution provided no basis for a federal cause of action by victims of gender-motivated violence against [their]perpetrators of offenses committed against them either under the[Commerce Clause or the Equal Protection Clause of the Fourteenth Amendment] commerce clause or the equal protection clause of the fourteenth amendment. In so ruling, the [Court]court held that it could "think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims."

In light of the void left by the [Supreme Court's]supreme court's decision, this [Council]council finds that victims of gender-motivated violence should have a private right of

action against [their] perpetrators of offenses committed against them under the [Administrative Code]code. This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence.

[§ 8-903]§ 10-1003 Definitions. [For the purposes of]As used in this chapter, the following terms have the following meanings:

[a. "Crime of violence"]Crime of violence. The term "crime of violence" means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction.

[b. "Crime of violence motivated by gender"]Crime of violence motivated by gender. The term "crime of violence motivated by gender" means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender.

[§ 8-904]§ 10-1004 Civil [Cause of Action]cause of action. Except as otherwise provided by law, any person claiming to be injured by an individual who commits a crime of violence motivated by gender [as defined in section 8-903 of this chapter, shall have]has a cause of action against such individual in any court of competent jurisdiction for any or all of the following relief:

[1. compensatory]a. Compensatory and punitive damages;

[2. Injunctive]b. Injunctive and declaratory relief;

[3. attorneys']c. Attorney's fees and costs; and

[4. such]d. Such other relief as a court may deem appropriate.

[§ 8-905]§ 10-1005 Limitations. a. A civil action under this chapter [must]shall be commenced within seven years after the alleged crime of violence motivated by gender [as defined in section 8-903 of this chapter]occurred. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the civil procedure law and rules, a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to seven years after the inability to commence the action ceases.

b. Except as otherwise permitted by law, nothing in this chapter entitles a person to a cause of action for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by preponderance of the evidence, to be a crime of violence motivated by gender[as defined in section 8-903].

c. Nothing in this section requires a prior criminal complaint, prosecution or conviction to establish the elements of a cause of action under this chapter.

[§ 8-906]§ 10-1006 Burden of [Proof]proof. Conviction of a crime arising out of the same transaction, occurrence or event giving rise to a cause of action under this chapter [shall be considered]is conclusive proof of the underlying facts of that crime for purposes of an action brought under this chapter. That such crime was a crime of violence motivated by gender must be proved by a preponderance of the evidence.

[§ 8-907]§ 10-1007 Severability. If any section, subsection, sentence, clause, phrase or other portion of this [local law]chapter is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable,

and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 6. Chapter 10 of title 8 of the administrative code of the city of New York is re-designated as a new chapter 10 of title 21 of the administrative code of the city of New York and amended to read as follows:

[§ 8-1001]§ 21-1001 Short title. This chapter shall be known and may be cited as the "Equal Access to Human Services [Act]Law of 2003[.]".

[§ 8-1002]§ 21-1002 Definitions. For purposes of this chapter, the following terms have the following meanings:

[a. "Agency"]Agency. Notwithstanding subdivision 1 of section 1-112, the term "agency" means the human resources administration/department of social services, including any part, subdivision, field office or satellite facility thereof.[b. Agency office. "Agency office" means a job center, food stamp office, medical assistance program office, or other part, subdivision, field office or satellite facility of the agency or agency contractor office that performs a covered function.]

[c. "Agency]Agency contractor. The term "agency contractor" means any contractor that enters into a covered contract with the agency.

Agency office. The term "agency office" means a job center, food stamp office, medical assistance program office, or other part, subdivision, field office or satellite facility of the agency or agency contractor office that performs a covered function.

[d. "Agency]Agency personnel. The term "agency personnel" means bilingual personnel or interpreter personnel who are employees of the agency.

[e. "Bilingual]Bilingual personnel. The term "bilingual personnel" means agency, agency contractor, or other contractor employees, not including work experience program participants, who provide language assistance services in addition to other duties.

[f. "Contract"]Contract. The term "contract" means any written agreement, purchase order or instrument whereby the city is committed to expend or does expend funds in return for work, labor or services.

[g. "Contractor"]Contractor. The term "contractor" means any individual, sole proprietorship, partnership, joint venture or corporation or other form of doing business that enters into a contract.

[h. "Covered]Covered contract. The term "covered contract" means a contract between the agency and a contractor to perform a covered function.

[i. "Covered]Covered function. The term "covered function" means any of the following functions:

1. Benefits or services offered or provided at agency offices;

2. Benefits or services provided by agency contractors to provide employment services in connection with participation of individuals engaged in activities required by sections 335 through 336-c of the social services law;

3. Home care services; and

4. Determinations regarding eligibility for subsidized child care.

[j. "Covered]Covered language. The term "covered language" means Arabic, Chinese, Haitian Creole, Korean, Russian or Spanish.

[k. "Document"]Document. The term "document" means the following forms and notices developed by the agency:

[i.]1. Application forms and corresponding instructional materials;

[ii.]2. Notices that require a response from the participant;

[iii.]3. Notices that concern the denial, termination, reduction, increase or issuance of a benefit or service;

[iv.]4. Notices regarding the rights of participants to a conference and fair hearing; and

[v.]5. Notices describing regulation changes that affect benefits.

[l. "Interpretation]Interpretation services. The term interpretation services" means oral, contemporaneous interpretation of oral communications.

[m. "Interpreter]Interpreter personnel. The term "interpreter personnel" means agency, agency contractor, or other contractor employees, not including work experience program participants, whose sole responsibility is to provide language assistance services.

[n. "Language]Language assistance services. The term "language assistance services" means interpretation services [and/or]or translation services provided by bilingual personnel or interpreter personnel to a limited English proficient individual in [his/her]his or her primary language to ensure [their]his or her ability to communicate effectively with agency or agency contractor personnel.

[o.]Limited English proficient individual. The term "[Limited English proficient individual]limited English proficient individual" means an individual who identifies as being, or is evidently, unable to communicate meaningfully with agency or agency contractor personnel because English is not his[/] or her primary language.

[p.]Other covered agency. The term "[Other covered agency]other covered agency" means the administration for children's services[;], the department of homeless services[;], the department of health and mental hygiene[;], and all functions served by the agency that are not covered functions, including any part, subdivision, field office or satellite facility thereof.

[q. "Primary]Primary language. The term "primary language" means the language in which a limited English proficient individual chooses to communicate with others.

[r. "Translation]Translation services. The term "translation services" means oral explanation or written translation of documents.

[§ 8-1003]§ 21-1003 Language assistance services. a. The agency and all agency contractors shall provide free language assistance services as required by this chapter to limited English proficient individuals.

b. When a limited English proficient individual seeks or receives benefits or services from an agency office or agency contractor, the agency office or agency contractor shall provide prompt language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The agency office or agency contractor shall meet its obligation to provide prompt language assistance services for purposes of this subdivision by ensuring that limited English proficient individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.

c. Where an application or form requires completion in English by a limited English proficient individual for submission to a state or federal authority, the agency or agency contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter.

d. The agency shall make all reasonable efforts to provide language assistance services in person by bilingual personnel.

[§ 8-1004]§ 21-1004 Translation of documents. The agency shall translate all documents into every covered language as of [the first day of the sixtieth month after the effective date of the local law that added this chapter]February 1, 2008.

[§ 8-1005]§ 21-1005 Notices. a. Upon initial contact, whether by telephone or in person, with an individual seeking benefits [and/or]or services offered by the agency or an agency contractor, the agency or agency contractor or any other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the agency or agency contractor or other covered agency shall inform the individual in [his/her]his or her primary language of the right to free language assistance services.

b. The agency shall provide in all application and recertification packages an [8 1/2 x]eight and one-half inch by 11 inch or larger notice advising participants that free language assistance services are available at its offices and where to go if they would like an interpreter. This notice shall appear in all covered languages.

c. The agency and each agency contractor shall post conspicuous signs in every covered language at all agency offices and agency contractor offices informing limited English proficient individuals of the availability of free language assistance services.

[d. Other covered agencies. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by another covered agency, the other covered agency shall determine the primary language of such individual. If it is determined that such individual's primary language is not English, the other covered agency shall inform the individual in his/her primary language of available language assistance services.]

[§ 8-1006]§ 21-1006 Screening and training. The agency and each agency contractor shall screen bilingual personnel and interpreter personnel for their ability to provide language assistance services. The agency and each agency contractor shall provide annual training for bilingual personnel and interpreter personnel and ensure that they are providing appropriate language assistance services.

[§ 8-1007]§ 21-1007 Recordkeeping. a. Agency and agency contractors. No later than [the first day of the sixtieth month after the effective date of the local law that added this chapter]February 1, 2008, the agency and each agency contractor shall maintain records of the primary language of every individual who seeks or receives benefits or services from the agency or agency contractor. At a minimum, the agency and each agency contractor shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by agency, agency contractor or contractor, agency office, type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the agency, disaggregated by language translated or interpreted by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

b. Other covered agencies. No later than [the first day of the sixtieth month after the effective date of the local law that added this chapter]February 1, 2008, every other covered agency shall maintain records of the primary language of every individual who seeks or receives ongoing benefits or services. At a minimum, the other covered agency shall maintain specific records of the following:

1. The number of limited English proficient individuals served, disaggregated by type of language assistance required and primary language;

2. The number of bilingual personnel and the number of interpreter personnel employed by the other covered agency, disaggregated by language translated by such personnel;

3. Whether primary language determinations are recorded properly; and

4. Whether documents are translated accurately and disseminated properly.

[§ 8-1008]§ 21-1008 Implementation. a. Agency. The agency shall phase in language assistance services for covered functions as follows:

1. As of [the first day of the twenty-fourth month after the effective date of the local law that added this chapter]February 1, 2005, no less than 20[%] percent of covered functions provided by agency offices[.];

2. As of [the first day of the forty-eighth month after the effective date of the local law that added this chapter]February 1, 2007, no less than 40[%] percent of covered functions provided by agency offices[.]; and

3. As of [the first day of the sixtieth month after the effective date of the local law that added this chapter]February 1, 2008, 100[%] percent of covered functions provided by agency offices.

b. [Contractors]Agency contractors.

1. In all covered contracts entered into or renewed after January 1, 2005, the contractor shall certify that it shall make available language assistance services and maintain and provide access to records as required by this chapter.

2. Every covered contract must contain a provision in which the contractor acknowledges that the following responsibilities constitute material terms of the contract:

(a) [to]To provide language assistance services as required by this chapter;

(b) [to]To comply with the recordkeeping requirements set forth in this chapter;

(c) [to]To provide the city access to its records for the purpose of audits or investigations to ascertain compliance with the provisions of this section, to the extent permitted by law; and

(d) [to]To provide evidence to the city that the contractor is in compliance with the provisions of this section, upon request.

3. If an agency contractor enters into a subcontract agreement to provide any benefits or services under a covered contract, that subcontract will be considered a covered contract for purposes of this section and the provisions of this section will bind the subcontractor. Each contractor is required to include the contract provision set forth in paragraph 2 of this subdivision in any such subcontract agreement.

c. Implementation plans. [Within eight months of the effective date of the local law that added this chapter]On or before October 1, 2003, the agency and each other covered agency shall develop an implementation plan that describes how and when the agency or other covered agency will meet the requirements imposed by this chapter. The agency and each other covered agency shall publish a copy of its implementation plan.

d. Implementation updates and annual reports. No later than 90 days after the end of each calendar year after the publication of the implementation plan and before implementation is complete, the agency and each other covered agency shall publish an implementation update. The implementation update shall describe steps taken over the prior year to implement the requirements of this chapter and shall describe any changes in the agency or other covered agency's plan for implementing the remaining requirements of the local law that added this chapter before the date set forth in subdivision a of this section. The implementation update for

every year after 2004 shall include a report on the number of limited English proficient people served, disaggregated by language and by agency office or other covered agency office. Not later than 90 days after the end of each calendar year beginning with 2008, the agency and each other covered agency shall publish an annual report on language assistance services. At a minimum, this annual report of the agency, each agency contractor and each other covered agency shall set forth the information required to be maintained by this chapter.

[§ 8-1009]§ 21-1009 Rules. The agency and each other covered agency shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of this chapter.

[§ 8-1010]§ 21-1010 Miscellaneous. a. Nothing in this chapter precludes the agency or an agency contractor from providing language assistance services beyond those required by this chapter.

b. Nothing in this chapter precludes a limited English proficient individual from having an adult volunteer, relative, spouse or domestic partner accompany [him/her]him or her to provide language assistance services with the agency office or agency contractor, provided that the agency office or agency contractor informs a limited English proficient individual of the availability of free language assistance services and the agency remains responsible for ensuring effective communication.

c. This chapter does not apply to any contract with an agency contractor entered into or renewed [prior to]before January 1, 2005.

[§ 8-1011]§ 21-1011 Severability. If any section, subsection, sentence, clause, phrase or other portion of [this local law]local law 73 for the year 2003 is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of [this]such law, which shall continue in full force and effect.

§ 7. Sections 21-950 through 21-959 of chapters 1 through 6 of title 21-A of the administrative code of the city of New York are renumbered as follows:

a. Section 21-950 of chapter 1 of title 21-A of the administrative code of the city of New York is renumbered section 21-5101.
b. Section 21-951 of chapter 2 of such title is renumbered section 21-5201.
c. Section 21-952 of chapter 3 of such title is renumbered section 21-5301.
d. Section 21-954 of chapter 4 of such title is renumbered section 21-5401.
e. Section 21-955 of chapter 5 of such title is renumbered section 21-5501.
f. Section 21-956 of chapter 6 of such title is renumbered section 21-5601.
g. Section 21-957 of such chapter is renumbered section 21-5602.
h. Section 21-958 of such chapter is renumbered section 21-5603.
i. Section 21-959 of such chapter is renumbered section 21-5604.

§ 8. Chapter 11 of title 8 of the administrative code of the city of New York is re-designated as a new chapter 7 of title 21-A of the administrative code of the city of New York and is amended to read as follows:

[§8-1101. Definition; confidentiality requirements. a.]§ 21-5701 Definitions. For purposes of this chapter, the term "chancellor" [shall mean]means the chancellor of the city school district of the city[of New York], or the chancellor's designee.

[b.]§ 21-5702 Confidentiality requirements. In no event shall any report submitted pursuant to this chapter release, or provide access to, any personally identifiable information contained in education records in violation of [20 U.S.C. §]section 1232g of title 20 of the

United States code or information in violation of any other applicable confidentiality requirement in federal or state law.

[§8-1102.]§ 21-5703 Annual report on student discipline. The chancellor shall submit to the city council by October [31st]31 of each year an annual report, based on data from the preceding school year, on the discipline of students.

a. The data in this report shall be disaggregated by school and shall show the total number of students in each school who have been:

1. [subjected]Subjected to a superintendent's suspension; or

2. [subjected]Subjected to a principal's suspension.

b. The data provided pursuant to each of paragraphs [one]1 and [two]2 of subdivision a shall be disaggregated by race/ethnicity, gender, grade level at the time of imposition of discipline, age of the student as of December [31st]31 of the school year during which discipline is imposed, whether the student is receiving special education services or whether the student is an English [Language Learner]language learner, disciplinary code infraction and length of suspension. If a category contains between [0]zero and [9]nine students, the number shall be replaced with a symbol.

c. The report shall also include the citywide total number of transfers that occurred in connection with a suspension, disaggregated by involuntary and voluntary transfers.

[§8-1103.]§ 21-5704 Biannual citywide report on suspensions. The chancellor shall submit to the council by October [31st]31 and March [31st]31 of each year a report on the discipline of students citywide, based on data from the first six months of the current calendar year and the second six months of the preceding calendar year respectively. Such report shall include the number of suspensions citywide for each month, disaggregated by superintendent's and principal's suspensions.

§ 9. Title 8 of the administrative code of the city of New York is REPEALED.

§ 10. The administrative code of the city of New York is amended by adding a new title 8 to read as follows:

TITLE 8
CIVIL RIGHTS

Chapter 1 General Provisions.
Chapter 2 Unlawful Practices.
Chapter 3 Investigation and Enforcement.
Chapter 4 Damages, Penalties and Other Relief.

CHAPTER 1
GENERAL PROVISIONS

Subchapter 1 Policy and Rules of Construction.
Subchapter 2 Additional Declarations of Policy for Certain Provisions Recodified in 2016.

Subchapter 1
Policy and Rules of Construction

§ 8-1001 Short title. This title and chapter 40 of the charter collectively shall be known as and may be cited as the "New York city human rights law."

§ 8-1002 Policy. In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related harassment or violence and disorder occasioned thereby threaten the rights and proper privileges of the city's inhabitants and menace the institutions and foundation of a free democratic state. A commission on human rights, a private right of action and additional means of judicial enforcement are hereby created and continued, with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, housing and other real estate, and other spheres of activity; to remedy such discrimination as has occurred; and to take other actions against prejudice, intolerance, bigotry, discrimination and bias-related violence or harassment as provided in this title and in chapter 40 of the charter. The commission is hereby given general jurisdiction and power for such purposes.

§ 8-1003 Definitions. Unless otherwise expressly provided, the following terms have the following meanings whenever used in this title:

Acts or threats of violence. The term "acts or threats of violence" includes acts that would constitute violations of the penal law.

Alienage or citizenship status. The term "alienage or citizenship status" means (i) the citizenship of any person or (ii) the immigration status of any person who is not a citizen or national of the United States.

Block, neighborhood or area. The term "block, neighborhood or area" means any 40 square blocks within the city.

Boarder, roomer or lodger. The term "boarder, roomer or lodger" means a person living within a household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

Chairperson. The term "chairperson" means the chairperson of the commission.

Commercial space. The term "commercial space" means any space in a building, structure, or portion thereof that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space that is used or occupied, or is intended, arranged or designed to be used or occupied as a business or professional unit or office in any building, structure or portion thereof.

Commission. The term "commission," unless a different meaning clearly appears from the text, means the city commission on human rights.

Consumer credit history. 1. The term "consumer credit history" means an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by:

(a) A consumer credit report;

(b) A credit score; or

(c) Information an employer obtains directly from the individual regarding details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit, or prior credit report inquiries, or regarding bankruptcies, judgments or liens.

2. A consumer credit report includes any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history.

Covered entity. The term "covered entity" means a person required to comply with any provision of subchapter 1 of chapter 2 of this title.

Cyberbullying. The term "cyberbullying" means willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices that is intended to frighten, harass, cause harm to, extort, or otherwise target another.

Defined protected status. The term "defined protected status" means age, alienage or citizenship status, color, creed, disability, gender, marital status, national origin, partnership status, race or sexual orientation.

Disability. 1. The term "disability" means any physical, medical, mental or psychological impairment, or a history or record of such impairment.

2. For purposes of this definition, the term "physical, medical, mental, or psychological impairment" means:

(a) an impairment of any system of the body, including, the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including speech organs; the cardiovascular system; the reproductive system; the digestive and genito-urinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or

(b) a mental or psychological impairment.

3. In the case of alcoholism, drug addiction or other substance abuse, the term "disability" only applies to a person who is recovering or has recovered and currently is free of such abuse. Such term does not include a person who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

Dwelling or real property. The term "dwelling or real property" means one-, two-, three- or four-family residences and any vacant land that is offered for sale or lease for the construction or location thereon of any such residence.

Educational institution. The term "educational institution" includes kindergartens, primary and secondary schools, academies, colleges, universities, professional schools, extension courses, and all other educational facilities.

Employee. For purposes of subchapter 1 of chapter 2 of this title, the term "employee" includes interns.

Employer. The term "employer" means any employer, including a four-plus employer.

Employment agency. The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

Family. The term "family," as used in paragraph 2 of subdivision b of section 8-2202, means either:

1. A person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers; or

2. Two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers.

Four-plus employer. 1. The term "four-plus employer" means any employer with four or more persons in his or her employ. For purposes of this definition and the definition of employer, natural persons employed as independent contractors to carry out work in furtherance of an

employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.

2. Where an employer employs his or her parents, spouse, domestic partner, or children, such family members shall be counted as persons employed by a four-plus employer for the purposes of paragraph 1 of this definition.

Gender. The term "gender" includes actual or perceived sex and a person's gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

Hate crime. The term "hate crime" means a crime that manifests evidence of prejudice based on age, alienage or citizenship status, disability, ethnicity, gender, national origin, race, religion or sexual orientation.

Housing accommodation. The term "housing accommodation" includes any building, structure, or portion thereof that is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings. Except as otherwise specifically provided, such term includes a publicly assisted housing accommodation.

Include. The term "include" or a variant of such term, when used in reference to a definition or list, indicates that the definition or list is partial and not exclusive. Such term shall be construed as if the phrase "but not limited to" were also set forth.

Intelligence information. The term "intelligence information" means records and data compiled for the purpose of criminal investigation or counterterrorism, including records and data relating to the order or security of a correctional facility, reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual, or investigation or analysis of potential terrorist threats.

Intern. 1. The term "intern" means an individual who performs work for an employer on a temporary basis whose work:

(a) Provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced;

(b) Provides experience for the benefit of the individual performing the work; and

(c) Is performed under the close supervision of existing staff.

2. Such term includes such individuals without regard to whether the employer pays them a salary or wage.

Lawful source of income. The term "lawful source of income" includes income derived from social security, or any form of federal, state or local public assistance or housing assistance, including housing choice vouchers authorized under section 1437f of title 42 of the United States code.

Labor organization. The term "labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of:

1. Collective bargaining;

2. Dealing with employers concerning grievances and terms and conditions of employment; or

3. Other mutual aid or protection in connection with employment.

National origin. For purposes of subchapter 1 of chapter 2 of this title, the term "national origin" includes ancestry.

National security information. The term "national security information" means any knowledge relating to the national defense or foreign relations of the United States, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States government and is defined as such by the United States government and its agencies and departments.

Occupation. The term "occupation" means any lawful vocation, trade, profession or field of specialization.

Partnership status. The term "partnership status" means the status of being in a domestic partnership, as defined by subdivision a of section 3-240.

Person. The term "person" includes one or more natural persons, proprietorships, partnerships, associations, group associations, organizations, governmental bodies or agencies, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

Place or provider of public accommodation. 1. The term "place or provider of public accommodation" includes providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and includes places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available.

2. Such term does not include any club that is in its nature distinctly private. A club is not in its nature distinctly private if it has more than 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 non-members for the furtherance of trade or business. For the purposes of this definition, a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law is in its nature distinctly private. No club that sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements is a private exhibition within the meaning of this definition.

Protected status. The term "protected status" means a status protected by this title, including a defined protected status.

Publicly assisted housing accommodations. The term "publicly assisted housing accommodations" includes:

1. Publicly owned or operated housing accommodations.

2. Housing accommodations operated by housing companies under the supervision of the state commissioner of housing and community renewal or the department of housing preservation and development.

3. Housing accommodations constructed after July 1, 1950, and housing accommodations sold after July 1, 1991:

(a) That are exempt in whole or in part from taxes levied by the state or any of its political subdivisions;

(b) That are constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of 1949;

(c) That are constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction; or

(d) For the acquisition, construction, repair or maintenance of which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance.

4. Housing accommodations, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July 1, 1955, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

Real estate broker. 1. For purposes of this title except article 1 of subchapter 2 of chapter 2 and sections 8-3752 and 8-4052:

(a) The term "real estate broker" means any person who, for another and for a fee, commission or other valuable consideration:

(1) Lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale at auction or otherwise, the exchange, purchase or rental of an estate or interest in real estate;

(2) Collects or offers or attempts to collect rent for the use of real estate; or

(3) Negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate.

(b) In the sale of lots pursuant to article 9-A of the real property law, the term "real estate broker" also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who sells or exchanges, or offers or attempts or agrees to negotiate the sale or exchange of any such lot or parcel of real estate.

2. For purposes of article 1 of subchapter 2 of chapter 2 of this title and sections 8-3752 and 8-4052, such term means a real estate broker as defined in article 12-A of the real property law.

Real estate dealer. The term "real estate dealer" means any firm, partnership, association, corporation or person that or who has within the preceding 12 months sold, traded or exchanged two or more dwellings other than, in the case of a natural person, such natural person's own residence.

Real estate office. The term "real estate office" means an office or other place of business that is primarily engaged in the business of selling, buying, leasing, or renting real property; listing real property for sale, purchase, lease or rental; or providing brokerage services in connection with such selling, buying, leasing, renting, or listing.

Real estate salesperson. The term "real estate salesperson" means a person:

1. Employed by or authorized by a licensed real estate broker to (i) list for sale, (ii) sell, (iii) offer for sale at auction or otherwise, (iv) buy, (v) offer to buy, (vi) negotiate the purchase or sale or exchange of, (vii) negotiate a loan on, (viii) lease, (ix) rent, (x) offer to lease, (xi) offer to rent, or (xii) offer to place for rent any real estate; or

2. Who collects or offers or attempts to collect rents for the use of real estate for or on behalf of such real estate broker.

Reasonable accommodation. The term "reasonable accommodation" means such accommodation that can be made that does not cause undue hardship in the conduct of the covered entity's business.

Sexual orientation. The term "sexual orientation" means heterosexuality, homosexuality, or bisexuality.

Solicitation. The term "solicitation" means requesting, inviting, or inducing by any means, including:

1. Going in or upon the property of the person to be solicited, except when invited by such person;

2. Communicating with the person to be solicited by mail, telephone, telegraph or messenger service, except when requested by such person;

3. Canvassing in streets or other public places;

4. Distributing handbills, circulars, cards or other advertising matter;

5. Using loudspeakers, sound trucks, or other voice-amplifying equipment; or

6. Displaying signs, posters, billboards, or other advertising devices other than signs placed upon a real estate office for the purpose of identifying the occupants and services provided therein, except that the term "solicitation" does not include advertising in newspapers of general circulation, magazines, radio, television, or telephone directories.

Trade secrets. 1. The term "trade secrets" means information that:

(a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and

(c) can reasonably be said to be the end product of significant innovation.

2. The term "trade secrets" does not include general proprietary company information such as handbooks and policies.

Undue hardship. The term "undue hardship," as used in relation to a claim for religious accommodation under section 8-2057, means an accommodation requiring significant expense or difficulty, including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system.

Unemployed. The term "unemployed" means not having a job, being available for work, and seeking employment.

Unemployment. The term "unemployment" means the status of being unemployed.

Unlawful discriminatory practice. The term "unlawful discriminatory practice" includes only those practices specified in subchapter 1 of chapter 2 of this title.

Victim of domestic violence. The term "victim of domestic violence" means a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or by a person who is or has continually or at regular intervals lived in the same household as the victim.

Victim of sex offenses or stalking. The term "victim of sex offenses or stalking" means a victim of acts that would constitute violations of article 130 of the penal law or a victim of acts that would constitute violations of sections 120.45, 120.50, 120.55, or 120.60 of the penal law.

§ 8-1004 Construction. The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.

§ 8-1005 Explanation of structure and order of provisions. Within this title, sections are subdivided in descending order and designated as follows:

a. Subdivision

1. Paragraph

(a) Subparagraph

(1) Clause

(A) Item

§ 8-1006 Effect of 2016 recodification. This title, as added by local law number XXXX for the year 2016, is a recodification of title 8 of the code as it existed immediately before the effective date of such local law.

Subchapter 2

Additional Declarations of Policy for Certain Provisions Recodified in 2016

§ 8-1051 General principles. The declarations of policy contained in this subchapter are hereby continued. Such declarations apply with the same force and to the same extent as on <<**N.b.:** Insert date preceding recodification>>, even though the provisions to which they applied on such date have been renumbered and restated.

§ 8-1052 Declaration of policy; certain unlawful real estate practices. It is hereby declared to be the policy of the city and the purpose of this chapter* to promote fair dealing in real estate transactions, to maintain community stability and security, and to foster racial and social harmony.

§ 8-1053† Declaration of policy; civil rights demonstration protection. It is hereby found that the letter and spirit of the constitution of the United States are being violated in some jurisdictions under color of law with the result that persons from this city and state, as well as from other states, are being subjected to discriminatory treatment in the exercise of their constitutional rights because of race or because they seek the removal of unconstitutional barriers to equal rights. Such persons, sometimes referred to as freedom riders and sit-ins, intent upon peaceful resistance to discrimination, segregation and the achievement of the constitutional rights of all persons in all jurisdictions of the United States, have suffered the stigma of criminal proceedings. It is hereby declared to be the policy of the city to remove or to neutralize, by affording to such residents appropriate relief to the fullest extent possible, the effect upon residents of this city of such criminal proceedings, resulting from the attempted use of public transportation facilities and other places of public accommodation.

§ 8-1054‡ Declaration of policy; systemic discrimination. The council finds that certain forms of unlawful discrimination are systemic in nature rooted in the operating conditions or policies of a business or industry. The council finds that the existence of systemic discrimination poses a substantial threat to, and inflicts significant injury upon, the city that is economic, social and moral in character, and is distinct from the injury sustained by individuals as an incident of such discrimination. The council finds that the potential for systemic discrimination exists in all areas of public life and that employment, housing and public accommodations are among the areas in which the economic effects of systemic discrimination are exemplified. The existence of

* Chapter 2 of title 8 of the code, as such chapter existed on <<N.b.: Date preceding recodification.>>

† Applicable to provisions previously contained in chapter 3 of title 8 of the code, as such chapter existed on <<N.b.: Date preceding recodification.>>

‡ Applicable to provisions previously contained in chapter 4 of title 8 of the code, as such chapter existed on <<N.b.: Date preceding recodification.>>

systemic discrimination impedes the optimal efficiency of the labor market by, among other things, causing decisions to employ, promote or discharge persons to be based upon reasons other than qualifications and competence. Such discrimination impedes the optimal efficiency of the housing market and retards private investments in certain neighborhoods by causing decisions to lease or sell housing accommodations to be based upon discriminatory factors and not upon ability and willingness to lease or purchase property. The council finds that the reduction in the efficiency of the labor, housing and commercial markets has a detrimental effect on the city's economy, thereby reducing revenues and increasing costs to the city. The council finds that such economic injury to the city severely diminishes its capacity to meet the needs of those persons living and working in, and visiting, the city. The council finds further that the social and moral consequences of systemic discrimination are similarly injurious to the city in that systemic discrimination polarizes the city's communities, demoralizes its inhabitants and creates disrespect for the law, thereby frustrating the city's efforts to foster mutual respect and tolerance among its inhabitants and to promote a safe and secure environment. The council finds that the potential consequences to the city of this form of discrimination requires that the corporation counsel be expressly given the authority to institute a civil action to enforce the city's human rights law so as to supplement administrative means to prevent or remedy injury to the city.

§ 8-1055* Declaration of policy; discriminatory boycotts and blacklists. Boycotts or blacklists that are based on a person's race, color, creed, age, national origin, alienage or citizenship status, marital status, partnership status, gender, sexual orientation, or disability pose a menace to the city's foundation and institutions. In contrast to protests that are in reaction to an unlawful discriminatory practice, connected with a labor dispute or associated with other speech or activities that are protected by the first amendment, discriminatory boycotts cause havoc, divide the citizenry and do not serve a legitimate purpose. The council declares that discriminatory boycotts are a dangerously insidious form of prejudice and hereby establishes a procedure for expeditiously investigating allegations of this type of prejudice, ensuring that the council and mayor are duly alerted to the existence of such activity and combating discriminatory boycotts or blacklists.

CHAPTER 2
UNLAWFUL PRACTICES

Subchapter 1
Unlawful Discriminatory Practices

* Applicable to provisions previously contained in chapter 7 of title 8 of the code, as such chapter existed on <<N.b.: Date preceding recodification.>>

Article 1
General Principles

§ 8-2001 Alienage or citizenship status; limitation. Notwithstanding any other provision of this subchapter, it is not an unlawful discriminatory practice for any person (i) to discriminate on the ground of alienage or citizenship status, (ii) to make any inquiry as to a person's alienage or citizenship status, or (iii) to give preference to a person who is a citizen or a national of the United States over an equally qualified person who is an alien, when such discrimination is required or when such preference is expressly permitted by any law or regulation of the United States, the state of New York or the city, and when such law or regulation does not provide that state or local law may be more protective of aliens. This provision does not prohibit inquiries or determinations based on alienage or citizenship status when such actions are necessary to obtain the benefits of a federal program.

§ 8-2002 Religious principles; limitation. This subchapter does not prohibit any religious or denominational institution or organization or any organization operated for charitable or educational purposes that is operated, supervised or controlled by or in connection with a religious organization from limiting employment or sales or rentals of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

§ 8-2003 Sexual orientation; limitation. This subchapter does not:

a. Restrict an employer's right to insist that an employee meet bona fide job-related qualifications of employment;

b. Authorize or require employers to establish affirmative action quotas based on sexual orientation or to make inquiries regarding the sexual orientation of current or prospective employees;

c. Limit or override the present exemptions in the New York city human rights law, including those relating to owner-occupied dwellings, as provided in paragraph 1 of subdivision b of section 8-2202 and paragraph 1 of subdivision b of section 8-2203; or any religious or denominational institution or organization, or any organization operated for charitable or educational purposes that is operated, supervised or controlled by or in connection with a religious organization, as provided in section 8-2002; or any prohibition or requirement that only applies to four-plus employers;

d. Make lawful any act that violates the penal law of the state of New York; or

e. Endorse any particular behavior or way of life.

§ 8-2004 Employer liability for discriminatory conduct by employee, agent or independent contractor. a. An employer is liable for an unlawful discriminatory practice based on the conduct of an employee or agent that is in violation of any provision of this subchapter other than article 3 of this subchapter, except that this subdivision governs the provisions of article 3 relating to religious observance in employment and discrimination on the basis of unemployment, consumer credit history, criminal conviction, arrest or criminal accusation, pregnancy, childbirth, or a related medical condition, or actual or perceived status as a victim of domestic violence or a victim of sex offenses or stalking.

b. Except as provided in subdivision a of this section, an employer is liable for an unlawful discriminatory practice based on the conduct of an employee or agent that is in violation of article 3 of this subchapter only where:

1. The employee or agent exercised managerial or supervisory responsibility;

2. The employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct; or

3. The employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action. An employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility.

c. An employer is liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

d. Where liability of an employer has been established pursuant to this section and is based solely on the conduct of an employee, agent, or independent contractor, the employer may plead and prove that before the discriminatory conduct for which it was found liable it had:

1. Established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including:

(a) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices;

(b) A firm policy against such practices that is effectively communicated to employees, agents and persons employed as independent contractors;

(c) A program to educate employees and agents about discriminatory practices that are unlawful under local, state, and federal law;

(d) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

2. A record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

e. The demonstration of any or all of the factors listed in subdivision d of this section in addition to any other relevant factors shall be considered in determining an employer's liability under paragraph 2 of subdivision b of this section.

§ 8-2005 Disparate impact; liability. a. An unlawful discriminatory practice based on disparate impact is established when:

1. The commission or a person who may bring an action under subchapters 2 or 3 of chapter 3 of this title demonstrates that a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any group protected by this subchapter; and

2. The covered entity fails to plead and prove as an affirmative defense either:

(a) That each such policy or practice does not contribute to the disparate impact, or

(b) One of the following:

(1) For disparate impact claims based on discrimination other than on the basis of unemployment, that each such policy or practice bears a significant relationship to a significant business objective of the covered entity, including successful performance of the job, or

(2) For disparate impact claims based on discrimination on the basis of unemployment, that each such policy or practice has as its basis a substantially job-related qualification such as, without limitation, a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

b. For purposes of paragraph 2 of subdivision a of this section, if the commission or such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, the commission or such person shall not be required to demonstrate which specific policies or practices within the group result in such disparate impact. In addition, a policy or practice or group of policies or practices demonstrated to result in a disparate impact is unlawful where the commission or such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available to such entity and such entity fails to prove that such alternative policy or practice would not serve such entity as well.

c. The mere existence of a statistical imbalance between a covered entity's challenged demographic composition and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

d. This section does not mandate or endorse the use of quotas; provided, however, that this section does not limit the scope of the commission's authority pursuant to sections 8-3158, 8-3162 and 8-4001 or affect court-ordered remedies or settlements that are otherwise in accordance with law.

§ 8-2006 Domestic violence, sex offenses and stalking; acts of perpetrator. In this subchapter, practices "based on," "because of," "on account of," "as to," "on the basis of," or "motivated by" an individual's "status as a victim of domestic violence," or "status as a victim of sex offenses or stalking" include those based solely on the actions of a person who has perpetrated acts or threats of violence against the individual.

§ 8-2007 Persons with disabilities; use of drugs or alcohol. This subchapter does not prohibit a covered entity from:

a. Prohibiting the illegal use of drugs or the use of alcohol at the workplace or on-duty impairment from the illegal use of drugs or from the use of alcohol; or

b. Conducting drug testing that is otherwise lawful.

§ 8-2008 Reasonable accommodation; burden of proof and affirmative defense. a. Undue hardship; burden of proof. In any case where undue hardship is placed in issue, the covered entity has the burden of proving undue hardship.

1. In making a determination of undue hardship with respect to claims for reasonable accommodation relating to activity covered by article 3 of this subchapter, other than claims based on an employee's or prospective employee's religious observance, the factors to be considered include:

(a) The nature and cost of the accommodation;

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

(c) The overall financial resources of the covered entity and the overall size of the business of a covered entity with respect to the number of its employees and 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, and the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

2. In making a determination of undue hardship with respect to claims for reasonable accommodation to an employee's or prospective employee's religious observance, factors to be considered in determining whether an accommodation constitutes an undue economic hardship include:

(a) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the four-plus employer;

(b) The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and

(c) For a four-plus employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

b. Effective accommodation affirmative defense. In any case where the need for reasonable accommodation is placed in issue, it is an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

Article 2

Generally Applicable Unlawful Discriminatory Practices

§ 8-2051 Aiding and abetting. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this subchapter, or to attempt to do so.

b. Other requirements. 1. (Open.)

§ 8-2052 Retaliation. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person engaged in any activity to which this subchapter applies to retaliate or discriminate in any manner against any person because such person has:

1. Opposed any practice forbidden under this subchapter;

2. Filed a complaint, testified or assisted in any proceeding under this subchapter;

3. Commenced a civil action alleging an unlawful discriminatory practice;

4. Assisted the commission or the corporation counsel in an investigation commenced pursuant to this title; or

5. Provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-3162.

b. Other requirements. 1. Adverse change; deterrence. The retaliation or discrimination complained of under this section need not result in an ultimate action with respect to employment, housing or a public accommodation or in a materially adverse change in the terms and conditions of employment, housing, or a public accommodation, provided, however, that the

retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

§ 8-2053 Interference with protected rights. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this subchapter.

b. Other requirements. 1. (Open.)

§ 8-2054 Failure to provide reasonable accommodations to a person with disabilities; any covered person. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person prohibited by this subchapter from discriminating on the basis of disability not to provide a reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the right or rights in question as long as the disability was known or should have been known by the covered entity.

b. Other requirements.

1. (Open.)

§ 8-2055 Failure to provide reasonable accommodations for pregnancy, childbirth, or a related medical condition; employment.

a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer to refuse to provide a reasonable accommodation to the needs of an employee for her pregnancy, childbirth, or related medical condition that allows the employee to perform the essential requisites of the job, so long as such employee's pregnancy, childbirth, or related medical condition was known or should have been known by the four-plus employer.

b. Other requirements. 1. Notice of rights. A four-plus employer shall provide written notice in a form and manner to be determined by the commission of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions pursuant to this section to (i) new employees at the commencement of employment and (ii) existing employees by May 30, 2014. Such notice may also be conspicuously posted at a four-plus employer's place of business in an area accessible to employees.

2. Effect of section. This section does not affect any other provision of law relating to discrimination on the basis of gender or pregnancy, or in any way diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of this subchapter.

§ 8-2056 Failure to provide reasonable accommodations for victims of domestic violence, sex offenses or stalking; employment. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person prohibited by this subchapter from discriminating on the basis of actual or perceived status as a victim of domestic violence or a victim of sex offenses or stalking not to provide a reasonable accommodation to enable a person who is a victim of domestic violence or a victim of sex offenses or stalking to satisfy the essential requisites of a job so long as the status as a victim of domestic violence or a victim of sex offenses or stalking was known or should have been known by the covered entity.

b. Other requirements. 1. Documentation of status. Any person required by subdivision a of this section to make a reasonable accommodation may require a person requesting a reasonable accommodation pursuant to that subdivision to provide certification that the person is a victim of domestic violence, or a victim of sex offenses or stalking.

(a) A person requesting a reasonable accommodation pursuant to subdivision a of this section shall provide a copy of such certification to the covered entity within a reasonable period after the request is made.

(b) A person may satisfy the certification requirement of this paragraph by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the individual seeking a reasonable accommodation or from whom that individual's family or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence.

(c) All information provided to the covered entity pursuant to this paragraph, including a statement of the person requesting a reasonable accommodation or any other documentation, record, or corroborating evidence, and the fact that the individual has requested or obtained a reasonable accommodation pursuant to this section, shall be retained in the strictest confidence by the covered entity, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation or otherwise is required by applicable federal, state or local law.

§ 8-2057 Failure to provide reasonable accommodations for employees' religious observance. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer not to provide a reasonable accommodation to the religious needs of a person seeking to obtain or retain employment with that four-plus employer, so long as such employee's desire for a religious accommodation is known or should have been known by the four-plus employer. Without in any way limiting the foregoing, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such person's religion, he or she observes as a sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, except that any such absence from work shall, wherever practicable in the judgment of the four-plus employer, be made up by an equivalent amount of time at some other mutually convenient time.

b. Other requirements. 1. (Open.)

§ 8-2058 Relationship or association; liability. The provisions of this subchapter set forth as unlawful discriminatory practices also prohibit such discrimination against a person because of the actual or perceived age, alienage or citizenship status, color, creed, disability, gender, marital status, national origin, partnership status, race, or sexual orientation of a person with whom such person has a known relationship or association.

§ 8-2059 Violation of conciliation agreement. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section 8-3162 to violate the terms of such agreement.

b. Other requirements. 1. (Open.)

Article 3
Employment and Related Matters
Part 1 -- General Provisions

§ 8-2101 Applicability. (Open.)

Part 2 – Unlawful Discriminatory Practices in Employment

§ 8-2105 Discrimination by a four-plus employer or employee or agent thereof; certain adverse actions. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer or an employee or agent thereof because of the actual or perceived defined protected status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

b. Other requirements. 1. Limitations; benefit plans, insurance and retirement plans and systems. The provisions of this section:

(a) As they apply to employee benefit plans, do not prohibit a four-plus employer from observing the provisions of any employee benefit plan covered by the federal employment retirement income security act of 1974 that is in compliance with applicable federal anti-discrimination laws where the application of this section to such plan would be preempted by such act;

(b) Do not prohibit the varying of insurance coverages according to an employee's age;

(c) Do not affect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision 3-a of section 296 of the executive law;

(d) Do not affect the retirement policy or system of a four-plus employer where such policy or system is not a subterfuge to evade the purposes of this subchapter.

2. Limitation; family members. This section does not govern the employment by a four-plus employer of his or her parents, spouse, domestic partner, or children.

§ 8-2106 Discrimination by a four-plus employer or employee or agent thereof; religious practice. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forgo a practice of, his or her creed or religion, including the observance of any particular day or days or any portion thereof as a sabbath or holy day or the observance of any religious custom or usage. Without in any way limiting the foregoing, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such person's religion, he or she observes as a sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, except that any such absence from work shall, wherever practicable in the judgment of the four-plus employer, be made up by an equivalent amount of time at some other mutually convenient time.

b. Other requirements. 1. (Open.)

§ 8-2107 Discrimination by an employer or agent thereof; domestic violence, sex offenses, or stalking. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an employer or an employee or agent thereof to refuse to hire or employ, to bar or to discharge from employment, or to discriminate against an individual in compensation or other terms, conditions, or privileges of employment because of the actual or perceived status of that individual as a victim of domestic violence or as a victim of sex offenses or stalking.

b. Other requirements. 1. (Open.)

§ 8-2108 Discrimination by a four-plus employer or agent thereof; unemployment. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer or an employee or agent thereof to base an employment decision with regard to hiring,

compensation or the terms, conditions or privileges of employment on an applicant's unemployment.

b. Other requirements.

1. Limitation; consideration and inquiry permitted. This section does not prohibit an employer or employee or agent thereof from (i) considering an applicant's unemployment where there is a substantially job-related reason for doing so or (ii) inquiring into the circumstances surrounding an applicant's separation from prior employment.

2. Limitation, substantially job-related qualifications. This section does not prohibit an employer or employee or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from considering any substantially job-related qualifications, including a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

3. Current employment and compensation. This section does not prohibit an employer or employee or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from determining that only applicants who are currently employed by the employer will be considered for employment or given priority for employment or with respect to compensation or terms, conditions or privileges of employment. In addition, this section does not prohibit an employer from setting compensation or terms or conditions of employment for a person based on that person's actual amount of experience. For the purposes of this paragraph, all persons whose salary or wages are paid from the city treasury, and all persons who are employed by public agencies or entities headed by officers or boards including one or more individuals appointed or recommended by officials of the city, shall be deemed to have the same employer.

4. Applicability. This section:

(a) Applies to individual hiring decisions made by an agency or entity with respect to positions for which appointments are not required to be made from an eligible list resulting from a competitive examination.

(b) Does not apply to actions taken by the department of citywide administrative services in furtherance of its responsibility for city personnel matters pursuant to chapter 35 of the charter or as a municipal civil service commission administering the civil service law and other applicable laws, or by the mayor in furtherance of the mayor's duties relating to city personnel matters pursuant to chapter 35 of the charter, including the administration of competitive examinations, the establishment and administration of eligible lists, and the establishment and implementation of minimum qualifications for appointment to positions.

(c) Does not apply to actions taken by officers or employees of other public agencies or entities charged with performing functions comparable to those performed by the department of citywide administrative services or the mayor as described in subparagraph (b) of this paragraph.

(d) Does not apply to agency appointments to competitive positions from eligible lists pursuant to subdivision 1 of section 61 of the civil service law.

(e) Does not apply to the exercise of any right of an employer or employee pursuant to a collective bargaining agreement.

5. Limitation: advertising job-related qualifications. This section does not prohibit an employer, employment agency, or employee or agent thereof from publishing, in print or in any other medium, an advertisement for any job vacancy in this city that contains any provision setting forth any substantially job-related qualifications, including a current and valid

professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

§ 8-2109 Discrimination by an employer or agent thereof; consumer credit history. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an employer or an employee or agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or of an employee or otherwise to discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee.

b. Other requirements. 1. Government agencies and city employees. Subdivision a of this section does not affect the obligations of persons required by section 12-110 or by mayoral executive order relating to disclosures by city employees to the conflicts of interest board to report information regarding their creditors or debts, or the use of such information by government agencies for the purposes for which such information is collected.

2. Legal process. Subdivision a of this section does not prohibit an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order or law enforcement investigation.

3. Applicability. Subdivision a of this section does not apply to:

(a) An employer or an employee or agent thereof that is required by state or federal law or regulations or by a self-regulatory organization as defined in paragraph (26) of subsection (a) of section 3 of the securities exchange act of 1934, as amended, to use an individual's consumer credit history for employment purposes;

(b) Persons applying for positions as or employed:

(1) As police officers or peace officers, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function at the department of investigation;

(2) In a position that is subject to background investigation by the department of investigation, except that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust, as defined by the commission in rules, has been reposed;

(3) In a position in which an employee is required to be bonded under city, state or federal law;

(4) In a position in which an employee is required to possess security clearance under federal law or the law of any state;

(5) In a non-clerical position having regular access to intelligence information, national security information, or trade secrets, except that regular access to trade secrets does not include access to or the use of client, customer or mailing lists;

(6) In a position (i) having signatory authority over third party funds or assets valued at $10,000 or more or (ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at $10,000 or more on behalf of the employer; or

(7) In a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

§ 8-2110 Discrimination by an employer or agent thereof; criminal conviction, arrest or criminal accusation. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any employer or employee or agent thereof to deny employment to any person or to

take adverse action against any employee because such person or employee was convicted of one or more criminal offenses or because of a finding of a lack of "good moral character" that is based on such person or employee having been convicted of one or more criminal offenses, when such denial or adverse action violates article 23-a of the correction law. For purposes of this section, "employment" does not include membership in any law enforcement agency.

b. Other requirements. 1. (Open.)

§ 8-2111 Discrimination by a four-plus employer or agent thereof; arrest and conviction records; four-plus employer inquiries. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any four-plus employer or employee or agent thereof to make any inquiry or statement related to the pending arrest or criminal conviction record of any person who is in the process of applying for employment with such four-plus employer or agent thereof until after such four-plus employer or agent thereof has extended a conditional offer of employment to the applicant.

b. Other requirements. 1. Definitions and usages.

(a) For purposes of this section, with respect to an applicant for temporary employment at a temporary help firm as such term is defined by subdivision 5 of section 916 of the labor law, an offer to be placed in the temporary help firm's general candidate pool shall constitute a conditional offer of employment.

(b) For purposes of the phrase "any inquiry or statement" in this section, "any inquiry" means any question communicated to an applicant in writing or otherwise, or any searches of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's criminal background information, and "any statement" means a statement communicated in writing or otherwise to the applicant to obtain an applicant's criminal background information regarding (i) an arrest record; (ii) a conviction record; or (iii) a criminal background check.

2. Limitation; consideration after a conditional offer of employment. After extending an applicant a conditional offer of employment, a four-plus employer or agent thereof may inquire about the applicant's arrest or conviction record if, before taking any adverse employment action based on such inquiry, the four-plus employer or agent thereof:

(a) Provides a written copy of the inquiry to the applicant in a manner to be determined by the commission;

(b) Performs an analysis of the applicant under article 23-a of the correction law and provides a written copy of such analysis to the applicant in a manner to be determined by the commission, which shall include supporting documents that formed the basis for any adverse action based on such analysis and the four-plus employer's reasons for taking any adverse action against such applicant; and

(c) After giving the applicant the inquiry and analysis in writing pursuant to subparagraphs (a) and (b) of this paragraph, allows the applicant a reasonable time to respond, which shall be no fewer than three business days, and during this time holds the position open for the applicant.

3. Limitation; other reasons. Nothing in this section prohibits a four-plus employer or agent thereof from taking any adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.

4. Improper inquiries. An applicant shall not be required to respond to any inquiry or statement that violates subdivision a of this section, and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.

5. Limitation; applicability. (a) This section does not apply to any actions taken by a four-plus employer or agent thereof pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. For purposes of this section, federal law includes rules or regulations promulgated by a self-regulatory organization as defined in paragraph (26) of subsection (a) of section 3 of the securities exchange act of 1934, as amended.

(b) This section does not apply to any actions taken by a four-plus employer or agent thereof with regard to an applicant for employment:

(1) As a police officer or peace officer, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or at a law enforcement agency as that term is used in article 23-a of the correction law, including the police department, the fire department, the department of correction, the department of investigation, the department of probation, the division of youth and family services, the business integrity commission, and the district attorneys' offices; or

(2) Listed in the determinations of personnel published as a commissioner's calendar item and listed on the website of the department of citywide administrative services upon a determination by the commissioner of citywide administrative services that the position involves law enforcement, is susceptible to bribery or other corruption, or entails the provision of services to or safeguarding of persons who, because of age, disability, infirmity or other condition, are vulnerable to abuse. If the department takes adverse action against any applicant based on the applicant's arrest or criminal conviction record, it shall provide a written copy of such analysis performed under article 23-a of the correction law to the applicant in a form and manner to be determined by the department.

§ 8-2112 Discrimination by an employer or agent thereof; discrimination by any person; arrest record; employment. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to:

1. Deny employment to any applicant or act adversely upon any employee by reason of an arrest or criminal accusation of such applicant or employee when such denial or adverse action violates subdivision 16 of section 296 of the executive law; or

2. Make any inquiry in writing or otherwise about any arrest or criminal accusation of an applicant or employee when such inquiry violates subdivision 16 of section 296 of the executive law.

b. Other requirements. 1. (Open.)

Part 3 – Employment Related Unlawful Discriminatory Practices

§ 8-2125 Apprentice training programs. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer, a labor organization, an employment agency or any joint labor-management committee controlling apprentice training programs or an employee or agent thereof:

1. To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria that permit review.

2. To deny to or withhold from any person because of his or her actual or perceived defined protected status or status as a victim of domestic violence or as a victim of sex offenses

or stalking the right to be admitted to or participate in a guidance program, an apprentice training program, an on-the-job training program, or other occupational training or retraining program.

3. To discriminate against any person in his or her pursuit of a guidance program, apprentice training program, on-the-job training program, or other occupational training or retraining program or to discriminate against such a person in the terms, conditions or privileges of such program because of such person's actual or perceived defined protected status or status as a victim of domestic violence or as a victim of sex offenses or stalking.

b. Other requirements. 1. Limitations; benefit plans, insurance and retirement plans and systems. The provisions of this section:

(a) As they apply to employee benefit plans, do not prohibit a four-plus employer from observing the provisions of any employee benefit plan covered by the federal employment retirement income security act of 1974 that is in compliance with applicable federal anti-discrimination laws where the application of this section to such plan would be preempted by such act;

(b) Do not prohibit the varying of insurance coverages according to an employee's age;

(c) Do not affect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision 3-a of section 296 of the executive law;

(d) Do not affect the retirement policy or system of a four-plus employer where such policy or system is not a subterfuge to evade the purposes of this subchapter.

§ 8-2126 Employment and apprentice training program advertising. a. Generally. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for a four-plus employer, a labor organization, an employment agency or an employee or agent thereof to express, directly or indirectly, any limitation, specification or discrimination as to defined protected status or status as a victim of domestic violence or as a victim of sex offenses or stalking or any intent to make any such limitation, specification or discrimination, when:

(a) Declaring, printing, or circulating or causing to be declared, printed or circulated any statement, advertisement or publication;

(b) Using any form of application for employment or for an apprentice training program; or

(c) Making any inquiry in connection with prospective employment or with a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program.

2. Other requirements. (a) Limitations; benefit plans, insurance and retirement plans and systems. The provisions of this subdivision and subdivision b of this section:

(1) As they apply to employee benefit plans, do not prohibit a four-plus employer from observing the provisions of any employee benefit plan covered by the federal employment retirement income security act of 1974 that is in compliance with applicable federal anti-discrimination laws where the application of this subdivision to such plan would be preempted by such act;

(2) Do not prohibit the varying of insurance coverages according to an employee's age;

(3) Do not affect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision 3-a of section 296 of the executive law;

(4) Do not affect the retirement policy or system of a four-plus employer where such policy or system is not a subterfuge to evade the purposes of this subchapter.

(b) Limitation; family members. This subdivision as it applies to employment does not govern the employment by a four-plus employer of his or her parents, spouse, domestic partner, or children.

b. Advertising by joint labor-management committees and apprentice training programs. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any joint labor-management committee controlling apprentice training programs or an employee or agent thereof to engage in conduct prohibited by subdivision a of this section as it pertains to an apprentice training program.

2. Other requirements. (Open.)

c. Employment advertising relating to arrest or criminal conviction. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any four-plus employer, employment agency or employee or agent thereof to declare, print or circulate or cause to be declared, printed or circulated any solicitation, advertisement or publication that expresses, directly or indirectly, any limitation or specification in employment based on a person's arrest or criminal conviction.

2. Other principles. (a) Limitation; other reasons. This subdivision does not prohibit a four-plus employer, employment agency or agent thereof from taking any adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.

(b) Limitation; improper inquiries. An applicant shall not be required to respond to any inquiry or statement that violates paragraph 1 of this subdivision, and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.

(c) Limitation; applicability. (1) This subdivision does not apply to any actions taken by a four-plus employer or agent thereof pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. For purposes of this subparagraph, federal law includes rules or regulations promulgated by a self-regulatory organization as defined in paragraph (26) of subsection (a) of section 3 of the securities exchange act of 1934, as amended.

(2) This subdivision does not apply to any actions taken by a four-plus employer or agent thereof with regard to an applicant for employment:

(A) As a police officer or peace officer, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or at a law enforcement agency as that term is used in article 23-a of the correction law, including the police department, the fire department, the department of correction, the department of investigation, the department of probation, the division of youth and family services, the business integrity commission, and the district attorneys' offices; or

(B) Listed in the determinations of personnel published as a commissioner's calendar item and listed on the website of the department of citywide administrative services upon a determination by the commissioner of citywide administrative services that the position involves law enforcement, is susceptible to bribery or other corruption, or entails the provision of services to or safeguarding of persons who, because of age, disability, infirmity or other condition, are vulnerable to abuse. If the department takes adverse action against any applicant based on the applicant's arrest or criminal conviction record, it shall provide a written copy of such analysis performed under article 23-a of the correction law to the applicant in a form and manner to be determined by the department.

d. Employment advertising relating to employment status. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice, unless otherwise permitted by city, state or federal law, for any employer, employment agency, or employee or agent thereof to publish, in print or in any other medium, an advertisement for any job vacancy in the city that contains one or more of the following:

(a) Any provision stating or indicating that being currently employed is a requirement or qualification for the job;

(b) Any provision stating or indicating that an employer, employment agency, or employee or agent thereof will not consider individuals for employment based on their unemployment.

2. Other requirements. (a) Effect of subdivision. This subdivision does not prohibit an employer, employment agency, or employee or agent thereof from publishing, in print or in any other medium, an advertisement for any job vacancy in this city that contains any provision setting forth any substantially job-related qualifications, including a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

(b) Limitation; consideration and inquiry permitted. (1) Limitation; consideration and inquiry permitted. Paragraph 1 of this subdivision does not prohibit an employer, employment agency, or employee or agent thereof from (i) considering an applicant's unemployment, where there is a substantially job-related reason for doing so or (ii) inquiring into the circumstances surrounding an applicant's separation from prior employment.

(2) Limitation, substantially job-related qualifications. This subdivision does not prohibit an employer, employment agency, or employee or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from considering any substantially job-related qualifications, including a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

(3) Current employment and compensation. This subdivision does not prohibit an employer, employment agency, or employee or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from determining that only applicants who are currently employed by the employer will be considered for employment or given priority for employment or with respect to compensation or terms, conditions or privileges of employment. In addition, this subdivision does not prohibit an employer from setting compensation or terms or conditions of employment for a person based on that person's actual amount of experience. For the purposes of this clause, all persons whose salary or wages are paid from the city treasury, and all persons who are employed by public agencies or entities headed by officers or boards including one or more individuals appointed or recommended by officials of the city, shall be deemed to have the same employer.

(4) Applicability. This subdivision:

(A) Applies to individual hiring decisions made by an agency or entity with respect to positions for which appointments are not required to be made from an eligible list resulting from a competitive examination.

(B) Does not apply to actions taken by the department of citywide administrative services in furtherance of its responsibility for city personnel matters pursuant to chapter 35 of the charter or as a municipal civil service commission administering the civil service law and other applicable laws, or by the mayor in furtherance of the mayor's duties relating to city personnel matters pursuant to chapter 35 of the charter, including the administration of competitive examinations, the establishment and administration of eligible lists, and the establishment and implementation of minimum qualifications for appointment to positions;

(C) Does not apply to actions taken by officers or employees of other public agencies or entities charged with performing functions comparable to those performed by the department of citywide administrative services or the mayor as described in item (B) of this clause (4);

(D) Does not apply to agency appointments to competitive positions from eligible lists pursuant to subdivision 1 of section 61 of the civil service law; or

(E) Does not apply to the exercise of any right of an employer or employee pursuant to a collective bargaining agreement.

§ 8-2127 Employment agencies. a. Applications for services. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived defined protected status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants for its services to an employer or employers.

2. Other requirements. (a) Limitations; benefit plans, insurance and retirement plans and systems. The provisions of this subdivision:

(1) As they apply to employee benefit plans, do not prohibit a four-plus employer from observing the provisions of any employee benefit plan covered by the federal employment retirement income security act of 1974 that is in compliance with applicable federal anti-discrimination laws where the application of this subdivision to such plan would be preempted by such act;

(2) Do not prohibit the varying of insurance coverages according to an employee's age;

(3) Do not affect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision 3-a of section 296 of the executive law;

(4) Do not affect the retirement policy or system of a four-plus employer where such policy or system is not a subterfuge to evade the purposes of this subchapter.

(b) Limitation; family members. This subdivision does not govern the employment by a four-plus employer of his or her parents, spouse, domestic partner, or children.

b. Unemployment. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an employment agency or employee or agent thereof to base an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment.

2. Other requirements. (a) Limitation; consideration and inquiry permitted. This subdivision does not prohibit an employment agency or employee or agent thereof from (i) considering an applicant's unemployment, where there is a substantially job-related reason for doing so; or (ii) inquiring into the circumstances surrounding an applicant's separation from prior employment.

(b) Limitation, substantially job-related qualifications. This subdivision does not prohibit an employment agency or employee or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from

considering any substantially job-related qualifications, including a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

(c) Current employment and compensation. This subdivision does not prohibit an employment agency or employee or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from determining that only applicants who are currently employed by the employer will be considered for employment or given priority for employment or with respect to compensation or terms, conditions or privileges of employment. In addition, this subdivision does not prohibit an employer from setting compensation or terms or conditions of employment for a person based on that person's actual amount of experience. For the purposes of this subparagraph, all persons whose salary or wages are paid from the city treasury, and all persons who are employed by public agencies or entities headed by officers or boards including one or more individuals appointed or recommended by officials of the city, shall be deemed to have the same employer.

(d) Applicability. This subdivision:

(1) Applies to individual hiring decisions made by an agency or entity with respect to positions for which appointments are not required to be made from an eligible list resulting from a competitive examination.

(2) Does not apply to actions taken by the department of citywide administrative services in furtherance of its responsibility for city personnel matters pursuant to chapter 35 of the charter or as a municipal civil service commission administering the civil service law and other applicable laws, or by the mayor in furtherance of the mayor's duties relating to city personnel matters pursuant to chapter 35 of the charter, including the administration of competitive examinations, the establishment and administration of eligible lists, and the establishment and implementation of minimum qualifications for appointment to positions;

(3) Does not apply to actions taken by officers or employees of other public agencies or entities charged with performing functions comparable to those performed by the department of citywide administrative services or the mayor as described in clause (2) of this subparagraph (d);

(4) Does not apply to agency appointments to competitive positions from eligible lists pursuant to subdivision 1 of section 61 of the civil service law; or

(5) Does not apply to the exercise of any right of an employer or employee pursuant to a collective bargaining agreement.

3. Limitation: advertising job-related qualifications. This subdivision does not prohibit an employment agency or employee or agent thereof from publishing, in print or in any other medium, an advertisement for any job vacancy in this city that contains any provision setting forth any substantially job-related qualifications, including a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

c. Consumer credit history. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an employment agency or an employee or agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or of an employee, or otherwise to discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment, based on the consumer credit history of the applicant or employee.

2. Other requirements. (a) Limitation; applicability; certain positions, city employees and government agencies. (1) Paragraph 1 of this subdivision does not affect the obligations of persons required by section 12-110 or by mayoral executive order relating to disclosures by city employees to the conflicts of interest board to report information regarding their creditors or debts, or the use of such information by government agencies for the purposes for which such information is collected.

(2) Paragraph 1 of this subdivision does not apply to an employer or an employee or agent thereof that is required by state or federal law or regulations or by a self-regulatory organization as defined in paragraph (26) of subsection (a) of section 3 of the securities exchange act of 1934, as amended, to use an individual's consumer credit history for employment purposes;

(3) Paragraph 1 of this subdivision does not apply to persons applying for positions as or employed:

(A) As police officers or peace officers, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function at the department of investigation;

(B) In a position that is subject to background investigation by the department of investigation, except that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust, as defined by the commission in rules, has been reposed;

(C) In a position in which an employee is required to be bonded under city, state or federal law;

(D) In a position in which an employee is required to possess security clearance under federal law or the law of any state;

(E) In a non-clerical position having regular access to intelligence information, national security information, or trade secrets, except that regular access to trade secrets does not include access to or the use of client, customer or mailing lists;

(F) In a position (i) having signatory authority over third party funds or assets valued at $10,000 or more or (ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at $10,000 or more on behalf of the employer; or

(G) In a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

(b) Limitation; Legal process. This subdivision does not prohibit an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order or law enforcement investigation.

d. Criminal conviction, arrest or criminal accusation. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any employment agency or employee or agent thereof to deny employment to any person or to take adverse action against any employee because such person or employee was convicted of one or more criminal offenses or because of a finding of a lack of "good moral character" that is based on such person or employee having been convicted of one or more criminal offenses, when such denial or adverse action violates the provisions of article 23-a of the correction law. For purposes of this subdivision, "employment" does not include membership in any law enforcement agency.

2. Other requirements. (a) (Open.)

e. Arrest and conviction records; employment agency inquiries. 1. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any employment agency or employee or agent thereof to make any inquiry or statement related to the pending arrest or criminal conviction record of any person who is in the process of applying for employment with such employer or agent thereof until after such employer or agent thereof has extended a conditional offer of employment to the applicant.

2. Other requirements. (a) Definitions and usages. (1) For purposes of this subdivision, with respect to an applicant for temporary employment at a temporary help firm as such term is defined by subdivision 5 of section 916 of the labor law, an offer to be placed in the temporary help firm's general candidate pool constitutes a conditional offer of employment.

(2) For purposes of the phrase "any inquiry or statement" in this subdivision "any inquiry" means any question communicated to an applicant in writing or otherwise, or any searches of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's criminal background information, and "any statement" means a statement communicated in writing or otherwise to the applicant to obtain an applicant's criminal background information regarding (i) an arrest record; (ii) a conviction record; or (iii) a criminal background check.

(c) Limitation; other reasons. Nothing in this subdivision prohibits an employment agency or agent thereof from taking any adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.

(d) Improper inquiries. An applicant shall not be required to respond to any inquiry or statement that violates paragraph 1 of this subdivision and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.

§ 8-2128 Labor organizations. a. Generally. 1. Unlawful discriminatory practices. It is an unlawful discriminatory practice for a labor organization or an employee or agent thereof, because of the actual or perceived defined protected status of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any four-plus employer or any person employed by a four-plus employer.

2. Other requirements. (a) Limitations; benefit plans, insurance and retirement plans and systems. The provisions of this section:

(1) As they apply to employee benefit plans, do not prohibit a four-plus employer from observing the provisions of any employee benefit plan covered by the federal employment retirement income security act of 1974 that is in compliance with applicable federal anti-discrimination laws where the application of this section to such plan would be preempted by such act;

(2) Do not prohibit the varying of insurance coverages according to an employee's age;

(3) Do not affect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision 3-a of section 296 of the executive law;

(4) Do not affect the retirement policy or system of a four-plus employer where such policy or system is not a subterfuge to evade the purposes of this subchapter.

(b) Limitation; family members. This section does not govern the employment by a four-plus employer of his or her parents, spouse, domestic partner, or children.

b. Consumer credit history. 1. Unlawful discriminatory practices. It is an unlawful discriminatory practice for a labor organization or an employee or agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or of

an employee, or otherwise to discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment, based on the consumer credit history of the applicant or employee.

2. Other requirements. (a) Limitation; certain employees, city employees, and government agencies. Paragraph 1 of this subdivision does not affect the obligations of persons required by section 12-110 or by mayoral executive order relating to disclosures by city employees to the conflicts of interest board to report information regarding their creditors or debts, or the use of such information by government agencies for the purposes for which such information is collected.

(b) Paragraph 1 of this subdivision does not apply to persons applying for positions as or employed:

(1) As police officers or peace officers, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function at the department of investigation;

(2) In a position that is subject to background investigation by the department of investigation, except that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust, as defined by the commission in rules, has been reposed;

(3) In a position in which an employee is required to be bonded under city, state or federal law;

(4) In a position in which an employee is required to possess security clearance under federal law or the law of any state;

(5) In a non-clerical position having regular access to intelligence information, national security information, or trade secrets, except that regular access to trade secrets does not include access to or the use of client, customer or mailing lists;

(6) In a position (i) having signatory authority over third party funds or assets valued at $10,000 or more or (ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at $10,000 or more on behalf of the employer; or

(7) In a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases. (c) Legal process. This subdivision does not prohibit an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order or law enforcement investigation.

Article 4

Public Accommodations

§ 8-2151 Applicability. a. This article does not apply, with respect to age or gender, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public policy.

b. The provisions of this article relating to discrimination on the basis of gender do not prohibit any educational institution subject to this article from making gender distinctions that would be permitted:

1. For educational institutions that are subject to section 3201-a of the education law or any rules or regulations promulgated by the state commissioner of education relating to gender; or

2. Under sections 86.32, 86.33 and 86.34 of title 45 of the code of federal regulations for educational institutions covered under such sections.

c. This article does not prohibit an educational institution, other than a publicly operated educational institution, that establishes or maintains a policy of educating persons of one gender exclusively from limiting admissions to students of that gender.

d. The provisions of this subchapter relating to disparate impact do not apply under this article to the use of standardized tests as defined by section 340 of the education law by an educational institution subject to this article, provided that such test is used in the manner and for the purpose prescribed by the test agency that designed the test.

e. The provisions of this article as they relate to unlawful discriminatory practices by educational institutions do not apply to matters that are strictly educational or pedagogic in nature.

§ 8-2152 Public accommodations. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, because of the actual or perceived defined protected status of any person to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, directly or indirectly.

b. Other requirements. 1. Burden of proof; private clubs. In any case where it is placed in issue, a club claiming that it is in its nature distinctly private bears the burden of proof on that issue.

§ 8-2153 Advertising public accommodations. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, directly or indirectly to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that:

1. Any of the accommodations, advantages, facilities and privileges of any such place or provider will be refused, withheld from or denied to any person on account of defined protected status; or

2. The patronage or custom of any person belonging to, purporting to be, or perceived to be, of any particular defined protected status is unwelcome, objectionable or not acceptable, desired or solicited.

b. Other requirements. 1. (Open.)

Article 5
Housing, Real Estate and Financing

§ 8-2201 Applicability.

a. Housing accommodations, land and commercial space; persons under 18 years of age. The provisions of this article, as they relate to unlawful discriminatory practices in housing accommodations, land and commercial space or an interest therein and lending practices on the basis of age, do not apply to unemancipated persons under the age of 18 years.

b. Residential housing; discrimination on the basis of occupation. Where a housing accommodation or an interest therein is sought or occupied exclusively for residential purposes, this article prohibits discrimination in the sale, rental, or leasing of such housing accommodation or interest therein and in the terms, conditions and privileges of the sale, rental or leasing of such

housing accommodation or interest therein and in the furnishing of facilities or services in connection therewith, on account of a person's occupation.

c. Limitation; dormitory residence operated by educational institution. The provisions of this article relating to discrimination on the basis of gender in housing accommodations do not prohibit any educational institution from making gender distinctions in dormitory residences that would be permitted under sections 86.32 and 86.33 of title 45 of the code of federal regulations for educational institutions covered thereunder.

d. Limitation; dormitory-type housing accommodations; gender and persons living with children. The provisions of this article that prohibit discrimination on the basis of gender and whether children are, may be or would be residing with a person do not apply to dormitory-type housing accommodations, including shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children.

e. Limitation; housing accommodations; lawful source of income. The provisions of this article, as they relate to unlawful discriminatory practices on the basis of lawful source of income, do not apply to housing accommodations that contain five or fewer housing units, except that they do apply:

1. To tenants subject to rent control laws who reside in housing accommodations that contained a total of five or fewer units as of March 26, 2008; and

2. To all housing accommodations, regardless of the number of units contained in each, of any person who has the right to sell, rent or lease or approve the sale, rental or lease of at least one housing accommodation within the city that contains six or more housing units, constructed or to be constructed, or an interest therein.

f. Limitation; discrimination against persons with children; housing for older persons. The provisions of this article with respect to discrimination against persons with whom children are, may be or would be residing do not apply to housing for older persons as defined in paragraphs 2 and 3 of subsection (b) of section 3607 of title 42 of the United States code and any regulations promulgated under such paragraphs.

g. Limitation; housing accommodations; persons 55 years of age and older. The provisions of this article with respect to discrimination on the basis of age do not apply to the restriction of the sale, rental or lease of any housing accommodation, land or commercial space or an interest therein exclusively to persons 55 years of age or older. This subdivision does not permit discrimination against such persons 55 years of age or older on the basis of whether children are, may be or would be residing in such housing accommodation or land or an interest therein unless such discrimination is otherwise permitted pursuant to subdivision f of this section.

h. Exemption for special needs of particular age group in publicly assisted housing accommodations. This article does not restrict the consideration of age in the rental of publicly assisted housing accommodations if the state division of human rights grants an exemption pursuant to section 296 of the executive law based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups, except that that this subdivision does not permit discrimination on the basis of whether children are, may be or would be residing in such housing accommodations unless such discrimination is otherwise permitted pursuant to subdivision f of this section.

i. Use of criteria or qualifications in publicly assisted housing accommodations. This article does not prohibit the use of criteria or qualifications of eligibility for the sale, rental,

leasing or occupancy of publicly assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program, or to prohibit the use of statements, advertisements, publications, applications or inquiries to the extent that they state such criteria or qualifications or request information necessary to determine or verify the eligibility of an applicant, tenant, purchaser, lessee or occupant.

§ 8-2202 Housing accommodations. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof, because of any person's or group of persons' actual or perceived defined protected status, or because of any lawful source of income of any person or persons, or because children are, may be or would be residing with any person or persons:

1. To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any such person or group of persons such a housing accommodation or an interest therein; or

2. To discriminate against any such person in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith.

b. Other requirements. 1. Limitation; rooms, accommodation size and family and owner-occupants. Subdivision a of this section does not apply:

(a) To the rental of a housing accommodation, other than a publicly assisted housing accommodation, in a building that contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

(b) To the rental of a room or rooms in a housing accommodation, other than a publicly assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

§ 8-2203 Advertising housing accommodations. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof to express, directly or indirectly, any limitation, specification or discrimination as to defined protected status, any lawful source of income, or whether children are, may be, or would be residing with a person or any intent to make such limitation, specification or discrimination when:(i) declaring, printing or circulating or causing to be declared, printed or circulated any statement, advertisement or publication relating to,

(ii) using any form of application for , or

(iii) making any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein.

b. Other requirements. 1. Limitation; rooms, accommodation size and family and owner-occupants. Subdivision a of this section does not apply:

(a) To the rental of a housing accommodation, other than a publicly assisted housing accommodation, in a building that contains housing accommodations for not more than two

families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

(b) To the rental of a room or rooms in a housing accommodation, other than a publicly assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

§ 8-2204 Land and commercial space. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof, because of a person's or group of persons' actual or perceived defined protected status, or because children are, may be or would be residing with a person or persons:

1. To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or withhold from any such person or group of persons land or commercial space or an interest therein; or

2. To discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or an interest therein or in the furnishing of facilities or services in connection therewith.

b. Other requirements.

1. (Open.)

§ 8-2205 Advertising land and commercial space. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof to express, directly or indirectly, any limitation, specification or discrimination as to defined protected status or as to whether children are, may be, or would be residing with a person or any intent to make such limitation, specification or discrimination when (i) declaring, printing or circulating or causing to be declared, printed or circulated any statement, advertisement or publicationrelating to,

(ii) using any form of application for, or

(iii) making any record or inquiry in connection with, the prospective purchase, rental or lease of such land or commercial space or an interest therein.

b. Other requirements.

1. (Open.)

§ 8-2206 Real estate brokers. a. Unlawful discriminatory practice. 1. Related to sale and other real estate actions. It is an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof, because of any person's or group of persons' actual or perceived defined protected status, or because of any lawful source of income of any person or persons, or because children are, may be or would be residing with any person or persons:

(a) To refuse to sell, rent or lease any housing accommodation, land or commercial space or an interest therein to any such person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space or an interest therein to any such person or group of persons;

(b) To represent that any housing accommodation, land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available; or

(c) Otherwise to deny or withhold any housing accommodation, land or commercial space or an interest therein or any facilities of any housing accommodation, land or commercial space or an interest therein from any such person or group of persons.

2. Inducement based on representations regarding the entry of persons. It is an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof to induce or attempt to induce any person to sell or rent any housing accommodation, land or commercial space or an interest therein by representations, explicit or implicit, regarding the entry or prospective entry into the neighborhood or area of a person or persons of a defined protected status, or a person or persons with any lawful source of income, or a person or persons with whom children are, may be or would be residing.

b. Other requirements. 1. (Open.)

§ 8-2207 Advertising by real estate brokers. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof to express, directly or indirectly, any limitation, specification or discrimination as to defined protected status, any lawful source of income, or whether children are, may be, or would be residing with a person or any intent to make such limitation, specification or discrimination when:(i) declaring, printing or circulating or causing to be declared, printed or circulated any statement, advertisement or publication relating to,

(ii) using any form of application for , or

(iii) making any record or inquiry in connection with the actual or prospective purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein.

b. Other requirements. 1. (Open.)

§ 8-2208 Multiple listing and other real estate services. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice to deny a person access to, membership in, or participation in a multiple listing service, real estate brokers' organization, or other service because of such person's actual or perceived defined protected status or because children are, may be or would be residing with such person.

b. Other requirements. 1. (Open.)

§ 8-2209 Real estate appraisal. a. Unlawful discriminatory practice. 1. Generally. It is an unlawful discriminatory practice for any person whose business includes the appraisal of housing accommodations, land or commercial space or interest therein or an employee or agent thereof to discriminate against any other person on the basis of the actual or perceived defined protected status, or because children are, may be or would be residing with such person in making available or in the terms or conditions of such appraisal.

b. Other requirements. 1. (Open.)

§ 8-2210 Lending practices. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city and regardless of whether or where incorporated, or any officer, agent or employee thereof to whom application is made for a loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space or an interest therein:

1. To discriminate against such applicant or applicants because of the actual or perceived defined protected status of such applicant or applicants, of any member, stockholder, director, officer or employee of such applicant or applicants, or of the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space, or because children are, may be or would be residing with such applicant or other person, in granting, withholding, extending or renewing or in fixing the rates, terms or conditions of any such financial assistance or in appraising any housing accommodation, land or commercial space or an interest therein; or

2. To use any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance or with the appraisal of any housing accommodation, land or commercial space or an interest therein, that expresses, directly or indirectly, any limitation, specification or discrimination as to defined protected status or as to whether children are, may be, or would be residing with a person.

b. Other requirements.

1. (Open.)

Article 6
Licenses, Registrations and Permits

§ 8-2251 Applicability; authorization to work. a. An applicant for a license or permit issued by the city may be required to be authorized to work in the United States whenever by law or regulation there is a limit on the number of such licenses or permits that may be issued.

b. Limitation; other laws. Nothing in this article prohibits an agency authorized to issue a license, registration or permit from using age, disability, criminal conviction or arrest record as a criterion for determining eligibility or continuing fitness for a license, registration or permit when specifically required to do so by any other provision of law.

§ 8-2252 Licenses, registrations and permits; in general. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice, for an agency authorized to issue a license, registration or permit or an employee thereof to discriminate against an applicant for a license, registration or permit because of the actual or perceived defined protected status of such applicant.

b. Other requirements. 1. (Open.)

§ 8-2253 Licenses, registrations and permits; consumer credit history. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an agency to request or use for licensing, registration or permitting purposes information contained in the consumer credit history of an applicant, licensee, registrant or permittee.

b. Other requirements. 1. Limitation; other laws. Subdivision a of this section does not apply to an agency required by state or federal law or regulations to use an individual's consumer credit history for licensing, registration or permitting purposes.

2. Limitation; taxes, fines, etc. Subdivision a of this section does not affect the ability of an agency to consider an applicant's, licensee's, registrant's or permittee's failure to pay any tax, fine, penalty, or fee for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction, or any tax for which a government agency has issued a warrant, or a lien or levy on property.

3. Limitation; legal process. This section does not prohibit a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or law enforcement investigation.

§ 8-2254 Licenses, registrations and permits; criminal conviction, arrest or charge. a. Unlawful discriminatory practices. It is an unlawful discriminatory practice for any person:

1. To deny any license, registration or permit to any applicant or to act adversely upon any holder of a license, registration or permit because the applicant or holder was convicted of one or more criminal offenses or because of a finding of a lack of "good moral character" that is based on his or her having been convicted of one or more criminal offenses, when such denial or adverse action violates the provisions of article 23-a of the correction law.

2. To deny any license, registration or permit to any applicant or to act adversely upon any holder of a license, registration or permit because he or she was arrested or accused of committing a crime when such denial or adverse action violates subdivision 16 of section 296 of the executive law.

3. To make any inquiry, in writing or otherwise, regarding any arrest or criminal accusation of an applicant for any license, registration or permit when such inquiry violates subdivision 16 of section 296 of the executive law.

b. Other requirements. 1. Limitation; deadly weapons. The prohibition relating to inquiries, denials or other adverse action related to a person's record of arrests or convictions does not apply to licensing activities in relation to the regulation of explosives, pistols, handguns, rifles, shotguns, or other firearms and deadly weapons.

§ 8-2255 Licenses, registrations and permits relating to advertising. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice for an agency authorized to issue a license, registration or permit or an employee thereof to express, directly or indirectly, any limitation, specification or discrimination as to defined protected status or any intent to make any such limitation, specification or discrimination when:

1. Declaring, printing or circulating or causing to be declared, printed or circulated any statement, advertisement or publication;

2. Using any form of application for a license, registration or permit; or

3. Making any inquiry in connection with any such application.

b. Other requirements. 1. (Open.)

Article 7
Commercial Activity

§ 8-2301 Applicability. (Open.)

§ 8-2302 Unlawful boycott or blacklist. a. Unlawful discriminatory practice. It is an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person because of such person's actual or perceived defined protected status or because of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act that enables any such person to take such action.

b. Other requirements. 1. Limitation; certain protests and protected expression. This section does not apply to:

(a) Boycotts connected with labor disputes;

(b) Boycotts to protest unlawful discriminatory practices; or

(c) Any form of expression that is protected by the First Amendment.

§ 8-2303 Advertising. (Open.)

§ 8-2304 Providing credit; arrest record. a. Unlawful discriminatory practice. For purposes of issuing credit, it is an unlawful discriminatory practice, unless specifically required or permitted by any other law, to:

1. Deny or act adversely upon any person seeking credit by reason of an arrest or criminal accusation of such person when such denial or adverse action violates subdivision 16 of section 296 of the executive law; or

2. Make any inquiry in writing or otherwise, regarding any arrest or criminal accusation of a person seeking credit when such inquiry violates subdivision 16 of section 296 of the executive law.

b. Other requirements. 1. (Open.)

Subchapter 2
Other Unlawful Practices

Article 1 Unlawful Real Estate Practices.
Article 2 Discriminatory Harassment and Violence.
Article 3 Civil Rights Protests.

Article 1
Unlawful Real Estate Practices

§ 8-2701 Aiding and abetting. It is unlawful for any person, firm, partnership, association, or corporation, to knowingly aid, abet, or coerce the commission of any act made unlawful by section 8-2702.

§ 8-2702 Real estate brokers and dealers. a. It is unlawful for any real estate broker or dealer or any agent or employee thereof, except in honest reply to an unprompted question by a prospective buyer or seller:

1. To represent, for the purpose of inducing or discouraging the purchase, sale, or rental, or the listing for purchase, sale, or rental, of any real property, that a change has occurred or will or may occur in the racial or religious composition of any block, neighborhood or area; or

2. To represent, implicitly or explicitly, for the purpose of inducing or discouraging the purchase, sale, or rental or the listing for purchase, sale, or rental of any real property, that the presence of persons of any particular race, religion or ethnic background in an area will or may result in:

(a) A lowering of property values in the area;

(b) A change in the racial, religious or ethnic composition of the area;

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

(d) A change in the racial, religious or ethnic composition of schools or other public facilities or services in the area.

b. It is unlawful for any real estate broker or dealer or any agent or employee thereof:

1. To make any misrepresentation in connection with the purchase, sale, or rental of any real property, that there will or may be physical deterioration of dwellings in any block, neighborhood or area; or

2. To refer to race, color, religion or ethnic background in any advertisement offering or seeking real property for purchase, sale or rental.

§ 8-2703 Real estate non-solicitation areas. It is unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer to solicit, directly or indirectly, the sale, purchase, or rental of any dwelling located within a non-solicitation area designated in accordance with section 8-3103.

Article 2
Discriminatory Harassment and Violence

§ 8-2751 Discriminatory harassment or violence. No person shall interfere by threats, intimidation or coercion or attempt to interfere by threats, intimidation or coercion with the exercise or enjoyment by any person of rights secured by the constitution or laws of the United States, the constitution or laws of this state, or local law of the city when such interference or attempted interference is motivated in whole or in part by the victim's actual or perceived defined protected status or whether children are, may or would be residing with such victim.

§ 8-2752 Discriminatory harassment. a. No person shall by force or threat of force knowingly injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's actual or perceived defined protected status.

b. No person shall knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim's actual or perceived defined protected status or whether children are, may be, or would be residing with such victim.

Article 3
Civil Rights Protests

§ 8-2801 Removal of disability or disqualification. Notwithstanding any provision of the code to the contrary, no person shall be denied any license, right, benefit or privilege extended by the code, or suffer any other disability or disqualification thereunder, or be denied the right of employment by the city, solely because of any arrest, apprehension, detention, indictment or other accusation, arraignment, trial, conviction or any other aspect of conviction or adjudication of a crime had under the jurisdiction of the courts of any state or of the United States, which is founded on an act or acts arising out of any peaceful demonstration or other peaceful activity, the object of which is to resist discriminatory treatment in or by any place or provider of public accommodation, or to achieve equal rights for all persons.

CHAPTER 3
INVESTIGATION AND ENFORCEMENT

Subchapter 1 Human Rights Commission.
Subchapter 2 Civil Action by Corporation Counsel.

Subchapter 3 Private Right of Action.

Subchapter 1
Human Rights Commission

Article 1 General Provisions.
Article 2 Rulemaking by Commission.
Article 3 Investigations and Findings.
Article 4 Commission Proceedings.
Article 5 Court Proceedings.

Article 1
General Provisions

§ 8-3001 Jurisdiction of commission. a. The commission does not have jurisdiction over a complaint filed pursuant to section 3-3151:

1. That has been filed more than one year after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 occurred;

2. If the complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 with respect to the same grievance that is the subject of the complaint under this subchapter, unless such civil action has been dismissed without prejudice or withdrawn without prejudice;

3. If the complainant has previously filed and has an action or proceeding before any administrative agency under any other law of the state alleging an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 with respect to the same grievance that is the subject of the complaint under this subchapter; or

4. If the complainant has previously filed a complaint with the state division of human rights alleging an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 with respect to the same grievance that is the subject of the complaint under this subchapter and a final determination has been made thereon.

b. The provisions of this subchapter that subject acts of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 to the jurisdiction of the commission do not apply to acts committed by members of the police department in the course of performing their official duties as police officers, whether the police officer is on or off duty.

§ 8-3002 Commencement of actions or proceedings. Where this chapter authorizes an application to be made, or an action or proceeding to be commenced on behalf of the commission in a court, such application may be made or such action or proceeding may be commenced only by the corporation counsel, such attorneys employed by the commission as are designated by the corporation counsel or other persons designated by the corporation counsel.

§ 8-3003 Reporting. a. The commission shall submit an annual report by March 1 to the mayor and the council that shall be published in The City Record. Such annual report shall include information for the preceding calendar year regarding:

1. Inquiries received by the commission from the public;

2. Complaints filed with the commission; and

3. Education and outreach efforts made by the commission.

b. The information regarding inquiries received by the commission from the public shall include:

1. The total number of inquiries;

2. The number of inquiries made by limited English proficient persons, disaggregated by language;

3. The subject matter of inquiries, disaggregated by the alleged category of unlawful discriminatory practice and the protected status of the person; and

4. The number of inquiries resolved by pre-complaint intervention.

c. The information regarding complaints filed with the commission shall include, but need not be limited to, the number of complaints filed with the commission and shall be disaggregated by:

1. The category of unlawful discriminatory practice alleged;

2. The basis of the alleged discriminatory practice based on the defined protected status or other protected status of the complainant;

3. Whether the complaint was resolved by mediation and conciliation, as set forth in section 8-3162; a determination of no probable cause, as set forth in section 8-3155; or a hearing, as set forth in subdivisions a through f of section 8-3156;

4. The number of days the complaint was outstanding at the time such resolution occurred; and

5. Whether a fine, penalty, or cash award was imposed and, if so, the dollar amount of such fine, penalty or cash award.

d. The information regarding the commission's education and outreach efforts as required by subdivisions a and b of section 905 of the charter shall include, but need not be limited to:

1. The types of outreach initiated;

2. The number of people with whom the commission made contact as a result of outreach;

3. The number of limited English proficient persons served; and

4. The languages in which such outreach was conducted.

Article 2

Rulemaking by the Commission

§ 8-3051 Rules of procedure. The commission shall adopt rules providing for hearing and pre-hearing procedures. These rules shall include rules providing that the commission, by its prosecutorial bureau, shall be a party to all complaints and that a complainant shall be a party if the complainant has intervened in the manner set forth in the rules of the commission. These rules shall also include rules governing discovery, motion practice and the issuance of subpoenas.

§ 8-3052 Establishment of policies, programs, procedures. a. The commission may establish by rule policies, programs and procedures that may be implemented by employers for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors.

b. Notwithstanding any other provision of law to the contrary, an employer found to be liable for an unlawful discriminatory practice based solely on the conduct of an employee, agent or person employed as an independent contractor who pleads and proves that policies, programs

and procedures established by the commission pursuant to subdivision a of this section had been implemented and complied with at the time of the unlawful conduct is not subject to any civil penalties or punitive damages that otherwise might have been imposed pursuant to chapter 3 of this title for such unlawful discriminatory practice.

§ 8-3053 Rules regarding unlawful real estate practices. The commission may from time to time make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of section-3103 and article 1 of subchapter 2 of chapter 2 of this title.

Article 3

Investigations and Findings

§ 8-3101 Investigations and investigative record keeping. a. The commission may at any time issue subpoenas requiring attendance and testimony by witnesses and the production of books, papers, documents and other evidence relating to any matter under investigation or any question before the commission. The issuance of such subpoenas is governed by the civil practice law and rules.

b. The commission may conduct investigations and studies concerning practices and activities governed by article 1 of subchapter 2 of chapter 2 of this title.

c. 1. Where the commission has initiated its own investigation or has conducted an investigation in connection with the filing of a complaint pursuant to this subchapter, the commission may demand that any person or persons who are the subject of such investigation (i) preserve those records in the possession of such person or persons that are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices or other unlawful practices with respect to activities in the city, and (ii) continue to make and keep the type of records made and kept by such person or persons in the ordinary course of business within the year preceding such demand that are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices or other unlawful practices with respect to activities in the city.

2. A demand made pursuant to this subdivision is effective immediately upon its service on the subject of an investigation and remains in effect until the termination of all proceedings relating to any complaint filed pursuant to this subchapter or civil action commenced pursuant to section 8-3552 or if no complaint or civil action is filed or commenced expires two years after the date of such service. The commission's demand shall require that such records be made available for inspection by the commission or be filed with the commission.

d. Any person upon whom a demand has been made pursuant to subdivision c of this section may, pursuant to procedures established by rule of the commission, assert an objection to such demand. Unless the commission orders otherwise, the assertion of an objection does not stay compliance with the demand. The commission shall make a determination on an objection to a demand within 30 days after such an objection is filed with the commission, unless the party filing the objection consents to an extension of time. Upon the expiration of the time set pursuant to such rules for making an objection to such demand, or upon a determination that an objection to the demand is not sustained, the commission shall order compliance with the demand.

e. Upon a determination that an objection to a demand is sustained, the commission shall order that the demand be vacated or modified.

§ 8-3102 Investigative reporting requirements for discriminatory boycott or blacklist. The following requirements apply to all complaints alleging that a discriminatory boycott or blacklist under section 8-2302 is occurring:

a. The commission shall begin an investigation within 24 hours of the filing of a complaint that alleges that a discriminatory boycott or blacklist is occurring.

b. Within three days after initiating such an investigation, the commission shall file a written report with the mayor. The report shall state:

1. The allegations contained in the complaint;

2. Whether the commission has reason to believe a discriminatory boycott or blacklist is occurring; and

3. Steps the commission has taken to resolve the dispute.

c. If it is stated within the report described in subdivision b of this section that the commission has reason to believe that a discriminatory boycott or blacklist has occurred, within 30 days after filing such report the commission shall file a second report with the mayor and the council. This second report shall contain:

1. A brief description of the allegations contained in the complaint;

2. A determination of whether probable cause exists to believe a discriminatory boycott or blacklist is occurring;

3. A recitation of the facts that form the basis of the commission's determination of probable cause; and,

4. If the boycott or blacklist is continuing at the date of the report, a description of all actions the commission or other city agency has taken or will undertake to resolve the dispute.

d. If a finding of probable cause is not contained in the report required by subdivision c of this section and the boycott or blacklist continues for more than 20 days after the report's release, then, upon demand of the mayor or council the commission shall update such report. Report updates shall detail:

1. Whether or not the commission presently has probable cause to believe a discriminatory boycott or blacklist is occurring; and

2. All new activity the commission or other city agency has taken or will undertake to resolve the dispute.

e. If the commission determines that the disclosure of any information in a report required by this section might interfere with or compromise a pending investigation or efforts to resolve the dispute by mediation or conciliation, it shall file the report without such information and state in the report the reasons for omitting such information.

§ 8-3103 Findings and designation of non-solicitation areas. a. Designation. The commission may designate an area as a non-solicitation area for a period of up to one year upon making written findings based on substantial evidence introduced at a public hearing that:

1. Consistently occurring within the area are practices made unlawful by sections 8-2701 and 8-2702, the inducement or encouragement by brokers or dealers of the use of fraudulent mortgage applications for the purchase of dwellings, or the direction based on race, creed, color or national origin by brokers or dealers of prospective purchasers or applicants to dwellings, or an unusually great incidence of solicitation, and that

2. Such practices are causing, or are likely to cause, residents within the area to believe that:

(a) Property values in the area are declining, or are about to decline rapidly;

(b) The area is experiencing, or is about to experience:

(1) A declining level of maintenance of its housing stock;

(2) An increase in criminal behavior; or

(3) A change in the racial, religious or ethnic composition of the schools in the area; or

(c) The area is experiencing, or is about to experience, a material change in its racial, religious or ethnic composition; and

3. The temporary prohibition in the area of the real estate activities described in section 8-2703 therefore is necessary to prevent a material change in the area's racial, religious or ethnic composition.

b. Extension. The commission may extend one or more times the designation of a non-solicitation area made pursuant to subdivision a of this section for a period of up to one year upon making written findings, based on substantial evidence introduced at a public hearing, that such extension is necessary to achieve the designation's purpose, as described in paragraph 3 of subdivision a of this section, except that no extension may be granted that, together with the original designation and all previous extensions, will maintain a non-solicitation area for a continuous period greater than two years. The public hearing on any extension shall be held not more than 30 days before the day on which the designation or earlier extension is scheduled to expire.

c. Notice. 1. The commission shall promptly announce by legal notice each designation made pursuant to subdivision a of this section and each extension made pursuant to subdivision b of this section, describing the area to which it applies by references to named streets and landmarks. Any designation shall take effect upon the completion of the publication required for legal notice. Any extension shall take effect at the time at which the designation or earlier extension would otherwise expire. Legal notice for purposes of this paragraph shall be given by (i) daily publication for one week in a newspaper of general circulation within the city and (ii) written notice to all real estate brokers in the area.

2. The commission shall maintain, and make available to all interested persons, a current listing of designated non-solicitation areas.

d. Termination. The commission may, at any time, terminate the designation of a non-solicitation area made pursuant to subdivision a of this section or the extension of a designation made pursuant to subdivision b of this section upon making findings, based on substantial evidence introduced at a public hearing, that the continuation of the designation or its extension is no longer necessary to achieve the designation's purpose, as described in this section.

Article 4

Commission Proceedings

§ 8-3151 Complaint. a. General commission duties. 1. In relation to complaints, the commission shall:

(a) Commence proceedings with respect to the complaint;

(b) Complete a thorough investigation of the allegations of the complaint; and

(c) Make a final disposition of the complaint promptly and within the time periods to be prescribed by rule of the commission.

2. If the commission is unable to comply with the time periods specified for completing its investigation and for final disposition of the complaint, it shall notify the complainant, respondent, and any necessary party in writing of the reasons for not doing so.

b. Initiating complaints. 1. Complaint by person aggrieved. Any person aggrieved by an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 may, by himself or herself or such person's attorney, make, sign and file with the commission a verified complaint in writing that shall (i) state the name of the person alleged to have committed the unlawful discriminatory practice or act of discriminatory

harassment or violence complained of, and the address of such person if known; (ii) set forth the particulars of the alleged unlawful discriminatory practice or act of discriminatory harassment or violence; and (iii) contain such other information as may be required by the commission. The commission shall acknowledge the filing of the complaint and advise the complainant of the time limits set forth in this chapter.

2. Complaint by employer. Any employer whose employee or agent refuses or threatens to refuse to cooperate with the provisions of subchapter 1 of chapter 2 of this title may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

3. Commission-initiated complaints. The commission may make, sign and file a verified complaint alleging that a person has committed an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752.

c. Service of complaint. The commission shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent of his or her procedural rights and obligations as set forth herein.

d. Amendment of complaint. Any complaint filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended complaint with the commission and serving a copy thereof upon all parties to the proceeding.

e. Confidentiality regarding lending practice complaints. Whenever a complaint is filed pursuant to section 8-2210, no member of the commission and no member of the commission's staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where express permission has been first obtained in writing from the lender and the borrower to such publication; except that the name of any borrower and a specific description of the collateral for any loan to such borrower may, if otherwise relevant, be introduced in evidence in any hearing before the commission or any review by a court of competent jurisdiction of any order or decision by the commission.

§ 8-3152 Answer. a. Verified answer. 1. Within 30 days after a copy of the complaint is served upon the respondent by the commission, the respondent shall file a written, verified answer thereto with the commission, and the commission shall cause a copy of such answer to be served upon the complainant and any necessary party.

2. Any necessary party may file with the commission a written, verified answer to the complaint, and the commission shall cause a copy of such answer to be served upon the complainant, the respondent and any other necessary party.

b. Specificity of Answer. 1. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial.

2. Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the commission unless good cause to the contrary is shown.

c. Affirmative defenses. All affirmative defenses shall be stated separately in the answer.

d. Extension. Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended in accordance with the rules of the commission.

e. Amendments. Any answer filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended answer with the

commission and serving a copy thereof upon the complainant and any necessary party to the proceeding.

§ 8-3153 Withdrawal of complaints. a. A complaint filed pursuant to section 8-3151 may be withdrawn by the complainant in accordance with rules of the commission at any time prior to the service of a notice that the complaint has been referred to an administrative law judge. Such a withdrawal shall be in writing and signed by the complainant.

b. A complaint may be withdrawn after the service of such notice at the discretion of the commission.

c. Unless such complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint shall be without prejudice:

1. To the continued prosecution of the complaint by the commission in accordance with rules of the commission;

2. To the initiation of a complaint by the commission based in whole or in part upon the same facts; and

3. To the commencement of a civil action by the corporation counsel based upon the same facts pursuant to section 8-3552.

§ 8-3154 Dismissal of complaint. a. Administrative convenience.

1. The commission may dismiss a complaint for administrative convenience at any time before the taking of testimony at a hearing. Administrative convenience includes, but is not limited to, the following circumstances:

(a) Commission personnel have been unable to locate the complainant after diligent efforts to do so;

(b) The complainant has repeatedly failed to appear at mutually agreed upon appointments with commission personnel or is unwilling to meet with commission personnel, to provide requested documentation, or to attend a hearing;

(c) The complainant has repeatedly engaged in conduct that is disruptive to the orderly functioning of the commission;

(d) The complainant is unwilling to accept a reasonable proposed conciliation agreement;

(e) Prosecution of the complaint will not serve the public interest; and

(f) (1) The complainant requests such dismissal;

(2) 180 days have elapsed since the filing of the complaint with the commission; and

(3) the commission finds (i) that the complaint has not been actively investigated and (ii) that the respondent will not be unduly prejudiced thereby.

2. The commission shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent, if the complainant requests such dismissal, unless the commission has conducted an investigation of the complaint or has engaged the parties in conciliation after the filing of the complaint.

b. Lack of jurisdiction. In accordance with the rules of the commission, the commission shall dismiss a complaint if the complaint is not within the jurisdiction of the commission.

c. Lack of probable cause. If after investigation the commission determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752, the commission shall dismiss the complaint as to such respondent.

d. Notice. The commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.

e. Review. The complainant or respondent may, within 30 days of service under subdivision d of this section, and in accordance with the rules of the commission, apply to the chairperson for review of any dismissal pursuant to this section. Upon such application, the chairperson shall review such action and issue an order affirming, reversing or modifying such determination or remanding the matter for further investigation and action. A copy of such order shall be served upon the complainant, respondent and any necessary party.

§ 8-3155 Determination of probable cause. a. Except in connection with commission-initiated complaints, which do not require a determination of probable cause, where the commission determines that probable cause exists to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752, the commission shall issue a written notice to the complainant and respondent so stating. A determination of probable cause is not a final order of the commission and is not administratively or judicially reviewable.

b. 1. If there is a determination of probable cause pursuant to subdivision a of this section in relation to a complaint alleging discrimination in housing accommodations, land or commercial space or an interest therein, or if a commission-initiated complaint relating to discrimination in housing accommodations, land or commercial space or an interest therein has been filed, and the property owner or the owner's duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations, land or commercial space or an interest therein for a period of 10 days from the date of such request, the commission may cause to be posted for a period of 10 days from the date of such request, in a conspicuous place on the land or on the door of such housing accommodations or commercial space, a notice stating that such accommodations, land or commercial space are the subject of a complaint before the commission and that prospective transferees will take such accommodations, land or commercial space at their peril.

2. Any destruction, defacement, alteration or removal of such notice by the owner or the owner's agents or employees is a misdemeanor punishable on conviction thereof by a fine of not more than $1,000 or by imprisonment for not more than one year or both.

c. If a determination is made pursuant to subdivision a of this section that probable cause exists, or if a commission-initiated complaint has been filed, the commission shall refer the complaint to an administrative law judge and shall serve a notice upon the complainant, the respondent and any necessary party that the complaint has been so referred.

§ 8-3156 Hearing. a. A hearing on a complaint shall be held before an administrative law judge designated by the commission.

1. The place of any such hearing shall be the office of the commission or such other place as may be designated by the commission.

2. Notice of the date, time and place of such hearing shall be served upon the complainant, respondent and any necessary party.

3. The testimony taken at the hearing shall be under oath and shall be transcribed.

b. The case in support of the complaint shall be presented before the commission by the commission's prosecutorial bureau. The complainant may present additional testimony and cross-examine witnesses, in person or by counsel, if the complainant has intervened pursuant to rules established by the commission.

c. If the respondent fails to answer the complaint within the time period prescribed in section 8-3152, the administrative law judge may enter a default and the hearing shall proceed to determine the evidence in support of the complaint. Upon application by the defaulting

respondent, the administrative law judge may, for good cause shown and upon equitable terms and conditions, open a default in answering, which may include the taking of an oral answer.

d. Except as otherwise provided in subdivision a of section 8-3160, the commission by its prosecutorial bureau, a respondent who has filed an answer or whose default in answering has been set aside for good cause shown, a necessary party, and a complainant or other person who has intervened pursuant to the rules of the commission may appear at such hearing in person or otherwise, with or without counsel, cross-examine witnesses, present testimony and offer evidence.

e. 1. The commission is not bound by the strict rules of evidence prevailing in courts of the state of New York.

2. Evidence relating to endeavors at mediation or conciliation by, between or among the commission, the complainant and the respondent is not admissible.

f. The commission may conduct hearings concerning certain unlawful real estate practices and activities governed by article 1 of subchapter 2 of chapter 2 of this title.

1. In conducting such hearings, the commission may subpoena witnesses, compel their attendance, administer oaths, examine witnesses under oath, and require the production of documents.

2. A written record shall be made of every hearing conducted under this subdivision.

§ 8-3157 Intervention and joinder of parties. The administrative law judge may permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.

§ 8-3158 Decision and order. a. If, upon all the evidence at a hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the commission finds that a respondent has engaged in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on such respondent an order providing for the relief prescribed in section 8-4001.

b. If, upon all the evidence at a hearing, and upon the findings of fact and conclusions of law recommended by the administrative law judge, the commission finds that a respondent has not engaged in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, and any necessary party and on any complainant who has not intervened an order dismissing the complaint as to such respondent.

§ 8-3159 Discovery orders. Wherever necessary, the commission shall issue orders compelling discovery. In accordance with the commission's discovery rules, any party from whom discovery is sought may object to such discovery based on a claim of privilege or other defense and the commission shall rule on such objection.

§ 8-3160 Noncompliance with discovery order or with order relating to records. a. Whenever a party fails to comply with an order of the commission pursuant to section 8-3159 compelling discovery or an order pursuant to section 8-3101 relating to records, the commission may, on its own motion or at the request of any party and after notice and opportunity for all parties to be heard in opposition or support, make such orders or take such action as may be just for the purpose of permitting the resolution of relevant issues or disposition of the complaint without unnecessary delay, including:

1. An order:

(a) That the matter concerning which the order compelling discovery or relating to records was issued be established adversely to the claim of the noncomplying party;

(b) Prohibiting the noncomplying party from introducing evidence or testimony, cross-examining witnesses or otherwise supporting or opposing designated claims or defenses;

(c) Striking out pleadings or parts thereof;

(d) That the noncomplying party may not object to the introduction and use of secondary evidence to show what the withheld testimony, documents, other evidence or required records would have shown; and

2. Inferring that the material or testimony is withheld or records not preserved, made, kept, produced or made available for inspection because such material, testimony or records would prove to be unfavorable to the noncomplying party and use such inference to establish facts in support of a final determination pursuant to section 8-3158.

b. In addition to any other penalties or sanctions that may be imposed pursuant to any other law, any person who knowingly makes a material false statement in any proceeding conducted, or document or record filed with the commission, or record required to be preserved or made and kept and subject to inspection by the commission pursuant to this chapter is liable for a civil penalty of not more than $10,000.

§ 8-3161 Reopening of proceeding by commission. The commission may reopen any commission proceeding, or vacate or modify any order or determination of the commission, whenever justice so requires, in accordance with the rules of the commission.

§ 8-3162 Mediation and conciliation. a. If in the judgment of the commission circumstances so warrant, it may at any time after the filing of a complaint endeavor to resolve the complaint by any method of dispute resolution prescribed by rule of the commission, including mediation and conciliation.

b. The terms of a conciliation agreement may contain such provisions as may be agreed upon by the commission, the complainant and the respondent, including a provision for the entry in court of a consent decree embodying the terms of the conciliation agreement.

c. The members of the commission and its staff may not publicly disclose what transpired in the course of mediation and conciliation efforts.

d. If a conciliation agreement is entered into, the commission shall embody such agreement in an order and serve a copy of such order upon all parties to the conciliation agreement. Violation of such an order may result in civil penalties under section 8-4101. Every conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not required to further the purposes of subchapter 1 of chapter 2 or subchapter 1 of chapter 3 of this title.

§ 8-3163 Enforcement by commission; criminal conviction history. Pursuant to section 755 of the correction law, the provisions of section 8-2110, section 8-2111, subdivision c of section 8-2126, and subdivisions d and e of section 8-2127, are enforceable against private employers by the commission through the administrative procedure provided for in this article. For purposes of this section only, the term "private employer" has the meaning given such term in section 750 of the correction law.

Article 5
Court Proceedings

§ 8-3201 Injunction and temporary restraining order. a. At any time after the filing of a complaint alleging an unlawful discriminatory practice or an act of discriminatory harassment or

violence as set forth in sections 8-2751 and 8-2752, if the commission has reason to believe that the respondent or other person acting in concert with the respondent is doing or procuring to be done any act or acts, tending to render ineffectual relief that could be ordered by the commission after a hearing as provided by sections 8-3158 and 8-4001, a special proceeding may be commenced in accordance with article 63 of the civil practice law and rules on behalf of the commission in the supreme court for an order to show cause why the respondent and such other persons who are believed to be acting in concert with respondent should not be enjoined from doing or procuring to be done such acts.

b. The special proceeding may be commenced in any county within the city:

1. Where the alleged unlawful discriminatory practice or act of discriminatory harassment or violence was committed;

2. Where the commission maintains its principal office for the transaction of business;

3. Where any respondent resides or maintains an office for the transaction of business;

4. Where any person aggrieved by the unlawful discriminatory practice or act of discriminatory harassment or violence resides; or,

5. If the complaint alleges an unlawful discriminatory practice under section 8-2202, 8-2203, 8-2204, 8-2205, 8-2206 or 8-2207, where the housing accommodation, land or commercial space specified in the complaint is located.

c. An order to show cause pursuant to this section may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording the commission, the person aggrieved, the respondent and any person alleged to be acting in concert with the respondent an opportunity to be heard, the court may grant appropriate injunctive relief upon such terms and conditions as the court deems proper.

§ 8-3202 Judicial review. a. A complainant, respondent or other person aggrieved by a final order of the commission issued pursuant to section 8-3158, paragraphs 1 and 2 of subdivision b of section 8-4001, subdivision b of section 8-3160 or an order of the chairperson issued pursuant to subdivision f of section 8-3154 affirming the dismissal of a complaint may obtain judicial review thereof in a proceeding as provided in this section.

b. Such a proceeding shall be brought in the supreme court of the state within any county in the city where the unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 that is the subject of the commission's order occurs or where any person required in the order to cease and desist from an unlawful discriminatory practice or act of discriminatory harassment or violence or to take other affirmative action resides or transacts business.

c. Such a proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing, before the commission, and the issuance and service of a notice of motion returnable before such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such relief as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order annulling, confirming or modifying the order of the commission in whole or in part. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

d. Any party may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and material evidence and seeking

findings thereon, provided such party shows reasonable grounds for the failure to adduce such evidence before the commission.

e. The findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole.

f. All such proceedings shall be heard and determined by the supreme court and by any appropriate appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court is exclusive and its judgment and order are final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding.

g. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. An appeal under this section shall be heard on the record without requirement of printing.

h. A proceeding under this section must be instituted within 30 days after the service of the order of the commission.

§ 8-3203 Enforcement of commission order. a. 1. Any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the commission pursuant to this subchapter, including actions to secure permanent injunctions enjoining any acts or practices that constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing penalties pursuant to section 8-4101, or for such other relief as may be appropriate, may be initiated in any court of competent jurisdiction on behalf of the commission.

2. In any such action or proceeding, application may be made for a temporary restraining order or preliminary injunction, enforcing and restraining all persons from violating any provisions of any such order, or for such other relief as may be just and proper, until hearing and determination of such action or proceeding and the entry of final judgment or order thereon. The court to which such application is made may make any or all of the orders specified, as may be required in such application, with or without notice, and may make such other or further orders or directions as may be necessary to render the same effectual.

b. In any action or proceeding brought pursuant to subdivision a of this section, no person may contest the terms of the order sought to be enforced unless that person has timely commenced a proceeding for review of the order pursuant to subdivision b of section 8-3202.

c. A proceeding may be brought on behalf of the commission in any court of competent jurisdiction seeking an order to compel compliance with an order issued pursuant to subdivision d of section 8-3101.

Subchapter 2
Civil Action by Corporation Counsel

Article 1
General Provisions

§ 8-3501 Time limitation on filing. A civil action commenced under section 8-3551 or section 8-3552 shall be commenced within three years after the alleged discriminatory practice occurred.

§ 8-3502 Investigation. The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to sections 8-3551 and 8-3552, and in connection therewith may issue subpoenas to compel the attendance of witnesses and the production of documents, administer oaths and examine such persons as are deemed necessary.

Article 2
Right to Bring Suit

§ 8-3551 Authority to bring pattern and practice suit. A civil action brought under section 8-3552 may be instituted only by the corporation counsel, such attorneys employed by the commission as are designated by the corporation counsel, or other persons designated by the corporation counsel.

§ 8-3552 Civil action to eliminate unlawful discriminatory practices; pattern and practice. a. Whenever there is reasonable cause to believe that a person or group of persons is engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by subchapter 1 of chapter 2 of this title, a civil action on behalf of the commission or the city may be commenced in a court of competent jurisdiction by filing a complaint setting forth facts pertaining to such pattern or practice and requesting such relief as provided in section 8-4002 as may be deemed necessary to ensure the full enjoyment of those rights.

b. This section does not prohibit (i) an aggrieved person from filing a complaint pursuant to section 8-3151 or from commencing a civil action pursuant to subdivisions a through c of section 8-3751 based on the same facts pertaining to such a pattern or practice as are alleged in the civil action, or (ii) the commission from filing a commission-initiated complaint pursuant to section 8-3151 alleging a pattern or practice of discrimination, provided that a civil action pursuant to this section has not previously been commenced.

§ 8-3553 Civil action to enjoin discriminatory harassment or violence. a.Whenever a person engages in an act of discriminatory harassment or violence as set forth in section 8-2751, the corporation counsel, at the request of the commission or on the corporation counsel's own initiative, may bring a civil action on behalf of the city for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

b. An action pursuant to subdivision a of this section may be brought in any court of competent jurisdiction.

Subchapter 3
Private Right of Action

Article 1
General Provisions

§ 8-3701 Time limitation for commencement of action. a. A civil action commenced under section 8-3751 must be commenced within three years after the alleged unlawful

discriminatory practice or act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 occurred. Upon the filing of a complaint with the commission or the state division of human rights and during the pendency of such complaint and any court proceeding for review of the dismissal of such complaint, such three year limitations period shall be tolled.

b. Notwithstanding any inconsistent provision of this section or section 8-3751, where a complaint filed with the commission or state division of human rights is dismissed for administrative convenience and such dismissal is due to the complainant's malfeasance, misfeasance or recalcitrance, the three year limitation period on commencing a civil action pursuant to this section or section 8-3751, is not tolled. Unwillingness to accept a reasonable proposed conciliation agreement is not malfeasance, misfeasance or recalcitrance.

Article 2
Right to Bring Suit

§ 8-3751 Civil action by persons aggrieved; generally. a. 1. Except as otherwise provided by law, any person claiming to be aggrieved by an unlawful discriminatory practice or by an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 has a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the commission or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence.

2. For purposes of this subdivision, the filing of a complaint with a federal agency pursuant to applicable federal law prohibiting discrimination that is subsequently referred to the commission or to the state division of human rights pursuant to such law does not constitute the filing of a complaint under this subdivision.

3. The provisions of this subchapter that provide a cause of action to persons claiming to be aggrieved by an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 do not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty. This paragraph does not affect rights or causes of action created by section 14-151.

b. Notwithstanding any inconsistent provision of subdivision a of this section, where a complaint filed with the commission or the state division on human rights is dismissed by the commission pursuant to subdivisions a or b of section 8-3154, or by the state division of human rights pursuant to subdivision 9 of section 297 of the executive law either for administrative convenience or on the ground that such person's election of an administrative remedy is annulled, an aggrieved person retains all rights to commence a civil action pursuant to this subchapter as if no such complaint had been filed.

c. The commission and the corporation counsel shall each designate a representative authorized to receive copies of complaints in actions commenced in whole or in part pursuant to subdivision a of this section. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, the plaintiff shall serve a copy of the complaint upon such authorized representatives.

d. Pursuant to section 755 of the correction law, the provisions of section 8-2110, section 8-2111, subdivision c of section 8-2126, and subdivisions d and e of section 8-2127 are enforceable against (i) public agencies by a proceeding brought pursuant to article 78 of the civil practice law and rules, and (ii) private employers as provided in subdivisions a through c of

section 8-3751. For purposes of this subdivision only, the terms "public agency" and "private employer" have the meaning given such terms in section 750 of the correction law.

§ 8-3752 Civil action by persons aggrieved by certain unlawful real estate practices. a. Any owner of real property who is induced to sell his or her property through or to a real estate broker or real estate dealer by acts committed by such broker or dealer in violation of sections 8-2701, 8-2702 and 8-2703 may institute a civil action against such broker or dealer.

b. Any buyer, through or from a real estate broker or real estate dealer, of real property the last owner of which, excluding such broker or dealer, was induced to sell, exchange or transfer his or her property by acts committed by such broker or dealer in violation of sections 8-2701, 8-2702 and 8-2703 may institute a civil action against such broker or dealer.

CHAPTER 4
DAMAGES, PENALTIES AND OTHER RELIEF

Subchapter 1 Remedies for Violations of Chapter 2.
Subchapter 2 Remedies for Violations of Chapter 3.

Subchapter 1
Remedies for Violations of Chapter 2

Article 1 Remedies Relating to Unlawful Discriminatory Practices.
Article 2 Remedies Relating to Other Unlawful Acts.

Article 1
Remedies Relating to Unlawful Discriminatory Practices

§ 8-4001 Remedies in administrative proceedings. a. Injunctive relief; damages. An order issued by the commission pursuant to section 8-3158 at the conclusion of an administrative proceeding shall require the respondent to cease and desist from the unlawful discriminatory practice. Such order shall require the respondent to take such affirmative action as, in the judgment of the commission, will effectuate the purposes of subchapter 1 of chapter 2 of this title, subchapter 1 of chapter 3 of this title, and sections 8-2751 and 8-2752, as applicable, including:

1. Hiring, reinstatement or upgrading of employees;

2. Admission to membership in any respondent labor organization;

3. Admission to or participation in a program, apprentice training program, on-the-job training program or other occupational training or retraining program;

4. Extension of full, equal and unsegregated accommodations, advantages, facilities and privileges;

5. Evaluating applications for membership in a club that is not distinctly private without discrimination based on defined protected status;

6. Selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;

7. Submission of reports with respect to the manner of compliance;

8. The award of back pay and front pay; and

9. Payment of compensatory damages to the person aggrieved by such practice or act.

b. Civil penalties. 1. Except as otherwise provided in sections 8-2004 and 8-4004, in addition to any of the remedies and penalties set forth in subdivision a of this section, where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest, impose a civil penalty of not more than $125,000. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act, the commission may, to vindicate the public interest, impose a civil penalty of not more than $250,000.

2. A respondent found liable for an unlawful discriminatory practice may, in relation to the determination of the appropriate amount of civil penalties to be imposed pursuant to paragraph 1 of subdivision b of this section, plead and prove any relevant mitigating factor.

3. Any civil penalties recovered pursuant to this subdivision shall be paid into the general fund of the city.

c. Fees and costs. In any civil action commenced pursuant to subchapter 3 of chapter 3 of this title, the court may award costs and reasonable attorney's fees to the prevailing party. For the purposes of this subdivision, a prevailing party includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor.

§ 8-4002 Remedies in civil action by corporation counsel. a. Injunctive relief; damages. In a civil action by the corporation counsel on behalf of the commission or the city alleging or by the city pursuant to section 8-3552 that a person or group of persons is engaging in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by subchapter 1 of chapter 2 and subchapter 1 of chapter 3 of this title, the plaintiff may seek such relief as may be deemed necessary to ensure the full enjoyment of the rights described therein, including:

1. Injunctive relief;

2. Damages, including punitive damages; and

3. Such other types of relief as are specified in subdivision a of section 8-4001.

b. Civil penalties. In a civil action specified in subdivision a of this section, the trier of fact may, to vindicate the public interest, impose upon any person who is found to have engaged in such a discriminatory pattern or practice a civil penalty of not more than $250,000. In relation to determining the appropriate amount of civil penalties to be imposed pursuant to this section a liable party may plead and prove any relevant mitigating factor. Any civil penalties so recovered pursuant to this section shall be paid into the general fund of the city. This subdivision does not preclude the city from recovering damages, including punitive damages, and other relief pursuant to subdivision a of this section in addition to civil penalties.

§ 8-4003 Remedies in private action. a. Injunctive relief; damages. Except as otherwise provided by law, any person bringing a claim pursuant to subchapter 3 of chapter 3 of this title for an unlawful discriminatory practice may obtain or recover in any court of competent jurisdiction damages, including punitive damages, injunctive relief and such other remedies as may be appropriate.

b. (Open.)

§ 8-4004 Mitigation. The demonstration of any or all of the factors listed in subdivision d of section 8-2004, in addition to any other relevant factors, shall be considered in mitigation of the amount of civil penalties to be imposed by the commission pursuant to subchapter 1 of

chapter 3 of this title or in mitigation of civil penalties or punitive damages that may be imposed pursuant to subchapters 2 and 3 of chapter 3 of this title.

Article 2

Remedies Relating to Other Unlawful Acts

§ 8-4051 Remedies for discriminatory harassment and violence. a. In administrative action. 1. An order issued by the commission pursuant to section 8-3158 relating to acts of discriminatory harassment and violence as set forth in sections 8-2751 and 8-2752 shall require the respondent to cease and desist from the acts of discriminatory harassment or violence and require affirmative action as set forth in subdivision a of section 8-4001.

2. Where the commission finds that an act of discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 has occurred, the commission may, to vindicate the public interest, impose a civil penalty of not more than $250,000.

3. A respondent found liable for such an act of discriminatory harassment or violence may, in relation to the determination of the appropriate amount of civil penalties to be imposed pursuant to this subdivision, plead and prove any relevant mitigating factor.

4. Any civil penalties recovered pursuant to this subdivision shall be paid into the general fund of the city.

b. In civil action by corporation counsel. 1. In any action brought by the corporation counsel pursuant to section 8-3553, the corporation counsel may seek injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

2. A violation of an order issued pursuant to paragraph 1 of subdivision b of this section may be punished by a proceeding for contempt brought pursuant to article 19 of the judiciary law and, in addition to any relief thereunder, a civil penalty may be imposed not exceeding $10,000 for each day that the violation continues.

3. Any person who violates section 8-2752 is liable for a civil penalty of not more than $100,000 for each violation, which may be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction.

4. Any civil penalties recovered by the corporation counsel pursuant to this subdivision shall be paid into the general fund of the city.

c. In private action. 1. Except as otherwise provided by law, any person bringing a claim pursuant to subchapter 3 of chapter 3 of this title for discriminatory harassment or violence as set forth in sections 8-2751 and 8-2752 may obtain or recover damages, including punitive damages, injunctive relief and such other remedies as may be appropriate.

2. The court, in its discretion, may award costs and reasonable attorney's fees in such a claim pursuant to subdivision b of section 8-4003.

§ 8-4052 Remedies for certain unlawful real estate practices. a. Civil damages. 1. If, in an action instituted pursuant to subdivision a of section 8-3752, judgment is rendered in favor of the plaintiff, such plaintiff shall be awarded as damages:

(a) The amount of any gains, whether in the form of profits, commission, or otherwise, realized by the defendant as the result of the first subsequent arm's length sale, exchange, or transfer of the property, or, if the defendant acted as a broker, the amount of any commissions received by the defendant through the sale, exchange, or transfer of the plaintiff's property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant; or

(b) If the defendant has not realized any gains as defined in this subdivision, an amount equal to the difference between the price for which plaintiff sold his or her property and the fair market value at the time of the sale, or the fair market value of the property at the time the action is commenced, whichever difference is greater.

2. If, in an action instituted pursuant to subdivision b of section 8-3752, judgment is rendered in favor of the plaintiff, the plaintiff shall be awarded as damages the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of such plaintiff's purchase of the property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant.

3. If, in an action under subdivision a or b of section 8-3752, judgment is rendered in favor of the plaintiff, the plaintiff may in addition to any other damages be awarded reasonable attorney's fees and court costs.

4. With respect to the sale, exchange or transfer of any property, the liability of a real estate broker or real estate dealer created by subdivision b of section 8-3752 and paragraphs 2 and 3 of this subdivision is independent of and additional to the liability of such broker or dealer created by subdivision a of section 3752 and paragraph 1 of this subdivision.

b. Criminal penalties. 1. The chairperson or his or her designated representative may enforce the provisions of article 1 of subchapter 2 of chapter 2 of this title by signing criminal complaints against any person, firm, partnership, association, or corporation for violation of this chapter.

2. Any person, firm, partnership, association, or corporation that violates article 1 of subchapter 2 of chapter 2 of this title is guilty of a class A misdemeanor.

Subchapter 2

Remedies for Violations of Chapter 3

§ 8-4101 Civil penalties for violating commission orders. Any person who fails to comply with an order issued by the commission pursuant to section 8-3158 or section 8-3162 is liable for a civil penalty of not more than $50,000 and an additional civil penalty of not more than $100 per day for each day that the violation continues.

§ 8-4102 Disposition of civil penalties. Any civil penalties recovered pursuant to this subchapter shall be paid into the general fund of the city.

§ 8-4103 Civil enforcement of commission orders. a. Commission orders may be enforced as set forth in section 8-3203.

b. An action or proceeding may be commenced in any court of competent jurisdiction on behalf of the commission for the recovery of the civil penalties provided for in paragraphs 1 and 2 of subdivision b of section 8-4001.

c. Notwithstanding paragraph 2 of subdivision b of section 8-4001, where an action or proceeding is commenced against a city agency for the enforcement of a final order issued by the commission pursuant to section 8-3158 after a finding that such agency has engaged in an unlawful discriminatory practice and in such action or proceeding civil penalties are sought for violation of such order, any civil penalties that are imposed by the court against such agency shall be budgeted in a separate account. Such account shall be used solely to support city agencies' anti-bias education programs, to support activities sponsored by city agencies that are designed to eradicate discrimination or to fund remedial programs that are necessary to address the city's liability for discriminatory acts or practices. Funds in such account shall not be used to

support or benefit the commission. The disposition of such funds shall be under the direction of the mayor.

§ 8-4104 Criminal penalty for willfully violating commission order. In addition to any other penalties or sanctions that may be imposed pursuant to this chapter or any other law, any person who willfully resists, obstructs, impedes or otherwise interferes with the commission or any of its members or representatives in the performance of any duty under subchapter 1 of chapter 2 and subchapter 1 of chapter 3 of this title, or willfully violates an order of the commission issued pursuant to section 8-3158 or section 8-3162 is guilty of a misdemeanor and is punishable by imprisonment for not more than one year, or by a fine of not more than $10,000, or by both; but the procedure for the review of the order is not deemed to be such willful conduct.

§ 11. Subdivision k of section 11-243 of the administrative code of the city of New York is amended to read as follows:

k. No owner of a dwelling to which the benefits of this section shall be applied, nor any agent, employee, manager or officer of such owner shall directly or indirectly deny to any person because of race, color, creed, national origin, gender, sexual orientation, disability, marital status, age, religion, alienage or citizenship status, or the use of, participation in, or being eligible for a governmentally funded housing assistance program, including, but not limited to, the section 8 housing voucher program and the section 8 housing certificate program, 42 U.S.C. 1437 et seq., or the senior citizen rent increase exemption program, pursuant to either chapter [seven]7 of title [twenty-six]26 of [this]the code or section 26-509[of such code], any of the dwelling accommodations in such property or any of the privileges or services incident to occupancy therein. The term "disability" as used in this subdivision [shall have]has the same meaning [set forth]ascribed to such term in section [8-102 of the code]8-1003. Nothing in this subdivision shall restrict such consideration in the development of housing accommodations for the purpose of providing for the special needs of a particular group.

§ 12. Paragraph 3 of subdivision a of section 14-151 of the administrative code of the city of New York is amended to read as follows:

3. The terms "national origin," "gender," "disability," "sexual orientation," and "alienage or citizenship status" [shall]have the same [meaning]meanings ascribed to such terms in section [8-102 of the administrative code]8-1003.

§ 13. Paragraph (6) of subdivision c of section 19-504.4 of the administrative code of the city of New York is amended to read as follows:

(6) the holder of an authorization or a license or any of its officers, principals, directors, employees, or stockholders owning more than [ten]10 percent of the outstanding stock of the corporation has been found to have violated any of the provisions of [section 8-107 of the code]subchapter 1 of chapter 2 of title 8 of the code concerning unlawful discriminatory practices in public accommodations in the operation of a commuter van service or a commuter van.

§ 14. Subdivision q of section 19-505 of the administrative code of the city of New York is amended to read as follows:

q. [Not more than one hundred eighty days following the enactment of this subdivision,]No later than December 19, 2012, the commission shall develop and commence a program to notify drivers of all vehicles licensed by the commission that facilitating sex trafficking with a vehicle is illegal. Such program shall inform such drivers of the specific laws defining and proscribing such facilitation, including the provisions of this section and section 19-

507[of this chapter], and of article 230 of the penal law, and shall inform such drivers of the civil and criminal penalties associated with such facilitation, including but not limited to monetary penalties, license revocation and incarceration. Such program shall also provide information to such drivers about the resources available to assist victims of sex trafficking. Such program shall also inform such drivers that they may not refuse fares solely based on the appearance of an individual and that it is unlawful to refuse a fare based upon an individual's actual or perceived sexual orientation or gender, whether or not an individual's gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth, as set forth in [chapter one of] title eight of [this]the code. Such program may be presented through live instruction, video or an interactive computer course, and shall be updated regularly to reflect changes in law or other relevant circumstances. Completion of such program shall be a requirement for initial licensure and subsequent license renewal for such drivers, except that any driver who has completed such program at least once may subsequently satisfy the requirements of this subdivision, at the discretion of the commission, by reviewing written materials, to be developed by the commission, that contain the information in such program. All drivers licensed by the commission shall be required to certify that they have completed such program or received and reviewed such written materials.

§ 15. Section 19-709 of the administrative code of the city of New York, as added by local law number 68 for the year 2005, is amended to read as follows:

§ 19-709 Enforcement. The commission on human rights shall enforce the provisions of this chapter pursuant to the adjudication and mediation provisions [as]set forth in subchapter 1 of chapter [1]3 of title 8 of the[administrative] code[of the city of New York].

§ 16. Paragraph 7 of subdivision a of section 21-128 of the administrative code of the city of New York is amended to read as follows:

7. "Medically appropriate transitional and permanent housing" shall mean housing which is suitable for persons with severely compromised immune systems, and if necessary, accessible to persons with disabilities as defined in section [8-102 of this code]8-1003. Such housing shall include, but not be limited to, individual refrigerated food and medicine storage and adequate bathroom facilities which shall, at a minimum, provide an effective locking mechanism and any other such measures as are necessary to ensure privacy;

§ 17. This local law takes effect 180 days after it becomes law.

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Testimony of Rita Sethi, Dec. 9, 2015, before the Committee on Civil Rights

I am an employment lawyer and I practice in the New York metropolitan area and Long Island. I have been representing victims of discrimination for more than 20 years.

In my legal practice, the Restoration Act, through the case law it has generated because of its enhanced liberal construction provision, has been a boon that empowers lawyers to provide remedies to individuals who would have no legal recourse for the wrongs they have experienced. Most significantly for my cases has been the eradication of the too-strict standard of "severe or pervasive" that was created under federal law to set a threshold requirement for designating workplace abuse as a "hostile work environment."

With *Williams*, I have now brought cases that might not have survived a jury's scrutiny under federal law. Under federal law, for example, I would not have taken the risk of litigating a case where a salesman was given a lap dance at an industry networking conference by his female supervisor, or a case where a female sous-chef's breast was groped by a kitchen manager of a restaurant. In both circumstances, the conduct was clearly discriminatory, and, thanks to the City HRL case law, those are now both matters that have been able to be filed.

The uniquely broad and remedial construction required by the Restoration Act has helped fight discrimination on other bases, too. Last year I filed a religious discrimination case

under city law. Under federal law, the relentless proselytizing that the employee had been subjected to would not be actionable because it did not entail the religious denigration that the law requires to reach the level of a hostile work environment. The city law, however, provided recourse for this worker. During discovery, documents produced by the defendants revealed religious slurs that exposed their religious animus. Without the Restoration Act, this case would never have been litigated, this defendant would never be accountable for his actions and this employee would have never been vindicated.

I thank the Council for having passed the Restoration Act back in 2005, and I urge the Council to now insure that the best developments under that Act are ratified as examples of the appropriate method and approach of interpreting the City Human Rights Law.

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TESTIMONY OF BRIAN HELLER

My name is Brian Heller. I would like to first thank the Council for this opportunity to speak on this very important issue. For almost 15 years, I have been part of Schwartz & Perry, LLP, a boutique law firm located in Manhattan, where I am now a partner, representing employees who have suffered from discrimination and retaliation in the workplace.

The City Council's actions in passing the Restoration Act in 2005 has had a direct and positive effect on our ability to help our clients assert their rights under the law. The reality that exists in the field of employment law that it is usually not juries who decide claims of sexual harassment and discrimination, but judges. Summary judgment has become an overused filter that sharply limits the claims that are permitted to reach a jury. The Restoration Act of 2005 was enacted to prevent this overreaching and make certain that the Council's goal of having the broadest possible law is carried out. Appellate courts confirmed that goal in Williams in 2009 and again in Bennett in 2011. Unfortunately, lower courts have not consistently obeyed these decisions, which threatens the broad analysis that the Council mandated through the Restoration Act.

In one example, we represented a woman who had been sexually harassed in the most degrading way, which included having the men in her workplace, including her boss, make repeated comments about her body and the bodies of other female employees. She was even told that she should "respect" a newly hired man because he was "male and more powerful than her." She was propositioned for sex by her supervisor and, when she refused and protested his actions, she was fired.

SCHWARTZ & PERRY LLP

Remarkably, the trial court granted summary judgment to the employer and dismissed the case. The trial the court ignored the Restoration Act and Williams, dismissing them as "special considerations," and instead relied on the stricter federal standard.

We were required to appeal to the Second Circuit to reverse the trial court's decision and earn the right to get to a jury. We were helped at oral argument by the fact that Bennett had identified the trial court's decision as an example of how lower courts had failed to follow the broad analysis demanded by the Restoration Act. Not every client, however, has the resources to appeal a decision that narrows the City Law. Intro 814 will give plaintiffs and their counsel authority to make certain that trial judges get the interpretation right in the first place.

To offer another example, even after Bennett, I found myself in front of an appellate panel who did not fully appreciate the impact of the Restoration Act. Instead of appreciating that *all* provisions of the law must be subject to a liberal construction, including impacts analytical framework to be applied in these cases, the panel maintained that the only way the courts' analysis could be changed is if the Council passed a law specifically stating so. The court failed to appreciate that, as Bennett directed, the Restoration Act did impact the framework for proving discrimination. The fact that an appellate court should have had this problem seven years after the passage of the Restoration Act should demonstrate to the Council that these issues, though they should be settled, remain contested. We need Intro 814 to put to rest any loopholes sought to be inserted into the Restoration Act.

We ask that the Council pass Intro 814, to prevent risking a further narrowing of the Restoration Act. Confirming Williams, Bennett and Albunio will serve as an important reminder to both the bench and bar as to the direction in which the law needs to go. Thank you.

Dated: December 9, 2015

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December 9, 2015

Statement of Daniel Alterman

City Council Committee on Civil Rights

My name is Dan Alterman. I am a partner in the law firm of Alterman & Boop. I have been representing victims of discrimination for more than 45 years. I am here today to add my support for the passage of Intro 814.

It is important for the Council to understand clearly the difficulties that have existed over the years in getting courts to accept the progressive vision of the City Human Rights Law. The comprehensive 1991 amendments were intended to create a wholly independent body of law, but increasingly conservative judges have continued to resist that command, parts of which were expressed in the Committee Report and in the statement of then-Mayor Dinkins.

Finally, in 2005, the Restoration Act was passed, and it changed the statutory text to enhance the liberal construction provision. Some courts have gotten the message – most notably in the *Williams, Bennett,* and *Albunio* decisions, but some courts continue to resist.

That is why it is so important to cite these cases in the text of the statute as examples to follow. It is not just *Bennett's* statement that "the identification of the framework for evaluating the sufficiency of evidence in discrimination cases does not in any way constitute an exception to the Section 8-130 rule that all aspects of the City HRL must be interpreted so as to accomplish the uniquely broad and remedial purposes of the law," important as that is.

The Council in 2005 identified some of the factors that should guide court analysis of City Human Rights Law claims. For example, discrimination should play *no* role in decisions by covered entities. And traditional methods and principles of law enforcement – notably the desire to maximize deterrence and minimize evasion – need to be followed. But there continues to be reluctance on the part of litigators and courts to realize that the law has to be newly interpreted according to these guidelines. *Williams* and *Bennett* did that. For example, *Bennett* rejected a Supreme Court holding when it said that a defendant must suffer the consequences when, instead of limiting itself to presenting true reasons for its conduct, it throws in the kitchen sink in an attempt to confuse matters.[1]

Williams and *Bennett* need to be treated as models of analysis for other courts to follow, and only by citing the cases in the statute can this be achieved. Doing so will help resolve open areas in the law. For example, there are still no cases that say plainly that an employer is responsible not only for the acts of its employees but also for punitive damages based on the mental state of those employees when acting. There is no exception in Section 8-107(13) to vicarious liability for one's employees, courts have no business creating one, and the cases recited in Into 814 make clear that establishing liability for the mental state is the result that maximizes the employer's incentive to prevent the illegal conduct.

There may be those who are disturbed by Intro 814's innovative use of specific case law to make the necessary point, but I would like to conclude by saying three things. First, there is

[1] "It is difficult enough to discern a defendant's motive or motives in those circumstances without giving it a tactical advantage to throwing numerous nondiscriminatory justifications against the wall and seeing which stick. It must thus be the defendant's obligation to articulate its true reasons for acting in the way that it did. And the maximum deterrent effect sought by the City HRL can only be achieved where covered entities understand that, whatever the urge may be to cover up their actual motivations before arriving in court, there can be no benefit for doing so once in court." *Bennett v. Health Mgmt. Systems, Inc.*, 93 A.d.3d 29, 43 (1st Dept. 2011).

absolutely no rule against legislating in the fashion. Second, doing so is the practical way to proceed. You have to tackle the problem you find, and the problem we find today is that courts and litigants need assistance in fulfilling the promise of the Restoration Act. The cases that Intro 814 points to provide the necessary guidance. And, third, let's not mince words: opposition to doing so represents clear and direct harm to the cause of furthering the civil rights of New Yorkers.

Dated: New York, NY
December 9, 2015

ALTERMAN & BOOP LLP

By: _____
DANIEL L. ALTERMAN

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Testimony before the New York City Council Committee on Civil Rights
December 9, 2015

Submitted by Allegra L. Fishel, Director and Lauren T. Betters, Law Fellow
Gender Equality Law Center

Statement Prepared by Allegra L. Fishel:

The Gender Equality Law Center ("GELC") is a not for profit legal and advocacy organization that seeks to break down social, economic and political barriers created by gender-based discrimination and gender stereotyping. Through a variety of advocacy efforts, including impact litigation and legislative reform, GELC seeks to enforce and expand current anti-discrimination laws. GELC also provides training and strategic support for private lawyers litigating gender discrimination cases and education for the public about the status and effect of gender-based discrimination in our society.

We support the passage of Intro 814 which seeks to codify three important state court cases, as interpreted by the Local Restoration Act of 2005. Those cases explicitly set forth the more expansive and protective standards of proof to be used in employment discrimination cases under the New York City Human Rights Law ("NYCHRL" or "City Law"). Of particular importance are the holdings in *Williams* and *Bennett* which articulate a more liberal anti-discrimination

standard than that offered under other similar federal or state anti-discrimination statutes with regard to how to prove a hostile work environment claim on the basis of gender.

Although the Local Restoration Act was passed ten years ago, and that law clearly mandates that the City Law should be broadly interpreted so as to fulfill the goal of eradicating employment discrimination, there are relatively few legal decisions interpreting how to prove a gender-based hostile work environment claim under the NYCHRL. As a result, judges on both the state and federal level frequently rely upon the extensive jurisprudence that already exists under federal law [1] (and to a lesser degree under state law which also looks to federal court standards) to decide cases under the NYCHRL.

As an employment discrimination and civil rights lawyer for over 20 years, I have litigated numerous sexual harassment cases. In doing so, I have reviewed hundreds of cases decided under federal law in which the focus was not to end harassment in the workplace but to determine whether such conduct met an objective bar of "severity" or "pervasiveness" so as to hold the employer liable. [2] I have seen many, many plaintiffs have their cases dismissed under this standard, because the conduct complained of could not meet a sufficiently high threshold,

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[1] Most federal court cases in which claims of hostile work environment sexual harassment are alleged are interpreted under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000(e) *et seq.*

[2] See Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986) and Harris v. Forklift Sys., 510 U.S. 17 (1993). These cases hold that a plaintiff cannot succeed in a hostile work environment claim on the basis of gender unless she can prove that the conduct complained of was either "severe" enough or "pervasive" enough. As a preliminary matter, this objective standard is analyzed almost always through the eyes of a federal court judge who statistically is more likely than not to be male and who is distanced from the actual dynamics of the real workplace by virtue of his lifetime tenure on the bench.

even when that conduct was undeniably offensive to women [3] -- sexist comments, jokes, threats, obscene gestures and touching, among other behavior. The result was that women, who experienced gender-based harassment, were forced to either continue to work under disparate circumstances or were forced out of their workplaces. In either case they suffered serious consequences: emotional distress and/or the loss of income, which affected not just these women but also their families.

Both *Williams* and *Bennett,* two of the cases that Intro 814 seeks to codify, reject the "severe" or "pervasive" standard set forth under federal law and instead rely upon a more inclusive standard with the goal of eradicating hostile work environment sexual harassment in the workplace, not just eliminating the most severe or repetitious incidents of such identifiable conduct. Under these cases, a plaintiff does not need to prove that the harassment was "severe," or "pervasive," but rather that she experienced offensive conduct targeted against her because of her gender and that her male counterparts were not forced to endure the same or similar treatment. Under that standard, a whole range of offensive conduct that creates unequal terms and conditions for women on the basis of gender (but may not rise to the high bar established under federal law) would be actionable.

In *Bennett*, for example, the Court reinforced the holding that even a "single comment that objectifies women" could be made in circumstances to "signal views about the role of women in the workplace and be actionable." The Court also maintained that the exception for conduct that

[3] Although we refer to women in this statement, we do so both because most cases brought to court involve the sexual harassment of women. We note, however, that many men who identify as LGBTQ experience hostile work environment discrimination in the workplace, as do some heterosexual and/or cisgender men who are perceived not to conform to commonly held gender stereotypes about typical "masculine" behavior and traits.

constituted only "petty slights and trivial inconveniences" was to be a limited exception. In making this ruling in the context of a summary judgment motion, *Bennett* held that in almost all cases it should be a jury, made up of individuals from the community, and not a judge who frequently is under pressure to narrow his or her trial docket, who should decide what constitutes sexual harassment in the workplace.

We strongly support the interpretations set forth in *Williams* and *Bennett* as providing the correct remedial standard for proving hostile work environment cases under the City Law. The standard articulated under these cases will ensure that female employees will have the right to work in safe, non-threatening work environments and will create a consistent analysis under which other judges can rely in interpreting the scope of the City Law. It will also serve as a strong warning to NYC employers that gender-based hostility and sexism will not be tolerated on any level in the workplace.

We respectfully request the passage of Intro 814.

OUTTEN & GOLDEN LLP

Advocates for Workplace Fairness

Testimony of Darnley D. Stewart, Esq., Dec. 9, 2015

I am Of Counsel to the law firm of Outten & Golden LLP. I have been representing victims of employment discrimination for more than 18 years. I support Intro 818 and 819, but wanted to speak for a couple of moments about the importance of Intro 814.

The New York City Human Rights Law is unique and all of us -- and particularly this Council – should be proud and mindful of the protection it affords your employee constituents. All around us, we have had decades of cutbacks in civil rights.

It's hard for people in general – let alone judges -- to understand that the City law can be as progressive as it is. But it emerged at two distinct political moments. The first was back in 1991, when the Dinkins Administration was prepared, in cooperation with the Council, to enact wholesale changes to the law. Those changes were unprecedented, and gave the City Human Rights Law a unique law enforcement focus, a unique focus on preventing and remedying discrimination.

Then, in 2005, notwithstanding the objection of then-Mayor Bloomberg and then-Speaker Gifford Miller, a broad civil rights coalition was assembled to pass the Local Civil Rights

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Restoration Act. It was that Act that breathed new, independent life into the law and led to the *Albunio, Bennett,* and *Williams* decisions that underlie Intro 814.

What the context means, as a practical matter, is that the aggressively anti-discrimination philosophy of the City Law is at odds with the philosophy of many judges on both the state and federal level, and those judges still need reminding that, as set forth in *Williams,* whether or not the City Law's focus is "wise as a matter of legislative policy, [the] judicial function is to give force to legislative decisions."[1] Judges may not like it, but they understand they have to follow the law that the Council has enacted.

Here's a common problem we employee-side practitioners have: courts still often distinguish between negative actions based on an employee's protected class that are "materially adverse" and those that are not. The City statute says nothing about such a distinction, and allowing that carve-out reduces the incentive that employers and other covered entities have to avoid *any and all* decisions that are based on an employee's protected class status. Intro 814 will help restrain courts from inventing exceptions to coverage that are not spelled out in the statute. They have to follow the law as written as *Albunio, Bennett,* and *Williams* make clear.

The analysis in *Williams* would be of particular use in guiding courts to the correct decision. Say, for example, a new supervisor does not like women working for him, so he has the only female employee in that work location transferred to another location on the other side of town. The employee has the same title, pay, hours, and benefits in her new location. The new

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[1] *Williams v. NYC Housing Auth.,* 61 A.D. 3d 62, 68-69 (1st Dept. 2009).

location, however, makes it more difficult for her to pick up her child from an after-school program. *Williams* teaches us to separate the question of liability (in this example, the employer acted on the basis of gender) from the question of damages ("to what extent has the covered entity harmed the plaintiff by moving her"). Regardless of the amount of damages, a covered entity that has been proven to have acted on the basis of protected class should normally be found liable, just as *Williams'* interpretation of the construction provision led to that result in the harassment context.

As another example, in my own practice on behalf of employees over the years, I have seen how courts will often treat evidence that one of an employer's reasons was false or inaccurate as not being sufficient to overcome summary judgment and let a jury decide whether the employer was motivated at least in part by discrimination. For instance, I once represented a teacher's aide who worked for a school district on Long Island. She was over 60 years old and had worked for the school district for more than 20 years. A new, young principal came in and promptly let her go. He gave several different reasons for her termination that changed over time. The documents clearly established that the last reason given – my client's performance – was a lie because her most recent performance reviews were far better than many of the younger aides who were kept on. Yet, under the federal case law, I did not have evidence, such as age-related comments, that age was the real reason for my client's termination – only that the reasons given by the school district were untrue. This was a problem in my case. *Bennett,* however, makes clear that "evidence of pretext should in almost every case indicate to the court that a motion for summary judgment must be denied."[2]

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[2] *Bennett v. Health Management Sys., Inc.,* 92 A.D. 3d 29, 44 (1st Dept. 2011).

This is precisely why these cases – which lay out so clearly how this important statute should be construed -- need to be incorporated into the New York City Human Rights Law.

I would urge the Committee to adopt Intro 814 promptly.

61 A.D.3d 62
Supreme Court, Appellate Division,
First Department, New York.

Gina WILLIAMS, Plaintiff–Appellant,
v.
The NEW YORK CITY HOUSING
AUTHORITY, et al., Defendants–Respondents.

Jan. 27, 2009.

Synopsis

Background: Employee brought action against city housing authority and others alleging hostile work environment, disparate treatment on basis of sex, and retaliation. The Supreme Court, New York County, Faviola A. Soto, J., granted defendants' motion to compel document production and denied employee's cross motion to compel document production. Employee appealed. The Supreme Court, Appellate Division, 22 A.D.3d 315, 802 N.Y.S.2d 55, affirmed as modified in part and remitted. On remission, the Supreme Court, New York County, Michael D. Stallman, J., entered summary judgment in city's favor, and employee appealed.

Holdings: The Supreme Court, Appellate Division, Acosta, J., held that:

[1] employee's assignment to strip and wax boiler room floor did not constitute retaliation, and

[2] comments made in employees's presence were insufficient to support sexual harassment claim.

Affirmed.

Andrias, J., concurred in result only and filed opinion.

West Headnotes (10)

[1] **Civil Rights**
State and Local Remedies
Courts
Decisions of United States Courts as Authority in State Courts

Interpretations of state or federal provisions worded similarly to New York City Human Rights Law provisions may be used as aids in interpretation only to extent that counterpart provisions are viewed as floor below which city's human rights law cannot fall, rather than ceiling above which the local law cannot rise, and only to extent that those state or federal law decisions may provide guidance as to uniquely broad and remedial provisions of local law. New York City Administrative Code, § 8–130.

72 Cases that cite this headnote

[2] **Civil Rights**
State and Local Remedies
Courts
Construction of federal Constitution, statutes, and treaties

New York City's Civil Rights Restoration Act notified courts that (a) they had to be aware that some provisions of New York City Human Rights Law (HRL) were textually distinct from its State and federal counterparts, (b) all provisions of City's HRL required independent construction to accomplish the law's uniquely broad purposes and (c) cases that had failed to respect these differences were being legislatively overruled. New York City Administrative Code, § 8–130.

102 Cases that cite this headnote

[3] **Civil Rights**
Adverse actions in general
Civil Rights
Employment practices

In assessing retaliation claims under New York City's Human Rights Law (HRL) that involve neither ultimate actions nor materially adverse changes in terms and conditions of employment, it is important that assessment be made with keen sense of workplace realities, of fact that "chilling effect" of particular conduct is context-dependent, and of fact that jury is generally best suited to evaluate impact of retaliatory

conduct in light of those realities. New York City Administrative Code, § 8–107(a)(7).

42 Cases that cite this headnote

[4] **Civil Rights**
Public Employment
Municipal Corporations
Grounds

City housing authority employee's assignment to strip and wax boiler room floor did not constitute retaliation, in violation of New York City Human Rights Law, even if work was not normally part of employee's job, where same allegedly "out of title" work was given to non-complaining employees for whom work was not normally part of job.

Cases that cite this headnote

[5] **Limitation of Actions**
Liabilities Created by Statute

New York City's Civil Rights Restoration Act's uniquely remedial provisions are consistent with rule that neither penalizes workers who hesitate to bring action at first sign of what they suspect could be discriminatory trouble, nor rewards covered entities that discriminate by insulating them from challenges to their unlawful conduct that continues into the limitations period. New York City Administrative Code, § 8–130.

8 Cases that cite this headnote

[6] **Civil Rights**
Hostile environment; severity, pervasiveness, and frequency
Civil Rights
Employment practices

In examining alleged sexual harassment violation under New York City law, questions of "severity" and "pervasiveness" are applicable to consideration of scope of permissible damages, but not to question of underlying liability. New York City Administrative Code, § 8–107(1)(a).

18 Cases that cite this headnote

[7] **Civil Rights**
Practices prohibited or required in general; elements
Civil Rights
Employment practices

In order to establish sexual harassment claim under New York City Human Rights Law, plaintiff must prove by preponderance of evidence that she has been treated less well than other employees because of her gender. New York City Administrative Code, § 8–107(1)(a).

106 Cases that cite this headnote

[8] **Civil Rights**
Motive or intent; pretext
Judgment
Employees, cases involving

On motion for summary judgment in "mixed motive" employment discrimination claim under New York City Human Rights Law (HRL), question is whether there exist triable issues of fact that discrimination was one of the motivating factors for defendant's conduct. New York City Administrative Code, § 8–107.

56 Cases that cite this headnote

[9] **Civil Rights**
Hostile environment; severity, pervasiveness, and frequency

Defendant alleged to have engaged in sexual harassment in workplace can avoid liability under New York City Human Rights Law by proving that conduct complained of consists of nothing more than what reasonable victim of discrimination would consider petty slights and trivial inconveniences. New York City Administrative Code, § 8–107(1)(a).

54 Cases that cite this headnote

[10] **Civil Rights**
Hostile environment; severity, pervasiveness, and frequency

Comments made in female employee's presence on one occasion that were not directed at her,

and were perceived by her as being in part complimentary to co-worker were, in view of employee's own experience and interpretation, nothing more than petty slights or trivial inconveniences, and thus were insufficient to support sexual harassment claim under New York City Human Rights Act. New York City Administrative Code, § 8–107(1)(a).

40 Cases that cite this headnote

Attorneys and Law Firms

****29** Gina Williams, appellant pro se.

Ricardo Elias Morales, New York (Steven J. Rappaport and Donna M. Murphy of counsel), for respondents.

RICHARD T. ANDRIAS, J.P., DAVID B. SAXE, LUIS A. GONZALEZ, JAMES M. CATTERSON, ROLANDO T. ACOSTA, JJ.

ACOSTA, J.

63** ***Introduction

This appeal presents us with the opportunity to construe for the first time the Local Civil Rights Restoration Act of 2005 (Local Law No. 85 of City of New York [2005]).

Defendants' summary judgment motion—addressed to an amended complaint alleging a hostile work environment, disparate treatment on the basis of sex, and retaliation in violation of applicable provisions of the Executive Law and the New York City Administrative Code—was granted in its entirety. While we agree with the motion court that the claims arising under both ***64** State and City human rights laws must be dismissed, we take a different approach and consider the City claims under the commands of the Restoration Act, as a distinct analysis is required to fully appreciate and understand the distinctive and unique contours of the local law in this area.

Background

Plaintiff was, at all times relevant to the action, an employee of defendant Housing Authority. From November 1995 to June 2004, she worked as a heating plant technician assigned to the Authority's South Jamaica Houses development. As such, she was responsible for maintaining the development's heating system.

The pro se plaintiff commenced this action in August 2001. After converting defendants' dismissal motion to one for summary judgment, Justice Louise Gruner Gans dismissed the claims asserted under Title VII of the federal Civil Rights Act of 1964 (as amended), and otherwise granted plaintiff's motion for leave to amend the complaint. In the 2003 amended complaint, plaintiff alleged that defendants engaged in, or permitted, a hostile work environment, disparate treatment on the basis of sex, and retaliation, all in violation of Executive Law 296(a)(1), (6) and (7), and Administrative Code § 8–107(a)(1), (6) and (7).

****30** Plaintiff alleged she was sexually harassed in January 1997, when her supervisor allegedly told her, after she had requested facilities to take a shower, "You can take a shower at my house." Plaintiff alleged a second incident on October 21, 1998, where sex-based remarks were made in her presence, although not directed at her. Plaintiff interpreted some of those remarks as being complimentary to a co-worker, and a disparaging reference to the supervisor's own wife.

For her disparate treatment claim, plaintiff alleged that her supervisor denied her tools that she needed for her work, preferred (higher paying) shifts, and some training, all during her probationary year (i.e., no later than 1996). Plaintiff acknowledges that she was ultimately permitted to work the preferred shifts when they were vacated by employees of longer standing. She also alleged that she was denied two training opportunities in 1999. The record reflects that plaintiff did participate in other substantial training throughout her tenure.

Plaintiff asserted that she was retaliated against after making complaints about discriminatory treatment. She alleges that in ***65** August 1999 she had to do work outside of her regular duties; specifically, she was required to strip and wax the boiler room office floor, a task that she completed in two regular workdays. Plaintiff also asserted that in August 2001, she was required to perform work in the field and to respond to tenant complaints, work she claimed was customarily given to utility staff. She alleged that a 2002 incident of retaliation consisted of her supervisor's refusal to permit her to take "excused time" to resolve a parking ticket she had received.

Plaintiff was promoted in June 2004 to become an assistant superintendent.

In August 2007, the court (Michael D. Stallman, J.) granted defendants' motion for summary judgment dismissing the amended complaint in its entirety. The sexual harassment claim was dismissed on the basis that the conduct complained of was not "severe or pervasive."

On the disparate treatment claim, the court found the allegations from plaintiff's probationary year were time-barred because they were not part of a continuing pattern of discriminatory conduct. He also found that plaintiff had attended at least nine one- or two-day training courses, and did not allege that she suffered any injury as a result of not attending more. Finally, he found that plaintiff accepted a promotion offered in May 2004, and had not claimed that she would have been promoted earlier had she taken more classes. The court characterized the disparate treatment claim as missing the necessary element of an "adverse employment action."

Evaluating the retaliation claim, the court found that a one-time assignment to perform a task arguably within plaintiff's duties did not constitute retaliation, and that the other claims did not involve being treated differently from workers who had not complained.

We agree with the court's analysis as it pertains to plaintiff's State claims under the Executive Law. The decision dismissing the action failed, however, to properly construe plaintiff's claims under the local Restoration Act,[1] which mandates that courts be sensitive to the distinctive language, purposes, and method of analysis required by the City HRL, requiring an analysis more stringent than that called for under either Title VII or the State ****31** HRL. In ***66** light of this explicit legislative policy choice by the City Council, we separately analyze plaintiff's HRL claims.

I. Requirements and Purposes of the Restoration Act

While the Restoration Act amended the City HRL in a variety of respects,[2] the core of the measure was its revision of Administrative Code § 8–130, the construction provision of the City HRL (Local Law 85, § 7, deleted language, new language italicized):

> The provisions of this [chapter] *title* shall be construed liberally for the accomplishment of the *uniquely broad and remedial* purposes thereof, *regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.*

As a result of this revision, the City HRL now explicitly requires an independent liberal construction analysis in all circumstances, even where State and federal civil rights laws have comparable language. The independent analysis must be targeted to understanding and fulfilling what the statute characterizes as the City HRL's "uniquely broad and remedial" purposes, which go beyond those of counterpart State or federal civil rights laws.

[1] Section 1 of the Restoration Act amplifies this message. It states that the measure was needed because the provisions of the City HRL had been "construed too narrowly to ensure protection of the civil rights of all persons covered by the law." It goes on to mandate that provisions of the City HRL be interpreted "independently from similar or identical provisions of New York state or federal statutes." Taking sections 1 and 7 of the Restoration Act together, it is clear that interpretations of State or federal provisions worded similarly to City HRL provisions may be used as aids in interpretation only to the extent that the counterpart provisions are viewed "as a floor below which the City's Human Rights law cannot fall, rather ***67** than a ceiling above which the local law cannot rise" (§ 1), and only to the extent that those State- or federal-law decisions may provide guidance as to the "uniquely broad and remedial" provisions of the local law.

The Committee Report accompanying the legislation likewise states that the intent of the Restoration Act was to "ensure construction of the City's human rights law in line with the purposes of the fundamental amendments to the law enacted in 1991," and to reverse the pattern of judicial decisions that had improvidently "narrowed the scope of the law's protections" (Report of Committee on General Welfare, 2005 N.Y. City Legis. Ann., at 536).

The City Council's debate on the legislation made plain the Restoration Act's intent and consequences:

> Insisting that our local law be interpreted broadly and independently will safeguard New Yorkers at a time when federal and state civil rights protections are in jeopardy. There are

> many illustrations of cases, like *Levin* on marital status, *Priore* [,] *McGrath* and *Forrest* that have either failed to interpret the City Human Rights Law to fulfill its uniquely broad purposes, ignore [*sic*] ****32** the text of specific provisions of the law, or both. With [the Restoration Act], these cases and others like them will no longer hinder the vindication of our civil rights.[3]

[2] In other words, the Restoration Act notified courts that (a) they had to be aware that some provisions of the City HRL were textually distinct from its State and federal counterparts, (b) *all* provisions of the City HRL required independent construction to accomplish the law's uniquely broad purposes[4] ***68** and (c) cases that had failed to respect these differences were being legislatively overruled.

There is significant guidance in understanding the meaning of the term "uniquely broad and remedial." For example, in telling us that the City HRL is to be interpreted "in line with the purposes of the fundamental amendments to the law enacted in 1991," the Council's committee was referring to amendments[5] that were "consistent in tone and approach: every change either expanded coverage, limited an exemption, increased responsibility, or broadened remedies. In case after case, the balance struck by the Amendments favored victims and the interests of enforcement over the claimed needs of covered entities in ways materially different from those incorporated into state and federal law."[6]

The Council directs courts to the key principles that should guide the analysis of claims brought under the City HRL: "discrimination should not play a role in decisions made by employers, landlords and providers of public accommodations; traditional methods and principles of law enforcement ought to be applied in the civil rights context; and victims of discrimination suffer serious injuries, for which they ought to receive full compensation" (Committee Report, 2005 N.Y. City Legis. Ann., at 537).

In short, the text and legislative history represent a desire that the City HRL "meld the broadest vision of social justice with the strongest law enforcement deterrent."[7] Whether or not ***69** that desire is wise ****33** as a matter of legislative policy, our judicial function is to give force to legislative decisions.[8]

As New York's federal and State trial courts are recognizing the need to take account of the Restoration Act, the application of the City HRL as amended by the Restoration Act must become the rule and not the exception.[9]

II. Retaliation

In 1991, the anti-retaliation provision of the City HRL (Administrative Code § 8–107[7])—which had been identical to ***70** the State HRL provision—was amended in pertinent part to proscribe retaliation "*in any manner*" (Local Law 39 [1991], § 1). If courts were to construe this language to make actionable only conduct that has caused a materially adverse impact on terms and conditions of employment, it would constitute a significant narrowing of the Council's proscription on retaliation "in any manner." However, courts have consistently engaged in this construction. Therefore, the City Council was determined, via the Restoration Act of 2005 to "make clear that the standard to be applied to retaliation claims under the City's human rights law differs from the standard currently applied by the Second Circuit in [Title VII] retaliation claims ... [and] is in line with the standard set out in the guidelines of the Equal Employment Opportunity Commission" (Committee Report, 2005 Legis. Ann., at 536). In ****34** § 8(d)(3) of its compliance manual (1998), dealing with the subject of retaliation, EEOC indicates that the

> broad coverage accords with the primary purpose of the anti-retaliation provisions, which is to "[m]aintain[ ] unfettered access to statutory remedial mechanisms." Regardless of the degree or quality of harm to the particular complainant, retaliation harms the public interest by deterring others from filing a charge. An interpretation of Title VII that permits some forms of retaliation to go unpunished would undermine the effectiveness of the EEO statutes and conflict with the language and purpose of the anti-retaliation provisions [citations omitted].[10]

To accomplish the purpose of giving force to the earlier proscription on retaliation "in any manner," the Restoration Act amended § 8–107(7) to emphasize that

> [t]he retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment, housing or a public accommodation or in a materially adverse ***71** change in the terms and conditions of

> employment, housing, or a public accommodation, provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

[3] In assessing retaliation claims that involve neither ultimate actions nor materially adverse changes in terms and conditions of employment, it is important that the assessment be made with a keen sense of workplace realities, of the fact that the "chilling effect" of particular conduct is context-dependent, and of the fact that a jury is generally best suited to evaluate the impact of retaliatory conduct in light of those realities.[11] Accordingly, the language of the City HRL does not permit any type of challenged conduct to be categorically rejected as nonactionable. On the contrary, no challenged conduct may be deemed nonretaliatory before a determination that a jury could not reasonably conclude from the evidence that such conduct was, in the words of the statute, "reasonably likely to deter a person from engaging in protected activity".[12]

[4] Turning to the retaliation claims, it is clear that even under this broader construction, plaintiff's claim that her assignment to strip and wax the boiler room floor did not constitute retaliation. It is certainly possible for a jury to conclude that someone would be deterred from making a complaint if knowing that doing so might result in being assigned to duties outside or beneath one's normal work ****35** tasks. However, an examination of this record shows conclusively that plaintiff cannot link her complained-of assignment to a retaliatory motivation. The same allegedly "out of title" work was given to non-complaining employees for whom the work was not normally part of the job.

***72** Although not raised expressly on appeal by the pro se plaintiff, her other retaliation claims are similarly unavailing. Her assignment to do field work and respond to tenant complaints did not represent a difference in treatment attributable to retaliation, since the record shows that other workers (who did not complain of discrimination) were given similar assignments. The failure to grant plaintiff "excused time" to deal with a parking ticket also did not represent a difference in treatment from workers who did not complain of discrimination.[13] Accordingly, plaintiff's retaliation claim must fail.

III. Continuing violations

In *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S.Ct. 2061, 153 L.Ed.2d 106 [2002], the Supreme Court established that for federal law purposes, the "continuing violation" doctrine only applied to harassment claims as opposed to claims alleging "discrete" discriminatory acts. At the time the comprehensive 1991 amendments to the City HRL were enacted, however, federal law in the Second Circuit did not so limit continuing violation claims (*see e.g. Acha v. Beame,* 570 F.2d 57, 65 [2d Cir.1978], holding that a continuing violation would exist if there had been a continuing policy that "limited opportunities for female participation" in the work force, including policies related to "hiring, assignment, transfer, promotion and discharge"; *Cornwell v. Robinson,* 23 F.3d 694, 704 [2d Cir.1994], reaffirming the vitality of a 1981 decision finding a continuing violation where there had been a consistent pattern of discriminatory hiring practices). There is no reason to believe that the Supreme Court's more restrictive rule of 2002 was anticipated when the City HRL was amended in 1991, or even three years after that ruling, when the Restoration Act was passed in 2005.[14]

[5] On the contrary, the Restoration Act's uniquely remedial provisions ***73** are consistent with a rule that neither penalizes workers who hesitate to bring an action at the first sign of what they suspect could be discriminatory trouble, nor rewards covered entities that discriminate by insulating them from challenges to their unlawful conduct that continues into the limitations period.

****36** The continuing violation doctrine is discussed in the specific context of plaintiff's sexual harassment and disparate treatment claims, *infra,* at Parts IV and V, respectively.

IV. Sexual Harassment

In 1986 the Supreme Court ruled, for federal law purposes, that sexual harassment must be "severe or pervasive" before it could be actionable (*Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 67, 106 S.Ct. 2399, 91 L.Ed.2d 49).[15] The "severe or pervasive" rule has resulted in courts "assigning a significantly lower importance to the right to work in an atmosphere free from discrimination" than other terms and conditions of work.[16] The rule (and its misapplication) has routinely barred the courthouse door to women who have, in fact, been treated less well than men because of gender.[17]

Before the Restoration Act, independent development of the City HRL was limited by the assumption that decisions interpreting federal law could safely be imported into local human rights law because, it was said, any broad anti-discrimination policies embodied in State or local law are "*identical* to those underlying the federal statutes" (*McGrath,* 3 N.Y.3d at 433, 788 N.Y.S.2d 281, 821 N.E.2d 519 [emphasis added]). If the City Council had wanted to depart from a federal doctrine, *McGrath* stated, it should have ***74** amended the law to rebut that doctrine specifically (*id.* at 433–434, 788 N.Y.S.2d 281, 821 N.E.2d 519). The City Council followed this *McGrath* admonition, legislatively overruling it by amending the construction provision of Administrative Code § 8–130, and putting to an end this view of the City HRL as simply mimicking its federal and State counterparts.[18] By making a specific textual amendment to the construction provision (something not done in 1991), the Council formally and unequivocally rejected the assumption that the City HRL's purposes were identical to that of counterpart civil rights statutes. In its place, the Council instructed the courts —reflected in text and legislative history—that it wanted the City HRL's provisions to be construed *more broadly than federal civil rights laws and the State* HRL, and wanted the local ****37** law's provisions to be construed as *more remedial than federal civil rights laws and the State* HRL (Administrative Code § 8–130, as amended by the Restoration Act in 2005).

The Council saw the change to § 8–130 as the means for obviating the need for wholesale textual revision of the myriad specific substantive provisions of the law. While the specific *topical* provisions changed by the Restoration Act give unmistakable *illustrations* of the Council's focus on broadening coverage, § 8–130's specific *construction* provision required a "process of reflection and reconsideration" that was intended to allow independent development of the local law "in all its dimensions" (*Return to Eyes on the Prize,* 33 Fordham Urb LJ at 280).[19]

Accordingly, we first identify the provision of the City HRL we are interpreting and then ask, as required by the City ***75** Council: What interpretation "would fulfill the broad and remedial purposes of the City's Human Rights Law"?[20] Despite the popular notion that "sex discrimination" and "sexual harassment" are two distinct things, it is, of course, the case that the latter is one species of sex- or gender-based discrimination. There is no "sexual harassment provision" of the law to interpret; there is only the provision of the law that proscribes imposing different terms, conditions and privileges of employment based, inter alia, on gender (Administrative Code § 8–107[1][a]).[21]

As applied in the context of sexual harassment, therefore, the relevant question is what constitutes inferior terms and conditions based on gender. One approach would be to import the "severe or pervasive" test, a rule that the Supreme Court has characterized as "a middle path" between making actionable any conduct that is merely "offensive and requiring the conduct to cause a tangible psychological injury" ****38** (*Harris v. Forklift Sys.,* 510 U.S. 17, 21, 114 S.Ct. 367, 126 L.Ed.2d 295 [1993]). This "middle path," however, says bluntly that a worker whose terms and conditions of employment include being on the receiving end of all unwanted gender-based conduct (except what is severe or pervasive) is experiencing essentially the same terms and conditions ***76** of employment as the worker whose employer has created a workplace free of unwanted gender-based conduct.

[6] Twenty-two years after *Meritor,* 477 U.S. 57, 67, 106 S.Ct. 2399, 91 L.Ed.2d 49, it is apparent that the two workers described above do not have the same terms and conditions of employment. Experience has shown that there is a wide spectrum of harassment cases falling between "severe or pervasive" on the one hand and a "merely" offensive utterance on the other.[22] The City HRL is now explicitly designed to be broader and more remedial than the Supreme Court's "middle ground," a test that had sanctioned a significant spectrum of conduct demeaning to women. With this broad remedial purpose in mind, we conclude that questions of "severity" and "pervasiveness" are applicable to consideration of the scope of permissible damages, but not to the question of underlying liability (*Farrugia,* 13 Misc.3d at 748–749, 820 N.Y.S.2d 718).

In doing so, we note that the "severe or pervasive" test reduces the incentive for employers to create workplaces that have zero tolerance for conduct demeaning to a worker because of protected class status. In contrast, a rule by which liability is normally determined simply by the existence of differential treatment (i.e., unwanted gender-based conduct) maximizes the law's deterrent effect. It is the latter approach—maximizing deterrence—that incorporates "traditional methods and principles of law enforcement," one of the principles by which our analysis must be guided (Committee Report, 2005 N.Y. City Legis. Ann., at 537). Permitting a wide range of conduct to be found beneath the "severe or pervasive" bar would mean that discrimination

is allowed to play *some significant role* in the workplace. Both Administrative Code § 8–101 and the Committee Report accompanying the Restoration Act say the analysis of the City HRL must be guided by the need to make sure that discrimination plays *no* role (2005 N.Y. City Legis. Ann., at 537), a principle again much more consistent with a rule by which liability is normally determined simply by the existence of unwanted gender-based conduct. Finally, the "severe or pervasive" doctrine, by effectively treating as actionable only a small subset of workplace actions that demean women or members of other protected classes, is contradicted by the Restoration ***77** Act principle that the discrimination violations are *per se* "serious injuries" (*id.*).[23] Here again, a focus on differential treatment better serves the purposes of the statute.

Further evidence in the legislative history precludes making the standard for sexual harassment violations a carbon copy of the federal and State standard. The City HRL's enhanced liberal construction requirement was passed partly in recognition of multiple complaints that a change to § 8–130 was necessary to prevent women from being hurt by the unduly restrictive "severe or pervasive" standard. The Council had been told that the "severe or ****39** pervasive" standard "continuously hurts women" and "means that many victims of sexual harassment may never step forward."[24] Likewise, the Council was told that "without any consideration of what standard would best further ***78** the purposes of the City Law, women who have been sexually harassed are routinely thrown out of court without getting a chance to have a jury hear their claims because a judge uses the federal standard that they have not been harassed enough,"[25] and that "[w]e have long had the problem of judges insisting that harassment [has] to be 'severe or pervasive' before it is actionable, even though such a requirement unduly narrows the reach of the law."[26]

[7] **[8]** For HRL liability, therefore, the primary issue for a trier of fact in harassment cases, as in other terms-and-conditions cases, is whether the plaintiff has proven by a preponderance of the evidence that she has been treated less well than other employees because of her gender. At the summary judgment stage, judgment should normally be denied to a defendant if there exist triable issues of fact as to whether such conduct occurred (Administrative Code § 8–107(1)(a); *see Farrugia,* 13 Misc.3d at 748–749, 820 N.Y.S.2d 718 ["Under the City's law, liability should be determined by the existence of unequal treatment, and questions of severity and frequency reserved for consideration of damages"], cited by the Southern District Court in ****40** *Selmanovic,* 2007 U.S. Dist. LEXIS 94963, *11, 2007 WL 4563431, *4).[27]

Farrugia was recently criticized in *Gallo* for its focus on "unequal treatment," the Southern District insisting that the "severe or pervasive" restriction be applied to City HRL claims just as the restriction is applied to Title VII and State HRL claims. We conclude that the criticism simply does not recognize the City HRL's broader remedial purpose. The *Gallo* decision states:

> A single instance of "unequal" treatment (between, say, a man and woman or a homosexual and heterosexual) can constitute "discrimination," but may not qualify as "harassment" of the sort needed to create ***79** a hostile work environment. If inequality of treatment were all that the hostile work environment law required, hostile work environment and discrimination claims would merge.

(585 F.Supp.2d at 537–38). In other words, the *Gallo* court begins with the premise that it is necessary to maintain the distinction that current federal law makes between non-harassment sex discrimination claims on the one hand (where a permissive standard is applied), and sex discrimination claims based on harassment (where "hostile work environment" is the term of art describing the application of a restrictive standard).

Contrary to the assumption embedded in *Gallo,*[28] the task under the City HRL, as amended by the Restoration Act, is not to ask, "Would a proposed interpretation differ from federal law?", but rather, "How differently, if at all, should harassment and non-harassment sex discrimination cases be evaluated to achieve the City HRL's uniquely broad and remedial purposes?"[29]

As discussed above, we conclude that a focus on unequal treatment based on gender—regardless of whether the conduct is "tangible" (like hiring or firing) or not—is in fact the approach that is most faithful to the uniquely broad and remedial purposes of the local statute. To do otherwise is

to permit far too much unwanted gender-based conduct to continue befouling the workplace.

[9] Our task, however, is not yet completed because, while the City HRL has been structured to emphasize the vindication of civil rights over shortcuts that reduce litigation volume, we recognize that the broader purposes of the City HRL do not connote an intention that the law operate as a "general civility code" ****41** (*Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 81, 118 S.Ct. 998, 140 L.Ed.2d 201 [1998], discussing Title VII). The way to avoid this result is ***80** not by establishing an overly restrictive "severe or pervasive" bar, but by recognizing an affirmative defense whereby defendants can still avoid liability if they prove that the conduct complained of consists of nothing more than what a reasonable victim of discrimination would consider "petty slights and trivial inconveniences."

In doing so, we narrowly target concerns about truly insubstantial cases, while at the same time avoiding improperly giving license to the broad range of conduct that falls between "severe or pervasive" on the one hand and a "petty slight or trivial inconvenience" on the other. By using the device of an affirmative defense, we recognize that, in general, "a jury made up of a cross-section of our heterogeneous communities provides the appropriate institution for deciding whether borderline situations should be characterized as sexual harassment and retaliation" (*Gallagher v. Delaney*, 139 F.3d 338, 342 [2d Cir.1998]). At the same time, we assure employers that summary judgment will still be available where they can prove that the alleged discriminatory conduct in question does not represent a "borderline" situation but one that could only be reasonably interpreted by a trier of fact as representing no more than petty slights or trivial inconveniences.

[10] In the instant case, the complaint was filed in August 2001. As such, actions that occurred prior to August 1998 would normally be barred except if the continuing violation doctrine applies. During the limitations period, the only harassment allegation supported by evidence that could be credited by a jury consists of comments made in plaintiff's presence on one occasion in October 1998 that were not directed at her, and were perceived by her as being in part complimentary to a co-worker. These comments were, in view of plaintiff's own experience and interpretation, nothing more than petty slights or trivial inconveniences, and thus are not actionable.[30]

Prior to the limitations period, the record does reflect the inappropriate comment about taking a shower, made in January 1997 (i.e., 19 months before the start of the limitations period). Since this pre-limitation-period comment was not joined to actionable ***81** conduct within the limitation period,[31] the continuing violation doctrine does not render the complaint about the January 1997 comment timely. Accordingly, plaintiff's sexual harassment claims must fail.

V. Other Disparate Treatment Claims

Plaintiff's allegations regarding not initially being provided with necessary tools and not being assigned to more desirable work-shift assignments refer to conduct in 1995 and 1996. The absence of any problem for at least 20 months prior to the start of the limitations period does not evidence a "consistent pattern," and in any event, there is no connection to actionable conduct during the limitations period. Plaintiff does not show differences in treatment with male workers in the limitations period; like other workers, she received ****42** substantial training.[32] It is thus unnecessary to reach the issue of the "materiality" of these non-harassment claims.[33]

Accordingly, the order of Supreme Court, New York County (Michael D. Stallman, J.), entered August 14, 2007, which granted defendants summary judgment dismissing the amended complaint, should be affirmed, without costs.

Order, Supreme Court, New York County (Michael D. Stallman, J.), entered August 14, 2007, affirmed, without costs.

All concur except ANDRIAS, J.P. who concurs in the result only in a separate Opinion:

ANDRIAS, J. (concurring in the result only).

Because my learned colleagues insist on addressing and deciding an issue that was raised neither below nor on appeal, I would affirm for the reasons stated by the motion court which, in pertinent part, properly dismissed plaintiff's claim for retaliation upon a finding that a one-time assignment to strip and wax the boiler room floor—a task that was, at least arguably, a part of her duties—did not constitute retaliation.

***82** Relying upon the Supreme Court's decision in *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S.

53, 67–68, 126 S.Ct. 2405, 165 L.Ed.2d 345 [2006] for its holding that "actionable retaliation" is that which "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination" (internal quotations and citations omitted), plaintiff succinctly argues on appeal that a reassignment of duties can constitute retaliatory discrimination even where both the former and present duties fall within the same job description, that a jury could reasonably conclude the reassignment would have been "materially adverse to a reasonable employee," and that the motion court inappropriately assessed the credibility of the witnesses' statements regarding that assignment.

My colleagues find no merit to plaintiff's arguments and agree with the motion court's analysis as pertinent to plaintiff's State Human Rights Law claim, but take issue with its decision because it failed to construe her claim according to the standard set forth in the Local Civil Rights Restoration Act of 2005. However, neither at nisi prius nor on appeal has plaintiff enunciated a specific claim under the New York City Human Rights Law. Moreover, even if it could be argued that, by amending her verified complaint to add in its introduction that "This is an action pursuant to the New York Executive Law § 296(a)(1),(6), (7) and New York City Administrative Code § 8–107(a)(1), (6), (7), of a hostile work environment and retaliation to vindicate the civil rights of plaintiff," she had actually raised the issue, she clearly has not pursued it on appeal.

****43** The question of whether we should be deciding appeals on the basis of arguments not raised by the parties on appeal has recently become a recurring issue in this Court. It is, however, a fundamental principle of appellate jurisprudence that arguments raised below but not pursued on appeal are generally deemed abandoned, and such arguments, which are therefore not properly before us, should not be considered (*see McHale v. Anthony,* 41 A.D.3d 265, 266–267, 839 N.Y.S.2d 33 [2007]). The rationale for such principle, as expressed by this Court, is that deciding issues not even raised or addressed in the parties' briefs would be so unfair to the parties as to implicate due process concerns (*id.* at 267, 839 N.Y.S.2d 33). "By any standard it would be unusual behavior for an appellate court to reach and determine an issue never presented in a litigation, and to do so without providing an opportunity for the adversely affected parties to be heard on a question which they had no ***83** reason to believe was part of the litigation" (*Grant v. Cuomo,* 130 A.D.2d 154, 176, 518 N.Y.S.2d 105 [1987], *affd.* 73 N.Y.2d 820, 537 N.Y.S.2d 115, 534 N.E.2d 32 [1988]).

> "These principles are not mere technicalities, nor are they only concerned with fairness to litigants, important as that goal is. They are at the core of the distinction between the Legislature, which may spontaneously change the law whenever it perceives a public need, and the courts which can only announce the law when necessary to resolve a particular dispute between identified parties. It is always tempting for a court to ignore this restriction and to reach out and settle or change the law to the court's satisfaction, particularly when the issue reached is important and might excite public interest. However, it is precisely in those cases that the need for judicial patience and adherence to the common-law adversarial process may be—or is often greatest" (*Lichtman v. Grossbard,* 73 N.Y.2d 792, 794–795, 537 N.Y.S.2d 19, 533 N.E.2d 1048 [1988]).

For my colleagues to adopt a new and supposedly more liberal standard for determining liability under the City's Human Rights Law and to abandon the present, supposedly unduly restrictive, "severe or pervasive" standard in favor of one that "is most faithful to the uniquely broad and remedial purposes of the local statute," without any input from the parties concerned, flies in the face of these well settled principles.

In *A Return to Eyes on the Prize: Litigating under the Restored New York City Human Rights Law* (33 Fordham Urb LJ 255 [2006]), which my colleagues repeatedly cite with approval, the author, who is described as "the principal drafter of the Local Civil Rights Restoration Act" of 2005, complains that the failure of such reforms to achieve their potential is due in significant part to the supposed "unwillingness of judges to engage in an independent analysis of what interpretation of the City Human Rights Law would best effectuate the purposes of that law" (*id.* at 255–256). However, in the next breath, he states: "In fairness, advocates for victims of discrimination must also take responsibility for the stunted state of City Human Rights Law. On far too many occasions, courts have not been asked to engage in this independent analysis" (*id.* at 256 n. 5). That is exactly the case here, and my colleagues' departure from the normal rules governing appellate courts is singularly unwarranted (see *Grant,* 130 A.D.2d at 176, 518 N.Y.S.2d 105).

All Citations

61 A.D.3d 62, 872 N.Y.S.2d 27, 105 Fair Empl.Prac.Cas. (BNA) 1059, 2009 N.Y. Slip Op. 00440

Footnotes

1 *See* 2005 N.Y. City Legis. Ann., at 528–535.

2 These include re-emphasizing the breadth of the anti-retaliation requirement, discussed *infra,* Part II. Other provisions include creating protection for domestic partners, increasing civil penalties for claims brought administratively, restoring attorney's fees for "catalyst" cases, and requiring thoroughness in administrative investigations conducted by the New York City Human Rights Commission.

3 Statement of Annabel Palma at the meeting of the N.Y. City Council (Sept. 15, 2005, transcript at 41). Council Member Palma was a member of the Committee on General Welfare that had brought the bill to the floor of the Council. Committee Chairman Bill de Blasio emphasized that "localities have to stand up for their own visions" of "how we protect the rights of the individual," regardless of federal and State restrictiveness (transcript at 47). Council Member Gale Brewer, the chief sponsor of the Restoration Act, reiterated the comments of Palma and de Blasio, and the importance of making sure that civil rights protections "are stronger here than [under] the State or federal law" (transcript at 48–49). (Transcript on file with N.Y. City Clerk's Office and the N.Y. Legislative Service.)

4 The City Council in amending Administrative Code § 8–130 could have mandated that "some" provisions of the law be "construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof," or that "new" provisions of the law be so construed. The Council instead made the "shall construe" language applicable to "the provisions of this title," without limitation.

5 Local Law No. 39 (1991) of City of N.Y.

6 Prof. Craig Gurian, *A Return to Eyes on the Prize: Litigating under the Restored New York City Human Rights Law,* 33 Fordham Urb LJ 255, 288 (2006). The article—described elsewhere as "an extensive analysis of the purposes of the Local Civil Rights Restoration Act, written by one of the Act's principal authors" (*Ochei v. Coler/Goldwater Mem. Hosp.,* 450 F.Supp.2d 275, 283 n. 1 [S.D.N.Y.2006])—summarizes some of the dramatic changes of the 1991 Amendments (*see* Gurian, at 283–88).

7 *Gurian, Return to Eyes on the Prize,* 33 Fordham Urb LJ at 262. This is consistent with statements and testimony of the Association of the Bar of the City of N.Y. (letter dated Aug. 1, 2005), the Brennan Center for Justice (Jul. 8, 2005), and the Anti–Discrimination Center (Apr. 14, 2005), all on file with the Committee on General Welfare and the N.Y. Legislative Service, each confirming that the Council sought to have courts maximize civil rights protections. For example, the Bar Association, at p. 4 of its letter, referred to "the Council's clear intent to provide the greatest possible protection for civil rights." At the Council's debate prior to passage, Council Member Palma described the Bar Association and Brennan Center statements as important to the Committee, and characterized the Anti–Discrimination Center's testimony as "an excellent guide to the intent and consequences of [the] legislation we pass today."

8 We note in this context two cardinal rules of statutory construction: that legislative amendments are "deemed to have intended a material change in the law" (McKinney's N.Y. Statutes § 193[a]), and that "courts in construing a statute should consider the mischief sought to be remedied by the new legislation, and they should construe the act in question so as to suppress the evil and advance the remedy" (*id.* § 95). As such, we are not free to give force to one section of the law that has specifically been amended (e.g. Administrative Code § 8–107[7]), and decline to give force to another (e.g. § 8–130). We must give force to all amendments, and not relegate any of them to window dressing.

9 *See e.g. Selmanovic v. NYSE Group,* 2007 U.S. Dist. LEXIS 94963, *9–20, 2007 WL 4563431, *4–6 [S.D.N.Y.], recognizing the Restoration Act's enhanced liberal construction requirement, and its impact on sexual harassment and retaliation claims under the local law; *Pugliese v. Long Is. R.R. Co.,* 2006 U.S. Dist. LEXIS 66936, *38–40, 2006 WL 2689600, *12–13 [E.D.N.Y.], identifying Administrative Code § 8–107(13)(b)(1) as the City law's explicit statutory basis for imposing vicarious liability on those exercising managerial or supervisory authority, and noting that "the breadth and scope of CHRL will often yield results different from Title VII"; *Okayama v. Kintetsu World Express (U.S.A.),* 2008 WL 2556257 [Sup. Ct., N.Y. County], holding that the explicit statutory structure of Administrative Code § 8–107[13][b] precludes the availability of the federal *Faragher* affirmative defense where the conduct of those exercising managerial or supervisory authority is at issue; *Farrugia v. North Shore Univ. Hosp.,* 13 Misc.3d 740, 820 N.Y.S.2d 718 [2006], noting that "The New York City Human Rights Law was intended to be more protective than the state and federal counterparts"; *Bumpus v. New York City Tr. Auth,* 18 Misc.3d 1131(A), 2008 N.Y. Misc. LEXIS 4628, *7, 2008 WL 399147, *3, noting that "The legislative history contemplates that the Law be independently construed with the aim of making it the most progressive in the nation".

10 The Committee Report cited, inter alia, *Ray v. Henderson,* 217 F.3d 1234, 1241–1243 [9th Cir.2000] to help illustrate the broad sweep of the re-emphasized City anti-retaliation provision.

11 *See* discussion in *Return to Eyes on the Prize,* 33 Fordham Urb LJ at 321–322.

12 Subsequent to passage of the Restoration Act, the U.S. Supreme Court modified the Title VII anti-retaliation standard (*Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53, 126 S.Ct. 2405, 165 L.Ed.2d 345 [2006]). In doing so, however, *Burlington* still spoke in terms of "material adversity," i.e., conduct that might have dissuaded a reasonable worker from making or supporting a charge of discrimination (*id.* at 68, 126 S.Ct. 2405). While this was a standard similar to that set forth in § 8–107(7), it cannot be assumed that cases citing *Burlington* adequately convey the full import of the City HRL standard, especially because the confusing use of the term "materially adverse" might lead some courts to screen out some types of conduct *prior* to conducting "reasonably likely to deter" analysis. In fact, to reiterate, § 8–107(7) specifically rejects a materiality requirement.

13 There is no evidence in the record to suggest that in the circumstances presented, the failure to grant such time off was an act reasonably likely to deter a person from engaging in protected activity.

14 *See, e.g.,* the statement of then-Mayor Dinkins in connection with the signing of the 1991 Amendments, endorsed in the 2005 Committee Report, that "there is no time in the modern civil rights era when vigorous local enforcement of anti-discrimination laws has been more important. Since 1980, the federal government has been marching backward on civil rights issues" (Committee Report, 2005 N.Y. City Legis. Ann., at 536). Indeed, one motivation expressed by the Committee for passing the Restoration Act was that construction of numerous provisions of the City HRL "narrowed the scope of the law's protections." This enhanced liberal construction was directly confronted in *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 788 N.Y.S.2d 281, 821 N.E.2d 519 [2004], a case in which a narrow, post–1991 interpretation of federal law was transplanted into the local law without Council action (Committee Report, at 537). *McGrath* was also identified on the floor of the Council as a case inconsistent with the requirements of the Restoration Act (*see* Council Member Palma's statement at footnote 3, *supra*).

15 Although the assumption has been that such a rule applies to the City HRL (*see, e.g.,* the recent case of *Gallo v. Alitalia–Linee Aeree Italiane–Societa per Azioni,* 585 F.Supp.2d 520, 536–38 [S.D.N.Y.]), the fact is that "severe or pervasive" was not the accepted City HRL rule at the time of the 1991 Amendments (*see* discussion in *Return to Eyes on the Prize,* 33 Fordham Urb LJ at 300–301). Moreover, there is no evidence that "severe or pervasive" has ever been subjected to liberal construction analysis, let alone the enhanced analysis required by the Restoration Act.

16 Judith J. Johnson, *License to Harass Women: Requiring Hostile Environment Sexual Harassment to be "Severe or Pervasive" Discriminates among "Terms and Conditions" of Employment* (62 M.d. L. Rev. 85, 87 [2003]).

17 *Id.* at 111–134, describing a variety of techniques by which claims have been turned away using "severe or pervasive" as a shield for discriminators.

18 See Committee Report, 2005 N.Y. City Legis. Ann., at 537. Importantly, the way that the Council responded to *McGrath* was not by dealing with the specific topic of the case (the availability of attorney's fees in circumstances where only nominal damages are awarded), but by changing the method of analysis applicable to *all* provisions of the law. *McGrath,* of course, was also explicitly mentioned on the floor of the City Council as one of the cases that, with the passage of the Restoration Act, would—in Council member Palma's words—"no longer hinder the vindication of our civil rights" (*see* text at footnote 3, *supra*). In light of the foregoing, it is puzzling that *Gallo* would make the identical Council "could have done so" argument already specifically rejected by the Restoration Act (see 585 F.Supp.2d at 537–38).

19 *See also* page 4 of the Bar Association letter (*supra* at footnote 7), reciting the expectation that the undoing of narrow construction of the law by legislative amendment "should no longer be necessary" if there is judicial appreciation for the Restoration Act's intention that the law provide "the greatest possible protection for civil rights"; and page 5 of the Brennan Center Statement (same footnote), noting the suggestion that "a better approach would be for the Council to limit itself to specifically overruling individual interpretations that it views as unduly restrictive. However, this approach has proven ineffective in the past, as the courts have tended to construe narrowly specific Council amendments. Without an explicit instruction that the City Human Rights Law should be construed independently, courts will continue to weaken New York City's Law with restrictive federal and state doctrines."

20 *See* Committee Report, 2005 N.Y. City Legis. Ann., at 538 n. 8; *see also* page 4 of the Bar Association letter (*supra* at footnote 7) that construction must flow from "the Council's clear intent to provide the greatest possible protection for civil rights"; Anti–Discrimination Center testimony (same footnote) that "In the end, regardless of federal interpretations, the primary task of [a] judge hearing a City Human Rights Law claim is to find the interpretation for the City Law that most robustly further[s] the purposes of the City statute."

21 The fact that Title VII has language similar to that of the City HRL does not even begin our inquiry, let alone end it. The Restoration Act made clear, with specific statutory language, that the obligation to determine what interpretation best fulfills the City law's purposes is in no way limited by the existence of cases that have interpreted analogous federal civil

rights provisions (Administrative Code § 8–130); *cf. Gallo,* where the courts apparently believed there was something called "the hostile work environment law" (585 F.Supp.2d at 537–38), but never asked what interpretation of § 8–107(1)(a)'s "terms and conditions" language would best fulfill the uniquely broad and remedial purposes of the City HRL.

22 It would be difficult to find a worker who viewed a job where she knew she would have to cope with unwanted gender-based conduct (except what is severe or pervasive) as equivalent to one free of unwanted gender-based conduct.

23 As already noted, the fact that conduct is actionable does not control the amount of damages to be awarded.

24 Kathryn Lake Mazierski, President, New York State Chapter of the National Organization for Women, Testimony at Hearing of the City Council's Committee on General Welfare, at 49–50 (Sept. 22, 2004) (NOW testimony, transcript on file with N.Y. City Clerk's Office). Note that *Gallo* asserts that organizations sought to have the "severe and pervasive" test "removed" from the City HRL; that the Council "ignored" that suggestion and "amended only those specific portions of the CHRL that the City thought needed to be addressed," and that Prof. Gurian's article supports that account (585 F.Supp.2d at 537–38). In so stating, *Gallo* ignores the legislative history and mischaracterizes the article. In fact, as discussed, *supra,* the most important specific textual changes made by the Council were the changes to § 8–130—changes designed to control the construction of every other provision of the HRL, and so important that they were doubly emphasized in Section 1 of the Restoration Act. Contrary to *Gallo,* neither the New York Chapter of NOW nor any of the other organizations that spoke to this issue had argued that the City Council should revise the text of § 8–107(1)(a)'s terms-and-conditions provision to proscribe the "no severe or pervasive" limitation, and the Council made no decision to "adopt" the "severe or pervasive" rule. Instead, the organizations all raised the issue as part of their (successful) advocacy to have the language of § 8–130 changed. For example, Ms. Mazierski, after describing the "problem of hitching the local law to a federal standard" (NOW testimony, at 47) argued for an enhanced liberal construction provision: "If judges are forced to look at a proper standard for sexual harassment claims under the City's Human Rights Law, independent [of] the federal standard, *we will be able to have an argument on the merits and not be stuck on the standard that continuously hurts women"* (at 50, emphasis added). As for Prof. Gurian's article, it set forth the decision that the City Council actually made, describing the enhanced liberal construction provision as the Restoration Act's "declaration of independence," and noting that areas of law that have been settled by virtue of interpretations of federal or State law "will now be reopened for argument and analysis.... As such, advocates will be able to argue afresh (or for the first time) a wide range of issues under the City's Human Rights Law, including the parameters of actionable sexual harassment" (*Return to Eyes on the Prize,* 33 Fordham Urb LJ at 258).

25 Brennan Center statement (*supra at* footnote 7), at p. 5.

26 Anti–Discrimination Center testimony (*supra at* footnote 7), at p. 2.

27 In the "mixed motive" context, of course, the question on summary judgment is whether there exist triable issues of fact that discrimination was one of the motivating factors for the defendant's conduct. Under Administrative Code § 8–101, discrimination shall play no role in decisions relating to employment, housing or public accommodations.

28 Throughout this decision, we have referenced *Gallo* to illustrate types of analyses that have now been rejected by the Restoration Act, but it is important to note that the Restoration Act will require many courts to approach the City HRL with new eyes. It is not that frequent that legislation is enacted "to remind, empower, and require judges to fulfill their essential role as active and zealous agents for the vindication of the purposes of the law" (*Return to Eyes on the Prize,* 33 Fordham Urb LJ at 290). Nor are judges often urged by the legislative body to exercise judicial restraint against substituting their own more conservative social policy judgments for the policy judgments made by the Council or treating a local law as merely in parallel with its federal or state counterpart (*id.*).

29 *Cf.* Committee Report, 2005 N.Y. City Legis. Ann., at 538 n. 8: The Restoration Act "underscores the need for thoughtful, independent consideration of whether the proposed interpretation would fulfill the uniquely broad and remedial purposes of the City's human rights law."

30 One can easily imagine a single comment that objectifies women being made in circumstances where that comment would, for example, signal views about the role of women in the workplace and be actionable. No such circumstances were present here.

31 The lack of actionable gender-based discrimination in this case (to which a pre-limitation period harassing comment could otherwise be linked) is discussed, *infra,* in Part V.

32 The record shows that plaintiff was, in fact, absent on two occasions, but complained about being denied training.

33 In view of the Restoration Act's rejection of *Forrest v. Jewish Guild for the Blind,* 3 N.Y.3d 295, 786 N.Y.S.2d 382, 819 N.E.2d 998 [2004] and *Galabya v. New York City Bd. of Educ.,* 202 F.3d 636 [2d Cir.2000] two of the cases cited by the court below, that issue would need to be decided afresh with due regard for the commands of the enactment (*see e.g.* Council Member Palma's statement, at footnote 3, *supra,* that cases like these "will no longer hinder the vindication of

our civil rights"; *see also* Committee Report, 2005 N.Y. City Legis. Ann., at 537, demanding that "discrimination ... not play a role," and at 538 n. 4, contrasting *Galabya* with the Council's preferred approach to materiality). However, given the factual circumstances of the instant case, such a determination is not necessary.

End of Document

Fair Play Legislation

Statement of Craig Gurian on behalf of Fair Play Legislation, Dec. 9, 2015

For a quarter of a century now, the Council has been attempting to protect the City Human Rights Law from being narrowly construed by courts that have grown increasingly conservative. These legislative enactments defend a very specific vision: A Human Rights Law designed as a law enforcement tool with no tolerance for discrimination polluting any aspect of public life. In 2005, seeing that efforts to that time had not been successful, the Council passed the Local Civil Rights Restoration Act,[1] and insisted that all aspects of the Human Rights Law be interpreted broadly to fulfill the "uniquely broad and remedial" purposes of the law.

It is not as though we thought that every claim of discrimination was meritorious or that plaintiffs should "automatically win." What we have thought, however – and I say this as a principal drafter of the comprehensive 1991 Amendments and the principal drafter of the Restoration Act – is that the courtroom door must remain wide open, that court cases and administrative proceedings should be allowed to focus on the merits and not collateral issues, that anti-discrimination law must be treated seriously like other areas of law enforcement, that deterrence must be maximized, and evasion – the bread-and-butter of the discrimination defense bar – must be minimized.

In other words, by sharply rebalancing the playing field towards the victim of discrimination, we have recognized that there is a cost in terms of letting some ultimately non-meritorious cases proceed further than they would under state or federal civil rights law, but do so intentionally because we believe so strongly in the need to prevent, ferret out, and remedy every instance of discrimination there is, whether individual or systemic, whether the group discriminated against is popular or unpopular, and whether the group doing the discrimination is popular or unpopular.

Some courts have heeded the Restoration Act, but others have not. Many areas of the law remain as they were before the Restoration Act, with no scrutiny of whether the case law doctrines being applied are consistent with the requirements of the City Human Rights Law.

Having brought the legislation that has emerged as Intro 814 to the Council, I think I have a good insight into its purposes. By ratifying three key decisions construing the City Human Rights Law as amended by the Restoration Act, Intro 814 is intended to: (1) underline once more the requirement that courts must apply the enhanced liberal construction provisions of the law in every case and in respect to every issue; (2) illustrate best practices when engaging in the required analysis; and (3) accelerate the process by which doctrines inconsistent with the commands of the Restoration Act are abandoned.

The first case incorporated by Intro 814 is an important decision on the proper construction of the New York City Human Rights Law made by the New York State Court of Appeals in

[1] Local Law 85 of 2005, the "Restoration Act."

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Albunio v. City of New York.[2] Though the specific question in the case had to do with the meaning of the term "oppose" in the retaliation section, the court took the opportunity to examine the meaning of the enhanced liberal construction provision.

That provision required, the court held, that it construe the retaliation provision "*like other provisions of the City's Human Rights law,* broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible."[3]

In *Albunio,* there was quite limited evidence that the plaintiff had opposed discrimination. Even though the plaintiff "did not say in so many words" that her preferred candidate "was a discrimination victim" on the basis of perceived sexual orientation, "a jury could find that both [the supervisor and plaintiff] knew that he was, and that [plaintiff] made clear her disapproval of that discrimination by communicating to [her supervisor], in substance, that she thought [the supervisor's] treatment of [her candidate] was wrong" (thus constituting opposition to discrimination).[4]

A second case incorporated by Intro 814 – *Williams v. New York City Housing Authority*[5] -- is the case that most thoroughly captures the intent and intended consequences of the Restoration Act; it also illustrates how the amended liberal construction provision (Section 8-130) was designed to operate. The Restoration Act:

> notified courts that (a) they had to be aware that some provisions of the City HRL were textually distinct from its State and federal counterparts, (b) all provisions of the City HRL required independent construction to accomplish the law's uniquely broad purposes and (c) cases that had failed to respect these differences were being legislatively overruled.[6]

The court wrote that the enhanced liberal construction provision was envisioned as "obviating the need for wholesale textual revision of the myriad specific substantive provisions of the law."[7]

As the court explained:

> While the specific topical provisions changed by the Restoration Act give

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[2] 922 N.Y.S.2d 244 (N.Y. 2005).

[3] *Id.* at 246 (emphasis added).

[4] *Id.* at 247.

[5] 872 N.Y.S.2d 27 (N.Y. App. Div., 1st Dept. 2009).

[6] *Williams, supra,* 872 N.Y.S.2d at at 32. The cases specifically referenced as being legislatively overruled were *Levin v. Yeshiva Univ.,* 754 N.E.2d 1099 (N.Y. 2001) (in respect to marital status discrimination); *Priore v. N.Y. Yankees,* 761 N.Y.S.2d 608 (App. Div. 2003); *McGrath v. Toys "R" Us, Inc.,* 821 N.E.2d 519 (N.Y. 2004); and *Forrest v. Jewish Guild for the Blind,* 819 N.E.2d 998 (N.Y. 2004).

[7] *Id.* at 37.

> unmistakable *illustrations* of the Council's focus on broadening coverage, § 8-130's specific *construction* provision required a "process of reflection and reconsideration" that was intended to allow independent development of the local law "in all its dimensions" (internal citation omitted).[8]

That means that areas of law that have been settled by virtue of interpretations of federal or state law "will now be reopened for argument and analysis....As such, advocates will be able to argue afresh (or for the first time) a wide range of issues under the City's Human Rights Law (internal citation omitted)."[9]

Interpreting Section 8-130, *Williams* found that the text and legislative history of the City Human Rights Law represent a legislative desire that the City Human Rights Law "meld the broadest vision of social justice with the strongest law enforcement deterrent (internal citation omitted)."[10]

In the area of harassment, *Williams* held that questions of "severity" and "pervasiveness" properly go only to the question of damages, not to the question of underlying liability. In the ordinary case, therefore, liability is established when there is evidence of an employee being treated less well than others because of gender.[11] To "narrowly target" concerns about "truly insubstantial" cases, the court recognized an affirmative defense "whereby defendants can still avoid liability if they provide that the conduct complained of consists of nothing more than what a reasonable victim of discrimination would consider 'petty slights and trivial inconveniences.'"[12]

The *Williams* court properly did not defer to the standard created by federal courts. Instead, it looked to the uniquely broad purposes of the City Human Rights Law. *Williams* used the guideposts set out in the committee report that accompanied the Restoration Act. Specifically:

The committee report had said that "[t]raditional methods and principles of law enforcement ought to be applied in the civil rights context."[13] *Williams* concluded that determining liability by the existence of differential treatment without regard to severity or pervasiveness creates more of an incentive for employers to "create workplaces that have zero tolerance."[14] As the court wrote, "[M]aximizing deterrence is a traditional method and principle of law enforcement."

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[8] *Id.*

[9] Id. at 39, fn. 24.

[10] *Id.* at 32, fn. 7.

[11] *Id.* at 38.

[12] *Id.* at 41. The affirmative defense was, in fact, intended to be available only in very narrow circumstances, as reiterated in *Bennett, infra.*

[13] 2005 Committee Report, New York City Legislative Annual 537 (2005).

[14] *Williams, supra,* 872 N.Y.S.2d at 38.

The committee report had said, "Discrimination should not play a role in decisions made by employers, landlords, and providers of public accommodation." The court stated that the "severe or pervasive" rule improperly allowed discrimination "to play *some significant* role in the workplace."[15]

The committee report had said, "Victims of discrimination suffer serious injuries for which they ought to receive full compensation." The court stated that the "severe or pervasiveness" test contradicted that principle.[16]

One look at how the *Williams* interpretative process – looking at the requirements of Section 8-130, the enhanced liberal construction section in relation to the problem of harassment – makes clear why only the method chosen by Intro 814 of fully incorporating the case can successfully provide the needed guidance. The interpretation, or, rather, one of the things interpreted in the case goes on for page after page. One can only use the case as an illustration and direction of what courts (and advocates) should to if one incorporates what *Williams* has done and how it has done it. Incorporation by reference is not enough – were one to identify "results" only, one would set only forth a narrow subset of what Intro 814 is intending courts to look at.

And Williams wasn't even limited to harassment. In terms of retaliation, *Williams* held that assessments of challenged conduct must be made:

> with a keen sense of workplace realities, of the fact that the "chilling effect" of particular conduct is context-dependent, and of the fact that a jury is generally best suited to evaluate the impact of retaliatory conduct in light of those realities...Accordingly, the language of the City HRL does not permit any type of challenged conduct to be categorically rejected as nonactionable. On the contrary, no challenged conduct may be deemed nonretaliatory before a determination that a jury could not reasonably conclude from the evidence that such conduct was, in the words of the statute, "reasonably likely to deter a person from engaging in protected activity (internal citations omitted)."

In terms of continuing violations, *Williams* rejected the U.S. Supreme Court's 2002 narrowing of the doctrine[17] as applicable to the City Human Rights Law.[18] As such, continuing violations continue to be actionable in connection with discrete discriminatory acts that are related.[19]

Finally, it is important to note that *Williams* is important because its interpretation identifies key

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[15] *Id.*

[16] Id.

[17] *National R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 122 S.Ct. 2061, 153 L.Ed.2d 106 [2002].

[18] *Williams, supra,* 872 N.Y.S.2d at 35.

[19] *See also Sotomayor v. City of New York,* 862 F.Supp.2d 226, 250-51 (E.D.N.Y. 2012).

sources of guidance for understanding the Restoration Act, including the enhanced liberal construction requirement.

Intro 814 also incorporates *Bennett v. Health Management Systems, Inc.*[20] The court concluded[21] that "the identification of the framework for evaluating the sufficiency of evidence in discrimination cases does not in any way constitute an exception to the Section 8-130 rule that all aspects of the City HRL must be interpreted "to accomplish the uniquely broad and remedial purposes of the law," and for the court to "create an exemption from the sweep of the Restoration Act for the most basic provision of the City HRL -- that it is unlawful 'to discriminate' would impermissibly invade the legislative province."[22]

The court ruled that the U.S. Supreme Court's summary judgment standard failed to take sufficiently into account factors required to achieve the City Human Rights Law's uniquely broad and remedial purposes: "(a) the traditional power to be accorded to the inference of wrongdoing that arises from evidence of consciousness of guilt; (b) the importance of deterring a defendant's proffer of false reasons for its conduct; and (c) the impropriety of a court weighing the strength of evidence in the context of a summary judgment motion."[23]

Bennett holds:

First, "If a court were to find it necessary to consider the question of whether a prima facie case has been made out, it would need to ask the question, 'Do the initial facts described by the plaintiff, if not otherwise explained, give rise to the *McDonnell Douglas* inference of discrimination?'"[24]

Second, "Where a defendant has put forward evidence of one or more non-discriminatory motivations for its actions, however, a court should ordinarily avoid the unnecessary and sometimes confusing effort of going back to the question of whether a prima facie case has been made out. Instead, it should turn to the question of whether the defendant has sufficiently met its burden, as the moving party, of showing that, based on the evidence before the court and drawing all reasonable inferences in plaintiff's favor, no jury could find defendant liable under any of the evidentiary routes- *McDonnell Douglas*, mixed motive, "direct" evidence, or some combination thereof."[25]

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[20] 936 N.Y.S.2d 112 (1st Dept. 2011).

[21] **The description of the cases set forth herein is not intended to be comprehensive and courts should follow all of the teachings, interpretation, and analysis of *Albunio, Williams,* and *Bennett,* regardless of whether discussed herein.**

[22] *Id.* at 116-17. "[W]alling off from examination the doctrines that are appropriate to shape the presentation and evaluation of evidence that "discrimination" has occurred," the Court continued, "would create just such an exemption." *Id.* at 117.

[23] *Id.* at 122.

[24] *Id.* at 124.

[25] *Id.*

Third, "If the plaintiff responds with some evidence that at least one of the reasons proffered by defendant is false, misleading, or incomplete, a host of determinations properly made only by a jury come into play, and thus such evidence of pretext should in almost every case indicate to the court that a motion for summary judgment must be denied."[26]

As in *Williams,* the court linked its analysis to the City Human Rights Law's determination to maximize the exposure and remedying of discriminatory conduct. For example:

> It is difficult enough to discern a defendant's motive or motives in those circumstances without giving it a tactical advantage to throwing numerous non-discriminatory justifications against the wall and seeing which stick. It must thus be the defendant's obligation to articulate its true reasons for acting in the way that it did. And the maximum deterrent effect sought by the City HRL can only be achieved where covered entities understand that, whatever the urge may be to cover up their actual motivations before arriving in court, there can be no benefit for doing so once in court (internal citation omitted).[27]

Bennett also disapproved of federal district court decisions that were ruling too easily that the *Williams* affirmative defense in harassment cases has been made out. The court reiterated that the *Williams* affirmative defense be treated as the "narrowly drawn affirmative defense" it was intended to be, that it was important for "borderline" fact patterns be allowed to be heard by a jury, and it be understood that one could "easily imagine a single comment that objectifies women being made in circumstances where [the] comment would, for example, signal views about the role of women in the workplace and be actionable."[28]

Having a firm base of Albunio, Williams, and Bennett would, by way of illustration only:

- Make its easier to argue that there shouldn't be the materiality requirement to find adverse action that courts assume exists;

- Make it easier to explain why punitive damages against a company should be based on the mental state of the employee-wrongdoer and why the mental state should require only reckless disregard of possibility of injury (not of violation of statutorily protected right);

- Make it easier to beat back arguments like the meritless one raised by the City in defense of a disparate impact claim on the grounds that somehow age claims weren't encompassed; and

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[26] *Id.*

[27] *Id.* at 122.

[28] *Id.* at 123, fn. 16.

- Make it easier to argue successfully that selecting an employee or tenant because you think -- using protected class as a proxy – that the person is more vulnerable to exploitation constitutes an unlawful discriminatory practice.

Intro 814 reiterates that the City Human Rights Law is supposed to be maximally protective of civil rights in all circumstances.

Finally, Intro 814 makes explicit the mirror image construction rule to the rule to the law's provisions are to be broadly interpreted: exemptions from and exceptions to the law are to be interpreted narrowly. This is done to accomplish the goal of maximizing deterrence of discriminatory conduct. By way of illustration only, the new "narrow construction of exemptions and exceptions" language would be an aid, for example, in:

- Interpreting the scope of the 8-107(4)(f) exception for practices by educational institutions that are "strictly pedagogic in nature";

- Interpreting the scope of the 8-107(12) religious exemption for "such selection[s] as [are] calculated by such organization to promote the religious principles for which it is established or maintained"; and

- Interpreting 8-102(5)'s exclusion of those employers "with fewer than four persons in his or her employ" (an exclusion that doesn't specify that the employees have to be in New York City).

It would be great if all courts had gotten the Restoration Act memo. But clearly not all have. The Restoration Act intended that reconsidering doctrine in light of the uniquely broad and remedial purposes of the City Human Rights Law would be a routine occurrence. Neither bar nor bench has been sufficiently catalyzed. Even worse, there are some courts that would like to hold on to the discredited idea that the Council has to amend a specific section of the law for its interpretation to change rather than using the construction provision – Section 8-130 – to control everything. That was the position of the Court of Appeals in the pre- Restoration Act case of *McGrath v. Toys 'R Us.*[29] As *Williams* explained, that view was legislatively overruled by the Restoration Act.[30] Nevertheless, in *Melman v. Health Management Systems, Inc.,*[31] a court has thereafter simply assumed that an existing federal framework for consideration of claims of discrimination would apply because the Restoration Act didn't *specifically* have a such a provision, when it should have automatically engaged in the required liberal construction

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[29] 788 N.Y.S.2d 281 (N.Y. 2004).

[30] *See, e.g., Williams, supra,* 872 N.Y.S.2d at 37 ("While the specific topical provisions changed by the Restoration Act give unmistakable illustrations of the Council's focus on broadening coverage, § 8-130's specific construction provision required a 'process of reflection and reconsideration' that was intended to allow independent development of the local law 'in all its dimensions'" (citation omitted)).

[31] 936 N.Y.S.2d 112 (1st Dept. 2011). Note that *Bennett* was adhered to just yesterday by another panel of the First Department. *Cadet-Legros v, New York University Hospital Center,* ___ N.Y.S.2d ___, 2105 WL 8079663 (1st Dept. Dec. 8, 2015).

analysis. Reminding courts that the *McGrath/Melman* approach has been rejected is an important contribution of Intro 814.

Lastly, a word about the specious argument that the Council cannot or should not identify specific cases in providing Section 8-130 guidance to courts. There is simply no rule that precludes the Council from doing so. Indeed, doing so is not unprecedented. At the federal level, a landmark civil rights law – the Civil Rights Act of 1991 – does so, too. And some other federal laws do so as well.

But there is another point to be made. The City Human Rights Law has been a leading civil rights law because it has creatively and aggressively taken the steps necessary to combat rollback to to extend the reach of the law further. There is, as there should be, an ongoing process of amending the law. When the Council identifies barriers to the robust development of the law, it appropriately fits the solution to the problem. That is exactly what is being done here.

We urge prompt adoption of Intro 814.

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December 9, 2015

Testimony of The Legal Aid Society, Employment Law Unit
In Support of Proposed Amendments to the Human Rights Law

Presented Before the New York City Council Committee on Civil Rights
Presented by Karen Cacace, Director, Employment Law Unit

Thank you for the opportunity to present this testimony.

The Legal Aid Society (the Society) is the oldest and largest legal services provider for low-income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems, including some 45,000 individual civil matters in the past year benefiting nearly 117,000 New Yorkers as well as law reform cases which benefit all two million low-income families and individuals in New York City.

Through a network of 26 neighborhood, borough and courthouse-based offices in all five boroughs and 24 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

Through our Employment Law Unit, we provide legal services to over 2,000 low-wage workers each year to ensure these workers receive fair wages, fair treatment, decent working conditions, and the benefits to which they are entitled if they lose their jobs. Most of these cases involve wage and hour violations, family and medical leave issues, workplace discrimination, including discrimination based on past involvement with the criminal justice system, labor trafficking and unemployment insurance.

The Human Rights Law Reorganization

The Legal Aid Society supports the efforts of the City Council to reorganize the Human Rights Law to make the law more easily understood. However, we suggest that the reorganization should also include substantive provisions that will allow the law to protect more of the most vulnerable low-income workers in our city. Accordingly, we suggest that the following substantive proposals be included in the reorganization:

Section 8-1003: Definitions. In the Reorganization, Defined Protected Status includes age, alienage or citizenship status, color, creed, disability, gender, marital status, national origin, partnership status, race or sexual orientation. We suggest including pregnancy so that the law is clear that employment discrimination based on pregnancy is precluded. We also suggest including military status and genetic information. Discrimination in employment based on military status is currently prohibited under state law and discrimination in employment based on genetic information is currently protected by federal law. The City law should be at least as inclusive as state and federal law.

Section 8-2105: Discrimination by a four-plus employer. The four-plus requirement should be removed. All employees should be protected from discrimination – even those who work for small employers. The change should be made throughout the law so that all employment protections apply to all employees, regardless of the size of their employer.

Section 8-2052: Retaliation. Under section a.1, it is illegal to retaliate against any person because that person has opposed any practice forbidden under this subchapter. It should be clear that in order for the conduct of opposing any practice forbidden under this subchapter to be protected, the person only has to have a good faith belief that the conduct they are opposing is forbidden. This is the standard in federal employment cases.

Section 8-3001(a)(4): Jurisdiction of Commission. Currently, the Commission has no jurisdiction if the State Division of Human Rights has issued a final determination, but the State Division does not consider claims under the city law. Therefore, there is currently no allowance for jurisdiction over cases finally determined by the State Division in which the city law protects against conduct that is arguably not protected under state law, for example, discrimination on the basis of gender identity, or where the state law applies more restrictive standards. The law should be amended to grant the Commission jurisdiction to hear such claims even after a final determination by the State Division and/or to clarify that the complainant retains a private right of action under the city law even after the final determination of the State Division.

Section 8-3051: Rules of procedure. This provision requires the complainant to "intervene" to be a party. See also Section 8-3156(b) (about taking testimony at the hearing). The

complainant should automatically be deemed a party. This is an unnecessary hurdle that wastes resources. This requirement seems antiquated and should be deleted.

Section 8-3154(a): Dismissal of complaint for administrative convenience. After the answer is filed, the complainant is entitled to a dismissal for administrative convenience if 180 days have passed since the filing of the complaint and the Commission finds that the complaint has not been actively investigated. In contrast, the State Division freely grants such dismissals before the hearing has begun, without any further showing. The city law should adopt the less restrictive standard of the state law, since it often takes complainants a long time to secure private counsel.

Section 8-3163: Enforcement of Commission order; criminal conviction history. The definition of "private employer" for such cases refers to Section 750 of state Correction Law (requiring ten (10) employees or more); see also Section 8-3751(d) (private right of action in such cases). The city law should conform the definition of employer in such cases to that applicable in all other cases, currently four (4) employees or more.

Section 8-3751(d): The requirement that criminal conviction history cases against public agencies be brought by Article 78 proceedings should be repealed. Public agencies should be subject to the same judicial proceedings as private employers. Employees should have the same discovery options and remedies against public employers as they do against private employers.

Section 8-3202(c): To initiate a judicial proceeding to review a Commission determination requires filing of a written transcript. There should be a procedure for obtaining the transcript for free if the complainant is indigent.

Section 8-4003: Remedies in private action. Punitive damages are available in civil actions, not before the Commission. They should be available in both types of proceedings. Employees should not be penalized for filing a complaint at the Commission rather than in court.

We encourage the Council to include these substantive revisions to the Human Rights Law so that it will mandate that all New Yorkers should be allowed to work in a discrimination-free workplace and will provide the most expansive procedural protections and remedies.

Int. 814

The Legal Aid Society supports Int. 814 which will codify the interpretation of the Human Rights Law as applied in Albunio v. City of New York, 16 N.Y.3d 472 (2011), Bennett v. Health Management Systems, Inc., 92 A.D.3d 29 (1st Dep't 2011), and Williams v. New

York City Housing Authority, 61 A.D.3d 62 (1st dep't 2009). Each of these cases applied a liberal interpretation of the Human Rights Law in accordance with the stated policy of the law. The amendment will clarify that these decisions are correct interpretations of the law. Because the law was intended to, and should, be construed as broadly as possible, we support this amendment.

Int. 818

The Legal Aid Society supports Int. 818 which will allow attorneys' fees to be awarded in cases prosecuted at the New York City Commission on Human Rights. Currently under the Human Rights Law, attorneys' fees are not available in administrative proceedings but are available in civil court actions. Fees should be available to prevailing parties in both types of proceedings. Allowing the award of fees will increase the number of employees who have legal representation when they file a complaint with the Commission And having legal representation at the Commission will improve the process and benefit workers who have been a victim of discrimination. Accordingly, we support this amendment.

Int. 819

The Legal Aid Society supports the repeal of Section 1. Subdivision 16 of Section 8-107. This antiquated section of the Human Rights Law is a disclaimer related to the protections against discrimination based on sexual orientation. It states that the law does not restrict an employer's right to insist that an employee meet bona fide job-related qualifications, that it does not require employers to establish affirmative action quotas and that the law does not endorse any particular way of life. None of these statements are necessary. Accordingly, this section serves no purpose and should be repealed.

In conclusion, The Legal Aid Society commends the City Council's efforts to enact laws that protect New York City's workers. We look forward to continuing to work together to ensure that all workers, especially low-income and vulnerable workers, have a fair chance to succeed at their jobs and provide for their families.

Respectfully Submitted:

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10 years a better balance the work and family legal center

FOR THE RECORD

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Testimony before the New York City Council Civil Rights Committee
December 9, 2015

Submitted by Phoebe Taubman, Senior Staff Attorney
A Better Balance: The Work and Family Legal Center

A Better Balance is a New York City-based legal advocacy organization dedicated to promoting fairness in the workplace and helping workers across the economic spectrum care for their families without risking their economic security. A Better Balance also hosts a free hotline to assist low-income working New Yorkers with pregnancy discrimination, caregiver discrimination, pay discrimination, and other related issues. We receive calls from men and women across the tri-state area as well as from individuals all over the nation in response to our advocacy efforts.

A Better Balance joins our colleagues in supporting the passage of Intro 814. In passing this bill, the Council will lock in important gains we have made from the Restoration Act, including the *Williams* case. That decision made clear that a wide range of harassment violates the New York City Human Rights Law, and that degrees of severity and pervasiveness go only to the question of damages, not liability. The *Williams* decision is not a decision from New York's highest court, however, and the passage of Intro 814 will make sure that its holding

cannot be disturbed.

Intro 814 is important to remind courts of the need for "development of an independent body of jurisprudence for the New York city human rights law that is maximally protective of civil rights in all circumstances." And the provision that says that exceptions shall be construed narrowly in order to maximize deterrence is important, too. A Better Balance worked very hard, along with other civil rights advocacy groups, to pass a law in 2013 clarifying that employers are required to reasonably accommodate the needs of an employee for her pregnancy, childbirth, or related condition.[1] Like the reasonable accommodation provision for disability, there is an exception where the covered entity can prove "undue hardship." But unlike the religious accommodation provision, there is no limitation excusing the covered entity from making accommodations that require "significant expense or difficulty."[2] In other words, even accommodations that do require significant expense or difficulty do not necessarily cause hardship, let alone undue hardship for disability and pregnancy accommodation purposes. Intro 814 makes sure that no court is able to insert such a provision as a matter of judicial fiat.

Finally, we anticipate that a case will come to arise under the City Human Rights Law in connection with the problem of how the absence of flexibility and/or the imposition of unpredictable schedules and mandatory overtime in workplaces have a disparate impact

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[1] Local Law 78 of 2013.

[2] Admin. Code § 8-107(3)(b).

on women. Intro 814 helps make sure that the disparate impact provisions of the law – like all other provisions – are interpreted robustly.

Legal Support Unit

Legal Services NYC

TESTIMONY OF LEGAL SERVICES – NYC

New York City Council, Committee on Civil Rights

Hearing on December 9, 2015

Good afternoon. My name is Christine Clarke and I am an attorney at Legal Services NYC, the City's largest provider of free civil legal services to low-income New Yorkers. I represent clients who face discrimination on the basis of race, gender, national origin, sexual orientation, disability, source of income, and other categories protected by the New York City Human Rights Law.

Firstly, I would like to thank the Committee on Civil Rights for holding this hearing today, and to the City Councilmembers who have worked so hard to support the work of civil rights advocates throughout the city and to strengthen our civil rights laws.

Secondly, I hope and expect that my colleagues here today will be testifying with respect to Intro 819 – concerning the anachronistic and offensive exemptions currently in the Human Rights Law with respect to sexual orientation discrimination. So before I begin, please let me state unequivocally that a Human Rights Law that treats victims of sexual orientation discrimination differently from other victims of discrimination does a disservice, both to our client base at Legal Services NYC, and to the City of New York, by enshrining bigotry into our civil rights law.

The bulk of my testimony today, however, concerns Intro 818, concerning attorneys fees awarded to lawyers who bring successful discrimination cases under the New York City Human Rights law.

Most civil rights statutes on a federal, state, and city level work hand in hand with governmental enforcement bodies, like the Equal Employment Opportunity Commission federally, and the New York City Commission on Human Rights here in the City. However, the drafters of these civil rights laws, including the drafters of our own New York City Human Rights Law, were well aware that these governmental enforcement bodies were not equipped to fully enforce these civil

rights laws on behalf of everyone. They simply do not have the capacity or resources. The drafters of these laws knew equally what we all know here: that many victims of discrimination do not have the financial means to hire a private attorney to enforce their rights.

As a result, these civil rights statutes – including the New York City Human Rights Law – include a provision for statutory attorneys fees, so that any lawyer may represent a victim of discrimination in a lawsuit and, if the lawyer is successful, the court may award that lawyer fees for the time spent on the case, which are then paid by the defendant.

Statutory attorneys fees, therefore, are said to create "private attorneys general," by essentially compensating and incentivizing private attorneys to help enforce our civil rights statutes on behalf of everyone, even those who cannot pay for a lawyer. The inclusion of statutory attorneys fees in our civil rights statutes constitutes a public statement that we believe that low income individuals deserve to have their civil rights protected and that, in fact, it is in the public good to ensure that meritorious anti-discrimination lawsuits are brought, regardless of the financial resources of any individual plaintiff.

However, if Intro 818 is not passed, our existing attorneys fees structure does not meet these lofty goals and, as a result, hurts low-income victims of discrimination in Brooklyn, Queens, and Staten Island.

The actual rates for court awarded attorneys fees under federal anti-discrimination law are determined by the "prevailing market rate" in different federal judicial districts (this is known as the "forum rule"). That prevailing rate is set by case law and also "the court's own familiarity with the rates prevailing in the district."[1]

New York City, despite being one united city, is divided into separate judicial districts: Manhattan and the Bronx are part of the Southern District of New York, and Queens, Brooklyn, and Staten Island are part of the Eastern District. As a result, the attorneys fees awarded to lawyers who have won discrimination cases vary dramatically between boroughs.

While there is no hard and fast rule with respect to fees – which take into account the judge's own idea of what market rates are in the area, as well as the experience of the lawyer in question and the difficulty of the case at hand – it is generally understood amongst practitioners that

[1] *Farbotko v. Clinton Cnty of N.Y.*, 433 F.3d 204, 209 (2d Cir. 2005)

lawyers who win anti-discrimination cases in Brooklyn, Queens, and Staten Island can expect the court to award attorneys fees at only about two-thirds the rate generally awarded in Manhattan and the Bronx, sometimes even less. This is the case regardless of where the lawyer has their office or conducts most of their business.

So, we must ask ourselves: what incentives are we creating for these private attorneys general? A lawyer with limited resources, faced with two possible cases, one in Manhattan and one in Brooklyn, will almost certainly take the case in Manhattan or risk earning only two-thirds as much for the exact same work. Thus, in fact, a case based in Brooklyn must be roughly 33% stronger than a case in Manhattan to attract the same kind of attorney.

Having worked in previously in private practice as a plaintiff-side employment lawyer, I can attest from my own experience to the fact that this imbalance in attorneys fees which Intro 818 seeks to address has very real consequences for the kinds of cases lawyers take and, consequently, the kinds of legal representation available to low-income New Yorkers in different boroughs. Lawyers face tough choices about what cases they can take, but having to decide based on the borough in which the incident took place is heartbreaking when that borough is a mere 15 minute walk away over the Brooklyn Bridge.

This imbalance in fees, however, is purely a creature of federal law. There is no reason we need to replicate this in New York City Law. We can affirmatively state that we are one city and that low income New Yorkers have the right to be free from discrimination regardless of what borough they live or work in.

Intro 818 would do precisely that, by ensuring that lawyers who bring successful discrimination suits will receive statutory attorneys fees set by the same standard, no matter which federal judicial district the case happens to be venued in.

Legal Services NYC serves low-income New Yorkers in all five boroughs. Our resources are limited, and so we also rely on the private bar to help our clients enforce their rights. Our clients deserve to have the promises of our civil rights statutes upheld – the promise that all those who suffer discrimination and who have litigable, meritorious discrimination claims may have a fair opportunity to find legal representation, regardless of the borough from which their claims arise.

Thank you.

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Testimony of Margaret McIntyre on behalf of the

National Employment Lawyers Association / New York Affiliate (NELA/NY)

in support of Intro 814, December 9, 2015

My name is Margaret McIntyre. I have been representing victims of discrimination for 20 years. On behalf of NELA/NY, I testify today to express our strong support for Intro 814. Our nearly 400 attorney members have been on the front line of fighting in court to vindicate the civil rights of New Yorkers, and we know how important it is for courts to approach cases with an appreciation that the law must be interpreted with an understanding of how important it is to rid our city of discrimination. As stated in *Bennett,* one of the cases whose interpretative guidance would be ratified by Intro 814:

> [T]he existence of discrimination — a profound evil that New York City, as a matter of fundamental public policy, seeks to eliminate — demands that the courts' treatment of such claims maximize the ability to ferret out such discrimination, not create room for discriminators to avoid having to answer for their actions before a jury of their peers.[1]

Or, as *Williams* explains:

> There is significant guidance in understanding the meaning of the term "uniquely broad and remedial." For example, in telling us that the City HRL is to be interpreted "in line with the purposes of the fundamental amendments to the law enacted in 1991," the Council's committee was referring to amendments that were "consistent in tone and approach: every change either expanded coverage, limited an exemption, increased responsibility, or broadened remedies. In case after case, the balance struck by the Amendments favored victims and the interests of enforcement over the claimed needs of covered entities in ways materially different from those incorporated into state and federal law."[2]

[1] *Bennett v. Health Management Systems, Inc.,* 92 A.D.3d 29, 38 (1st Dept. 2011).

[2] *Williams v. New York City Housing Auth.*, 61 A.D. 3d 62, 68 (1st Dept. 2009).

What does this mean as a practical matter? It means that, courts are supposed to treat the law as expansively as possible or, as *Albunio* says, all of its provisions are to be interpreted "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible."[3]

Once Intro 814 is enacted into law, there will be no doubt that the interpretations set forth in that case and in *Williams* and *Bennett* must be accepted and that the roadmap set out by the cases must be followed.

As has been pointed out elsewhere, proper administration of the City Human Rights Law requires the recognition that, "The need today for the development of the provisions of the City Human Rights Law by the process of judicial decision-making is not unlike the need for
the development of the provisions of Title VII by the process of judicial decision-making which followed the passage of the Civil Rights Act of 1964."[4]

In other words, rather than taking the easy approach – assuming that older cases have properly interpreted the law – a court must in each case consider whether the analysis required by the enhanced liberal construction provision had been followed. If not, the court must do that analysis itself.

As an attorney in private practice who represents employees with discrimination claims, I believe it is critically important that the City Council ratify the decisions made in *Albunio, Bennett and Williams.*

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[3] *Albunio v. City of New York,* 16 N.Y.3d 472, 477-78 (N.Y. 2011).

[4] *A Return to Eyes on the Prize,* 33 Fordham Urb. L.J. 255, 259 (2006).

There continue to be courts that do not follow these decisions and dismiss on motions for summary judgment cases that should be decided by juries. Those courts' decisions then create new case law that is contrary to these decisions and that new case law emboldens defendants to seek summary judgment even if there is evidence of discrimination in the record. A clear signal from the City Council that summary judgment is only available in rare cases will protect victims of discrimination from having their cases unduly delayed by unnecessary motion practice.

I urge the quick passage of Intro 814.

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Testimony of Michael Grenert on behalf of the

National Employment Lawyers Association / New York Affiliate (NELA/NY)

in support of Intro 818

December 9, 2015

My name is Michael Grenert. I have been representing victims of discrimination for 19 years. On behalf of NELA/NY, I want to thank Chair Mealy for introducing Intro 818 and am here today to express our support for that legislation. Intro 818 takes three important steps to make it easier for victims of discrimination to vindicate their rights.

First, the bill provides for the recovery of expert fees and other costs. It is often the case that an expert is necessary – whether to provide testimony as to how a victim has been affected by the discrimination, testimony as to the statistical composition of a workforce, or otherwise – but retaining one is generally an expensive proposition. Without assurance that these fees will be recovered, an attorney may not be able to retain the experts she needs, or may not even take the case at all. With Intro 818, this barrier will be removed.

Second, the bill removes the penalty currently suffered for attorneys who work in New York City but who do not work in Manhattan. The Human Rights Law is designed to encourage the prosecution of acts of discrimination, and making sure that these attorneys do not have their fees reduced because of where in the city they work is an important step. Please remember that the fees are still being limited to

those charged by attorneys of "similar skill and experience."

Third, the bill deals with the fact that attorney's fees are currently only available for court proceedings, not administrative proceedings before the Commission. There have been and will continue to be reasons why many cases will be brought in court (including the fact that it is only in court that punitive damages are available and the fact that the plaintiff has more control over proceedings in court). But there are cases that should appropriately be brought to the Commission. Many times, our colleagues cannot afford to bring cases at the Commission because: (1) the damages involved are not sufficient to be able to handle the case on a contingency fee basis; and (2) no fees are available. We anticipate that the availability of attorney's fees at the Commission will encourage many more cases to be filed there.

It is almost always the case that, when expanding the strength of a civil rights law, there is someone who will cry that the sky is falling. We would remind the Committee that fees are only available when the plaintiff has prevailed. In other words, if the case does not have merit, fees will not be available. So the decision really comes down to whether meritorious cases of discrimination should be encouraged to be brought. Doing so is essential, we think, and Intro 818 helps in the process. We urge its passage.

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STATEMENT BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CIVIL RIGHTS IN SUPPORT OF INT. 0814-2015, DEC. 9, 2015

My name is Colleen Meenan, and I am a practicing attorney for the past 25 years here in New York City with a focus in representing the rights of employees to equal treatment and fairness in the work place.

I was the lead trial attorney in the case of Robert Sorrenti, a former NYPD sergeant who sued the New York City Police Department because he was denied a position working with children by a police chief who believed that Sorrenti was a gay man and as such should not be working with children. Former police captain Lori Albunio and police lieutenant Tom Connors had advocated for Sorrenti to receive the position in Youth Services, and after they advised Police Chief James Hall of their support for Sorrenti, each suffered career ending retaliation.

All of these officers sued the police department seeking to vindicate their long standing careers and reputations within the New York City Police Department. All of the cases were consolidated for pre-trial matters and for trial before a jury here in Manhattan which lasted almost 30 days and in the end the jury agreed that these officers were treated unlawfully and awarded each monetary damages. As the lead attorney in these cases at trial and in post-trial submissions, I am intimately aware of the facts, the legal arguments, and the extraordinary burden that comes to bear upon plaintiffs in such cases when they challenge unlawful conduct within a powerful institution.

The jury decision in Lori Albunio's case and Tom Connors case was challenged all the way up to the Court of Appeals and it is the findings in that legal decision which are of tremendous importance to all employees such as Albunio who seek vindication in the Court for work place wrongdoing. That Albunio decision made clear, among other things, that a jury is permitted to consider a wide range of indirect proof of discrimination.

After 25 years of representing blue collar and low wage employees, I can tell you this: the proposed law gives both employers and employees a better chance of having a dispute heard by a jury and that it the way it should be. An employer must not be given the benefit of doubt just because it happens to be the City of New York or any other powerful institution. My experience and work place realities make clear that it is extremely difficult for a plaintiff often without witnesses, direct evidence and all the documents to vindicate some wrong doing. And I have lost cases and I have won cases at trial. The right to a jury trial is the essence of our system of justice and is the best determinative of rights and wrongs in the employee-employer relationship. Just give workers a fairer chance to get there.

I would like to thank you for affording me the opportunity to speak before you today and I also would like to thank council member Lander, the prime sponsor of this bill.

Please pass this bill.

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Statement of Kenneth Kimerling, Legal Director

Asian American Legal Defense and Education Fund

in Support of Intro 814

December 9, 2015

The Asian American Legal Defense and Education Fund is a national organization that engages in litigation, advocacy, education, and organizing to protect and promote the rights of Asian Americans. Intro 814 protects the gains made by the 2005 Local Civil Rights Restoration Act, and we support its passage.

In the years since *Williams* was decided, I don't think that there has been full appreciation of the fact that the decision held that *all* cases that had failed to interpret the City Human Rights Law independently in an way to accomplish the law's uniquely broad and remedial purposes were being "legislatively overruled." [1] These included several pre-2005 amendment cases: the marital status element of *Levin v. Yeshiva University*, which had an unduly narrow interpretation of that type of discrimination; *Priore v. New York Yankees,* which wrongly concluded that individual employees were not liable for their own discriminatory acts; *Forrest v. Jewish Guild,* which improperly conflated state and city human rights law analysis; and *McGrath v. Toys "R" Us,* which perversely made the City Human Rights Law vulnerable to being narrowed whenever

[1] *Williams v. New York City Housing Auth.*, 61 A.D. 3d 62, 67-68 (1st Dept. 2009).

federal or state law was narrowed.[2]

Beyond this, *Williams* held, "areas of law that have been settled by virtue of interpretations of federal or State law 'will now be reopened for argument and analysis…As such, advocates will be able to argue afresh (or for the first time) a wide range of issues'" under the City Human Rights Law.[3]

Finally, *Williams* made clear that the text and legislative history of the 2005 Local Civil Rights Restoration Act "meld the broadest vision of social justice with the strongest law enforcement deterrent."[4]

Any objection to Intro 814's ratification of the interpretations and application of particular cases, including *Williams,* is remarkably ill-founded. There any legal impediment to doing so. Moreover, ratification is the only method by which other courts can be directed to incorporate *all* of the elements of how these cases interpreted the law. The is particularly important because there is no practical way to list in legislation what factors the cases treated as pertinent to a liberal construction analysis and how those cases then applied the factors to particular issues at hand. The only way to proceed is to present the cases in their entirely as illustrations of the proper procedure that should be emulated.

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[2] *Id.* at 67.

[3] *Id.* at 77, fn. 24 (citation omitted).

[4] *Id.* at 68 (citation omitted).

Doing this will encourage courts and advocates to recognize that the City Human Rights Law, despite its age, is actually in the early stages of its independent development, a development that needs active assistance in the form of the thorough-going analysis that the enhanced liberal construction provision requires.

It is by no means unprecedented for legislation to refer to particular cases, and Intro 814's doing so is consistent with the tradition of innovation that has characterized the City Human Rights Law over the last 25 years. AALDEF urges the Committee to pass Intro 814 promptly.

EISENBERG & SCHNELL LLP
ATTORNEYS AT LAW

HERBERT EISENBERG
LAURA S. SCHNELL

JULIAN R. BIRNBAUM
Of Counsel

Testimony of Herbert Eisenberg

My name is Herbert Eisenberg and I'm a partner in the law firm of Eisenberg & Schnell. I'm a past president of the New York Affiliate of the National Employee Lawyers Association, and have been a member of NELA's National Executive Board for over a decade and previously served as the NELA National Vice President for Legislation and Public Policy. I have represented countless victims of discrimination and have been doing so for more than thirty years.

I am here today to express my support for Intros 814, 818, and 819, and to explain in particular why passing Intro 814 is so critical to the ability of victims of discrimination to vindicate their rights.

As you will hear from some of my colleagues as well, you need to be in court regularly to see just how much resistance there is to interpreting civil rights laws so that they can fulfill their purpose of keeping the workplace free of discrimination. A tremendous amount of time energy and effort is spent, for example, with defendants trying to come up with loopholes. That is one reason why Intro 814's provision requiring that

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exceptions be interpreted narrowly is important. It not only helps in terms of the exceptions specifically set out in the law, it makes clear that judges should be very reluctant to create or permit new exceptions or exemptions of their own.

More generally, the provision of the law explaining its liberal construction is supposed to provide guidance. The provision was very helpfully amended by the Restoration Act. But the issue of *how* to interpret – discussed in the Restoration Act's committee report – has only been taken up by a few cases, *Williams* and *Bennett* among them. Unfortunately, this is guidance that is too infrequently used by judges and must be reaffirmed.

One of the many important things that *Williams* does is it points important sources for understanding the Restoration Act, and, particularly, for understanding the amendment to the construction provision.

This included the statement on the floor of the Council by Council Member Palma when the Council was getting ready to vote on the Restoration Act. She provided examples of many cases that had failed to interpret the City Human Rights Law to fulfill its uniquely broad purposes, that had ignored the text of the law, or both. With the Restoration Act, she explained, "these cases and others like them will no longer hinder the vindication of

our civil rights." [1]

The *Williams* case also treated *A Return to Eyes on the Prize*,[2] the comprehensive law review article describing the intent and intended consequences of the Restoration Act as an authoritative source. It drew on the article extensively. It detailed the article's focus on the reasons for and the method to interpret the enhanced construction provision of the Code. For example, the decision cited approvingly the observation that, in light of the enhanced liberal construction requirement, "areas of law that have been settled by virtue of interpretations of federal or State law 'will now be reopened for argument and analysis...As such, advocates will be able to argue afresh (or for the first time) a wide range of issues'" under the City Human Rights Law.[3]

Will Intro 814 guarantee that courts will interpret the City Human Rights Law correctly? No, but it will be a powerful tool in the hands of advocates to be able to argue just how courts should approach these cases. I urge you to pass this legislation.

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[1] *Williams v. NYC Housing Auth.*, 62 A.D.3d 62, 67 (1st Dept. 2009). The illustrations were the marital status element of *Levin v. Yeshiva University*, which had an unduly narrow interpretation of that type of discrimination; *Priore v. New York Yankees;*, which wrongly concluded that individual employees were not liable for their own discriminatory acts; *Forrest v. Jewish Guild,* which improperly conflated state and city human rights law analysis; and *McGrath v. Toys "R" Us,* which perversely made the City Human Rights Law vulnerable to being narrowed whenever federal or state law was narrowed.

[2] 33 Fordham Urb. L.J. 255 (2006).

[3] *Williams*, 61 A.D.3d at 77, fn. 24.

LAW OFFICE OF DANIELA NANAU, P.C.

Statement of Daniela Nanau, Esq.
before the Civil Rights Committee of the New York City Council
December 9, 2015

My name is Daniela Nanau and I am an employment lawyer with a solo practice in Central Queens. I am very grateful for this opportunity to address the Civil Rights Committee to express my strong support for Intro 814.

The enactment of Intro 814 is vitally important because it will, among other important things, codify several important court cases that demonstrate how to practically implement the intent of the City Council regarding the expansive breadth of the New York City Human Rights Law.

Intro 814 will act as a bulwark against the inclination of some courts to again narrow construing the City Human Rights Law again. Preventing that rollback is critical. I feel so strongly about this that I came all the way from Central Queens to share with you information about a case I litigated recently that, I think, demonstrates how singularly powerful the City Human Rights law is and must remain.

My client – let's call him Cliff – worked in the mailroom at a large company in Manhattan. Cliff was unlike the other men in the mailroom in that he did not engage in openly macho behavior such as sexual banter.

Instead, Cliff focused taking on additional duties at work, in hopes of eventually getting a promotion to assistant manager, and because he liked to earn overtime, which allowed him to afford himself fashionable sneakers and expensive clothing.

Cliff's focus on his attire encouraged his male co-workers to verbally abuse him. I apologize in advance for using any language that offends anyone here but this is what Cliff was exposed to on a daily basis by his co-workers for years. They called him a "faggot" and "girlie boy," and excluded him from conversations because, they claimed, Cliff "liked to sleep with boys."

Cliff is a very private person and never discussed his personal relationships at work with anyone but this did not deter his co-workers from subjecting him to abusive comments informed by stereotypes about how quote

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unquote real men act. Cliff's supervisor, let's call her Mary, she knew about the co-worker harassment and did nothing to stop it. In fact, Mary encouraged it by gossiping about Cliff's sexual orientation and occasionally Mary verbally abused him by telling Cliff he was "not a real man" when he received personal items in the mail at work, such as new sneakers or clothes.

When Cliff told Mary he did not want to participate in a voluntary blood drive on day, Mary called him "faggot" in front of his entire department, which another employee reported to the HR Department because she was so shocked by such brazen harassment. When Cliff confirmed for HR that Mary had subjected him to verbal abuse, Mary retaliated against Cliff by preventing him from getting the promotion to assistant manager and ultimately had him fired.

Even though the abuse Cliff was subjected to was so bad that another co-worker went to HR to complain about it, on these facts, it would have been very difficult to meet the higher federal or NY State Human Rights Law standard for a hostile work environment. The co-worker abuse happened during the first few years of Cliff's time at his employer. Then a few months passed during which no incidents of harassment occurred, and then Mary told Cliff he was "not a real man" several times before calling him a faggot. Because of that passage of time, the employer's lawyer would try to slice and dice the allegations to make the conduct sound less extreme, and as Cliff's attorney, I would have had a tough time getting a federal court to allow the case to proceed to the trial.

What happened next occurred because of the *Williams* case. I filed a Charge of Discrimination with the EEOC, which agreed to mediate the case.

At the mediation, predictably, the employer's attorney argued that the harassment alleged was not enough to meet the "severe or pervasive" standard.

I agreed that such a possibility existed. However, I was able to argue convincingly that even if the federal harassment claim was dismissed, the harassment alleged was enough to make out a claim under the New York City Human Rights Law. Because a separate retaliation claim was strong enough to bring as a federal claim, I argued that the case would stay in federal court, *all* of the claims would be given to the jury to decide, and no one would care ultimately under which statute what claim was brought. In other words, because of the City Law, I was pretty certain Cliff and I were still going to be able to get the case to a jury trial in federal court if his former employer did not settle.

Defendant's lawyer recognized this, too.

About an hour after I made this observation about the City Law claim, Cliff's case settled for six figures. I am happy to report that Cliff is using his settlement money to return to school and get his degree so he can get a better job and never work in a mailroom again. In other words, after enduring many years of misery because he was abused at work because of the non-stereotypical way in which he expresses his gender, Cliff received compensation and used that money to dramatically improve his life.

The wide breadth of the City Law is what made the difference in Cliff's case, and allowed him to receive compensation even though he had a technical issue – that six-month lapse in the stream of verbal abuse he otherwise had to put up with for many years – which would have otherwise doomed his case.

But the discriminatory treatment that Cliff was subjected to was very real and the economic and emotional damage the hostile work environment caused was significant. No one should loose out on enforcing their civil rights because of technical issues like small lapses in time, when they can otherwise prove their case, like Cliff.

I think cases like Cliff's demonstrate that the City Law more comprehensively protects New Yorkers against illegal discrimination than other statutes out there meant to do the same thing. Intro 814 will protect the gains of the Restoration Act and allow me and my colleagues the tools with which to make the City Law even stronger. For this reason, please support Intro 814.

Thank you.

Lambda Legal
making the case for equality

Testimony of Ryan Rasdall, Legal Assistant, Transgender Rights Project, Lambda Legal

Before the New York City Council Committee on Civil Rights

December 9, 2015 at 1:00 pm

Good afternoon. My name is Ryan Rasdall and I work at Lambda Legal as the Legal Assistant to the Transgender Rights Project. I am here today to present Lambda Legal's testimony in support of Intros 814, 818, and 819.

Founded in 1973, Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and those with HIV through impact litigation, education and public policy work.

I want first of all to note our support for Intros 819 and 818. Intro 819, which is long overdue, finally removes the second-class status of the prohibition against discrimination on the basis of sexual orientation by eliminating the special disclaimer enacted back when sexual orientation coverage was added in the 1980s. We also support the clarifications to the fee provisions set out in Intro 818, including the provision that makes clear that a prevailing party is entitled to reimbursement for expert fees.

Principally, though, I wish to convey Lambda Legal's support for Intro 814, the amendment to the construction section of the law. Making explicit that courts construing the City Human Rights law must exercise independent jurisprudence

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that is "maximally protective of civil rights in all circumstances" is an important step forward. Additionally, the provision insisting that exceptions and exemptions be narrowly construed is the appropriate mirror image to the existing provision that coverage must be broadly construed.

Finally, ratifying *Albunio, Williams,* and *Bennett* is very important. The guidance these cases provide in terms of how to interpret the law so as to properly allow plaintiffs to vindicate their rights through the courts is consistent with the principles the Council has previously set out. These cases should be incorporated into the law so that courts and litigants have the benefit of this important guidance as additional issues emerge under the City Human Rights Law. Thus, for example, following the guidance of these cases would help ensure that transgender people, like myself, will not face undue limitations on their ability to seek redress under the City Human Rights Law. Doing so would also encourage judges to give due respect to litigants' rights to bring their cases before a jury. Additionally, it would also encourage courts to adopt the important guidance in *Williams* that discrimination injuries are *per se* serious injuries.

I urge you to pass Intros 814, 818, and 819 to take additional steps to move the Human Rights Law forward.

Thank you.

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STATEMENT OF THE BLACK INSTITUTE IN SUPPORT OF INTRO 814

The Black Institute urges the prompt adoption of Intro 814. The passage of the Restoration Act 10 years ago was a landmark event – it freed the local Human Rights Law from being treated as nothing more than a carbon copy of its federal and state counterparts. Locking in the gains of cases that have followed the Restoration Act's command of broad overage is important, of course, but there is work that remains to be done.

Techniques and methods of discrimination always evolve. In these circumstances, we need to see courts take a more active role in combatting emerging problems. Intro 814 provide a clear, progressive path that advocates will be able to push courts to pursue.

For example, one of the basic provisions of the Human Rights Law is prohibiting employers from refusing to "hire or employ" any person. There are many different relationships that are encompassed by the act of hiring or employing. The synonyms for "hire or employ" include engage, recruit, appoint, take on, sign up, enroll, commission, enlist, and contract. That obviously includes relationships beyond those of a full-time salaried worker. The key cases interpreting the Restoration Act make clear that courts are not at liberty to narrow the scope of the law when there is a reasonable broader interpretation available.

Intro 814 will ensure that the Human Rights Law will adapt to changing times.

THE COUNCIL
THE CITY OF NEW YORK

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Appearance Card

I intend to appear and speak on Int. No. 818 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Michael Grenert

Address: 200 Riverside Blvd., NY, NY

I represent: NELA/NY

Address: 39 Broadway, NY, NY

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Dana Sussman, Special Counsel

Address: 100 Gold Street, 2 ~~Carmelyn P. Malalis~~

I represent: Commission on Human Rights

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Commissioner Carmelyn P. Malalis

Address: 100 Gold Street Suite 4600

I represent: Commission on Human Rights

Address: _____

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: DARNLEY STEWART

Address: 31 WEST 93rd ST APT 1B NY

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/09/15

(PLEASE PRINT)

Name: Brian Heller

Address: 295 Madison Ave, NY, NY 10017

I represent: _____

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: DEC 9, 2015

(PLEASE PRINT)

Name: DANIELA NAVAO, ESQ.

Address: 8903 RUTLEDGE AVENUE GLENDALE NY

I represent: LAW OFFICE OF DANIELA NAVAO P.C.

Address: SAME AS ABOVE

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 12-9-15

(PLEASE PRINT)

Name: Ryan Rasdall

Address: _____

I represent: Lambda Legal

Address: 120 Wall Street 19th Fl, NY, NY 10005

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12-9-15

(PLEASE PRINT)

Name: CRAIG GURIAN

Address: 57 W 57 St NY 10019

I represent: FAIR PLAY LEGISLATION

Address: 57 W 57 St NY 10019

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☑ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Lauren Betters

Address: 310 E. 2nd ST. #10K New York, NY 10009

I represent: Gender Equality Law Center

Address: 15 West 28th Street, Suite #7A New York, NY 10001

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Dan Alterman

Address: Alterman & Boop

I represent: NELA

Address: 99 Hudson

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Kenneth Kimerling

Address: 99 Hudson St NY NY 10013

I represent: Asian American Legal Defense and Educ Fund

Address: 99 Huden St NY NY 10013

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 818 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Christine Clarke

Address: 40 Worth, Suite 606 NY NY

I represent: Legal Services NYC

Address: 40 Worth St. Suite 606

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: Dec 9, 2015

(PLEASE PRINT)

Name: Felicia Nestor Esq

Address: 11 Broadway, Ste 615, NYC, NY 10004

I represent: Rita Sethi

Address:

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814, 818, 819 Res. No. _____

☑ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Karen Cacace

Address: 199 Water st

I represent: The Legal Aid Society

Address:

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Herbert Eisenberg

Address: 233 Broadway Suite 2704 New York, N.Y. 10279

I represent: self, Employee Attorney Advocate - Eisenberg & Schnell LLP

Address: Same

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/15

(PLEASE PRINT)

Name: Margaret McIntyre

Address: 299 BROADWAY NY NY 10007

I represent: NELA/NY

Address:

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THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/14

(PLEASE PRINT)

Name: Colleen Meenan

Address: 299 Broadway Ste 1310

I represent:

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 814 Res. No. _____

☒ in favor ☐ in opposition

Date: 12/9/2015

(PLEASE PRINT)

Name: Felix Matos Lockrum

Address: ~~39 Broadway, Suite 1740~~ 53 Irving Place, Brooklyn

I represent: The Black Institute

Address: 39 Broadway, Suite 1740

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