

# MEMORANDUM

HRCCDC  
Agenda Item No. 1(G)1

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**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** February 13, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Ordinance related to Fair  
Housing Discrimination testers;  
amending chapter 11A, article II,  
section 11A-11 of the Code;  
amending definition of the word  
“person” to include testers

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The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Danielle Cohen Higgins.



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Geri Bonzon-Keenan  
County Attorney

GBK/gh

MDC001

# Memorandum



**8 UNY:** March 7, 2023

**Hc.:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**: fca .:** Daniella Levine Cava  
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

**Gi VYWh** Fiscal Impact Statement for Ordinance Relating to Fair Housing Discrimination Testers

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It is not anticipated that the implementation of this Ordinance will have a fiscal impact on the County. Employees who staff the Miami-Dade Commission on Human Rights currently investigate housing discrimination complaints filed by testers and do not expect a large increase in filings from these individuals in the near future.

A handwritten signature in blue ink that reads "Edward Marquez".  

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Edward Marquez  
Chief Financial Officer

# Memorandum



**Date:** March 7, 2023

**To:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor 

**Subject:** Social Equity Statement for Ordinance Amendment Relating to Fair Housing  
Discrimination Testers


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The proposed ordinance amends Chapter 11A, Article II, Section 11A-11 of the Code of Miami-Dade County, to further define the word “person” to include testers, as applicable in addressing fair housing discrimination.

Even though federal, state and local laws protect many from overt housing discrimination, subtle forms still persist. As such, many housing advocates throughout the US have turned to testing as the most effective tool to investigate violations of fair housing laws.

The proposed ordinance will provide social benefits to the community in many ways. Fair housing testers are usually individuals from the local community who have been specifically trained to conduct fair housing test. Testing can be used by agencies, such as the Miami-Dade Commission on Human Rights (CHR), to demonstrate whether a violation of our Human Rights Ordinance has occurred. It is often challenging to detect deceptive barriers such as false information, neighborhood steering and the application of different standards; however, testers conduct covert investigations by posing as housing applicants and documenting the treatment they receive from housing providers. This information is subsequently provided to Fair Housing agencies, such as the CHR, as evidence of discrimination.

Including testers will broaden the scope of individuals who can bring violations of Chapter 11A to the attention of the CHR, as they currently investigate many of these same types of cases by several other entities defined as a “person” under the Ordinance.

  
Edward Marquez  
Chief Financial Officer



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** October 6, 2022

**FROM:**   
Gen. Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 4(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 4(A)  
10-6-22

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATED TO FAIR HOUSING DISCRIMINATION TESTERS; AMENDING CHAPTER 11A, ARTICLE II, SECTION 11A-11 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AMENDING DEFINITION OF THE WORD “PERSON” TO INCLUDE TESTERS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

**WHEREAS**, since 1969, Miami-Dade County has had a fair housing ordinance that prohibits housing discrimination within the County; and

**WHEREAS**, since the original enactment of the fair housing ordinance, this Board enacted the present day anti-discrimination ordinance that is codified in chapter 11A of the Code of Miami-Dade County (“Human Rights Ordinance”); and

**WHEREAS**, the purpose of Human Rights Ordinance is to eliminate and prevent discrimination in employment, family leave, public accommodations, credit and financing practices, and in housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or expression, status as a victim of domestic violence, dating violence or stalking, or source of income as it pertains to housing only (“protected classes”); and

**WHEREAS**, pursuant to sections 11A-3 and 11A-5 of the Human Rights Ordinance, this Board established the Miami-Dade Commission on Human Rights (“CHR”), appointed a Director (“CHR Director”), and further authorized hearing officers to enforce the provisions of the ordinance; and

**WHEREAS**, the CHR Director, the CHR, and hearing officers all rely heavily on well-established federal and state case law developed by the United States Supreme Court and other federal and state courts when determining whether an aggrieved person who alleges an unlawful housing practice has legal standing to bring a claim under the Human Rights Ordinance; and

**WHEREAS**, section 11A-11 of the Human Rights Ordinance defines a person as “one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries”; and

**WHEREAS**, to have standing, a person must show that they have been injured by a discriminatory housing practice or believe that such person will be injured by a discriminatory housing practice that is about to occur; and

**WHEREAS**, historically, testers, which according to the United States Supreme Court in the 1982 case of *Havens Realty Corp. v. Coleman*, have standing to bring a fair housing discrimination complaint; and

**WHEREAS**, the Supreme Court has defined the term “testers” as “individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful discriminatory practices”; and

**WHEREAS**, the Supreme Court held that testers who receive misrepresentations from renters, sellers, or brokers of real estate concerning the availability of housing based on, for example, race, have automatic standing to sue under the Fair Housing Act since such testers have the right to receive truthful information concerning the availability of such housing; and

**WHEREAS**, the Supreme Court in *Havens* also paved the way for fair housing organizations to bring suit under the Fair Housing Act; and

**WHEREAS**, fair housing testing organizations include the Miami-based not-for-profit organization, Housing Opportunities Projects for Excellence Inc., which is funded by the United States Department of Housing and Urban Development (HUD) through HUD's Fair Housing Initiatives Program to assist people who believe they have been victims of housing discrimination, carry out testing and enforcement activities to prevent or eliminate discriminatory housing practices, and to partner with HUD to help people identify government agencies that handle complaints of housing discrimination; and

**WHEREAS**, in addition to fair housing testing organizations, in 1991, the United States Department of Justice established its Fair Housing Testing Program, which identifies unlawful housing discrimination based on race, national origin, disability, or familial status in violation of the Fair Housing Act and the Americans with Disabilities Act; and

**WHEREAS**, this Board believes that fair housing testing is a critical and beneficial component in the fight to eliminate and prevent housing discrimination based on the protected classes in Miami-Dade County; and

**WHEREAS**, in fact, since 2020, the CHR Director has been investigating 34 cases of potential discrimination involving testers; and

**WHEREAS**, notwithstanding these ongoing investigations by the CHR Director, at least one court in the County has determined that testers do not have standing under the Human Rights Ordinance even though other courts have found otherwise; and

**WHEREAS**, this Board believes that there should be no doubt that testers have standing to file complaints of unlawful housing discrimination with the CHR Director, the CHR, hearing officers, and courts of competent jurisdiction under the Human Rights Ordinance; and

**WHEREAS**, accordingly, this Board wishes to amend the Human Rights Ordinance to provide such clarification,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 11A-11 of the Code of Miami-Dade County, Florida is hereby amended as follows:<sup>1</sup>

**ARTICLE II. – HOUSING**

\* \* \*

**Sec. 11A-11. - Definitions.**

The definitions set out in Section 11A-2 shall apply to this article in addition to the definition set forth below. As used in this article:

\* \* \*

(11) Person shall mean one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 [of the United States Code], receivers, ~~[[and]]~~ fiduciaries~~>>~~, and testers. For purposes of this subsection, the word “testers” includes any person who, without an intent to rent or purchase a dwelling unit or property, poses as a renter or purchaser for the purpose of collecting evidence or gathering information of unlawful discriminatory practices.<<

~~[[12]]~~ ~~>>~~13<< Source of income shall mean the lawful, verifiable income paid directly to a tenant or paid to a representative of a

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<sup>1</sup> Words stricken through and/or ~~[[double bracketed]]~~ shall be deleted. Words underscored and/or ~~>>~~double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.



tenant, including, but not limited to, Section 8 Housing Choice Vouchers, Supplemental Security Income, Social Security, pensions and other retirement benefits.

**Section 2.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 3.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 4.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:

Prepared by:

Terrence A. Smith

Prime Sponsor: Commissioner Danielle Cohen Higgins