HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER

Your Committee recommends the adoption of "A LOCAL LAW amending the Laws of Westchester County in relation to enforcement of the Westchester County Fair Housing Law."

Your Committee is advised that the Westchester County Fair Housing Law ("County Fair Housing Law") was adopted pursuant to Local Law No. 4-2008 and amended by Local Law No. 13 - 2010. The general purpose of the County Fair Housing Law is to promote the availability and accessibility of housing and real property to all persons; to prohibit unlawful discriminatory real estate practices in real property transactions, whether direct or indirect, which deny those persons equal rights and opportunities in acquiring, disposing of, or occupying real property; and to provide enforcement mechanisms for the accomplishment of such purpose.

Your Committee is further advised that the United States Department of Housing and Urban Development ("HUD") maintains a Fair Housing Assistance Program ("FHAP"). Under FHAP, HUD provides FHAP grants annually on a noncompetitive basis to State and local fair housing enforcement agencies that have been certified as "substantially equivalent." Substantial equivalency certification takes place when a State or local agency applies for certification and HUD determines that the agency enforces a law that provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act. Under the County Fair Housing Law, the County's fair housing enforcement agency is the Fair Housing Board of the Westchester County Human Rights Commission (HRC).

Your Committee is aware that HUD has reviewed the County Fair Housing Law for

substantial equivalency and recently communicated to HRC its determination that the County Fair Housing Law lacks equivalency in one respect. HUD stated that, if an election is made to proceed to court to adjudicate a housing discrimination complaint, the local government should appear in court on the behalf of the aggrieved person at its own expense. HUD maintained that such participation by the local government is an important right under the Fair Housing Act and a necessary component of substantially equivalent laws. Note that, in the case of such elections, local government appearance in court would occur after the local fair housing enforcement agency had made a determination of probable cause in the housing discrimination complaint. HUD further stated that a failure to amend the County Fair Housing Law as indicated would result in the loss of substantial equivalency certification and participation in the FHAP program.

Your Committee finds that HUD's certification of substantial equivalency and the federal assistance available through FHAP accomplish important County priorities in fair housing. Moreover, the housing stipulation agreement requires the County to maintain substantial equivalency of the County Fair Housing Law. Your Committee therefore recommends the proposed Local Law amending the County Fair Housing Law, in order to provide for an election for court adjudication in housing discrimination complaints before the HRC Fair Housing Board, as well as to require Westchester County's participation on behalf of aggrieved persons in such civil action.

The proposed Local Law includes the following amendments: 1) authorization for any party to a housing discrimination complaint to the Fair Housing Board to elect adjudication of the complaint claims in a civil action, within certain time requirements; 2) in the event of such

election, a requirement that the Board of Legislators authorize the County Attorney to commence and maintain a civil action at County expense on behalf of the aggrieved person(s) in federal district court; 3) authorization for any aggrieved person with issues to be determined in the civil action to intervene as of right; and 4) upon a court's determination that a discriminatory housing practice has occurred or will occur, authorization for the court to provide any relief consistent with 42 U.S.C § 3613 to aggrieved persons, subject to certain discovery requirements.

Prior to taking any action on the proposed Local Law, your Honorable Board must hold a public hearing pursuant to LWC Section 209.141(4). A resolution providing for a public hearing is attached to this legislation. In addition, your Honorable Board must comply with the provisions of the State Environmental Quality Review Act (SEQRA) and its implementing regulations, 6 NYCRR Part 617. Staff has determined that the proposed local law does not constitute an action under SEQRA and environmental review is not required. Your Committee concurs with this conclusion.

In accordance with the provisions of LWC Section 209.141, an affirmative vote of a majority of the voting strength of the Board is required for approval of the attached Local Law. Your Committee, after careful consideration, recommends adoption of this Local Law.

Dated: , 2012
White Plains, New York

COMMITTEE ON

RESOLUTION NO. - 2012

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. - 2012, "A LOCAL LAW amending the Laws of Westchester County in relation to enforcement of the Westchester County Fair Housing Law." The public hearing will be held at .m. on the day of , 2012 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law. Copies of the proposed legislation are on file in the office of the Clerk of the Board of Legislators and may be inspected there by any interested party during regular business hours.

LOCAL LAW INTRO. NO. -2012

A LOCAL LAW amending the Laws of Westchester County in relation to enforcement of the Westchester County Fair Housing Law

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. Subdivision F of Section 700.28 of Chapter 700 of the Laws of Westchester County is hereby amended to read as follows:

F. Complaints - Investigation and Determination

1. Within 30 days after a complaint is filed, the Board shall determine whether it has jurisdiction.

2. Upon determination that it has jurisdiction, the Board shall determine, within 100 days of the filing of the complaint, unless impracticable to do so, whether there is probable cause to believe that the person named in the complaint, hereinafter referred to as the respondent, has engaged in, is engaging in; or is about to engage in an unlawful discriminatory real estate practice. If the Board is unable to complete the investigation within 100 days after the filing of the complaint, the Executive Director shall notify the complainant and respondent in writing of the reasons for not doing so.

3. The Executive Director shall provide written notification to both the complainant and respondent regarding the Board's determination of whether probable cause does or does not exist.

4. The Board shall make a final administrative disposition of a complaint within one (1) year of the date of receipt of a complaint, unless it is impracticable to do so. If

it is unable to do so, it shall notify the parties, in writing, of the reasons for not doing so.

5. A determination that probable cause does not exist shall be subject to judicial review upon application by any party aggrieved by a final Board order.

6. The Fair Housing Board shall have the authority to:

    a. Grant appropriate temporary or preliminary relief pending final disposition of a complaint if such action is necessary to carry out the purposes of the law;

    b. Issue and seek enforceable subpoenas;

    c. Grant actual and punitive damages;

    d. Grant equitable relief; and

    e. Provide an administrative proceeding in which a civil penalty may be assessed <u>or adjudication in court, at County expense, allowing the assessment of punitive damages against the respondent</u>.

7. <u>A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action in lieu of a hearing under subsection 6e. of this section. The election must be made not later than 20 days after the receipt by the electing person of service of the complaint or, in the case of the Board, not later than 20 days after such service. The person making such election shall give notice of doing so to the Human Rights Commission and to all other complainants and respondents to whom the charge relates.</u>

a. If an election is made under this section, the Board shall authorize, and not later than 30 days after the election is made the County Attorney shall commence and maintain, a civil action on behalf of the aggrieved person in a United States district court seeking relief under this subsection.

b. Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

c. In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under section 42 U.S.C. 3613. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

8[7]. The Board shall establish rules of practice or procedure to govern, expedite and effectuate the foregoing procedure and its own actions thereunder, provided that such rules are not inconsistent with the provisions hereof.

Section 2. This Local Law shall take effect immediately.