

187-21
UPDATED VERSION

OFFICE OF THE
DEMOCRATIC MINORITY




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Inter-Departmental Memo

To: Michael C Pulitzer, Clerk of the Legislature

From: Peter J. Clines, Esq., Minority Counsel 

CC: Hon. Richard Nicoletto, Presiding Officer

Hon. Kevan Abrahams, Minority Leader

Date: June 3, 2021

Re: A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE
IN RELATION TO AMENDING THE NASSAU COUNTY HUMAN RIGHTS LAW
TO PRECLUDE DISCRIMINATION AGAINST FIRST RESPONDERS

Attached please find the above referenced local law which has been approved as to form per the Rules of the Legislature. Kindly distribute a copy to Presiding Officer Richard Nicoletto along with our request that this item be placed on the next available legislative agenda.

Kindly provide a time stamped hard copy acknowledgement of your receipt.

Thank you.

FILED

2021 JUN 03 10:00 AM


Introduced by: Legislator Joshua A. Lafazan

Co-Sponsored by: Legislators Delia DeRiggi-Whitton, Arnold W. Drucker and Ellen W. Birnbaum

PROPOSED LOCAL LAW NO. -2021

**A LOCAL LAW TO AMEND THE NASSAU COUNTY ADMINISTRATIVE CODE IN
RELATION TO AMENDING THE NASSAU COUNTY HUMAN RIGHTS LAW TO
PRECLUDE DISCRIMINATION AGAINST FIRST RESPONDERS**

APPROVED AS TO FORM


PETER J. CLINES MINORITY COUNSEL

BE IT ENACTED by the County Legislature of the County of Nassau as follows:

Section 1. Legislative Intent.

It is the judgment of this Legislature that the recent widespread pattern of physical attacks and intimidation directed at the police has undermined the civil liberties of the community at large. It has been reported that over seven hundred federal, state and local law enforcement officers have sustained injury in civil unrest since the close of May of last year, according to United States Department of Justice data. This Legislature notes with extreme concern that in many jurisdictions, outbreaks of destructive rioting and lawlessness have deliberately targeted and victimized law enforcement officers and other first responders. This Legislature further recognizes that the clear intent of some of these attacks is to hinder or prevent the police from performing their duty to enforce the law and safeguard society from chaos and mass violence. Such violence is therefore a direct assault on the rule of law, every bit as much as suppression of speech by public authorities. It is the emphatic judgment of the Legislature that no law enforcement officer should be subjected to actual or threatened physical assault and abuse in the performance of his or her duties – not only because police officers are human beings deserving of respect, dignity and equal protection of law, but also because they are the indispensable first line of defense for everyone’s fundamental civil and human rights. As this Legislature also recognizes, our basic rights are ultimately grounded in and dependent upon the effective rule of

law and if law enforcement officers are prevented from upholding the law, these rights are little more than empty words.

Importantly, this Legislature expressly disavows any intent to excuse or minimize the gravity of incidents of police misconduct that have occurred in this country, especially those which may be motivated by racial intolerance. Because these wrongful acts are done in the name of law, they are especially corrosive to the rule of law. We believe that our law enforcement personnel join us in condemning such misconduct. Yet acts of misconduct by individual officers can never under any circumstances justify the vilification of all law enforcement personnel or acts of violence directed at police.

The police are essential to protect the constitutional right of all citizens to protest inequities they see in society. The police are essential to protect citizens' freedom to speak, or refrain from speaking, from individuals who would use threats and violence to silence those with whom they disagree or to enforce conformity of thought. The police are essential to protect our right to freedom of worship and the free exercise of religion at a time when acts of religiously motivated violence and desecration of houses of worship are surging throughout the world – including in our own country and our own county. The police are essential to protect the property rights and livelihoods of small businessmen and businesswomen, of all backgrounds, including new Americans. These rights include the right to provide for their families and to prosper, succeed and realize the American dream, without having their properties looted or destroyed. Accordingly, the Legislature concludes that the civil, human and constitutional rights of members of society are jeopardized when the police are prevented from carrying out their duty. Moreover, all first responders are essential to protecting the lives, health and safety of the community.

It is therefore declared to be the public policy of this County to acknowledge that our rights as Americans and as citizens of the State of New York cannot be enjoyed without a fully effective and functional police force. As such, it is also incumbent upon this Legislature to adopt appropriate measures which create the conditions necessary for the police to vigorously perform their mission. Naturally it is equally imperative that such police force must always be well-regulated, disciplined, dedicated to respectfully protecting the entire community and subject to diligent civilian oversight.

In view of the foregoing, the Legislature determines that there is an urgent need to enhance the legal protections afforded to our law enforcement personnel and other first responders under the Human Rights Law, in order to encourage them in their crucial service to the community, to make them whole in the face of injury suffered at the hands of rioters and other individuals bent on lawless behavior, and to deter and punish such destructive behavior in order to protect the human rights of all people. Such being the case, the Legislature hereby determines that it shall be an unlawful discriminatory practice to harass, menace, assault or injure an individual due to such individual's status as a first responder and that those who violate this provision be subject to a substantial civil penalty and as well as civil liability to the first responder. And because organized mob violence undermines the foundations of law, democracy and ordered liberty, and severely impairs the ability of citizens to engage in peaceful protest,

such damages are trebled when the first responder is injured in the course of a riot. Violators are also subject to punitive damages as a further deterrence and to injunctive relief to prevent future targeting of law enforcement personnel and other first responders. Finally, violators are liable to pay costs and attorneys' fees to facilitate the ability of first responders to exercise their rights under this section.

This Legislature respects and indeed reveres the right of all Americans to peacefully assemble to petition the government and to freely express their views and convictions whatever they may be. These are the core constitutional rights that the members of this body have sworn to preserve, protect and defend. It is the intent of this Legislature in adopting this legislation to promote such rights by helping to ensure a secure and stable environment in which those rights may be peaceably exercised. Violence directed at the rule of law and those who uphold it is intended to suppress liberty and should be deterred by all prudent means consistent with the Constitution of the United States of America and the State of New York.

Section 2. A new Section 21-9.8.1 of Title C-2 of the Nassau County Administrative Code is added as follows:

Title C-2
Unlawful Discriminatory Practices

§ 21-9.8.1 Unlawful discriminatory practices targeting first responders.

1. **Unlawful Discriminatory Practices against First Responders Prohibited. It shall be an unlawful discriminatory practice for any person to harass, menace, assault or injure an individual due to such individual's status as a first responder and such unlawful discriminatory practices are hereby prohibited. Where such first responder is in uniform, or is otherwise clearly identified as a first responder, there is an irrebuttable presumption that such harassment, menacing, assault or injury is motivated by such individual's status as a first responder.**

2. **Additional Definitions. As used in this section, "harass" shall mean to engage in conduct constituting any of the crimes of harassment under article two hundred forty of the New York State Penal Law, "menace" shall mean to engage in conduct constituting any of the crimes of menacing under article one hundred twenty of the New York State Penal Law, "assault" shall mean to engage in conduct constituting the any of the crimes of assault under article one hundred twenty of the New York State Penal Law, and "riot" shall have the meaning set forth in title eighteen United States Code section two thousand one hundred and two, subsection (a). 18 U.S. Code § 2102; "first responder" shall mean an individual who possesses "first responder status" as defined in Section 21-9.2 (q) of this Chapter and shall in addition include Nassau County corrections officers.**

3. Civil Action for Unlawful Discriminatory Practices.

- a. A first responder claiming to be aggrieved by a discriminatory practice under subsection one of this section may commence a civil action in a court of competent jurisdiction for declaratory and injunctive relief and to recover compensatory damages, punitive damages and attorney's fees and costs and for such other relief as the court may deem appropriate. Where violations of this section occur during the course of a riot in response to which the first responder is deployed, such monetary damages shall be trebled. Notwithstanding anything to the contrary in this title, such civil action may be commenced without exhaustion of any administrative remedies which may be available to the first responder. A court of competent jurisdiction is hereby authorized to determine and award attorney's fees to a prevailing first responder in such a civil action. A civil action commenced under this section must be commenced within three years after the occurrence of the alleged unlawful discriminatory practice.
- b. The private cause of action established under this section shall not require that a criminal charge be brought, or a criminal conviction be obtained as a condition precedent to the plaintiff commencing a civil action or obtaining a civil judgment.

4. Administrative Proceedings. Violations of this section shall not be subject to the administrative process set forth in section 21-9.9 of this title.

5. Civil Penalties. In addition to civil liability under subsection three of this section, any person found to have violated the provisions of this section shall be subject to a civil penalty of no more than twenty-five thousand dollars per violation that shall be recoverable for and payable to the aggrieved first responder. Where such violation is committed in the course of participating in a riot, the penalty shall be no more than fifty thousand dollars.

6. Enforcement by County Attorney. In addition to any other power which he or she may possess under this title, the County Attorney is hereby authorized and directed to obtain enforcement of the provisions of this title by commencing an action in any court of competent jurisdiction for any relief as provided under this section, including but not limited to the assessment and collection of penalties provided herein, injunctive relief including but not limited to relief enjoining violations and threatened violations of this section, monetary and punitive damages, including treble damages, to persons aggrieved, civil penalties, and attorney's fees. Such authority shall include the authority to appear as intervenor in any action commenced by a party pursuant to any provision of this title. Notwithstanding any other provision of law, any action taken by the County Attorney under this subsection shall not require a resolution of the Legislature. The Commissioner of Police is hereby authorized to request the County Attorney to commence such a civil action.

§ 3. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

§ 4. SEQRA Determination.

It is hereby determined, pursuant to the provisions of the State Environmental Quality Review Act, 8 N.Y.E.C.L, section 0101 et seq. and its implementing regulations, Part 617 of 6 N.Y.C.R.R., and Section 1611 of the County Government Law of Nassau County, that the adoption of this local law is a "Type II" Action within the meaning of Section 617 .5(c) of 6 N.Y.C.R.R., and, accordingly, is of a class of actions which do not have a significant effect on the environment, and no further review is required.

§ 5. Effective Date.

This local law shall take effect immediately after enactment.

Introduced by: Legislator Joshua A. Lafazan

Co-Sponsored by: Legislators Delia DeRiggi-Whitton, Arnold W. Drucker and Ellen W. Birnbaum

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 - b. The private cause of action established under this section shall not require that a criminal charge be brought, or a criminal conviction be obtained as a condition precedent to the plaintiff commencing a civil action or obtaining a civil judgment.
4. Administrative Proceedings. Violations of this section shall not be subject to the administrative process set forth in section 21-9.9 of this title.
5. Civil Penalties. In addition to civil liability under subsection three of this section, any person found to have violated the provisions of this section shall be subject to a civil penalty of no more than twenty-five thousand dollars per violation that shall be recoverable for and payable to the aggrieved first responder. Where such violation is committed in the course of participating in a riot, the penalty shall be no more than fifty thousand dollars.
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