

Notice of Proposed Adoption of Administrative Rules

In accord with Chapter 1-2 of the City Code, the Human Resources Department (the "Department") proposes adoption of the attached "Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15" (the "Proposed Rules"). In accord with Section 1-2-4 of the City Code, the Department provides the following information:

1. The full text of the Proposed Rules is attached to this Notice. Copies of the Proposed Rules may be obtained from the Office of the City Clerk during normal hours.
2. The purpose of the Proposed Rules is to implement the administrative, investigation, and civil penalty assessment provisions of Chapter 4-15 of the City Code (Fair Chance Hiring). These provisions give the Director of the Equal Employment/Fair Housing Office the authority and responsibility to administer Chapter 4-15, to investigate complaints alleging violation of Chapter 4-15, to assess civil penalties for violations of Chapter 4-15, and to adopt rules for these purposes.
3. The Proposed Rules are proposed for adoption by the Human Resources Director, who has administrative responsibility and authority over the Equal Employment/Fair Housing Office, and are authorized under the authority set out in Chapter 4-15. The City Attorney has examined the Proposed Rules and found them to be within the authority of the Human Resources Department to adopt.
4. Members of the public may provide comments to the proposed Rules no later than 5:00 p.m. on April 14, 2018, which is 31 days from the date of this Notice. Comments to the Proposed Rules should be directed to:

ATTN: Jonathan Babiak
City of Austin Equal Employment/Fair Housing Office
1050 East 11th Street, Suite 200
Austin, Texas 78702
(512) 972-FAIR (3247)
<http://austintexas.gov/email/fairchancehiring>

Filed with the City Clerk this 14th day of March, 2018.



Joya Hayes, Human Resources Director

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City of Austin

Rules for Investigation of Complaints and Assessment Of Civil Penalties under City Code Chapter 4-15

1. Purpose and Scope.

- (A) On March 24, 2016, the City Council approved the Fair Chance Hiring Ordinance (City Code Chapter 4-15), which became effective on April 4, 2016.
- (B) These Rules define the procedures for investigating complaints and assessing civil penalties under Chapter 4-15.

2. Definitions.

Terms defined in Chapter 4-15 shall have the same meaning when used in these Rules. In addition, in these Rules:

- (A) "Administrator" means the Equal Employment/Fair Housing Office ("EE/FHO") Administrator appointed by the City of Austin Director of Human Resources.
- (B) "Complainant" means an individual who makes an allegation of a violation of the Chapter 4-15 to the EE/FHO.
- (C) "Complaint" means a written statement signed by a Complainant alleging a violation of Chapter 4-15 by a Respondent.
- (D) "Determination" means the written decision of the Administrator stating the outcome and disposition of a Complaint.
- (E) "EE/FHO" means the Equal Employment/Fair Housing Office of the City.
- (F) "Investigator" means an employee who reports directly or indirectly to the Administrator and has responsibility for conducting investigations and/or making recommendations to the Administrator concerning Complaints.
- (G) "Preponderance of the evidence" when applied to the evaluation of whether a violation of Chapter 4-15 has occurred means that the issue under consideration is more likely true than not.
- (H) "Respondent" means the employer named in a Complaint.

3. Filing of Complaints.

- (A) The Administrator will not investigate an alleged violation of Chapter 4-15 unless the allegation is the subject of a timely Complaint filed in accord with these Rules.
- (B) The Administrator may prescribe forms and administrative procedures for filing a Complaint.
- (C) A Complaint will be timely filed under these Rules if it is filed with the EE/FHO within the time prescribed in City Code §4-15-6(B). Under these Rules:
 - (1) A Complaint will be deemed filed with the EE/FHO as of the date the Complainant first contacts the EE/FHO, whether in-person or by telephone or email, provided that the Complainant also complies with any procedures established by the Administrator under Part 3(B) of this Rule.
 - (2) If the last day for filing a Complaint under §4-15-6(B) falls on a City, state, or federal holiday, a Complaint received on the next regular City business day following the holiday will be deemed filed on the last day prescribed in §4-15-6(B).
 - (3) A Complaint received by regular mail will be deemed filed on the date the Complaint is postmarked or the postage meter date if there is no postmark.

4. Investigation of Complaints.

- (A) Investigations shall be performed in a fair, impartial, and objective manner, according to the procedures below.
- (B) The Administrator may prescribe forms and administrative procedures for the investigation of Complaints.
- (C) Upon receiving a Complaint that meets the requirements of these Rules, including any procedures prescribed under Part 3(B), the Administrator will assign the Complaint to an Investigator. The Investigator will allow the Complainant and the Respondent a full opportunity to present witness statements, documents, or other information relevant to the allegations in the Complaint, and will take or cause to be taken the following actions:
 - (1) Within 10 business days of receiving the assignment, the Investigator will attempt to schedule an initial interview with the Complainant.

- (2) Within 10 business days of receiving the assignment, the Respondent will be served with a copy of the Complaint and a request for responsive information. The Respondent will be given 21 days from the date of receipt to respond.
- (D) The Administrator will cause a subpoena to be issued and served on the Respondent in accord with City Code §4-15-7 if the Respondent fails to respond to the information request in Part 4(C)(2).
- (E) The Complainant and the Respondent may submit witness statements and documents during the investigation that prove or disprove the allegations in the Complaint. The Investigator may request additional witnesses or documents from either the Complainant or the Respondent during the investigation.
- (F) Investigations are not governed by formal rules of evidence. The Investigator and the Administrator may consider information that tends to prove or disprove the allegations in the complaint, regardless of whether such information would be admissible in a court of law.

5. Final Determinations on Complaints.

- (A) The Investigator shall submit a recommended final determination to the Administrator on each Complaint assigned to the Investigator. The recommendation shall state whether the evidence is sufficient or insufficient to establish a violation of Chapter 4-15 based on a preponderance of the evidence submitted during the investigation.
- (B) The recommended final determination shall be made to the Administrator within 90 days of assignment of the Complaint to the Investigator. The Investigator shall provide the Complainant, Respondent, and Administrator a written justification concerning any Complaint for which a recommended final determination is not made within 90 days of the date the Complaint is assigned.
- (C) The Administrator shall independently review the Complaint and the evidence gathered during the investigation, and shall consider the Investigator's recommended final determination. After such review and consideration, the Administrator shall take one of the following actions:
 - (1) The Administrator may return the Complaint to the Investigator for additional analysis or to gather and analyze additional evidence, and the Investigator shall perform the tasks assigned by the Administrator. The Investigator shall prepare a new recommended final determination for the Administrator's evaluation under this Part.

- (2) The Administrator shall dismiss the complaint if the Administrator concludes that a preponderance of the evidence does not establish a violation of Chapter 4-15.
 - (3) The Administrator shall issue a written notice of violation and proposed civil penalty to the Respondent in accord with City Code §4-15-8(A) if the Administrator concludes that a preponderance of the evidence establishes a violation of Chapter 4-15. The amount of the proposed civil penalty, including the alternative of compliance training for eligible Respondents, shall be determined under Part 6. The notice shall instruct the Respondent that a civil penalty will be assessed against the Respondent within 10 business days after the Respondent receives the notice unless the Respondent remedies the violation within that time.
- (D) If the Administrator issues a notice of violation and proposed civil penalty under Part 5(C)(3) of this Rule:
- (1) The Administrator shall issue a no-penalty violation notice to the Respondent if the Respondent establishes to the satisfaction of the Administrator that the Respondent has remedied the violation within 10 business days of receipt of the notice of violation and proposed civil penalty.
 - (2) The Administrator shall assess a civil penalty against the Respondent in the amount of the proposed civil penalty unless the Respondent establishes to the satisfaction of the Administrator that the Respondent has remedied the violation within 10 business days of receipt of the notice of violation and proposed civil penalty.
 - (3) If the Administrator has offered the Respondent compliance training as an alternative to a civil penalty under Part 6(B), the Administrator shall assess a civil penalty against the Respondent in the amount of the proposed civil penalty unless the Respondent:
 - (a) Provides written notice to the Administrator within 10 business days of receipt of the notice of violation and proposed civil penalty that the Respondent elects to complete the compliance training in lieu of the civil penalty; and
 - (b) Provides evidence satisfactory to the Administrator within 30 days of receipt of the notice of violation and proposed civil penalty that the Respondent has completed the compliance training.

- (E) A civil penalty assessed under these Rules shall constitute a liability of the Respondent to the City, and shall be enforceable against the Respondent on the same basis as any other liability to the City.
- (F) The Administrator may administratively dismiss a Complaint if a Respondent provides evidence satisfactory to the Administrator that the Respondent is exempt from Chapter 4-15, or that Chapter 4-15 does not otherwise apply to the Respondent.
- (G) The decision of the Administrator under this Rule is final. There is no right of appeal to any determination issued by the Administrator.
- (H) The Administrator shall endeavor to close the investigation and determination of all Complaints no later than the 120th day after the date the Complaint is assigned to an Investigator. If the Administrator is unable to close the investigation within the 120-day period, the Administrator shall notify the Complainant and the Respondent in writing of the reasons for the delay.

6. Assessment and Collection of Civil Penalties.

- (A) If the Administrator determines under Part 5(C)(3) that a violation of Chapter 4-15 has occurred, the Administrator shall determine a proposed civil penalty for the violation. The amount of the proposed civil penalty shall be determined as follows:
 - (1) For a Respondent with fewer than 50 employees as of the date the Complaint was filed:
 - (a) \$50 per violation for a first-time violation;
 - (b) \$100 per violation for a second violation;
 - (c) \$250 per violation for a third violation; and
 - (d) \$500 per violation for every subsequent violation within a calendar year.
 - (2) For a Respondent with 50 or more employees as of the date the Complaint was filed:
 - (a) \$100 per violation for a first-time violation;
 - (b) \$250 per violation for a second violation, and
 - (c) \$500 per violation for every subsequent violation within a calendar year.

- (B) The Administrator may offer compliance training as an alternative to the proposed civil penalty determined under Part 6(A) to a Respondent who meets the eligibility criteria in City Code City Code §4-15-8(A). Such compliance training shall be on the terms and conditions prescribed by the Administrator, which shall include a requirement that an official or managerial employee of the Respondent with substantial authority to adopt or modify the Respondent's existing policies shall participate in the training.
- (C) The Administrator may increase or decrease the amount of the proposed civil penalty under Part 6(A) in light of a demonstrated hardship to the Respondent or a history of non-compliance with Chapter 4-15 by the Respondent. The decision whether to increase or decrease a proposed civil penalty is subject to the following limitations:
 - (1) In determining whether to increase or decrease a penalty, the Administrator may consider any of the following:
 - (a) The number of employees or others working for the Respondent;
 - (b) The Respondent's good faith efforts to comply with Chapter 4-15;
 - (c) The Respondent's indifference toward or disregard of its obligations under Chapter 4-15; and
 - (d) Other violations of Chapter 4-15 by the Respondent during the previous year.
 - (2) In determining the amount of a proposed civil penalty, the Administrator shall not negotiate the amount of any increase or decrease under this Part 6(C) with the Complainant or the Respondent.
 - (3) The Administrator shall not increase a proposed civil penalty above the maximum penalty amount set out in Chapter 4-15(8)(A).

7. Closure of Complaint Investigations.

- (A) The Administrator will close the investigation of a Complaint and terminate EE/FHO proceedings on the Complaint at the earliest to occur of the following:
 - (1) The Complaint is withdrawn by the Complainant; or
 - (2) The Administrator determines under Part 5(C)(2) that the preponderance of evidence does not establish a violation of Chapter 4-15; or

- (3) The Respondent establishes to the satisfaction of the Administrator that a violation determined under Part 5(C)(3) has been remedied; or
 - (4) The Respondent establishes to the satisfaction of the Administrator that a civil penalty assessed under Part 5(D)(2) has been paid; or
 - (5) A Respondent who is offered compliance training in lieu of a proposed civil penalty under Part 6(B) establishes to the satisfaction of the Administrator that the Respondent has completed the compliance training; or
 - (6) The Administrator determines that the Complainant has failed to cooperate reasonably in the investigation of the Complaint, or has abandoned the Complaint.
- (B) The Administrator may prescribe forms and administrative procedures for the closure of Complaint investigations.