

**NOTICE OF RULE ADOPTION**

**FAIR CHANCE HIRING RULES**

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

**May 22, 2018**

## **NOTICE OF RULE ADOPTION**

**ADOPTION DATE: MAY 22, 2018**

**By: Joya Hayes, Director**

**Human Resources Department**

**OCC RECEIVED AT  
MAY 22 '18 PM 4:31**

The Director of the City of Austin Human Resources Department has adopted the following rule. Notice of the proposed rule was posted on March 13, 2018. Public comment on the proposed rule was solicited in the March 13, 2018 notice. Time for public comment was extended to May 4, 2018. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11<sup>th</sup> Street, Suite 200, Austin, Texas 78702

Office of the City Clerk, City Hall, located at 301 West 2<sup>nd</sup> Street, Austin, Texas.

Internet copies are available free of charge at <https://austintexas.gov/fairchancehiring>

## **EFFECTIVE DATE OF ADOPTED RULE**

A Rule adopted by this notice is effective on May 22, 2018.

## **TEXT OF ADOPTED RULE**

**The full text of the adopted Rule is set forth in Exhibit A attached to this Notice. Changes from the text of the Rule as initially proposed are shown in Exhibit A. Such changes have been made in response to written comments received from the public, or for clarification purposes.**

## **SUMMARY OF COMMENTS**

Written comments and comments submitted online to the EEFHO Fair Chance Hiring webpage (spreadsheet attached) were received regarding Rules 1-7. The EEFHO has reviewed the comments and determined that clarification in wording was warranted and made the applicable changes. A summary of the responses to comments is attached.

A copy of the comments and responses is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11<sup>th</sup> Street, Suite 200, Austin, Texas 78702

Office of the City Clerk, City Hall, located at 301 West 2<sup>nd</sup> Street, Austin, Texas.

Internet copies are available free of charge at <https://austintexas.gov/fairchancehiring>

## **AUTHORITY FOR ADOPTION OF RULE**

City Code Chapter 4-15-6(5) provides that the "Equal Employment/Fair Housing Office shall adopt rules necessary to implement this [City Code] chapter [4-15]."

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code.

## **APPEAL OF ADOPTED RULE TO CITY MANAGER**

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30<sup>TH</sup> DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30<sup>th</sup> day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the city clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

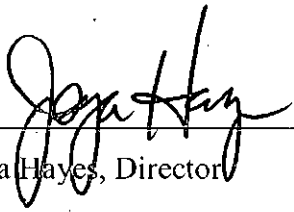
Notice that an appeal was filed will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60<sup>th</sup> day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16<sup>th</sup> day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31<sup>st</sup> day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

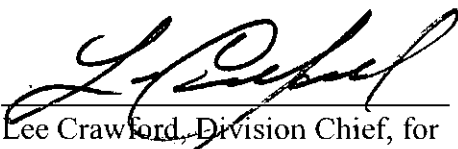
## **CERTIFICATION BY CITY ATTORNEY**

By signing this Notice of Rule Adoption, the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

**REVIEWED AND APPROVED**

  
\_\_\_\_\_  
Joya Hayes, Director  
Human Resources Department

Date: 5/18/18

  
\_\_\_\_\_  
Lee Crawford, Division Chief, for  
Anne L. Morgan, City Attorney

Date: 5/16/18

**EXHIBIT A**

**TEXT OF ADOPTED RULE**

**FAIR CHANCE HIRING RULES FOR INVESTIGATION OF COMPLAINTS AND  
ASSESSMENT OF CIVIL PENALTIES UNDER CITY CODE CHAPTER 4-15**

## **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 Within two business days of 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 make all reasonable efforts to schedule an initial interview with the Complainant. ~~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 ~~may 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 Within 15 business days of receiving the Investigator's recommendation, 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~~ Issue a written notice of dismissal of ~~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) \$50 100 per violation for a first-time violation;
    - (b) ~~\$400~~ 150 per violation for a second violation;
    - (c) ~~\$250~~ 300 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) ~~\$400~~ 150 per violation for a first-time violation;



- (b) ~~\$250~~ 300 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.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
1	General	Connor Brim	Rules fail to clarify the term "individuals retained" that appears at §2(J) of the Ordinance. Does it mean someone came in and signed up? Does it mean that we have identified a specific assignment for the individual that will begin after completing paperwork and other administrative matters? Does it mean someone who has been identified, gone through the entire process, not on a current job, but still on the payroll and receiving benefits like a Robert Half salaried professional?	Against	Thank you for your comment. Note the language at §4-15-4(G) of the Ordinance, makes it clear that placement in a staffing pool is separate and distinct from identifying a job to which the individual will be employed.
2	General	Rebecca Eisenbrey	The rulemaking process lacked opportunity for true public input.	Against	Thank you for your comment. Rules were posted for public comment by the City Clerk's Office in accordance with City Code §1-2-4.
3	General	Rebecca Eisenbrey	We request that the comment period be extended.	Against	Thank you for your comment. Comment period was extended for three weeks, or until Friday, May 4, 2018.
4	General	Rebecca Eisenbrey	Rules should require complaint forms to be widely available and accessible to all Austin residents.	Against	Thank you for your comment. Once finalized, complaint forms will be included on the FCH website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a> . The Equal Employment/Fair Housing Office will continue efforts to raise public awareness of the complaint process, with information about contacting the Office to file a complaint. 311 operators have been trained to receive and forward inquiries about the Ordinance to the Office.
5	General	Rebecca Eisenbrey	Complaint deadlines are insufficient to ensure speedy processing and resolution of complaints.	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. EE/FHO currently operates in partnership with the U.S. Equal Employment Opportunity Commission, which imposes a 180-day standard for completing investigations, and the U.S. Dept. of Housing and Urban Development, which imposes a 100-day standard for completing investigations.
6	Ordinance §52(G) & 4(E)	Rebecca Eisenbrey	Rules fail to address the requirement that employers conduct an individualized assessment.	Against	Thank you for your comment. §4-15-4(E) of the Ordinance is clear that an Individualized Assessment is required and failure to do so is a violation of the Ordinance.
7	Ordinance §52(A) & 4(F)	Rebecca Eisenbrey	Rules fail to address the requirement that an employer who takes adverse action against an individual on the basis of the individual's criminal history provide the individual with written notice that the adverse action was based on the individual's criminal history	Against	Thank you for your comment. §4-15-4(F) of the Ordinance is clear that a written notice of adverse action is required, including notice that the adverse action was based on the individual's criminal history, and failure to do so is a violation of the Ordinance.
8	Part 6	Rebecca Eisenbrey	The penalty schedule described in the Proposed Rules would undermine enforcement efforts by sending the message that the City does not take the Ordinance seriously.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.
9	Part 3(B)	Rebecca Eisenbrey	Proposed Rules should require the Department to ensure that the complaint form be translated into Spanish and other languages.	Against	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EE/FHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EE/FHO Fair Chance Hiring Website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a>
10	Part 3(B)	Rebecca Eisenbrey	Proposed Rules should require the Department to ensure that that multilingual forms be widely distributed in hardcopy.	Against	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EE/FHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EE/FHO Fair Chance Hiring Website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a>
11	Part 3(B)	Rebecca Eisenbrey	Proposed Rules should require the Department to ensure that multilingual forms be prominently featured online in accessible formats.	Against	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EE/FHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be available at the City of Austin Equal Employment/Fair Housing Office ("EEFHO"), located at 1050 East 11th Street, Suite 200, Austin, Texas 78702 and included on the EE/FHO Fair Chance Hiring Website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a>
12	Part 3(B)	Rebecca Eisenbrey	Proposed Rules should require the Department to develop a clear, easy-to-use complaint form, such as that used by the City of Los Angeles.	Against	Thank you for your comment. EE/FHO is finalizing forms to comply with the Ordinance requirements, using cities like Los Angeles as a benchmark.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
13	Part 4(C)	Rebecca Eisenbrey	The Commenter is troubled by the lack of a timeframe for the assignment of a Complaint from the Administrator to the Investigator, and suggests that the Proposed Rules should specify that this shall be done "immediately" or "within two (2) business days." Without such specificity, the Complaints could and likely would languish in the Equal Employment/Fair Housing Office ("the EE/FHO") for weeks or even months before being assigned to an investigator.	Against	Thank you for your comment. Rule 4C has been amended to read, "Within two business days of 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."
14	Part 4(C)(1)	Rebecca Eisenbrey	The timeframe in Part 4(C)(1) is overly generous.	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations.
15	Part 4(C)(1)	Rebecca Eisenbrey	There is no requirement in Part 4(C)(1) that the Investigator succeed in scheduling, or even continue to try to schedule, an interview.	Against	Thank you for your comment. Part 4(C)(1) now reads, "Within 10 business days of receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial interview with the Complainant."
16	Part 4(C)(1)	Rebecca Eisenbrey	The Commenter suggests that the provision should instead state: "Within five (5) business days of receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial interview with the Complainant."	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. The Proposed Rules allow limited but appropriate flexibility for the Investigator to manage the workload. Part 4(C)(1) now reads, "Within 10 business days of receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial interview with the Complainant."
17	Part 4(C)(2)	Rebecca Eisenbrey	The Commenter believes that this grant of time (21 days) is unnecessarily generous, and instead recommends that the provision state: "The Respondent's response must be received by the EE/FHO (or, if mailed, postmarked) within 10 days of service of the Complaint."	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations.
18	Part 4(D)	Rebecca Eisenbrey	Part 4(D) does not contain any time limits. The Commenter recommends that the provision should state: "... if the Respondent fails to respond to the information required in Part 4(C)(2) within the prescribed time period."	Against	Thank you for your comment. §4-15-7(A) of the Ordinance authorizes the Administrator to exercise discretion and independent judgment before a subpoena is issued: "(t)he Director of the Equal Employment/Fair Housing Office may subpoena records or testimony (emphasis added) ..." The Rule cannot limit the authority found in the Ordinance. However the rule will be amended to change "will" to "may" to clarify that the Administrator retains discretion under the Ordinance to issue a subpoena.
19	Part 4	Rebecca Eisenbrey	Part 4 makes no mention of the individualized assessment that employers who wish to consider criminal records are required to perform under City Code § 4-15-4(E). This assessment is the keystone of the Ordinance: it ensures that an employer will truly look at the applicant, not just her criminal record, and consider whether there is a nexus between her conviction and the position such that a record-based exclusion would be job related and consistent with business necessity. See generally, Equal Employment Opportunity Commission Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., Apr. 25, 2012, available at <a href="https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm">https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm</a> . In order to determine whether an employer has complied with the Ordinance, it is crucial that investigators have the ability to assess whether an individualized assessment was performed.	Against	Thank you for your comment. The Ordinance at §§2(G) & 4(E) requires a determination that an individual is unsuitable for a job only after a consideration of the three factors. An employer would be in violation of the ordinance if they failed to conduct an individualized assessment. An individual who believes that the individual has been subjected to disparate impact discrimination under other local, Texas, or federal law may pursue a discrimination complaint separate from a Fair Chance Hiring Complaint.
20	Part 4	Rebecca Eisenbrey	The Commenter suggests that a new Part 4(G) be added to the Proposed Rules, stating: "Where the Complainant alleges that he or she was the subject of an adverse employment action based on his or her criminal record, the Investigator must determine whether the Respondent conducted a reasonable individualized assessment, as defined in City Code § 4-15-2(G), including what individualized assessment system the Respondent used; what factors the Respondent relied on to support its employment decision; and whether the factors cited by the Respondent provide at least a rational basis for concluding that the applicant was unsuitable for the job."	Against	Thank you for your comment. The Ordinance at §§2(G) & 4(E) requires a determination that an individual is unsuitable for a job only after a consideration of the three factors. An employer would be in violation of the ordinance if they failed to conduct an individualized assessment. The Ordinance defines the three factors an employer must consider when conducting an individualized assessment and does not give EE/FHO the authority to assess the system used by the Respondent, or determine whether the decision of an employer was reasonable.
21	Part 4	Rebecca Eisenbrey	Part 4 also fails to mention the written notice that, under City Code § 4-15-4(F), an employer who takes adverse action against an individual based on the individual's criminal history is required to provide. This requirement is crucial to the efficacy of the Ordinance; without notice, an applicant or employee will have no way of knowing that her rights may have been violated and no opportunity to seek recourse for any potential violation.	Against	Thank you for your comment. §4-15-2(G) & §4-15-4(F) of the Ordinance, when read together, are clear: the employer is required to issue a written notice of adverse action that meets the requirements of the Ordinance. A failure to issue any written notice of adverse action is a violation. A written notice that does not meet the requirements of the Ordinance likewise remains a violation.
22	Part 4	Rebecca Eisenbrey	In order to ensure that employers give proper written notice, the Commenter recommends that the Department develop and distribute a model notice form. The City of New York has developed an excellent notice form, available at: <a href="https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance_Form23-A_distributed.pdf">https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance_Form23-A_distributed.pdf</a> . This form should ask the employer to state: (1) the duties and responsibilities of the job; (2) the specific criminal record that the employer considered disqualifying; and (3) the way in which the employer believes that the individual's record affects her fitness or ability to perform the duties and responsibilities of the job. The form should also state that the individual has the right to provide the employer with evidence of rehabilitation and/or evidence challenging the accuracy of the criminal background report, if necessary. Finally, the form should indicate that the individual can file a complaint with the EE/FHO if she believes that her rights under the Ordinance were violated.	Against	Thank you for your comment. The Ordinance only requires that the notice be in writing. Any specific form, including the elements suggested by the Commenter, exceed the requirements of the Ordinance. The Ordinance does not require an employer to consider mitigating evidence following the completion of an Individualized Assessment, nor does the Ordinance require an employer to provide information accompanying a notice of adverse action regarding the filing of a complaint under the Ordinance.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
23	Part 5(B)	Rebecca Eisenbrey	Part 5(B) provides Investigators with 90 days to make a recommendation of final determination to the Administrator. To ensure that affected individuals receive needed relief in a more timely fashion, the Commenter recommends that the deadline should be 60 days, absent special circumstances.	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. The Ordinance has no provisions for individual relief, and the Rules do not create individual rights to relief.
24	Part 5(C)	Rebecca Eisenbrey	Part 5(C) contains no timeline. The Commenter recommends that the provision be amended to include a requirement that the Administrator act within 15 days of receipt of a recommendation of final determination.	Against	Thank you for your comment. Part 5(H) of the Rule has been edited to read, "Within 15 business days of receiving the Investigator's recommendation, the Administrator shall take one of the following actions:..."
25	Part 5(H)	Rebecca Eisenbrey	Part 5(H) provides the Administrator with 120 days to close an investigation after the date the complaint was assigned to an investigator. For the benefit of the affected parties, the Commenter suggests that this be changed to 90 days.	Against	Thank you for your comment. Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. EE/FHO currently operates in partnership with the U.S. Equal Employment Opportunity Commission, which imposes a 180-day standard for completing investigations, and the U.S. Dept. of Housing and Urban Development, which imposes a 100-day standard for completing investigations.
26	Part 6	Rebecca Eisenbrey	The Commenter strongly objects to the Proposed Rules' dual penalty schedule. The City took the concerns of small businesses seriously when it chose to exempt from coverage all employers with fewer than 15 employees. Reducing the already meager penalties to mere slaps on the wrist for businesses with 16 to 49 employees cannot be justified, and the Equal Justice Center urges the Department to retract this proposal.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to consider other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.
27	Part 6	Rebecca Eisenbrey	The Commenter also objects to the Proposed Rules' penalty schedule itself. City Code § 4-15-8(A) provides that, for a first-time violation, the City may issue a warning instead of a penalty if the employer attends a training session. Not only are additional concessions for second- and third- time offenders unnecessary, they send the message that the City is not serious about enforcing the Ordinance and that employers need not be serious about complying with it. To fulfill the City Council's purpose of combatting the injustice faced by individuals with criminal records, the Equal Justice Center urges the Department to reject the proposed fee schedule and instead impose a mandatory \$500 penalty except where § 4-15-8(A) provides for a warning or in light of demonstrated serious hardship.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to consider other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.
28	General	Helen Gaebler	Rulemaking process lacked opportunity for meaningful public input due to an extremely foreshortened response period.	Against	Thank you for your comment. Rules were posted for public comment by the City Clerk's Office in accordance with City Code §1-2-4. Comment period was extended for three weeks, or until Friday, May 4, 2018.
29	General	Helen Gaebler	Rules should require complaint forms to be widely available and accessible to all Austin residents.	Against	Thank you for your comment. Once finalized, complaint forms will be included on the FCH website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a> . The Equal Employment/Fair Housing Office will continue efforts to raise public awareness of the complaint process, with information about contacting the Office to file a complaint. 311 operators have been trained to receive and forward inquiries about the Ordinance to the Office.
30	General	Helen Gaebler	Complaint deadlines should be shortened to ensure speedy processing and resolution of complaints.	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. EE/FHO currently operates in partnership with the U.S. Equal Employment Opportunity Commission, which imposes a 180-day standard for completing investigations, and the U.S. Dept. of Housing and Urban Development, which imposes a 100-day standard for completing investigations.
31	Ordinance §§2(G) & 4(E)	Helen Gaebler	An employer's obligation to conduct an individualized assessment should be detailed with particularity.	Against	Thank you for your comment. The Ordinance at §§2(G) & 4(E) requires a determination that an individual is unsuitable for a job only after a consideration of the three factors. An employer would be in violation of the ordinance if they failed to conduct an individualized assessment. The Ordinance defines the three factors an employer must consider when conducting an individualized assessment and does not give EE/FHO the authority to require additional factors.
32	Ordinance §§2(A) & 4(F)	Helen Gaebler	Employers who take adverse action against an individual on the basis of the individual's criminal history should have to provide the individual with written notice that the adverse action was based on the individual's criminal history.	Against	Thank you for your comment. §4-15-4(F) of the Ordinance is clear that a written notice of adverse action is required, including notice that the adverse action was based on the individual's criminal history after conducting an individual assessment.
33	Part 6	Helen Gaebler	The penalty schedule should be redesigned and penalty amounts increased so as to promote enforcement efforts by sending the message that the City takes the Ordinance seriously.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
34	Ordinance §52(G) & 4(E)	Lewis Conway Jr.	In view of the extreme latitude given to the EE/FHO by the Council in writing the rules of procedure, it's disappointing to find no specific rules standardizing nor governing the protocol of the "individualized assessment" process and no oversight mechanism in place. As advocates, stakeholders and members of the community, we were assured that the ordinance would adhere to the EEOC guidelines already in place in regards to an individualized assessment. In the absence of a true protocol, processes, or mechanism of oversight in place, how are we protecting the rights of the parties affected?	Against	Thank you for your comment. The Ordinance at §52(G) & 4(E) defines the three factors an employer must consider when conducting an individualized assessment and does not give EE/FHO the authority to assess the system used by the Respondent, or determine whether the decision of an employer was reasonable. An employer would be in violation of the ordinance if they failed to conduct an individualized assessment. The Rules provide for oversight by requiring the investigator to obtain and analyze evidence, and make a recommendation on a determination to the Administrator, who independently decides the outcome of the complaint investigation.
35	Parts 3(B) & (C)(1)	Lewis Conway Jr.	In Part 3(b), under the "Filing of Complaints" section, it refers to the prescription of forms and administrative procedures. Are these forms and procedures currently available for public information and if so, why weren't they included in this draft? If they do not currently exist, this of course presents a significant problem in moving forward with adoption; as several sections of the proposed rules refer back to these forms and procedures. Without these forms and procedures in place, before this draft is adopted, parties affected by the ordinance are posited at a detrimental disadvantage.	Against	Thank you for your comment. The Rules authorize the EE/FHO Administrator to prescribe forms and procedures necessary for the filing of complaints. The authority granted to the Administrator by the rules does not include the authority to take any action that would limit the enforcement of the Ordinance. Once finalized, complaint forms will be included on the FCH website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a>
36	Parts 2(H) & 4(F)	Lewis Conway Jr.	In the use of legalese, or legal terms, there is a clear choice made not to employ the formal legal definition of the term "evidence", yet the term "Respondent" is used in place of "Employer". This begs the question: why would the City choose to use a legal term in an inconsequential manner in regards to naming a party in the process, yet conversely, not employ the same method when considering the aspects of the process, that determines whether either party (Complainant or Respondent) are named at all? The contradiction is glaring and disconcerting.	Against	Thank you for your comment. The Rules define both "Complainant" and "Respondent" to clarify how parties to a complaint investigation will be identified. An entity that meets the definition of "Employer" at §4-15-2(F) of the Ordinance is not a "Respondent" unless it is named in a Complaint.
37	General	Lewis Conway Jr.	Moreover, we are disturbed by the sovereign ascendancy of the Administrator as the final dispositional authority, in regards to complaints and resolutions. In the conspicuous absence of rules of procedure and the perplexing lack of evidentiary protocol, one has to wonder why the City wouldn't provide access to an appeal process. Even the most basic of grievance processes, provides one the right to appeal a decision of a lower body, to a higher body of authority. It is disappointing that the City would choose to deny the applicant an alternative recourse.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance.
38	Parts 2(G), 5(A), 5(C)(2), 5(C)(3), & 7(A)(2)	Lewis Conway Jr.	This list of terms lack definitions, or need alternative definitions for the following. The terms used should be clearly defined for both employers and residents. 1. Investigation - Not included. 2. Individualized Assessment - Ex. "means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors". 3. Preponderance of Evidence - is a legal term and should be clearly defined. Ex. "This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence."	Against	Thank you for your comment. It is common for many terms used in laws in regulations not to have specific definitions and instead retain their normal meaning. Similar rules of Texas and federal enforcement authorities (Texas Workforce Commission and U.S. Equal Employment Opportunity Commission) do not include a definition for "Investigation." The term "Individualized Assessment" is defined in the Ordinance at §4-15-2(G). The term "Preponderance of the evidence" is defined at Part 2(G) of the Proposed Rules as meaning "more likely than not."
39	Part 3(A)	Lewis Conway Jr.	There seems to be lacking an explanation as to what happens when The Administrator does not investigate or determine a decision in a timely manner. What is the oversight mechanism in place to determine the aforementioned? This is an oversight that should be corrected before any draft of the rules are adopted, as it severely limits the possibility of a speedy or thorough review of the complaint.	Against	Thank you for your comment. The City of Austin job description for the position of Equal Employment/Fair Housing Administrator expressly states that the position is subject to management direction and control, which may include periodic reports to management on case status. In addition, the Equal Employment/Fair Housing Administrator position is subject to routine City of Austin individual job performance standards that are managed by Human Resources Management through normal reporting channels. The Equal Employment/Fair Housing Administrator position currently reports to the position of Assistant Director, Human Resources Department.
40	Parts 3(C) & 4(D)	Lewis Conway Jr.	The Rule refers to City Code §§4-15-6(B) and 4-15-7. For residents that aren't familiar with cross referencing municipal codes and ordinances, this seems to be an unfair burden placed upon residents and employers alike. A simplified system of cross reference and link should be provided in the online version of the proposed rules.	Against	Thank you for your comment. The City will make every effort to make the Rules accessible and will work on options to assist in cross referencing.
41	Parts 4(B) & (C)	Lewis Conway Jr.	The Rule refers to forms and administrative procedures prescribed by the Administrator. What are the procedures and where can they be found?	Against	Thank you for your comment. The Rules authorize the Administrator to prescribe forms and administrative procedures for the investigation of complaints, and those forms and procedures will be available once they are implemented. In the process of prescribing forms and administrative procedures for filing, investigating, and closing complaints, the Administrator must comply with the Ordinance and the Rules.
42	Part 4(C)(2)	Lewis Conway Jr.	Who will be the entity that is used to serve the parties involved? Ex. constable, sheriff, etc. - This should be clearly defined so each party is aware of whom to expect correspondence from or be in contact with. Are these records available for public inspection? What are the protocols and oversight mechanisms in place, if none, which ones will be?	Against	Thank you for your comment. The Ordinance gives the EE/FHO the authority to subpoena records/testimony by written notice, and the Investigator will be the primary conduct to the parties during the investigation. Records will be available subject to the Public Information Action.
43	Part 4(F)	Lewis Conway Jr.	In the strongest language possible, we want to convey: this is unacceptable. If formal rules of evidence aren't going to apply, what rules will? What effort is being made to place those rules on public display? Who is the governing body that determined those rules, and again, what is the mechanism of oversight in place to assure the public these "rules" are being employed? As stated earlier, in lieu of employing legal terms, a standardized collection of protocol must be in place. The lack of these rules, or standardized protocol, presents a significant legal burden on both parties affected by the ordinance. We demand a publicly displayed set of rules to be used when investigating claims.	Against	Thank you for your comment. Formal rules of evidence will raise unnecessary technical obstacles to non-attorneys who wish to access the complaint process, either for the purpose of filing complaints or responding to complaints. Texas and federal enforcement authorities (Texas Workforce Commission and U.S. Equal Employment Opportunity Commission) have long conducted routine and complex investigations under multiple authorities without formal rules of evidence. EE/FHO has substantial experience conducting routine and complex investigations of equal employment opportunity, fair housing, and public accommodations complaints.

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44	Part 5(B)	Lewis Conway Jr.	What recourse of action does the Respondent and Complaint have in the interim?	Against	Thank you for your comment. Current EE/FHO practice is to make all customers, whether filing complaints or merely making inquiries without filing complaints, aware of the ability to file a complaint, including the ability to file a new complaint of retaliation even after the previous filing of a separate complaint.
45	Part 5(C)(3)	Lewis Conway Jr.	As indicated by the lack of participation in the employer outreach (11 attendees), we believe this phrasing needs clarification, protocol of procedure and oversight. We are unaware of the existence of a compliance training, nor are we aware of the rules and procedures governing that compliance training. As a community, it is more important for an Employer to cease violating the rights of applicants, than it is to seek a monetary penalty. In that context, we think there is value in the consideration of involving stakeholders in the process of constructing a compliance training and utilizing stakeholder organizations as training facilitators. The curriculum, outreach plan and intended outcomes of the compliance training must be determined, before any further effort is made to adopt the proposed rules of administration.	Against	Thank you for your comment. Outreach efforts and design of compliance training can proceed independent of adoption of rules for complaint investigations. The Equal Employment/Fair Housing Office will continue efforts to raise public awareness of the complaint process, with information about contacting the Office to file a complaint. 311 operators have been trained to receive and forward inquiries about the Ordinance to the Office.
46	Part 5(G)	Lewis Conway Jr.	As stated earlier, the absolute sovereignty of the Administrator and lack of oversight is of utmost concern. We stringently implore you to reconsider this.	Against	Thank you for your comment. The City of Austin job description for the position of Equal Employment/Fair Housing Administrator expressly states that the position is subject to management direction and control. The position has no element of sovereignty.
47	Part 7(A)(2)	Lewis Conway Jr.	A protocol of how evidence is determined should be employed to protect the rights of employers and residents. Additionally, a clear definition of preponderance of evidence should be included, either as a footnote, "hot" link or subtext. Every effort should be made to protect businesses from exposure to legal action and every resident deserves to their rights protected. In this instance, neither is accomplished or attempted.	Against	Thank you for your comment. The authority of the Administrator to determine that the preponderance of evidence does not establish a violation under the Ordinance is subject to management direction and control inherent in the City of Austin job description for the EE/FHO Administrator position. The term "Preponderance of the evidence" is defined at Part 2(H) of the rules. The City will make every effort to publish the final rules in an accessible manner, including internal links to defined terms. EE/FHO will make a continuing, ongoing effort to educate employers and residents about the Fair Chance Hiring Ordinance in accordance with §4-15-6(A)(2) of the Ordinance to ensure compliance by covered employers and to protect the rights of individuals.
48	Part 7(A)(6)	Lewis Conway Jr.	We believe under no circumstance should the Administrator be the ascendant and sovereign dispositional authority of reasonableness. By what measure is reasonableness being considered? If the City has chosen to option out of applying the formal rules of evidence; by what standard is the Administrator held to in determining reasonableness? We ardently urge to reconsider this language and reconsider the authority mandated to the Administrator, by power of these rules of procedure. The dispositional authority given to the Administrator speaks to residents not having access to any alternatives of recourse.	Against	Thank you for your comment. The term "reasonably" in the Rules is not defined and therefore will take its normal meaning, and the exercise of discretion by the Administrator to assess reasonableness under Part 7(A)(6) of the Rules is subject to management direction and control.
49	Part 7(A)(6)	Lewis Conway Jr.	We believe under no circumstance should the Administrator be the ascendant and sovereign dispositional authority of reasonableness. What qualifications is incumbent in the job description of the Administrator, that will lend itself to be the ultimate, sovereign and supreme authority on reasonableness? We ardently urge to reconsider this language and reconsider the authority mandated to the Administrator, by power of these rules of procedure. The dispositional authority given to the Administrator speaks to residents not having access to any alternatives of recourse.	Against	Thank you for your comment. The Ordinance grants the EE/FHO the full authority to administer this Ordinance under §4-15-6, including education, investigation, enforcement, compliance, and rules adoption. The Rules prescribe a two step process for closure of a complaint: Investigator recommendation, and the Administrator final decision. The Ordinance does not prescribe an alternative recourse.
50	General	Lewis Conway Jr.	We firmly believe this iteration of the proposed rules, many efforts have been made to give employers the benefit of the doubt. No such effort is made on behalf of the residents affected. With careful consideration, we ask this iteration of the proposed rules of administration not be adopted.	Against	Thank you for your comment. Within the limits of the Ordinance, the Rules are designed to ensure the full, fair, and prompt resolution of Fair Chance Hiring Ordinance complaints. The process by which the Rules were posted and these comments were received in accordance with City Code Chapter 1-2, Adoption of Rules, is the method the City utilizes to undertake the effort to involve all stakeholders in the rulemaking process.
51	General	Lewis Conway Jr.	We ask that before any effort is undertaken to propose another draft, there is an effort made to involve the stakeholders in the process. We believe the more stakeholders are involved, on both sides, the more resolute the outcomes will be.	Against	Thank you for your comment. The City remains receptive at all times to input from members of the community with an interest in the fair and effective administration of the Fair Chance Hiring Ordinance.
52	Part 3(C)(1)	Steven Garrett	Rule 3(C)(1) is antithetical to the definition of Complaint in Rule 2(C). By removing the requirement that a Complaint be filed in writing to be "timely" it creates a situation where an individual could alert the EE/FHO office of an alleged violation of the ordinance, and yet the employer would not become aware of the alleged violation until months later when the Complaint is finally signed. City Code 4-15-16(B) sets out that a timely Complaint is necessary for a thorough investigation. The current Rule 3(C)(1) could result in an employer not preserving information because it did not know there was an alleged violation. Rule 3(C)(1) should be amended to clarify that an individual has not filed a Complaint until the Complaint is reduced to writing and signed.	Against	Thank you for your comment. The requirement that Complaint's be signed has been removed. The Rules, as amended, require the Administrator to assign a Complaint to an Investigator within 2 business days, and require the Investigator to reach out to both the Complainant and Respondent within 10 days of the assignment, regardless if the Complaint is signed/in writing (See Parts 4(C)(1) and 4(C)(2).
53	Part 4(C)(2)	Steven Garrett	Rule 4(C)(2) similarly denies the employers the assurance of timely notice. Instead Rule 4(C)(2) should require the Complaint be sent to the employer within ten days of receipt by the EE/FHO office so the employer can preserve any necessary information to assist with the investigation. Tying employer notice to the assignment of a Complaint to an Investigator permits an extended delay that could result in the loss of valuable information or records. The rule should be amended to support the ordinance's requirement that there be a timely Complaint and timely notice to the employer.	Against	Thank you for your comment. Revised Part 4(C) requires assignment to an Investigator "within two business days of receiving a complaint." Part 4(C)(2) requires the Respondent to be served within 10 business days of the assignment. Therefore, service to the Respondent will occur within 10 business days of receipt of the complaint by EE/FHO.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
54	Part 4(D)	Steven Garrett	Rule 4(D) removes the Administrator's discretion regarding whether or not to serve a subpoena. This could result in unnecessary subpoenas being issued, and force employers to hire attorneys to respond to a subpoena, increasing the cost of doing business in the City. The rule should be amended to reflect the ordinance's direction that the Administrator "may subpoena records or testimony relevant to the investigation" and grant the Administrator discretion to issue a subpoena if necessary. If an employer is late in responding or does not make a complete response within 21 days, but is cooperating, it would waste the City's resources to issue a subpoena.	Against	Thank you for your comment. Part 4(D) will be amended to change "will" to "may" to clarify that the Administrator retains discretion under the Ordinance to issue a subpoena.
55	Part 4(F)	Steven Garrett	Rule 4(F) undermines the integrity of the investigation and any conclusion that may be drawn from a finding (whether it establishes a violation or not). By expressly stating that the Administrator may consider information that does not meet the admissibility standards necessary to prove a violation of the law in court. This rule creates an inference that the investigation is tainted by unreliable, irrelevant, or unsubstantiated claims. Rule 4(F) should be removed or amended to only consider information that would be admissible in court.	Against	Thank you for your comment. Formal rules of evidence will raise unnecessary technical obstacles to non-attorneys who wish to access the complaint process, either for the purpose of filing complaints or responding to complaints. Texas and federal enforcement authorities (Texas Workforce Commission and U.S. Equal Employment Opportunity Commission) have long conducted routine and complex investigations under multiple authorities without formal rules of evidence. Also, EE/FHO has substantial experience conducting routine and complex investigations of equal employment opportunity, fair housing, and public accommodations complaints without the need for formal rules of evidence.
56	Part 5(B)	Steven Garrett	Rule 5(B) should tie the 90 day deadline to submit a recommendation to the date notice is provided to the employer, not to the date the Investigator receives the Complaint. This will result in the Investigator having ample time to consider any evidence the employer may wish to provide, without prejudicing the employer's right to a "full opportunity to present witness statements, documents, or other information relevant to the allegations in the Complaint" as described in Rule 4(C).	Against	Thank you for your comment. The 90-day and 120-day deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. EE/FHO currently operates in partnership with the U.S. Equal Employment Opportunity Commission, which imposes a 180-day standard for completing investigations, and the U.S. Dept. of Housing and Urban Development, which imposes a 100-day standard for completing investigations.
57	Part 5(D)	Steven Garrett	Rule 5(D) should be modified to include a procedure where the Administrator must find that "voluntary compliance cannot be obtained" as required by City Code 4-15-6(C) before issuing a civil penalty. City Code 4-15-6(C) requires two findings before a civil penalty, first that a violation occurred, and second that voluntary compliance cannot be obtained. Accordingly, the Administrator should first issue a finding that a violation occurred, and then attempt to seek voluntary compliance. Only after finding that voluntary compliance cannot be obtained does the ordinance authorize issuing a civil penalty. Without this finding, employers may be able to successfully challenge any civil penalty that is issued as violating the ordinance.	Against	Thank you for your comment. The absence of a requirement in the Rules for the Administrator to seek voluntary compliance before assessing a civil penalty does not relieve the Administrator of that obligation or set aside that requirement found in the Ordinance. The Rules cannot make any substantive change to the terms of the Ordinance.
58	Part 6	Steven Garrett	Rule 6 should be clarified to describe a "violation." For example, is each applicant who sees an ad that violates the ordinance a separate violation? Or would that be a single violation because the employer only took one action that violated the ordinance?	Against	Thank you for your comment. The Ordinance at §4-15-8(B) makes it clear that an "employer who violates Section 4-15-4(A) or Section 4-15-4(B) of this chapter is liable for no more than one civil penalty for each job to which the violation relates." Further clarification in the Rules is unnecessary.
59	General; Part 3(B)	Stephanie Gharakhanian	The Complaint and investigation process should be as accessible as possible. The Commenter recommends that Complaint forms developed by the Administrator pursuant to Part 3(B) of the Proposed Rules be translated into Spanish and other languages and that such multilingual forms be distributed in hardcopy, as well as be available online in an accessible format and in an easy to find, prominent location on the City's website. The majority of workers served by Workers Defense Project are non-English speakers who do not have a computer in their homes or secure access to the internet. Many do not use e-mail or even have an e-mail address. The Commenter also recommends that the Complaint form be clear and easy-to-use and that it not request sensitive information such as a Complainant's Social Security Number. Should the form require some sort of attestation, the Commenter recommends that the form utilize a written sworn declaration rather than require notarization, to avoid placing additional burdens on Complainants.	Against	Thank you for your comment. Serving Limited English Proficient customers is already a City of Austin priority independent of the Proposed Rules. EE/FHO will make best efforts to translate the complaint form into Spanish and other languages as soon as possible after the forms are finalized. Final forms will be included on the EE/FHO Fair Chance Hiring Website at: <a href="https://austintexas.gov/fairchancehiring">https://austintexas.gov/fairchancehiring</a> . The Equal Employment/Fair Housing Office will continue efforts to raise public awareness of the complaint process, with information about contacting the Office to file a complaint. 311 operators have been trained to receive and forward inquiries about the Ordinance to the Office. The Rules authorize the Administrator to prescribe procedures and forms only for the limited purposes of filing, investigating, and closing complaints. Therefore, forms designed or intended to collect sensitive information such as Social Security Numbers that is not relevant to enforcement of the Ordinance are not authorized by the Rules.
60	Part 3(A)	Stephanie Gharakhanian	The process of receiving complaints, conducting investigations, evaluating whether a violation has occurred, and steps taken to address violations should be as transparent as possible. Part 3(A) of the Proposed Rules allows for the Administrator to decline to investigate an alleged violation of the Ordinance if a Complaint is not timely or "filed in accord with these Rules." The Proposed Rules, however, do not require the Administrator to notify a Complainant as to whether their Complaint has been accepted for investigation. If a Complaint is timely, but does not meet the requirements established by the Administrator, the Complainant should be notified and afforded the opportunity to correct any deficiencies and file a revised Complaint within the established statute of limitations. The Commenter suggests that Part 3(A) therefore be amended to read: "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. Unless the Complaint is filed anonymously, within 5 business days after determining that a particular Complaint is not timely or is not filed in accord with these Rules, the Administrator shall inform the Complainant in writing that it will not take action on the Complaint and provide a clear and concise explanation of the reason as to why."	Against	Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
61	Part 4(C)	Stephanie Gharakhanian	The Commenter suggests that Part 4(C) of the Proposed Rules similarly require that, unless Complaints are filed anonymously, Complainants receive written notice from the Administrator to notify them that their Complaint has been accepted for investigation and assigned to an Investigator.	Against	Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance.
62	Part 4(C)	Stephanie Gharakhanian	The rules at Part 4(C) should provide the timeline that such notice should be sent, such as 2 business days after a Complaint is assigned to an Investigator, and the notice itself should: 1) inform the Complainant of the name, phone number, and email address of the assigned Investigator; 2) advise the Complainant that the Investigator will be contacting them to schedule an initial interview; 3) remind the Complainant that they may submit witness statements and documents to substantiate the allegations in the Complaint; 4) and direct the Complainant on how such statements or documents may be shared with the assigned Investigator.	Against	Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance. Given the requirement in the Rules that the Investigator interview the Complainant, the interview is the opportunity for the Investigator to provide contact information; request all available evidence in the form of documents or witnesses with knowledge of the facts of the case; and answer questions the Complainant may have.
63	Parts 5(A) & 7	Stephanie Gharakhanian	Complainants should also receive written notice when an assigned Investigator has made a recommendation to the Administrator for final determination, and written notice when the Administrator has made their final determination and the disposition of that determination.	Against	Thank you for your comment. Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance.
64	Parts 5(C)(2) & 5(D)	Stephanie Gharakhanian	A Complainant should be notified if: a Complaint is dismissed; a written notice of violation is issued to the Respondent pursuant to City Code §4-15-8(A); whether and how a Respondent has remedied a violation; whether a Respondent has elected to complete compliance training; whether the Respondent has ultimately completed compliance training; and whether the Respondent has paid the civil penalty assessed.	Against	Thank you for your comment. Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance.
65	General	Stephanie Gharakhanian	The Proposed Rules should ensure that the entire process is transparent, and that all parties are regularly informed in writing of the status of their Complaint and that all written notices are provided to parties in their preferred language.	Against	Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance. Serving Limited English Proficient ("LEP") customers is already a City of Austin priority independent of the Proposed Rules, and best efforts will be made to ensure communication to LEP customers.
66	Part 3(B)	Stephanie Gharakhanian	EE/FHO should be intentional about ensuring that people are informed of their ability to make complaints anonymously and understand the implications of doing so. In developing administrative procedures pursuant to 3(B), the Administrator should establish how both anonymous and non-anonymous complaints shall be received and investigated by EE/FHO.	Against	Thank you for your comment. EE/FHO is obligated under §4-15-6(A)(1) of the Ordinance to educate employers and residents about the Ordinance, and the Office will strive to include all aspects of the Ordinance, including anonymous complaints, in those education initiatives. Parts 4(C)(1) and 4(C)(2) require the investigator to reach out to both the Respondent and Complainant within 10 days of the assignment, regardless of whether the Complainant is anonymous.
67	Part 3(B)	Stephanie Gharakhanian	EE/FHO should be intentional about ensuring that people are informed of their ability to make complaints anonymously and understand the implications of doing so. The Complaint form should let Complainants know that the Ordinance allows them to make complaints anonymously, and allow them to designate if they wish to do so. The form should also notify Complainants how (if at all) investigations or outcome of anonymous complaints may differ from non-anonymous complaints, so that Complainants may make an informed decision as to whether they want to remain anonymous or not.	Against	Thank you for your comment. This comment will be taken into account in prescribing notice and forms for the filing, investigation, and closure of complaints, as well as education initiatives for employers and residents undertaken according to §4-15-6(A)(1) of the Ordinance.
68	General	Stephanie Gharakhanian	Every step in the process of receiving complaints, investigating complaints, reaching a final determination on a complaint, and closing an investigation should be time-bound with clear deadlines. For example, the Proposed Rules should prescribe clear deadlines establishing: when the Administrator must assign a Complaint to an Investigator after it is received and when parties are advised that a Complaint has been accepted for investigation or dismissed under Part 4(C); when a subpoena is issued in accordance with Part 4(D); and when the Administrator must act upon recommendation of final determination under Part 5(C).	Against	Thank you for your comment. Revised Part 4(C) requires assignment to an Investigator "within two days of receiving a complaint." Revised Part 5(C) requires the Administrator to take action within 15 days of receiving the Investigator's recommendation. All phases of the investigation are subject to the general 90-day and 120-day standards established in Parts 5(B) & 5(H) of the Rules.
69	General	Stephanie Gharakhanian	The Proposed Rules should encourage the timely investigation of complaints. While ensuring a thorough investigation of complaints is essential, the Proposed Rules should prevent the potential for complaints to languish with EE/FHO. EE/FHO should remain mindful that many people filing complaints alleging violations under the Ordinance are job seekers in need of gainful employment. Furthermore, the potential to achieve meaningful voluntary compliance decreases if too much time passes between the period of time that a Complaint is filed, and final determination is reached.	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. EE/FHO currently operates in partnership with the U.S. Equal Employment Opportunity Commission, which imposes a 180-day standard for completing investigations, and the U.S. Dept. of Housing and Urban Development, which imposes a 100-day standard for completing investigations.

	Proposed Rules Part or Ordinance Section	Name	Comment	For/Against	Response
70	Parts 4(C)(2), 5(B), & 5(H)	Stephanie Gharakhanian	The Proposed Rules should encourage the timely investigation of complaints. In particular, the Commenter recommends that the period of time that Respondents' have to respond to a Complaint under Part 4(C)(2) of the Proposed Rules be decreased from 21 to 10 days, that the time period that Investigators have to make a recommendation of final determination to the Administrator in Part 5(B) be reduced from 90 days to 60 days, and that the length of time between when a Complaint is assigned to an Investigator and when it is closed by the Administrator pursuant to Part 5(H) be reduced from 120 days to 90 days.	Against	Thank you for your comment. Deadlines in the Rules balance timely and thorough investigations, and are based on lengthy, substantial experience gained from the administration of regulatory complaint investigations. EE/FHO currently operates in partnership with the U.S. Equal Employment Opportunity Commission, which imposes a 180-day standard for completing investigations, and the U.S. Dept. of Housing and Urban Development, which imposes a 100-day standard for completing investigations.
71	Part 5(C)(3)	Stephanie Gharakhanian	Part 5(C) should require the Administrator to document and substantiate in writing the result of her independent review. Part 5(C) of the Proposed Rules require the Administrator to issue written notice of her independent review only upon finding of violation.	Against	Thank you for your comment. Part 5(C)(2) has been revised to require a written notice of dismissal.
72		Stephanie Gharakhanian	The Administrator should also be required to provide parties with written notice if she determines that additional analysis or evidence is still needed prior to reaching a final determination on a Complaint, or if she determines that a Complaint should be dismissed. If the Administrator determines that a Complaint requires additional analysis or evidence, she should specify to the Investigator why she believes the information gathered or analysis conducted to date is not sufficient and what additional tasks still must be performed before a Final Determination may be reached.	Against	Thank you for your comment. The Rules make clear that the Investigator position is held accountable to perform the tasks assigned by the Administrator under Part 5(C)(1) of the Rules if the Administrator returns the Complaint following consideration of the Investigator's recommended final determination.
73	Part 5(C)(2)	Stephanie Gharakhanian	If an Administrator chooses to dismiss a Complaint in accordance with Part 5(C)(2), she should justify such dismissal in writing and explain the reason for the dismissal in written notice sent to both the Complainant and the Respondent.	Against	Thank you for your comment. Part 5(C)(2) has been revised to require a written notice of dismissal.
74	General	Stephanie Gharakhanian	Establishing an appeal process within the Proposed Rules is essential. In order to ensure accountability and due process, either the Respondent or the Complainant should have the opportunity to request additional review of the determination of the Complaint.	Against	Thank you for your comment. The Ordinance does not authorize the Administrator to create an appeal process, and the Rules cannot exceed the authority found in the Ordinance.
75	Part 6	Stephanie Gharakhanian	The civil penalties proposed in Part 6 should be increased and adjusted to reflect the gravity of the violation. The current civil penalties proposed are far too small to have the effect of deterring the sort of discrimination the Fair Chance Hiring Ordinance was passed to prevent. The civil penalties schedule should be tailored not to the size of the employer, but the gravity of the violation.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.
76	Part 6	Stephanie Gharakhanian	The civil penalties proposed in Part 6 should be increased and adjusted to reflect the gravity of the violation. The Commenter recommends that the Proposed Rules impose a mandatory \$500 penalty except where §4-15-8(A) provides for a warning or where the Respondent can demonstrate some other serious hardship.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance.
77	Part 6	Stephanie Gharakhanian	The civil penalties proposed in Part 6 should be increased and adjusted to reflect the gravity of the violation. The Proposed Rules should also specify that each separate violation of the Ordinance merits a separate assessment of civil penalty. For instance, a final determination finding violations of both §4-15-4(C) and §4-15-5 should result in the assessment of up to \$1000 in civil penalties.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the Administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. The application of the "each job" provision at §4-15-8(B) of the Ordinance is expressly limited to violations under Section 4-15-4(A) or Section 4-15-4(B).
78	Part 6	Stephanie Gharakhanian	The civil penalties proposed in Part 6 should be increased and adjusted to reflect the gravity of the violation. Additionally, the Proposed Rules should clarify that "each job" as it is used in § 4-15-8 does not restrict multiple applicants to a particular job from filing separate Complaints with EE/FHO, and that, if substantiated, each Complaint filed could result in the Respondent being liable for a civil penalty.	Against	Thank you for your comment. All penalties have been increased by \$50. The Ordinance authorizes the Equal Employment/Fair Housing Office to exercise discretion and independent judgment in assessing a penalty in any amount up to \$500. The Rules are designed to assist the Administrator with guidelines that have the intended effect of consistent, even-handed application of the Ordinance across a wide range of varying fact settings. The Rules at Part 6(C) authorize the administrator to take into account other factors in consideration of increasing or decreasing a penalty established by the general guidelines in Part 6(A), so long as the Administrator does not engage in negotiations with either party or exceed the \$500 limit established in the Ordinance. The "each job" provision at §4-15-8(B) of the Ordinance cannot be modified by Rule.



April 13, 2018

ATTN: Jonathan Babiak  
City of Austin Equal Employment/Fair Housing Office  
1050 E. 11th St., Ste. 200  
Austin, Texas 78702

*Via email to [fairchancehiring@austintexas.gov](mailto:fairchancehiring@austintexas.gov)*

**Re: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15**

To Whom It May Concern:

The Equal Justice Center ("EJC") is a non-profit law firm and employment justice organization that empowers low-income families, workers, and communities across the state of Texas to achieve fair treatment in the workplace, in the justice system, and in our shared society. We write in response to the City of Austin Human Resources Department's ("the Department's") proposed "Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15" ("the Proposed Rules").

As an initial matter, we are disappointed by the lack of opportunity for true public input in the rulemaking process. Along with many other advocacy organizations and community groups, the EJC was heavily involved in the development of the City of Austin's Fair Chance Hiring Ordinance ("the Ordinance"). Since the passage of the Ordinance, the EJC and other organizations have made it clear to the City that we are ready and willing to assist in any way with its implementation. Despite our demonstrated commitment to the success of the Ordinance, we did not learn that the Proposed Rules had been drafted until Friday, April 6, and did not receive a copy of the Proposed Rules until Wednesday, April 11, two days before the deadline to file public comments. We respectfully request that the comment period be extended to allow all stakeholders a meaningful opportunity to read and respond to the proposal.

Despite the lack of time, we have done our best to review the Proposed Rules and provide the following feedback and recommendations.

## **I. Introduction**

The EJC thanks the Department for taking seriously its mandate to establish rules necessary to implement the Ordinance. In general, we commend the Department for its work. However, we have identified several areas where the Proposed Rules can and should be improved: as discussed *infra* Part II, the Proposed Rules should require complaint forms to be widely available and accessible to all Austin residents; as discussed *infra* Part III and IV, the deadlines in the Proposed Rules are insufficient to ensure speedy processing and resolution of complaints; as discussed *infra* Part III, the Proposed Rules fail to address the requirement that employers conduct an individualized assessment; as discussed *infra* Part III, the Proposed Rules fail to address the requirement that an employer who takes adverse action against an individual on the basis of the individual's criminal history provide the individual with written notice that the adverse action was based on the individual's criminal history; and, as discussed *infra* Part V, the penalty schedule described in the Proposed Rules would undermine enforcement efforts by sending the message that the City does not take the Ordinance seriously. These issues are discussed in detail below.

## **II. Filing of Complaints**

Part 3(B) of the Proposed Rules states that the Administrator may prescribe forms for filing a complaint. To ensure that all Austin residents have access to these forms, the EJC recommends that the Proposed Rules require the Department to ensure that the complaint form be translated into Spanish and other languages; that multilingual forms be widely distributed in hardcopy; and that multilingual forms be prominently featured online in accessible formats. Additionally, the EJC encourages the Department to develop a clear, easy-to-use complaint form, such as that used by the City of Los Angeles.<sup>1</sup>

## **III. Investigation of Complaints**

Part 4(C) of the Proposed Rules states that, "upon receiving a Complaint," the Administrator "will assign the Complaint to an Investigator." The EJC is troubled by the lack of a timeframe for this assignment, and suggests that the Proposed Rules should specify that this shall be done "immediately" or "within two (2) business days." Without such specificity, the Complaints could and likely would languish in the Equal Employment/Fair Housing Office ("the EE/FHO") for weeks or even months before being assigned to an investigator.<sup>2</sup>

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<sup>1</sup> The City of Los Angeles's complaint form is available at <https://bca.lacity.org/Uploads/fciho/Fair%20Chance%20Initiative%20for%20Hiring%20Complaint%20Form%20%28English%29.pdf>.

<sup>2</sup> See Audrey McGlinchy, *Austin Law Requires Jobseekers With Criminal Pasts Get A Fair Shot. But It's Not Being Enforced.*, KUT.org (Mar. 8, 2018), <http://kut.org/post/austin-law-requires-jobseekers-criminal-pasts-get-fair-shot-its-not-being-enforced> ("According to records obtained by KUT and interviews with staff, the city has received five complaints since the rule went into effect on April 4, 2016. All the investigations are currently 'pending,' despite the fact that four of them were filed in 2016.")

Part 4(C)(1) of the Proposed Rules states that, within 10 business days of receiving the assignment, the Investigator will “attempt” to schedule an interview with the Complainant. The EJC identifies two issues with this provision: first, the timeframe is overly generous; and second, there is no requirement that the Investigator succeed in scheduling, or even continue to try to schedule, an interview. The EJC suggests that the provision should instead state: “Within five (5) business days of receiving the assignment, the Investigator will make all reasonable efforts to schedule an initial interview with the Complainant.”

Part 4(C)(2) of the Proposed Rules states that the Respondent will be given 21 days from the date of receipt of the Complaint and request for information to respond. The EJC believes that this grant of time is unnecessarily generous, and instead recommends that the provision state: “The Respondent’s response must be received by the EE/FHO (or, if mailed, postmarked) within 10 days of service of the Complaint.”

Part 4(D) does not contain any time limits. The EJC recommends that the provision should state: “. . . if the Respondent fails to respond to the information required in Part 4(C)(2) within the prescribed time period.”

Part 4 makes no mention of the individualized assessment that employers who wish to consider criminal records are required to perform under City Code § 4-15-4(E). This assessment is the keystone of the Ordinance: it ensures that an employer will truly look at the applicant, not just her criminal record, and consider whether there is a nexus between her conviction and the position such that a record-based exclusion would be job related and consistent with business necessity.<sup>3</sup> **In order to determine whether an employer has complied with the Ordinance, it is crucial that investigators have the ability to assess whether an individualized assessment was performed.** The EJC therefore suggests that a new Part 4(G) be added to the Proposed Rules, stating: “Where the Complainant alleges that he or she was the subject of an adverse employment action based on his or her criminal record, the Investigator must determine whether the Respondent conducted a reasonable individualized assessment, as defined in City Code § 4-15-2(G), including what individualized assessment system the Respondent used; what factors the Respondent relied on to support its employment decision; and whether the factors cited by the Respondent provide at least a rational basis for concluding that the applicant was unsuitable for the job.”

Part 4 also fails to mention the written notice that, under City Code § 4-15-4(F), an employer who takes adverse action against an individual based on the individual’s criminal history

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<sup>3</sup> See generally, Equal Employment Opportunity Commission Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e *et seq.*, Apr. 25, 2012, available at [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

is required to provide. This requirement is crucial to the efficacy of the Ordinance; without notice, an applicant or employee will have no way of knowing that her rights may have been violated and no opportunity to seek recourse for any potential violation. **In order to ensure that employers give proper written notice, the EJC recommends that the Department develop and distribute a model notice form.**<sup>4</sup> This form should ask the employer to state: (1) the duties and responsibilities of the job; (2) the specific criminal record that the employer considered disqualifying; and (3) the way in which the employer believes that the individual's record affects her fitness or ability to perform the duties and responsibilities of the job. The form should also state that the individual has the right to provide the employer with evidence of rehabilitation and/or evidence challenging the accuracy of the criminal background report, if necessary. Finally, the form should indicate that the individual can file a complaint with the EE/FHO if she believes that her rights under the Ordinance were violated.

In addition, the EJC suggests that a new Part 4(H) be added to the Proposed Rules, stating: **"Where the Complainant alleges that he or she was the subject of an adverse employment action based on his or her criminal record, the Investigator must determine whether the Respondent provided proper notice as required by City Code § 4-15-4(F). In making this determination, the Investigator must consider whether the notice: identified (1) the duties and responsibilities of the job, (2) the specific criminal record that the employer considered disqualifying, and (3) the way in which the employer believes that the individual's record affects her fitness or ability to perform the duties and responsibilities of the job; informed the Complainant of his/her right to provide evidence of rehabilitation and/or evidence challenging the accuracy of the criminal background report; and informed the Complainant of his/her right to file a Complaint with the EE/FHO."**

#### **IV. Final Determinations on Complaints**

Part 5(B) provides Investigators with 90 days to make a recommendation of final determination to the Administrator. To ensure that affected individuals receive needed relief in a more timely fashion, the EJC recommends that the deadline should be 60 days, absent special circumstances.

Part 5(C) contains no timeline. The EJC recommends that the provision be amended to include a requirement that the Administrator act within 15 days of receipt of a recommendation of final determination.

Part 5(H) provides the Administrator with 120 days to close an investigation after the date the complaint was assigned to an Investigator. For the benefit of the affected parties, the EJC suggests that this be changed to 90 days.

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<sup>4</sup> The City of New York has developed an excellent notice form, available at: [https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance\\_Form23-A\\_distributed.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/FairChance_Form23-A_distributed.pdf)

## **V. Assessment and Collection of Civil Penalties**

The EJC strongly objects to the Proposed Rules' dual penalty schedule. The City took the concerns of small businesses seriously when it chose to exempt from coverage all employers with fewer than 15 employees. Reducing the already meager penalties to mere slaps on the wrist for businesses with 16 to 49 employees cannot be justified, and the EJC urges the Department to retract this proposal.

The EJC also objects to the Proposed Rules' penalty schedule itself. City Code § 4-15-8(A) provides that, for a first-time violation, the City may issue a warning instead of a penalty if the employer attends a training session. Not only are additional concessions for second- and third-time offenders unnecessary, they send the message that the City is not serious about enforcing the Ordinance and that employers need not be serious about complying with it. To fulfill the City Council's purpose of combatting the injustice faced by individuals with criminal records, the EJC urges the Department to reject the proposed fee schedule and instead impose a mandatory \$500 penalty except where § 4-15-8(A) provides for a warning or in light of demonstrated serious hardship.

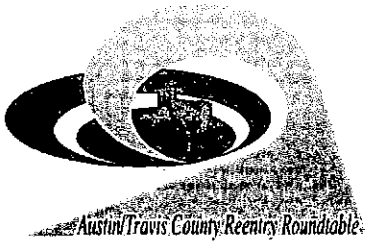
## **VI. Conclusion**

When it adopted the Fair Chance Hiring Ordinance, the City Council promised that in the City of Austin, a past conviction should not be a life sentence to joblessness. The EJC hopes that the Department will help the Council make good on this promise by accepting our recommendations and adopting rules that allow for the swift and thorough investigation of complaints and a penalty scheme that demonstrates that the City takes the enforcement of the Ordinance seriously and effectively deters violations.

Respectfully,

THE EQUAL JUSTICE CENTER

Rebecca Eisenbrey  
Staff Attorney  
512-474-0007 ext. 132  
reisenbrey@equaljusticecenter.org



## **Austin/Travis County Reentry Roundtable**

*Building Successful Strategies for  
Offender Re-Entry in Austin/Travis County, Texas*

April 13, 2018

ATTN: Jonathan Babiak  
City of Austin Equal Employment/Fair Housing Office  
1050 E 11th St., Ste. 200  
Austin, Texas 78702

*Via email to [fairchancehiring@austintexas.gov](mailto:fairchancehiring@austintexas.gov)*

**Re: Comments on Notice of Proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15**

To Whom It May Concern:

The Austin/Travis County Reentry Roundtable ("Roundtable") welcomes the opportunity to submit a written comment on the proposed Adoption of Administrative Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15.

Expanding employment opportunities for individuals with criminal records is a critical piece to the reentry equation. The Roundtable has been a strong advocate for Fair Chance Hiring since the City of Austin first considered expanding reentry employment policies beyond Ban the Box and has offered its support to help implement Fair Chance Hiring fully and expeditiously. Notwithstanding the lack of opportunity for meaningful public input in this rulemaking process due to an extremely foreshortened response period, the Roundtable remains ready to work collaboratively with the city and a wide range of stakeholders to ensure that the City of Austin emerges as a model for how to build support for Fair Chance Hiring across all sectors.

Overall, the Roundtable thanks the Department for taking seriously its mandate to establish rules necessary to implement the Ordinance. In general, the Roundtable commends the Department for its work. However, we have identified several areas where the Proposed Rules can and should be improved. In this regard, the Roundtable fully endorses the recommended improvements identified in comments submitted by the Equal Justice Center, including the following specific recommendations:

- Complaint forms should be made widely available and accessible to all Austin residents;
- Deadlines in the Proposed Rules should be shortened to ensure speedy processing and resolution of complaints;
- An employers' obligation to conduct an individualized assessment should be detailed with particularity;

- Employers who take adverse action against an individual on the basis of the individual's criminal history should have to provide the individual with written notice that the adverse action was based on the individual's criminal history; and
- The penalty schedule should be redesigned and penalty amounts increased so as to promote enforcement efforts by sending the message that the City takes the Ordinance seriously.

We appreciate the City's participation and engagement in these conversations, and we are hopeful that with robust community educational and meaningful outreach to our employer community, that the City of Austin's adopted standards will set a precedent for other jurisdictions looking to implement similar employment practices.

Please feel free to contact me should you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Helen Gaebler', with a long, sweeping horizontal line extending to the right.

Helen Gaebler Co-Chair, Austin/Travis County Reentry Roundtable

Kenneth Thompson Co-Chair, Austin/Travis County Reentry Roundtable

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**From:** Lewis Conway Jr <apache@austintexas.gov>  
**Sent:** Wednesday, April 18, 2018 3:08 PM  
**To:** FairChanceHiring  
**Subject:** Fair Chance Response

This message is from Lewis Conway Jr. [ lconway@grassrootsleadership.org ]

ATTN: Jonathan Babiak  
City of Austin Equal Employment/Fair Housing Office  
April 18, 2018

Mr. Babiak,

My name is Lewis Conway, Jr and I currently work with Grassroots Leadership as a Criminal Justice Organizer. In addition, I led the lobbying effort to protect Fair Chance Hiring last legislative session and was part of the original stakeholder process in 2015-2016. I am formerly incarcerated, having served 8 years in prison and 12 on parole, you can understand my commitment to making sure the rights of folks on both sides of the ordinance are protected.

After reviewing the Notice of Proposed Adoption of Administrative Rules, there are several issues and concerns that we wanted to highlight. As a preface to following line by line analysis and feedback, I wanted to share a few thoughts in a broader context about the proposed rules.

#### Summary

In view of the extreme latitude given to the EE/FHO, by the Council in writing the rules of procedure. Itâ€™s disappointing to find no specific rules standardizing, nor governing the protocol of the â€™individualized assessmentâ€™ process and no oversight mechanism in place. As advocates, stakeholders and members of the community, we were assured that the ordinance would adhere to the EEOC guidelines already in place in regards to an individualized assessment. In the absence of a true protol, processes, or mechanism of oversight in place, how are we protecting the rights of the parties affected?

In Part 3(b), under the â€™Filing of Complaintsâ€™ section, it refers to the prescription of forms and administrative procedures. Are these forms and procedures currently available for public information and if so, why werenâ€™t they included in this draft? If they do not currently exist, this of course presents a significant problem in moving forward with adoption; as several sections of the proposed rules refer back to these forms and procedures. Without these forms and procedures in place, before this draft is adopted, parties affected by the ordinance are posited at a detrimental disadvantage.

In the use of legalese, or legal terms, there is a clear choice made not to employ the formal legal definition of the term â€™evidenceâ€™, yet the term â€™Respondentâ€™ is used in place of â€™Employerâ€™. This begs the question: why would the City choose to use a legal term in a inconsequential manner in regards to naming a party in the process, yet conversely, not employ the same method when considering the aspects of the process, that determines whether either party (Complainant or Respondent) are named at all? The contradiction is glaring and disconcerting.

Moreover, we are disturbed by the sovereign ascendancy of the Administrator as the final dispositional

authority, in regards to complaints and resolutions. In the conspicuous absence of rules of procedure and the perplexing lack of evidentiary protocol, one has to wonder why the City wouldn't provide access to an appeal process. Even the most basic of grievance processes, provides one the right to appeal a decision of a lower body, to a higher body of authority. It is disappointing that the City would choose to deny the applicant an alternative recourse.

## Analysis and Feedback of the Proposed Administrative Rules

### Rules for Investigation of Complaints and Assessment Of Civil Penalties under City Code 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:

- The list of terms lack definitions, or need alternative definitions for the following. The terms used should be clearly defined for both employers and residents.

(Investigation) - Not included.

(Individualized Assessment) - Ex. "means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors".

(Preponderance of Evidence) - is a legal term and should be clearly defined. Ex. "This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence."

#### 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.

- There seems to be lacking an explanation as to what happens when The Administrator does not investigate or determine a decision in a timely manner. What is the oversight mechanism in place to determine the aforementioned? This is an oversight that should be corrected before any draft of the rules are adopted, as it severely limits the possibility of a speedy or thorough review of the complaint.

(b) The Administrator may prescribe forms and administrative procedures for filing a Complaint.

- As noted earlier, what are these forms and procedures and where can they be found?

(1) 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:

- For residents that aren't familiar with cross referencing municipal codes and ordinances, this seems to be an unfair burden placed upon residents and employers alike. A link should be provided in the online version of the proposed rules.

(1) ... 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.

- As noted earlier, what are the procedures and where can they be found?

(2) ...under Â§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 Â§4-15- 6(B).

- For residents that arenâ€™t familiar with cross referencing municipal codes and ordinances, this seems to be an unfair burden placed upon residents and employers alike.

#### 4. Investigation of Complaints.

##### Subsection C

â€ 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:

- As noted earlier, what are the procedures and where can they be found?

##### Under Subsection C

(1) ...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.

Who will be the entity that is used to serve the parties involved? Ex. constable, sheriff, etc - This should be clearly defined so each party is aware of whom to expect correspondence from or be in contact with. Are these records available for public inspection? What are the protocols and oversight mechanisms in place, if none, which ones will be?

(B) The Administrator may prescribe forms and administrative procedures for the investigation of Complaints.

- As noted earlier, what are these forms and procedures and where can they be found?

(C) ... 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:

- As noted earlier, what are these forms and procedures and where can they be found?

(D) ... City Code Â§4-15-7 if the Respondent fails to respond to the information request in Part 4(C)(2). - Folks need access to this link to understand the procedure, a hot link should be provided for all such instances when the rules refer to a city code.

- At the very least, in addition to a simplified system of cross reference, â€˜hotâ€™ links should be provided when reference is made to a municipal code.

(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.

- In the strongest language possible, we want to convey: this is unacceptable. If formal rules of evidence aren't going to apply, what rules will? What effort is being made to place those rules on public display? Who is the governing body that determined those rules, and again, what is the mechanism of oversight in place to assure the public these "rules" are being employed? As stated earlier, in lieu of employing legal terms, a standardized collection of protocol must be in place. The lack of these rules, or standardized protocol, presents a significant legal burden on both parties affected by the ordinance. We demand a publicly displayed set of rules to be used when investigating claims.

## 5. Final Determinations on Complaints.

(B) ...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.

- What recourse of action does the Respondent and Complaint have in the interim?

(c) (3) ...City Code Â§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.

- As indicated by the lack of participation in the employer outreach (11 attendees), we believe this phrasing needs clarification, protocol of procedure and oversight. We are unaware of the existence of a compliance training, nor are we aware of the rules and procedures governing that compliance training. As a community, it is more important for an Employer to cease violating the rights of applicants, than it is to seek a monetary penalty. In that context, we think there is value in the consideration of involving stakeholders in the process of constructing a compliance training and utilizing stakeholder organizations as training facilitators. The curriculum, outreach plan and intended outcomes of the compliance training must be determined, before any further effort is made to adopt the proposed rules of administration.

(G) The decision of the Administrator under this Rule is final. There is no right of appeal to any determination issued by the Administrator.

- As stated earlier, the absolute sovereignty of the Administrator and lack of oversight is of utmost concern. We stringently implore you to reconsider this.

## 7. Closure of Complaint Investigations.

(A)(2) The Administrator determines under Part 5(C)(2) that the preponderance of evidence does not establish a violation of Chapter 4-15; or

- A protocol of how evidence is determined should be employed to protect the rights of employers and residents. Additionally, a clear definition of preponderance of evidence should be included, either as a footnote, "hot" link or subtext. Every effort should be made to protect businesses from exposure to legal action and every resident deserves to their rights protected. In this instance, neither is accomplished or attempted.

(6) The Administrator determines that the Complainant has failed to cooperate reasonably in the investigation of the Complaint, or has abandoned the Complaint.

- We believe under no circumstance should the Administrator be the ascendant and sovereign dispositional authority of reasonableness. By what measure is reasonableness being considered? If the City has chosen to

option out of applying the formal rules of evidence; by what standard is the Administrator held to in determining reasonableness? What qualifications is incumbent in the job description of the Administrator, that will lend itself to be the ultimate, sovereign and supreme authority on reasonableness? We ardently urge to reconsider this language and reconsider the authority mandated to the Administrator, by power of these rules of procedure. The dispositional authority given to the Administrator speaks to residents not having access to any alternatives of recourse.

In Closing:

We firmly believe this iteration of the proposed rules, many efforts have been made to give employers the benefit of the doubt. No such effort is made on behalf of the residents affected. With careful consideration, we ask this iteration of the proposed rules of administration not be adopted.

Moreover, we ask that before any effort is undertaken to propose another draft, there is an effort made to involve the stakeholders in the process. We believe the more stakeholders are involved, on both sides, the more resolute the outcomes will be.

In service,  
Lewis Conway, Jr

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**From:** Steven Garrett <steven@boulettegolden.com>  
**Sent:** Wednesday, April 25, 2018 9:45 AM  
**To:** FairChanceHiring  
**Subject:** Fair Chance Hiring Proposed Rules - Comments

Dear Mr. Babiak:

I am writing to comment on the proposed Rules for Investigation of Complaints and Assessment of Civil Penalties under City Code Chapter 4-15.

**Rule 3(C)(1)** is antithetical to the definition of Complaint in Rule 2(C). By removing the requirement that a Complaint be filed in writing to be "timely" it creates a situation where an individual could alert the EE/FHO office of an alleged violation of the ordinance, and yet the employer would not become aware of the alleged violation until months later when the Complaint is finally signed. City Code 4-15-16(B) sets out that a timely Complaint is necessary for a thorough investigation. The current Rule 3(C)(1) could result in an employer not preserving information because it did not know there was an alleged violation. Rule 3(C)(1) should be amended to clarify that an individual has not filed a Complaint until the Complaint is reduced to writing and signed.

**Rule 4(C)(2)** similarly denies the employers the assurance of timely notice. Instead Rule 4(C)(2) should require the Complaint be sent to the employer within ten days of receipt by the EE/FHO office so the employer can preserve any necessary information to assist with the investigation. Tying employer notice to the assignment of a Complaint to an Investigator permits an extended delay that could result in the loss of valuable information or records. The rule should be amended to support the ordinance's requirement that there be a timely Complaint and timely notice to the employer.

**Rule 4(D)** removes the Administrator's discretion regarding whether or not to serve a subpoena. This could result in unnecessary subpoenas being issued, and force employers to hire attorneys to respond to a subpoena, increasing the cost of doing business in the City. The rule should be amended to reflect the ordinance's direction that the Administrator "may subpoena records or testimony relevant to the investigation" and grant the Administrator discretion to issue a subpoena if necessary. If an employer is late in responding or does not make a complete response within 21 days, but is cooperating, it would waste the City's resources to issue a subpoena.

**Rule 4(F)** undermines the integrity of the investigation and any conclusion that may be drawn from a finding (whether it establishes a violation or not). By expressly stating that the Administrator may consider information that does not meet the admissibility standards necessary to prove a violation of the law in court. This rule creates an inference that the investigation is tainted by unreliable, irrelevant, or unsubstantiated claims. Rule 4(F) should be removed or amended to only consider information that would be admissible in court.

**Rule 5(B)** should tie the 90 day deadline to submit a recommendation to the date notice is provided to the employer, not to the date the Investigator receives the Complaint. This will result in the Investigator having ample time to consider any evidence the employer may wish to provide, without prejudicing the employer's right to a "full opportunity to present witness statements, documents, or other information relevant to the allegations in the Complaint" as described in Rule 4(C).

**Rule 5(D)** should be modified to include a procedure where the Administrator must find that "voluntary compliance cannot be obtained" as required by City Code 4-15-6(C) before issuing a civil penalty. City Code City Code 4-15-6(C) requires two findings before a civil penalty, first that a violation occurred, and second that voluntary compliance cannot be obtained. Accordingly, the Administrator should first issue a finding that a violation occurred, and then attempt to

seek voluntary compliance. Only after finding that voluntary compliance cannot be obtained does the ordinance authorize issuing a civil penalty. Without this finding, employers may be able to successfully challenge any civil penalty that is issued as violating the ordinance.

**Rule 6** should be clarified to describe a "violation." For example, is each applicant who sees an ad that violates the ordinance a separate violation? Or would that be a single violation because the employer only took one action that violated the ordinance?

If you would care to discuss any of the above, please don't hesitate to contact me.

Steven Garrett  
Associate  
Boulette Golden & Marin  
512-732-8900  
512-732-8905 (fax)  
[steven@boulettegolden.com](mailto:steven@boulettegolden.com)



## Workers Defense Project

*Proyecto Defensa Laboral*

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May 4, 2018

ATTN: Jonathan Babiak  
City of Austin Equal Employment/Fair Housing Office  
1050 E. 11th St., Ste. 200  
Austin, Texas 78702

*Sent via email to fairchancehiring@austintexas.gov*

**Re: Comments on Notice of Proposed Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15**

To whom it may concern:

Workers Defense Project ("WDP") is a membership-based organization that empowers low-income workers to achieve fair employment through education, direct services, organizing and strategic partnerships. Founded in 2002, WDP both provides direct legal services to low-wage workers and engages in advocacy to improve worker protections. Much of WDP's advocacy has involved working with enforcement agencies at every level of government, including departments within the City of Austin, to ensure that existing legal protections are enforced to fulfill their intended benefit for working people. It is with this experience, that WDP offers the following comments to the proposed "Rules for Investigation of Complaints and Assessment of Penalties under City Code Chapter 4-15" ("Proposed Rules").

- 1. The Complaint and investigation process should be as accessible as possible.** WDP recommends that Complaint forms developed by the Administrator pursuant to Part 3(B) of the Proposed Rules be translated into Spanish and other languages and that such multilingual forms be distributed in hardcopy, as well as be available online in an accessible format and in an easy to find, prominent location on the City's website. The majority of workers served by WDP are non-English speakers who do not have a computer in their homes or secure access to the internet. Many do not use e-mail or even have an e-mail address. WDP also recommends that the Complaint form be clear and easy-to-use and that it not request sensitive information such as a Complainant's Social Security Number. Should the form require some sort of attestation, WDP recommends that the form utilize a written sworn declaration rather than require notarization, to avoid placing additional burdens on Complainants.
- 2. The process of receiving complaints, conducting investigations, evaluating whether a violation has occurred, and steps taken to address violations should be as transparent as possible.** Part 3(A) of the Proposed Rules allows for the Administrator to decline to investigate an alleged violation of the Ordinance if a Complaint is not timely or "filed in accord with these Rules." The Proposed Rules, however, do not require the

Administrator to notify a Complainant as to whether their Complaint has been accepted for investigation. If a Complaint is timely, but does not meet the requirements established by the Administrator, the Complainant should be notified and afforded the opportunity to correct any deficiencies and file a revised Complaint within the established statute of limitations. WDP suggests that Part 3(A) therefore be amended to read:

"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. Unless the Complaint is filed anonymously, within 5 business days after determining that a particular Complaint is not timely or is not filed in accord with these Rules, the Administrator shall inform the Complainant in writing that it will not take action on the Complaint and provide a clear and concise explanation of the reason as to why."

WDP further suggests that Part 4(C) of the Proposed Rules similarly require that, unless Complaints are filed anonymously, Complainants receive written notice from the Administrator to notify them that their Complaint has been accepted for investigation and assigned to an Investigator. The rules should provide the timeline that such notice should be sent, such as 2 business days after a Complaint is assigned to an Investigator, and the notice itself should: 1) inform the Complainant of the name, phone number, and email address of the assigned Investigator; 2) advise the Complainant that the Investigator will be contacting them to schedule an initial interview; 3) remind the Complainant that they may submit witness statements and documents to substantiate the allegations in the Complaint; 4) and direct the Complainant on how such statements or documents may be shared with the assigned Investigator.

Complainants should also receive written notice when an assigned Investigator has made a recommendation to the Administrator for final determination, and written notice when the the Administrator has made their final determination and the disposition of that determination. Notably, Part 5 of the Proposed Rules, "Final Determination of Complaints" currently does not require the Administrator to inform a Complainant if a Complaint is dismissed, nor does it require the Administrator to send the Complainant a copy of the written notice of a violation issued to the Respondent pursuant to City Code §4-15-8(A), or require the Administrator to inform the Complainant whether or how a Respondent has remedied a violation, whether a Respondent has elected to complete compliance training, or whether the Respondent has ultimately completed the compliance training or paid the civil penalty assessed. The Proposed Rules should ensure that the entire process is transparent, and that all parties are regularly informed in writing of the status of their Complaint and that all written notices are provided to parties in their preferred language.

- 3. EE/FHO should be intentional about ensuring that people are informed of their ability to make complaints anonymously and understand the implications of doing so.** WDP frequently encounters workers who have faced retaliation by their employers for seeking to exercise their employment rights. Workers who fear retaliation often

prefer to file complaints of workplace violations anonymously when they have the opportunity to do so. In developing administrative procedures pursuant to 3(B), the Administrator should establish how both anonymous and non-anonymous complaints shall be received and investigated by EE/FHO. The Complaint form should Complainants that they Ordinance allows them to make complaints anonymously, and allow them to designate if they wish to do so. The form should also notify Complainants how (if at all) investigations or outcome of anonymous complaints may differ from non-anonymous complaints, so that Complainants may make an informed decision as to whether they want to remain anonymous or not.

4. **Every step in the process of receiving complaints, investigating complaints, reaching a final determination on a complaint, and closing an investigation should be time-bound with clear deadlines.** For example, the Proposed Rules should prescribe clear deadlines establishing: when the Administrator must assign a Complaint to an Investigator after it is received and when parties are advised that a Complaint has been accepted for investigation or dismissed under Part 4(C); when a subpoena is issued in accordance with Part 4(D); and when the Administrator must act upon recommendation of final determination under Part 5(C).
5. **The Proposed Rules should encourage the timely investigation of complaints.** While ensuring a thorough investigation of complaints is essential, the Proposed Rules should prevent the potential for complaints to languish with EE/FHO. EE/FHO should remain mindful that many people filing complaints alleging violations under the Ordinance are job seekers in need of gainful employment. Furthermore, the potential to achieve meaningful voluntary compliance decreases if too much time passes between the period of time that a Complaint is filed, and final determination is reached. In particular, WDP recommends that the period of time that Respondents' have to respond to a Complaint under Part 4(C)(2) of the Proposed Rules be decreased from 21 to 10 days, that the time period that Investigators have to make a recommendation of final determination to the Administrator in Part 5(B) be reduced from 90 days to 60 days, and that the length of time between when a Complaint is assigned to an Investigator and when it is closed by the Administrator pursuant to Part 5(H) be reduced from 120 days to 90 days.
6. **Part 5(C) should require the Administrator to document and substantiate in writing the result of her independent review.** Part 5(C) of the Proposed Rules require the Administrator to issue written notice of her independent review only upon finding of violation. The Administrator should also be required to provide parties with written notice if she determines that additional analysis or evidence is still needed prior to reaching a final determination on a Complaint, or if she determines that a Complaint should be dismissed. If the Administrator determines that a Complaint requires additional analysis or evidence, she should specify to the Investigator why she believes the information gathered or analysis conducted to date is not sufficient and what additional tasks still must be performed before a Final Determination may be reached. If an Administrator chooses to dismiss a Complaint in accordance with Part 5(C)(2), she

should justify such dismissal in writing and explain the reason for the dismissal in written notice sent to both the Complainant and the Respondent.

7. **Establishing an appeal process within the Proposed Rules is essential.** In order to ensure accountability and due process, either the Respondent or the Complainant should have the opportunity to request additional review of the determination of the Complaint.
8. **The civil penalties proposed in Part 6 should be increased and adjusted to reflect the gravity of the violation.** The current civil penalties proposed are far too small to have the effect of deterring the sort of discrimination the Fair Chance Hiring Ordinance was passed to prevent. The civil penalties schedule should be tailored not to the size of the employer, but the gravity of the violation. WDP recommends that the Proposed Rules impose a mandatory \$500 penalty except where § 4-15-8(A) provides for a warning or where the Respondent can demonstrate some other serious hardship. The Proposed Rules should also specify that each separate violation of the Ordinance merits a separate assessment of civil penalty. For instance, a final determination finding violations of both § 4-15-4(C) and § 4-15-5 should result in the assessment of up to \$1000 in civil penalties. Additionally, the Proposed Rules should clarify that "each job" as it is used in § 4-15-8 does not restrict multiple applicants to a particular job from filing separate Complaints with EE/FHO, and that, if substantiated, each Complaint filed could result in the Respondent being liable for a civil penalty.