



**Austin City Code Amendment  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 7  
AGENDA DATE: Thu 06/10/2004  
PAGE: 1 of 2**

**SUBJECT:** Approve an ordinance amending Chapters 5-1, 5-2, and 5-3 of the City Code relating to discrimination in housing, public accommodations, and employment; and of Chapter 2-1 of the City Code relating to the Human Rights Commission updating the Code to conform to current Federal law, clarifying responsibilities of Austin Human Rights Commission and adding "gender identity" to the classifications protected against discrimination.

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** N/A

**REQUESTING DEPARTMENT:** Human Resources

**DIRECTOR'S AUTHORIZATION:** Vanessa Downey-Little

**FOR MORE INFORMATION CONTACT:** Vanessa Downey-Little, Director/974-3225; Charles Gorham, Compliance Administrator/974-3259

**PRIOR COUNCIL ACTION:** N/A

**BOARD AND COMMISSION ACTION:** Recommended by the Austin Human Rights Commission

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The Austin Human Rights Commission with the assistance of the Human Resources and Law Departments initiated a review of the current City ordinances protecting Austin citizens against discrimination in housing, public accommodations, and employment and recommends proposed changes to Chapters 5-1 (Housing Discrimination), 5-2 (Discrimination in Public Accommodations), and 5-3 (Discrimination in Employment Generally) of the City Code. The commission also recommends revisions to Article 31 of Chapter 2-1 of the City Code relating to the commissions responsibilities.

The changes are being proposed to (1) comply with current Federal law related to Americans with Disabilities Act of 1990 (ADA), (2) clarify the responsibilities of the Austin Human Rights Commission and the Human Resources Department, and (3) enhance the protection of Austin citizens against discriminatory practices by adding "gender identity" to the list of classifications protected against discrimination.

Currently, the Human Resources Department receives \$380,000 in Federal funds from the Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Housing and Urban Development (HUD) to conduct investigations relating to claims of discrimination in housing and employment. The proposed City Code amendments were submitted to and approved by both EEOC and HUD.

The following changes are proposed:

**Chapter 5-1. Housing Discrimination**

- This chapter was changed to comply with the ADA. The changes reflect that the phrase "handicap" was changed to "disability."



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- The chapter also adds “gender identity” to the list of classifications protected against discriminatory practices.
- Other changes made were to distinguish the difference between the responsibilities and duties of the Austin Human Rights Commission and the Compliance Division of the Human Resources Department (HRD). To further clarify, HRD’s Compliance Division’s name was changed to the Equal Employment Opportunity/Fair Housing Office (EE/FHO) and the name of the Austin Human Rights Commission remained the same. The EE/FHO is responsible for the total administration of the chapter. The Austin Human Rights Commission’s involvement in investigation of a complaint filed under the chapter is limited to reviewing a decision made by an Administrative Law Judge if a hearing is held after a charge is issued.
- Section 5-1-22 Definitions were combined to more closely reflect current Federal law.
- The Legal Department recommended non-substantive amendments to conform to the City’s drafting guidelines, which are incorporated in the proposed ordinance.
- Numbering of Sections was changed to conform to the City’s drafting guidelines.

Chapter 5-2. Discrimination in Public Accommodations

- This chapter was changed to comply with the ADA. Definition of a Disability was added and the in-depth definitions of a mental and physical disability were deleted.
- An additional classification protected against discriminatory practice was added, “Gender Identity.”
- The Austin Human Rights Commission was deleted as the responsible party for direct investigation and the HRD’s EE/FHO was defined and given the responsibility for investigating charges of discrimination.

Chapter 5-3. Discrimination in Employment Generally

- This chapter was amended to reflect a change from the Austin Human Rights Commission as the body responsible for investigations to the HRD’s EE/FHO.
- Definitions were also to provide clarity, including the definition of “disability” to comply with the ADA.
- “Gender identity” was added as an additional classification protected against discriminatory practice.

Chapter 2-1. Boards and Commissions

- Section 2-1-313, Duties and Functions was changed to reflect that the Commission does not investigate a charge of discrimination under Title 5 (Civil Rights).



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## ORDINANCE NO.

**AN ORDINANCE AMENDING SECTIONS 2-1-312 AND 2-1-313 OF THE CITY CODE RELATING TO THE HUMAN RIGHTS COMMISSION, CHAPTER 5-1 OF THE CITY CODE RELATING TO HOUSING DISCRIMINATION, CHAPTER 5-2 OF THE CITY CODE RELATING TO DISCRIMINATION IN PUBLIC ACCOMMODATIONS, AND CHAPTER 5-3 OF THE CITY CODE RELATING TO DISCRIMINATION IN EMPLOYMENT GENERALLY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Section 2-1-312 of the Code is amended to read:

**§2-1-312     Organization and Conduct of Business.**

(A) The commission shall elect ~~[and appoint a chairperson and such other]~~ officers ~~[from among its members,]~~ and may adopt rules for the transaction of its authorized business ~~[, as it may elect].~~

(B) The city manager shall assign ~~[to the commission]~~ a City employee to serve as liaison to the Commission ~~[executive secretary,]~~ and may assign other employees as ~~[may be]~~ necessary to assist with ~~[perform]~~ the functions of the commission.

**PART 2.** Subsections (6) and (7) of Section 2-1-313 are amended to read:

**§2-1-313     Duties and Functions.**

(1) Receive ~~[and investigate]~~ complaints and ~~[, as provided by state law, and if necessary, subpoena witnesses and documents needed for investigation of those complaints, and]~~ initiate investigations of tensions, acts of prejudice, and practices of discrimination.

(2) Conduct public hearings on complaints and present a written ~~[investigate and]~~ report to the council, including ~~[Council in writing]~~ facts, findings, and recommendations. The commission shall use ~~[after using persuasion,]~~ mediation~~[,]~~ and conciliation before it conducts a ~~[any]~~ public hearing, and shall provide a ~~[after make certain that any]~~ person named in a [any] report ~~[of investigation was given]~~ the opportunity to be heard before the commission, including a ~~[with the]~~ right to examine and cross-examine witnesses.

**PART 4.** Articles 1 and 2 of Chapter 5-1 of the Code are amended to read:

**CHAPTER 5-1. HOUSING DISCRIMINATION.**

***ARTICLE 1. GENERAL PROVISIONS.***

**§ 5-1-1      DECLARATION OF POLICY.**

(A) It is ~~[hereby declared to be]~~ the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain housing without regard to race, color, creed, religion, sex, national origin, disability ~~[handicap]~~, ~~[status as a]~~ student status, marital status, familial status, sexual orientation, gender identity, or age.

(B) This ~~[It is further declared that such]~~ policy is established upon a recognition of the inalienable rights of each individual to obtain housing without regard to race, color, creed, religion, sex, national origin, disability ~~[handicap]~~, ~~[status as a]~~ student status, marital status, familial status, sexual orientation, gender identity, or age; and further that the denial of such rights through considerations based on race, color, creed, religion, sex, national origin, disability ~~[handicap]~~, ~~[status as a]~~ student status, marital status, familial status, sexual orientation, gender identity, or age, is detrimental to the health, safety and welfare of the inhabitants of the City and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of the government to prevent.

**§ 5-1-2      SCOPE.**

(A) To provide a procedure for investigating and settling complaints of discriminatory housing practices which are violations of state and federal law, to provide rights and remedies substantially equivalent to those granted under federal law and to permit the director to accept referral of complaints from the ~~[U.S. Attorney General and the]~~ Secretary of Housing and Urban Development and from the Texas Commission on Human Rights, Article 2 (*Discrimination in Housing – Fair Housing Act Compliance*) ~~[of this chapter]~~ prohibits discrimination in housing on the basis of race, color, sex, religion, disability ~~[handicap]~~, familial status or national origin and establishes procedures to enforce the provisions of federal and state law.

(B) Even though federal law protects individuals against discrimination in housing based on race, color, sex, religion, disability ~~[handicap]~~, familial status or national origin, it is the policy of the City that no person should be denied the opportunity to obtain housing on the basis of creed, ~~[status as a]~~ student status, marital status, sexual orientation, gender identity, or age. ~~[To~~

~~effectuate this policy, Article 3 of this chapter prohibits discrimination in housing on any of those bases and establishes procedures to enforce those prohibitions.]~~

**~~§ 5-1-3~~ ELECTION OF REMEDIES.**

~~Because the provisions of federal law provide remedies for discriminatory housing practices based on race, color, religion, sex, familial status, handicap or national origin which cannot be provided by this chapter for discriminatory housing practices based on creed, status as a student, marital status, sexual orientation or age, any individual who desires to file a complaint based on violations of both Articles 2 and 3 must, at the time the complaint is filed, elect to proceed under only one of such articles. The commission shall notify the complainant of the requirement to make such an election and explain to the complainant the differing provisions and remedies available under Article 2 and Article 3.]~~

**ARTICLE 2. DISCRIMINATION IN HOUSING - FAIR HOUSING ACT COMPLIANCE.**

**Division 1. General Provisions.**

**§ 5-1-11 [20] PURPOSE.**

The purposes of this article are:

- (1) to provide for fair housing practices in the City;
- (2) to create a procedure for investigating and settling complaints of discriminatory housing practices; and
- (3) to provide rights and remedies substantially equivalent to those granted under state and federal law.

**§ 5-1-12 [24] AUTHORITY.**

This article is enacted pursuant to authority explicitly granted municipalities by Section 214.903 (*Fair Housing Ordinances*) of the Texas Local Government Code the, Chapter 301 (*Texas Fair Housing Act*) of the Texas Property Code.

**§ 5-1-13 [22] DEFINITIONS.**

In this article:

- (1) ADMINISTRATOR means the Equal Employment/Fair Housing

Office administrator [~~or chief staff officer of the commission who is~~]  
appointed by the director.

(2) AGE means the calendar age of an individual 18 years of age or older.

(3) AGGRIEVED PERSON includes a [~~any~~] person who:

(a) claims to have been injured by a discriminatory housing practice; or

(b) believes that he will be injured by a discriminatory housing practice that is about to occur.

(4) COMPLAINANT means a person, including the administrator or the commission, who files a complaint under Section 5-1-60 (*Complaint*).

(5) COMMISSION means the Austin Human Rights Commission.

(6) CONCILIATION means the attempted resolution of issues raised by a complainant or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the respondent, and the Equal Employment/Fair Housing Office [~~commission~~].

(7) CONCILIATION AGREEMENT means a written agreement setting forth the resolution of the issues in conciliation.

(8) COVERED MULTIFAMILY DWELLING means:

(a) buildings consisting of four or more units if such buildings have one or more elevators; and

(b) ground floor units in other buildings consisting of four or more units.

(9) CREED means a set of principles, rules, opinions, or precepts formally expressed and seriously adhered to or maintained by a person.

(10) [~~(9)~~] DIRECTOR means the director of the Human Resources Department.

(11) DISABILITY, with respect to an individual, means:

(a) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;

(b) a record of the impairment; or

(c) being regarded as having an impairment.

(12) ~~[(10)]~~ DISCRIMINATORY HOUSING PRACTICE means an act prohibited by this article.

(13) ~~[(11)]~~ DWELLING means:

(a) a [any] building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or

(b) [any] vacant land that is offered for sale or lease for the construction or location of a building, structure or part of a building or structure described in Subsection (a) [of this definition].

(14) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the staff in the Human Resources Department that handles cases referred to the City by the United States Department Housing and Urban Development or the Texas Commission on Human Rights.

(15) ~~[(12)]~~ FAMILY means a single individual or group of individuals living together under one common roof.

(16) ~~[(13)]~~ FAMILY STATUS means the status resulting from:

(a) ~~[The status resulting from]~~ one or more persons who are under ~~[the age of]~~ 18 years old being domiciled with an individual who is either the parent of the persons under ~~[age]~~ 18 years old, ~~[;]~~ the legal guardian or custodian of the persons under ~~[age]~~ 18 years old, ~~[;]~~ or the designee (with written authorization) of the parent, ~~[or]~~ legal guardian, or custodian of the persons under ~~[age]~~ 18 years old; ~~[-]~~

(b) ~~[The status resulting from]~~ being pregnant; or [-]

(c) ~~[The status resulting from]~~ being in the process of securing legal custody of a [any] person who is under [the age of] 18 years old.

~~[(14) HANDICAP means a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. This does not include the current illegal use of or~~



~~addiction to a controlled substance.]~~

(17) GENDER IDENTITY means a person's various individual attributes, actual or perceived, that may be in accord with or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

(18) ~~[(15)]~~HOUSING FOR OLDER PERSONS means housing:

(a) that is determined by the Equal Employment/Fair Housing Office ~~[commission]~~, consistent with the United States Department of Housing and Urban Development's guidelines, to be specifically designed and operated to assist elderly persons under a federal or state program;

(b) intended for, and solely occupied by, persons 62 years of age and older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing meets this definition, the Equal Employment/Fair Housing Office ~~[commission]~~ shall consider at least the following factors:

(i) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or, if such improvements are not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(ii) that at least 80 percent [%] of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) the publication of and adherence to policies and procedures demonstrating an intent by the owner or manager to provide housing for persons 55 years of age or older.

(19) ~~[(16)]~~ MAJOR LIFE ACTIVITIES means functions including ~~[such as, but not limited to,]~~ caring for one's self ~~[oneself]~~, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(20) MARITAL STATUS means an individual's status as a single, married, divorced, widowed, or separated person.

(21) ~~[(17)]~~ PERSON includes one or more individuals, corporations,

partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Bankruptcy Code, receivers, and fiduciaries.

(22) [(48)] RESPONDENT means:

(a) the person accused of a violation of this article in a complaint of discriminatory housing practice; or

(b) any person identified as an additional or substitute respondent under Section 5-1-74 [~~5-1-63~~] (*Additional or Substitute Respondent*) or an agent of an additional or substitute respondent.

(23) SEXUAL ORIENTATION means an individual's sexual preference or practice including homosexuality, heterosexuality, or bisexuality.

(24) STUDENT STATUS means an individual's status as a student enrolled in any type of educational program or institution.

(25) [(49)] TO RENT includes to lease, sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

**§ 5-1-14 [23] CERTAIN SALES AND RENTALS EXEMPTED.**

(A) Subject to Subsection (B), Division 3 (*Prohibitions Against Discrimination*) does [~~ef this section, Sections 5-1-50 through 5-1-56 of this article do~~] not apply to:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(a) the owner does not:

(i) own more than three single-family houses at any one time; or

(ii) own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and

(b) the house was sold or rented without:

(i) the use of the services or facilities of a real estate agent or

any other person in the business of selling or renting real estate;  
or

(ii) the publication, posting, or mailing of a notice, statement or advertisement prohibited by Section 5-1-52 ~~[5-1-51]~~  
(*Publication Indicating Discrimination*).

(2) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters of the owner's residence, except that the prohibition against discriminatory advertising shall apply to dwellings described in this paragraph.

(B) The exemption in Subsection (A)(1) ~~[of Subsection (A) of this section]~~ applies only to one sale or rental in a 24-month period if the owner did not reside in the house at the time of sale or rental or was not the most recent resident of the house prior to the sale or rental.

**§ 5-1-15 ~~[24]~~ RELIGIOUS ORGANIZATION AND PRIVATE CLUB EXEMPTION.**

(A) This article does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from:

(1) limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin; or

(2) giving preference to persons of the same religion unless membership in the religion is restricted because of race, color, or national origin.

(B) This article does not prohibit a private club not in fact open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.

**§ 5-1-16 ~~[25]~~ HOUSING FOR ELDERLY EXEMPTED.**

The provisions of this article relating to familial status do not apply to housing for

older persons.

**§ 5-1-17 [26] APPRAISAL EXEMPTION.**

This article does not prohibit a person engaged in the business of furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, sexual orientation, gender identity, disability, age, family ~~[handicap, familial]~~ status, or national origin.

**§ 5-1-18 [27] EFFECT ON OTHER LAW.**

(A) This article does not affect a reasonable state or local restriction on the maximum number of occupants permitted to occupy a dwelling or a restriction relating to health or safety standards.

(B) This article does not affect a requirement of nondiscrimination in any other ordinance or state or federal law.

**Division 2. Administration.**

**§ 5-1-31 [40] ADMINISTRATION.**

~~[(A)]~~ The Equal Employment/Fair Housing Office ~~[commission]~~ shall administer this article.

**§ 5-1-32 RULES.**

~~[(B) Rules.]~~ The Equal Employment/Fair Housing Office ~~[commission]~~ may adopt both substantive and procedural rules necessary to implement this article, provided that substantive rules ~~[adopted by the commission]~~ shall impose obligations, rights, and remedies which are substantially the same as provided in federal fair housing regulations. ~~[The commission may adopt procedural rules to implement this chapter.]~~

**§ 5-1-33 COMPLAINTS.**

~~[(C) Complaints.]~~ The Equal Employment/Fair Housing Office ~~[commission]~~ shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this article.

~~[(D) Delegation of authority. The commission may, by rule, authorize the administrator of the commission to exercise the commission's powers or perform the commission's duties under this article.]~~

~~[(E) Reports, studies. The commission shall, at least annually, make a written report to the city council recommending legislative or other action to carry out the purposes of this article. The commission shall make studies relating to the nature and extent of~~

discriminatory housing practices in this City.]

**§ 5-1-34 COOPERATION WITH OTHER ENTITIES.**

~~[(F) Cooperation with other entities.]~~ The Equal Employment/Fair Housing Office ~~[commission]~~ shall cooperate with and, as appropriate, may provide technical and other assistance to federal, state, local, and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices.

**§ 5-1-35 SUBPOENAS; DISCOVERY.**

~~[(G) Subpoenas, discovery.]~~ The Equal Employment/Fair Housing Office ~~[commission]~~ may issue subpoenas and order discovery ~~[as provided by this section]~~ in aid of investigations and hearings under this article ~~[- The subpoenas and discovery may be ordered]~~ to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in District Court.

**§ 5-1-36 WITNESS FEES.**

~~[(H) Witness fees.]~~ Witnesses summoned by a subpoena under this article are ~~[shall be]~~ entitled to the same witness and mileage fees as witnesses in state District Court. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party, or, where a party is indigent, by the Equal Employment/Fair Housing Office ~~[commission]~~.

**Division 3. Prohibitions Against Discrimination.**

**§ 5-1-51 [50] DISCRIMINATION IN SALE OR RENTAL OF HOUSING.**

(A) A person may not refuse to sell or rent a dwelling to a person who has made a *bona fide* offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make unavailable or deny a dwelling to any person based on ~~[because of]~~ race, color, religion, sex, sexual orientation, gender identity, age, family [familial] status, disability, or national origin.

(B) A person may not discriminate against a [any] person in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with the sale or rental, based on ~~[because of]~~ race, color, religion, sex, sexual orientation, gender identity, age, family [familial] status, disability, or national origin.

(C) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance, but does not permit discrimination based on a disability [on the basis of a handicap].

**§ 5-1-~~52~~ [54] PUBLICATION INDICATING DISCRIMINATION.**

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, disability, age, family [~~handicap, familial~~] status, or national origin, or an intention to make such a preference, limitation, or discrimination.

**§ 5-1-~~53~~ [52] AVAILABILITY FOR INSPECTION.**

A person may not represent to a [any] person based on [~~because of~~] race, color, religion, sex, sexual orientation, gender identity, disability, age, family [~~handicap, familial~~] status, or national origin that a dwelling is not available for inspection, for sale or rental when the dwelling is available for inspection.

**§ 5-1-~~54~~ [53] ENTRY INTO NEIGHBORHOOD.**

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, sexual orientation, gender identity, disability, age, family [~~familial~~] status, or national origin.

**§ 5-1-~~55~~ [54] DISCRIMINATION BASED ON DISABILITY PROHIBITED [HANDICAP].**

(A) A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter based on a disability [~~because of a handicap~~] of:

- (1) that buyer or renter;
- (2) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) a [any] person associated with that buyer or renter.

(B) A person may not discriminate against a [any] buyer or renter in the terms, conditions, or privileges of the sale or rental of a dwelling or in providing [~~the provision of~~] services or facilities in connection with the dwelling based on a disability [~~because of a handicap~~] of:

- (4) that buyer or renter;
- (5) a person residing in or intending to reside in that dwelling after it is

sold, rented, or made available; or

(6) a ~~[any]~~ person associated with that person.

(C) For purposes of this section only, discrimination includes:

(7) A refusal by an owner or landlord to permit, at the expense of the person with the disability ~~[handicap]~~, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises of a dwelling, provided that, in the case of a rental, a landlord may reasonably condition permission for modifications upon the renter's agreement to restore the interior of the premises to its pre-modification condition, reasonable wear and tear excepted, and reasonably condition the ~~[such]~~ permission on the renter providing a reasonable description of the proposed modifications and reasonable assurances that all work will be done in a workmanlike manner and that all required permits will be obtained.

(8) A landlord may not increase for a person with a disability a ~~[handicapped persons any]~~ customarily required security deposit ~~[deposited]~~, except that, to ensure available funds for restorations, if any, a landlord may negotiate an agreement that the renter deposit into an interest bearing escrow account, over a reasonable period, a reasonable amount not to exceed the cost of restorations. All interest shall accrue to the renter's benefit.

(9) A refusal by an owner or landlord to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a ~~[handicapped]~~ person with a disability the equal opportunity to use and enjoy a dwelling, including public and common use areas.

(10) In connection with the design and construction of covered multifamily dwellings for first occupancy after September 13, 1991, a failure by the owner to design and construct those dwellings in ~~[such]~~ a manner that:

(a) the dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;

(b) the public use and common use portions of the dwellings are readily accessible and usable by persons with a disability

[handicap];

(c) all the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by an individual ~~[persons]~~ in a wheelchair ~~[wheelchairs]~~; and

(d) all premises within the dwellings contain the following features of adaptive design:

- (i) an accessible route into and through the dwelling;
- (ii) light switches, electrical outlets, thermostats, and other environmental control in accessible locations;
- (iii) reinforcements in bathroom walls to allow later installation of grab bars; and
- (iv) usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

(11) Making any inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling or any person associated with that person, has a disability ~~[handicap]~~ or to determine the nature or severity of the disability ~~[any handicap]~~, except that the following inquiries may be made if these inquiries are made of all applicants, regardless of disability ~~[handicap]~~:

(a) inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) inquiry to determine whether an applicant is qualified for a dwelling available only to a person with a disability ~~[persons with handicaps]~~ or to a person ~~[persons]~~ with a particular type of disability ~~[handicap]~~;

(c) inquiry to determine whether an applicant for a dwelling is qualified for a priority available to a person with a disability ~~[persons with handicaps]~~ or to a person ~~[persons]~~ with a particular type of disability ~~[handicap]~~;

(d) inquiring whether an applicant for a dwelling is a current illegal user or addict of a controlled substance; and

(e) inquiring whether an applicant has been convicted of the illegal



manufacture or distribution of a controlled substance.

(D) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for persons with physical disabilities, commonly cited as "ANSI A 117.1," suffices to satisfy the requirements of Subsection (C)(4)(c) ~~[of this section]~~.

(E) ~~In [As used in]~~ this section ~~[subsection]~~, the term "covered multifamily dwelling" ~~[COVERED MULTI-FAMILY DWELLINGS]~~ means:

(12) buildings ~~[Buildings]~~ consisting of four or more units if the buildings have one or more elevators; and

(13) ground ~~[Ground]~~ floor units in other buildings consisting of four or more units.

(F) Nothing in this section requires that a dwelling be made available to a person ~~[an individual]~~ whose tenancy would constitute a direct threat to the health or safety of others ~~[other individuals]~~ or whose tenancy would result in substantial physical damage to the property of others.

**§ 5-1-56 [55] RESIDENTIAL REAL ESTATE RELATED TRANSACTION.**

(A) A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, sexual orientation, gender identity, disability, age, family ~~[handicap, familial]~~ status, or national origin.

(B) In this section, "residential real estate related transaction" ~~[RESIDENTIAL REAL ESTATE RELATED TRANSACTION]~~ means:

- (1) making or purchasing loans or providing other financial assistance:
  - (a) to purchase, construct, improve, repair, or maintain a dwelling;  
or
  - (b) secured by residential real estate; or
- (2) selling, brokering, or appraising residential real property.

**§ 5-1-57 [56] BROKERAGE SERVICES.**

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or

facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, sexual orientation, gender identity, disability, age, family [~~handicap~~, ~~familial~~] status, or national origin.

**Division 4. Complaint, Investigation, and Administrative Action.**

**§ 5-1-71 [60] COMPLAINT.**

(A) The Equal Employment/Fair Housing Office [~~commission~~] shall investigate alleged discriminatory housing practices.

(B) A complaint must be:

(1) in writing;

(2) under oath; and

(3) in the form prescribed by the Equal Employment/Fair Housing Office [~~commission~~].

(C) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, file a complaint with the Equal Employment/Fair Housing Office [~~commission~~] alleging the discriminatory housing practice.

(D) Not later than one year after an alleged discriminatory housing practice has occurred or terminated, whichever is later, the Equal Employment/Fair Housing Office [~~commission~~] may file its own complaint.

(E) A complaint may be amended at any time.

(F) Upon the filing of a complaint, the Equal Employment/Fair Housing Office [~~commission~~] shall issue a written notice to the complainant and the aggrieved person if different from the complainant:

(4) advising that the complaint has been filed, and the date the complaint was accepted for filing;

(5) including a copy of the complaint;

(6) advising of the time limits applicable to the complaint and of all procedural rights and obligations of the aggrieved person under this article;

(7) advising of the aggrieved person's right to commence a civil action

as provided by federal and state laws and the time period which such action may be filed; and

(8) advising that retaliation against any person who files a complaint or assists or otherwise participates in the investigation of a complaint is a discriminatory housing practice.

(G) Not later than the tenth day after a complaint is filed, the Equal Employment/Fair Housing Office [~~commission~~] shall issue a written notice to each respondent, by certified mail or personal service:

(9) advising the date the complaint was accepted for filing;

(10) identifying the alleged discriminatory housing practice;

(11) including a copy of the complaint;

(12) advising of the time limits applicable to complaint processing and of all procedural rights and obligations of the respondent under this article, including the right to submit an answer to the complaint within ten days after receipt of the notice;

(13) advising of the aggrieved person's right to commence a civil action as provided by federal law and the time period within which such action may be filed;

(14) advising why the respondent has been joined to the complaint if the respondent is not specifically named in the complaint; and

(15) advising that retaliation against any person who files a complaint or assists or otherwise participates in the investigation of a complaint is a discriminatory housing practice.

(H) The Equal Employment/Fair Housing Office [~~commission~~] shall commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint.

**§ 5-1-72 [61]      ANSWER.**

(A) Not later than the tenth day after receipt of the notice and copy under Section 5-1-71(F)(3) [~~5-1-60(F)(3)~~] (*Complaint*), a respondent may file an answer to the complaint.

(B) An answer must be:

(1) in writing;

(2) under oath; and

(3) in the form prescribed by the Equal Employment/Fair Housing Office ~~[commission]~~.

(C) An answer may be amended at any time.

(D) An answer does not inhibit the investigation of a complaint.

**§ 5-1-73 [62] INVESTIGATION.**

(A) If the state or federal government has referred a complaint to the City ~~[commission]~~ or has deferred jurisdiction over the subject matter of the complaint to the City ~~[commission]~~, the Equal Employment/Fair Housing Office ~~[commission]~~ shall promptly investigate the allegations set forth in the complaint.

(B) The Equal Employment/Fair Housing Office ~~[commission]~~ shall investigate all complaints, and except as provided by Subsection (C) ~~[of this section]~~, shall complete an investigation no later than the 100th day after the date the complaint is filed, or if it is unable to complete the investigation within the 100-day period, shall dispose of all administrative proceedings related to the investigation not later than one year after the date the complaint is filed.

(C) If the Equal Employment/Fair Housing Office ~~[commission]~~ is unable to complete an investigation within the time periods prescribed by Subsection (B) ~~[of this section]~~, the Equal Employment/Fair Housing Office ~~[commission]~~ shall notify the complainant and the respondent in writing of the reasons for the delay.

**§ 5-1-74 [63] ADDITIONAL OR SUBSTITUTE RESPONDENT.**

(A) The Equal Employment/Fair Housing Office ~~[commission]~~ may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation the Equal Employment/Fair Housing Office ~~[commission]~~ determines that the person should be accused of a discriminatory housing practice.

(B) In addition to the information required in the notice under Section 5-1-71(G) ~~[5-1-60(G)]~~ (*Complaint*) the Equal Employment/Fair Housing Office ~~[commission]~~ shall include in a notice to a respondent joined under this section an explanation of the basis for the determination that the person is properly joined as a respondent.

**§ 5-1-75 [64]      CONCILIATION.**

(A) The Equal Employment/Fair Housing Office [~~commission~~] shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the Equal Employment/Fair Housing Office [~~commission~~], to the extent feasible, engage in conciliation with respect to the complaint.

(B) A conciliation agreement is a written agreement between a respondent and the complainant and is subject to Equal Employment/Fair Housing Office [~~commission~~] approval.

(C) A conciliation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

(D) A conciliation agreement shall be made public unless the complainant and respondent agree otherwise, and the Equal Employment/Fair Housing Office [~~commission~~] determines that disclosure is not necessary to further the purposes of this article.

(E) Nothing said or done in the course of conciliation may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned.

(F) After completion of the Equal Employment/Fair Housing Office's [~~commission's~~] investigation, the Equal Employment/Fair Housing Office [~~commission~~] shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation and the final investigation report related to the investigation.

**§ 5-1-76 [65]      TEMPORARY OR PRELIMINARY RELIEF.**

(A) If the Equal Employment/Fair Housing Office [~~commission~~] concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the Equal Employment/Fair Housing Office [~~commission~~] may request a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint. The Equal Employment/Fair Housing Office [~~commission~~] may direct the request for civil action to the Texas Commission on Human Rights or to the city attorney.

(B) Upon receipt of the Equal Employment/Fair Housing Office's

[~~commission's~~] request, the city attorney shall promptly assess the case and determine whether to file an action.

(C) A temporary restraining order or other order granting preliminary or temporary relief under this section is governed by the applicable Texas Rules of Civil Procedure.

(D) The filing of a civil action under this section does not affect the initiation or continuation of administrative proceeding under Section 5-1-85 [~~5-1-74~~] (*Administrative Hearing*).

**§ 5-1-77 [~~66~~]      INVESTIGATIVE REPORT.**

(A) The Equal Employment/Fair Housing Office [~~commission~~] shall prepare a final investigative report showing:

- (1) the names and dates of contacts with witnesses;
- (2) a summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts;
- (3) a summary description of other pertinent records;
- (4) a summary of witness statements; and
- (5) answers to interrogatories.

(B) A final report under this section may be amended if additional evidence is discovered.

**§ 5-1-78 [~~67~~]      REASONABLE CAUSE DETERMINATION.**

(A) The Equal Employment/Fair Housing Office [~~commission~~] shall determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur.

(B) The Equal Employment/Fair Housing Office [~~commission~~] shall make the determination under Subsection (A) [~~of this section~~] not later than the 100th day after the date a complaint is filed unless:

- (1) it is impracticable to make the determination; or
- (2) the Equal Employment/Fair Housing Office [~~commission~~] has approved a conciliation agreement relating to the complaint.

(B) If it is impracticable to make the determination within the time period provided by Subsection (B) of this section, the Equal Employment/Fair Housing Office [~~commission~~] shall notify the complainant and respondent in writing of the reasons for the delay.

(C) If the Equal Employment/Fair Housing Office [~~commission~~] determines that reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the Equal Employment/Fair Housing Office [~~commission~~] shall, except as provided by Section 5-1-81 [~~5-1-70~~] (*Dismissal*), immediately issue a charge on behalf of the aggrieved person.

#### **§ 5-1-79 [68] CHARGE.**

(A) A charge issued under Section 5-1-78 [~~5-1-67~~] (*Reasonable Cause Determination*):

- (1) must consist of a short and plain statement of the facts on which the Equal Employment/Fair Housing Office [~~commission~~] has found reasonable cause to believe that a discriminatory housing practice occurred or is about to occur;
- (2) must be based on the final investigative report; and
- (3) need not be limited to the facts or grounds alleged in the complaint.

(B) Not later than the 20th day after the Equal Employment/Fair Housing Office [~~commission~~] issues a charge, the commission shall send a copy of the charge with information concerning the election under Section 5-1-83 [~~5-1-72~~] (*Election of Judicial Determination*) of this article to:

- (1) each respondent, together with a notice of the opportunity for a hearing provided by Section 5-1-85 [~~5-1-74~~] (*Administrative Hearing*); and
- (2) each aggrieved person on whose behalf the complaint was filed.

#### **§ 5-1-80 [69] LAND USE LAW.**

If the Equal Employment/Fair Housing Office [~~commission~~] determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the Equal Employment/Fair Housing Office [~~commission~~] may not issue a charge and shall immediately refer the matter to the city attorney for appropriate action.

#### **§ 5-1-81 [70] DISMISSAL.**

(A) If the Equal Employment/Fair Housing Office [~~commission~~] determines that no reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the Equal Employment/Fair Housing Office [~~commission~~] shall:

- (1) issue a short and plain written statement of the facts explaining the determination of no reasonable cause; and
- (2) dismiss the complaint and promptly notify the aggrieved person and the respondent of the dismissal, including the written statement of facts.

(B) The Equal Employment/Fair Housing Office [~~commission~~] may make public disclosure of each dismissal under this section. The aggrieved person and the respondent may request that no public disclosure be made, but the fact of dismissal, including the names of the parties, but not the statement of facts, shall be available to the public upon request.

**§ 5-1-82 [71]        PENDING CIVIL TRIAL.**

The Equal Employment/Fair Housing Office [~~commission~~] may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under federal or state law or this article seeking relief with respect to that discriminatory housing practice.

**§ 5-1-83 [72]        ELECTION OF JUDICIAL DETERMINATION.**

(A) A complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action as provided by Section 5-1-84 [~~5-1-73~~] (*City Attorney Action for Enforcement*).

(B) The election must be made no later than the 20th day after the date of receipt by the electing person of service under Section 5-1-79(B) [~~5-1-68(B)~~] (*Charge*) or, in the case of the Equal Employment/Fair Housing Office [~~commission~~], not later than the 20th day after the date the charge was issued.

(C) The person making the election shall give notice to the Equal Employment/Fair Housing Office [~~commission~~] and to all other complainants and respondents to whom the charge relates.

**§ 5-1-84 [73]        CITY ATTORNEY ACTION FOR ENFORCEMENT.**

(A) If a timely election is made under Section 5-1-83 [~~5-1-72~~] (*Election of Judicial Determination*) the Equal Employment/Fair Housing Office [~~commission~~] shall request, and not later than the 30th day after the election is



made, the city attorney shall file, a civil action on behalf of the aggrieved person in a district court seeking relief under this section.

(B) Venue for an action under this section is in Travis County.

(C) An aggrieved person may intervene in the action.

(D) If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under this article.

**§ 5-1-85 [74] ADMINISTRATIVE HEARING.**

(A) If a timely election is not made under Section 5-1-83 [5-1-72] (*Election of Judicial Determination*), the complainant, respondent, or an aggrieved person on whose behalf the complaint was filed may request that the Equal Employment/Fair Housing Office [commission shall] provide for a hearing on the charge. A hearing under this section shall be conducted by an administrative law judge.

(B) Except as provided by Subsection (C), Chapter 2001 (*Administrative Procedure Act*) of the Texas Government Code governs a hearing and an appeal of a hearing under this section.

(C) A hearing under this section may not continue on an [regarding any] alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved person under this article or federal or state law seeking relief with respect to that discriminatory housing practice.

(D) At the conclusion of a hearing under this section, the administrative law judge shall issue a written recommendation to the commission, including findings of fact.

**§ 5-1-86 [75] ADMINISTRATIVE PENALTIES.**

(A) The commission shall review and take action on the administrative law judge's recommendation. The commission may adopt, modify, or reject the recommendation. If the commission rejects the recommendation, the commission shall make a determination based on the findings of fact submitted by the administrative law judge.

~~(B)~~ ~~[(A)]~~ If the commission determines ~~[at a hearing under Section 5-1-74 (Administrative Hearing)]~~ that a respondent has engaged in or is about to engage in a discriminatory housing practice, the commission may order the appropriate relief, including compensatory damages, reasonable attorney's

fees, court costs, and other injunctive or equitable relief.

(C) [~~B~~] To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed:

- (1) \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
- (2) except as provided by Subsection (D) [~~C~~], \$25,000 if the respondent has been adjudged by order of the commission or a court to have committed one other discriminatory housing practice during the five year period ending on the date of the filing of this charge; and
- (3) except as provided by Subsection (D) [~~C~~], \$50,000 if the respondent has been adjudged by order of the commission or a court to have committed two or more discriminatory housing practices during the seven year period ending on the date of the filing of the charge.

(D) [~~C~~] If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in Subsections (B)(2) and (3) may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(E) [~~D~~] At the request of the commission, the city attorney may sue to recover a civil penalty due under this section. Funds collected under this section shall be paid to the city treasurer for deposit in the general revenue fund.

#### **§ 5-1-87 [76] EFFECT OF COMMISSION ORDER.**

A commission order under Section 5-1-86 [5-1-75] (*Administrative Penalties*) does not affect a contract, sale, encumbrance, or lease that:

- (1) [~~A~~] was consummated before the commission issued the order; and
- (2) [~~B~~] involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this article.

#### **§ 5-1-88 [77] LICENSED OR REGULATED BUSINESSES.**

If the commission issues an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the commission shall, not later than the 30th day after the date of

the issuance of the order:

- (1) ~~[(A)]~~ send copies of the findings and the order to the governmental agency; and
- (2) ~~[(B)]~~ recommend to the governmental agency appropriate disciplinary action.

**§ 5-1-89 [78] ORDER IN PRECEDING FIVE YEARS.**

If the commission issues an order against a respondent against whom another order was issued within the preceding five years under Section 5-1-86 [~~5-1-75~~] (*Administrative Penalties*), the commission shall send a copy of each order issued under that section to the Texas Commission on Human Rights and to the attorney general.

**§ 5-1-90 [79] COOPERATION WITH STATE AND FEDERAL AGENCIES.**

(A) The Equal Employment/Fair Housing Office ~~[commission]~~ is encouraged to cooperate with the secretary of Housing and Urban Development and the attorney general of the United States in the enforcement of the Fair Housing Act of 1968, 42 U.S.C. § 3601, et seq., and may assist the secretary or attorney general in any way consistent with the policy of this chapter. The Equal Employment/Fair Housing Office ~~[commission]~~ is encouraged to cooperate with the Texas Commission on Human Rights in the enforcement of Chapter 301 (*Texas Fair Housing Act*) of the Texas Property Code, and may assist the Texas Commission on Human Rights in any way consistent with the policy of this chapter.

(B) The Equal Employment/Fair Housing Office [commission] shall treat a complaint referred by the secretary of Housing and Urban Development or the attorney general of the United States under the Fair Housing Act of 1968, 42 U.S.C. § 3601, et seq., or by the Texas Commission on Human Rights under Chapter 301 (*Texas Fair Housing Act*) of the Texas Property Code as a complaint filed under this article. No action will be taken under this article against a person for a discriminatory housing practice if the referred complaint was filed with the governmental entity later than one year after an alleged discriminatory housing practice occurred or terminated.

**Division 5. Civil Action.**

**§ 5-1-101 [90] CIVIL ACTION.**

(A) An aggrieved person may file a civil action in an appropriate United States district court not later than the second year after the later of ~~[occurrence]~~

~~of~~] the termination of an alleged discriminatory housing practice~~;~~] or the breach of a conciliation agreement entered into under this article ~~[, whichever occurs last,]~~ to obtain appropriate relief based on ~~[with respect to]~~ the discriminatory housing practice or breach.

(B) The two year period does not include any time during which an administrative hearing under this article is pending with respect to a complaint or charge under this article based on the discriminatory housing practice. This subsection does not apply to actions arising from a breach of a conciliation agreement.

(C) An aggrieved person may file an action under this section whether or not a complaint has been filed under Section 5-1-71 ~~[5-1-60]~~ (*Complaint*) and without regard to the status of any complaint filed under that section.

(D) If the Equal Employment/Fair Housing Office ~~[commission]~~ has obtained a conciliation agreement with the consent of an aggrieved person, the aggrieved person may not file an action under this section based on ~~[with respect to]~~ the alleged housing practice ~~[that forms the basis for the complaint]~~ except to enforce the terms of the agreement.

(E) An aggrieved person may not file an action under this section based on ~~[with respect to]~~ an alleged discriminatory housing practice that forms the basis of a charge issued by the Equal Employment/Fair Housing Office ~~[commission]~~ if a hearings examiner ~~[the commission]~~ has begun a hearing on the record under this article on ~~[with respect to]~~ the charge.

#### **§ 5-1-102 [91] COURT APPOINTED ATTORNEY.**

On application by a person alleging a discriminatory housing practice or by a person against whom such a practice is alleged, the court may appoint an attorney for the person.

#### **§ 5-1-103 [92] RELIEF.**

In an action under this article, an appropriate court, in providing enforcement of this chapter, may:

- (1) award to the plaintiff compensatory and punitive damages, where the court finds that a discriminatory housing practice has occurred or is about to occur;
- (2) allow reasonable attorney's fees and court costs; and
- (3) subject to Section 5-1-104 ~~[5-1-93]~~ (*Effect of Relief Granted*), grant

any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering appropriate affirmative action.

**§ 5-1-104 [93] EFFECT OF RELIEF GRANTED.**

Relief granted under this article does not affect a contract, sale, encumbrance, or lease that:

- (1) was consummated before the granting of the relief; and
- (2) involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under this article or a civil action under this article.

**§ 5-1-105 [94] INTERVENTION BY CITY ATTORNEY.**

(F) On request of the Equal Employment/Fair Housing Office, [~~commission~~] the city attorney may intervene in an action if the Equal Employment/Fair Housing Office [~~commission~~] certifies that the case is of general public importance.

(G) The city attorney may obtain the same relief available under Section 5-1-106 [~~5-1-100~~] (*Pattern or Practice Cases*).

**§ 5-1-106 [100] PATTERN OR PRACTICE CASES.**

(H) On request of the Equal Employment/Fair Housing Office, [~~commission~~] the city attorney may file a civil action in district court for appropriate relief if the Equal Employment/Fair Housing Office [~~commission~~] has reasonable cause to believe that:

- (1) a person is engaged in a pattern or practice of resistance to the full enjoyment of any right granted by this article; or
- (2) a person has been denied any right granted by this article and that denial raises an issue of general public importance.

(B) In an action under this section the court may:

- (1) award preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this article as necessary to assure the full enjoyment of the rights granted by this article;
- (2) award other appropriate relief, including monetary damages,

reasonable attorney's fees, and court costs; and

(3) to vindicate the public interest, assess a civil penalty against the respondent in an amount that does not exceed:

(a) \$50,000 for a first violation; and

(b) \$100,000 for a second or subsequent violation.

(I) A person may intervene in an action under this section if the person is:

(4) an aggrieved person to the discriminatory housing practice; or

(5) a party to a conciliation agreement concerning the discriminatory housing practice.

#### **§ 5-1-107 [101] SUBPOENA ENFORCEMENT.**

The city attorney, on behalf of the Equal Employment/Fair Housing Office [~~commission or other party at whose request a subpoena is issued under this article~~], may enforce the subpoena in appropriate proceedings in district court.

#### **§ 5-1-108 [110] PREVAILING PARTY.**

A court in a civil action brought under this article or the commission in an administrative hearing under Section 5-1-85 [~~5-1-74~~] (*Administrative Hearing*) may award reasonable attorney's fees to the prevailing party and assess costs against the non-prevailing party.

### **Division 6. Intimidation or Interference Prohibited.**

#### **§ 5-1-121 [120] INTIMIDATION OR INTERFERENCE.**

A person commits an offense if the person [~~he~~] coerces, intimidates, threatens, or otherwise interferes with a [~~any~~] person in the exercise or enjoyment of, or on account of the other [~~that~~] person having exercised or enjoyed, or [~~on account of that person having~~] aided or encouraged any other person in the exercise or enjoyment of, a [~~any~~] right granted or protected by this chapter.

**PART 5.** Article 3 (*Discrimination in Housing Based on Other Classifications*) of Chapter 5-1 of the Code is repealed and Article 4 (*Accessibility in Housing Constructed with Public Funds*) is renumbered accordingly. Sections 5-1-171 through 5-1-176 are renumbered 5-1-131 through 5-1-136 respectively. Sections 5-1-181 through 5-1-185 are renumbered 5-1-141 through 5-1-145 respectively.

**PART 6.** Chapter 5-2 of the Code is amended to read:

## CHAPTER 5-2. DISCRIMINATION IN PUBLIC ACCOMMODATIONS.

### § 5-1-1 DECLARATION OF POLICY.

(A) It is ~~[hereby declared to be]~~ the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain goods and services in a [all places of] public accommodation without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [and physical or mental] disability.

(B) This ~~[It is further declared that such]~~ policy is established upon a recognition of the inalienable rights of each individual to obtain goods and services in a [all places of] public accommodation without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or [and physical or mental disability]; and further that the denial of such rights through considerations based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [and physical or mental] disability is detrimental to the health, safety and welfare of the inhabitants of the City and constitutes an unjust denial or deprivation of these [such] inalienable rights ~~[which is]~~ within the power and the proper responsibility of government to prevent.

### § 5-1-2 DEFINITIONS.

In this chapter:

- (1) AGE means a person over the age of 18 years.
- (2) COMMISSION means the Austin Human Rights Commission.
- ~~(3) DIRECTOR means the director of Human Resources Department [or authorized assistant].~~
- (4) DISABILITY means, with respect to an individual:
  - (a) a physical or mental impairment that substantially limits one or more major life activity of the individual, including caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;
  - (b) a record of the impairment; or
  - (c) being regarded as having an impairment.
- (5) ~~[(4)]~~ DISCRIMINATION means the [any] direct or indirect

exclusion, distinction, segregation, limitation, refusal, denial or any other differentiation in the treatment of a person based on~~[or persons on account of]~~ race, color, religion, sex, sexual orientation, gender identity, national origin, age, or ~~[and physical or mental]~~ disability in a [all places of] public accommodation.

(6) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the staff of the Human Relations Department that handles complaints under this chapter.

(7) GENDER IDENTITY means a person's various individual attributes, actual or perceived, that may be in accord with or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

~~[(5) MAJOR LIFE ACTIVITIES means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.]~~

~~[(6) MEMBER means a member of the commission.]~~

~~[(7) PHYSICAL or MENTAL DISABILITY means any physical or mental impairment which substantially limits one or more major life activities.]~~

~~[(8) PHYSICAL or MENTAL IMPAIRMENT includes:]~~

~~[(a) any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or]~~

~~[(b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.]~~

~~(8) [(9) PLACE OF] PUBLIC ACCOMMODATION means [each of the following establishments which serve the public]:~~

(a) an [any] inn, hotel, motel or other lodging establishment for [which provides lodging to] transient guests, excluding [other than] an establishment located in [within] a building with [which contains] not more than five rooms for rent or hire and [which is



~~actually]~~ occupied by the owner or operation as a primary proprietor of such establishment as his residence;

(b) a [any] restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including a [; but not limited to, any such] facility located on the premises of a [any] retail establishment[;] or a [any] gasoline station;

(c) a movie theatre [any motion picture house], theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

(d) a [any] bar, tavern, pub, drinking establishment, or facility where alcoholic beverages are served for consumption on the premises;

~~(e) a retail establishment that sells [establishments selling any kind of] goods or services; and~~

(f) an [(i) any] establishment ~~[which is]~~ physically located in [within] the premises of an [any] establishment described in [otherwise covered by] this subsection or containing [within the premises of which is physically located] a covered establishment, [;] and an [(ii) any] establishment which holds itself out as serving patrons of a covered establishment.

### § 5-1-3 INTERPRETATION.

In construing this chapter, it is the intent of the city council that the courts shall be guided by Federal Court interpretations of Title VII of the Civil Rights Act of 1964~~[; as amended]~~.

### § 5-1-4 PROHIBITED PRACTICES.

(A) A person is [All persons shall be] entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a [any place of] public accommodation, without discrimination or segregation based on [the ground of] race, color, religion, sex, sexual orientation, gender identity, national origin, age, or ~~[and physical or mental]~~ disability.

(B) A [It is an unlawful discriminatory act for any] person, including [being] the owner, operator [proprietor], or lessee of a [any place of] public

accommodation may not ~~[to]~~ directly or indirectly exclude, segregate, limit, refuse or deny a ~~[to any]~~ person ~~[any of]~~ the accommodations, advantages, facilities, benefits, privileges, services, or goods of the public accommodation ~~[that place]~~ based on ~~[account of]~~ race, color, religion, sex, sexual orientation, gender identification, national origin, age, or ~~[and physical or mental]~~ disability.

(C) A ~~[It is an unlawful discriminatory act for any]~~ person, including ~~[being]~~ the owner, operator ~~[proprietor]~~, or lessee of a ~~[any place of]~~ public accommodation, may not ~~[to]~~ circulate, issue, display, post, mail, or ~~[otherwise to]~~ publish a statement, advertisement, or sign that indicates that ~~[any of]~~ the accommodations, advantages, facilities, benefits, privileges, services, or goods of the public accommodation ~~[that place]~~ will be denied to an ~~[any]~~ individual based on ~~[account of]~~ race, color, religion, sex, sexual orientation, gender identification, national origin, age, or ~~[physical or mental]~~ disability, or that the patronage ~~[of,]~~ or presence ~~[at that place]~~ of an ~~[any]~~ individual is objectionable, unwelcome, unacceptable, undesirable, or unsolicited based on ~~[account of]~~ race, color, religion, sex, sexual orientation, gender identification, national origin, age or ~~[physical or mental]~~ disability.

#### **§ 5-1-5      COMPLAINT PROCEDURES~~[FOR VIOLATIONS]~~.**

(A) The Equal Employment/Fair Housing Office may take action to ~~[commission is empowered to]~~ prevent a [any] person from engaging in an ~~[any]~~ unlawful public accommodation practice.

(B) A person must file a charge under this chapter within 180 days following the occurrence of the alleged unlawful public accommodation practice.

(C) ~~[(B)]~~When ~~[Whenever a charge is filed with the commission by]~~ a person ~~[claiming to be aggrieved (hereinafter referred to as the "charging party")]~~ alleging an unlawful public accommodation practice files a charge with the Equal Employment/Fair Housing Office (charging party), the director shall, not later than the 10<sup>th</sup> day after the charge is received, send ~~[serve a]~~ notice of the charge to the owner, operator, or lessee of the public accommodation (respondent). Notice under this section shall include ~~[(including]~~ the date, place, and specific circumstances~~[-] with as much specificity as possible~~ of the alleged unlawful public accommodation practice, ~~[on such owner, proprietor or lessee (hereinafter referred to as the "respondent") within ten days; provided, however, that before any]~~

(D) Before a charge is ~~[becomes]~~ accepted for investigative purposes, the director or an investigator shall review the charge ~~[have personally reviewed]~~

with the charging party and make a determination that the ~~[the allegations contained therein and shall have determined that said]~~ charge alleges a violation ~~[comes within the provisions]~~ of this chapter. If the preliminary review ~~[In the event such review]~~ results in a [the] determination that the [a-particular] charge does not allege a violation ~~[come within the provisions]~~ of this chapter, the charging party shall be given a clear and concise explanation by the director or investigator of the reasons why the charge will not be accepted for investigation. ~~[it does not, and]~~ The charging party may appeal a determination under this section under Section 5-2-6 (Dismissal and Appeal) ~~[such determination in accordance with the procedure set forth in Subsection (D)].~~

(E) The Equal Employment/Fair Housing Office [Records] shall maintain records that indicate ~~[be maintained indicating]~~ the reason ~~[for which]~~ a charge was not accepted for investigation. ~~[A report of charges accepted shall be compiled by the director and the results and recommendations shall be filed with the commission at such time as the commission directs. A charge under this section must be filed within 180 days following the occurrence of the alleged unlawful public accommodation practice.]~~

(F) ~~[(C)]~~ A charge filed under this section [Charges] shall be on the form provided by the Equal Employment/Fair Housing Office, and include an ~~[in-writing under]~~ oath or affirmation and any other ~~[shall contain such]~~ information required by the office~~[and be in such form as the commission requires].~~

#### **§ 5-1-6 DISMISSAL AND APPEAL.**

(A) ~~[(D)]~~ If an ~~[the]~~ investigator determines after investigation that there is not reasonable cause to believe that a ~~[the]~~ charge alleges a violation of this chapter~~[is true]~~, the Equal Employment/Fair Housing Office ~~[commission]~~ shall dismiss the charge and promptly notify the charging party and the respondent of its action.

(B) Not later than the 10<sup>th</sup> day after ~~[Within ten days from the]~~ receipt of a [such] notice of dismissal, the charging party may~~[, or his attorney, shall]~~ file [with the commission] a request for review with the Equal Employment/Fair Housing Office. The [and the] commission shall conduct a hearing and provide the charging party [and his attorney] an opportunity to appear to present evidence~~[before the commission]~~. Upon conclusion of a [such] hearing, the commission may [by majority vote] affirm, reverse, or modify the finding of the investigator~~[, as appropriate]~~.

**§ 5-1-7**      **INFORMAL RESOLUTION.**

(A) ~~[(E)]~~ If after investigation an investigator determines ~~[it is determined]~~ that there is reasonable cause to believe that a charge alleges a violation of this chapter~~[is true]~~, the director or a conciliator who has not participated in the ~~[that]~~ investigation~~;~~ shall attempt to resolve the matter through ~~[endeavor to eliminate any such alleged unlawful public accommodation practice by]~~ informal methods, including ~~[of]~~ conference, conciliation, and persuasion.

~~(B) The Equal Employment/Fair Housing Office, [Nothing said or done in the course of such informal endeavors may be made public by the commission,]~~ the director, the investigator, the conciliator, the charging party, and ~~[of]~~ the respondent shall treat the information produced during an informal proceeding as confidential, unless disclosure is required by law. Information produced during an informal proceeding may not ~~[, or]~~ be used as evidence in a later ~~[subsequent]~~ proceeding without the written consent of all parties~~[persons concerned]~~.

~~(C) An investigator shall ensure that each determination is~~ [All determinations shall be] reasonable and [be] made as promptly as possible.

(D) A [Should a] respondent may agree to ~~[desire at any time to enter into]~~ a predetermination settlement if ~~[, same shall be allowed provided]~~ the charging party and the director accept the settlement and agree that it meets ~~[such is acceptable and in accordance with]~~ the objectives of this chapter.

**§ 5-1-8**      **REFERRAL.**

~~[(F)]~~ If the director or conciliator is unable to secure from the respondent an acceptable conciliation agreement after investigation, the Equal Employment/Fair Housing Office shall ~~[commission must upon a majority vote,]~~ refer the case to the city attorney for appropriate prosecution ~~[in municipal court or to other agencies, as appropriate]~~.

**§ 5-1-9 [6]**      **ACCESS TO RECORDS.**

The ~~[In connection with any investigation of a charge filed under this chapter, the]~~ director or an investigator shall ~~[at all reasonable times]~~ have access to evidence relating to an investigation under this chapter, and may examine or ~~[, for the purposes of examination and the right to]~~ copy the ~~[, any]~~ evidence ~~[of any person being investigated or proceeded against that relates to unlawful public accommodation practices and is relevant to the charge under investigation and]~~ unless the information is ~~[not]~~ confidential under applicable ~~[as provided by]~~ law.

**§ 5-1-10 [7] VIOLATIONS.**

A ~~[No]~~ person may not ~~[shall]~~ violate ~~[any provision of]~~ this chapter, or knowingly obstruct or prevent compliance with this chapter.

**§ 5-1-11 [8] AUTHORITY OF EQUAL EMPLOYMENT/FAIR HOUSING OFFICE ~~[COMMISSION TO ESTABLISH, AMEND NECESSARY REGULATIONS]~~.**

The Equal Employment/Fair Housing Office may adopt ~~[commission shall have authority from time to time to issue, amend or rescind suitable procedural]~~ regulations, including procedural due process, to administer ~~[carry out the provisions of]~~ this chapter. The Equal Employment/Fair Housing Office shall consult with the city attorney ~~[shall be consulted regarding and regulations adopted by the commission]~~ before ~~[the rules and]~~ regulations adopted under this section become effective. ~~[Such rules and regulations shall provide for procedural due process.]~~

**§ 5-1-12 [9] LEGAL ASSISTANCE FOR COMMISSION.**

The ~~[city manager shall instruct the]~~ city attorney shall ~~[to]~~ assign or obtain counsel ~~[or to obtain counsel]~~ to assist the Equal Employment/Fair Housing Office and the commission in the performance of their ~~[its]~~ functions ~~[and make such other administrative arrangements as are normal and necessary for the functioning the commission]~~.

**§ 5-1-13 [10] EXEMPTIONS.**

(A) This ~~[The provisions of this]~~ chapter does ~~[shall]~~ not apply to a facility owned or operated by ~~[establishments and facilities of]~~ the federal, state, or ~~[and]~~ county government, ~~[governments]~~ or ~~[of]~~ the University of Texas.

(B) This ~~[The provisions of this]~~ chapter does ~~[shall]~~ not apply to a private club or other establishment not ~~[in fact]~~ open to the public, unless ~~[except to the extent that]~~ the facilities of the ~~[such]~~ establishment are made available to the customer of a public accommodation ~~[customers or patrons of an establishment within the scope of the definition of "place of public accommodation" as defined in Section 7-2-2 (Definitions)]~~.

**PART 7.** Sections 5-3-1 through 5-3-5 of the Code are amended to read:

**§ 5-1-1 DECLARATION OF POLICY.**

(A) It is ~~[hereby declared to be]~~ the policy of the city to bring about through fair, orderly and lawful procedures, the opportunity for each person to obtain employment without regard to race, color, religion, sex, sexual orientation,

gender identity, national origin, age, or ~~[physical]~~ disability.

(B) ~~This [It is further declared that this]~~ policy is established upon the recognition of the inalienable rights of each individual to work to earn wages and obtain a share of the wealth of this city through gainful employment; and further that the denial of such rights through considerations based upon race, color, religion, sex, sexual orientation, gender identity, national origin, age, or ~~[physical]~~ disability is detrimental to the health, safety and welfare of the inhabitants of the city and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of government to prevent.

## § 5-1-2 DEFINITIONS.

In this chapter:

- (1) AGE means a person at least ~~[of]~~ 40 years old ~~[or over]~~.
- (2) CHARGE means a complaint filed by a charging party alleging discrimination under Section 5-3-4 (Unlawful Employment Practices), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 (Employment Discrimination) of the Texas Labor Code.
- (3) CHARGING PARTY means the person alleging discrimination in a charge.
- (4) ~~[(2)]~~ COMMISSION means the Austin Human Rights Commission.
- (5) ~~[(3)]~~ DIRECTOR means the director ~~[Director]~~ of Human Resources Department ~~[or his authorized assistant]~~.
- (6) DISABILITY, with respect to an individual, means:
  - (a) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;
  - (b) a record of the impairment; or
  - (c) being regarded as having an impairment.
- (7) EEOC means the Equal Employment Opportunity Commission.
- (8) ~~[(4)]~~ EMPLOYEE means an individual employed by an employer, including a City employee. The term does not include an elected official of the City. [Employee shall not include any person elected to public

~~office of the city by the qualified voters thereof. The employees of the city are included within the scope of this chapter.]~~

(9) ~~[(5)]~~ EMPLOYER means a person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person's [any] agent. The [of such a person. Such] term does not include the United States, or a corporation wholly owned by the government of the United States; ~~[or]~~ a bona fide private membership club (other than a labor organization) which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; or the state, a state agency, or [agencies thereof and] political subdivision ~~[thereof]~~.

(10) ~~[(6)]~~ EMPLOYMENT AGENCY means a [any] person who regularly attempts, [undertaking] with or without compensation, to procure employees for an employer or to procure employment opportunities for employees, including the person's [opportunities to work for an employer; this term includes an] agent ~~[of such a person]~~.

(11) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the office in the Human Resources Department responsible for receiving, investigating, conciliating, making determinations, and taking other action related to charges received under this chapter.

(12) GENDER IDENTITY means a person's various individual attributes, actual or perceived, that may be in accord with or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

(13) Investigator means the person investigating a charge.

(14) ~~[(7)]~~ LABOR ORGANIZATION means a labor organization and its [any] agent, including an [of such an organization, and includes any] organization, ~~[of any kind, any]~~ agency, or employee representation committee, group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council ~~[so engaged]~~ which is subordinate to a national or international labor organization.

~~[(8)] PHYSICALLY DISABLED means any physical impairment which substantially limits one or more major life activities.]~~

~~[(9) PHYSICAL IMPAIRMENT includes any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.]~~

(15) ~~[(10)]~~ RELIGION means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates the inability to reasonably accommodate ~~[to]~~ an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(16) RESPONDENT means the person against whom a charging party alleges discrimination in a charge.

(17) ~~[(11)]~~ SEX DISCRIMINATION means discrimination on the basis of gender, or any associated condition ~~[associated therewith]~~, including ~~[, but not limited to,]~~ pregnancy, childbirth, or related medical conditions. A woman ~~[; and women]~~ affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as a person ~~[other persons]~~ not so affected, but similar in their ability or inability to work.

### § 5-1-3 INTERPRETATION AND DESIGNATION.

(A) In construing this chapter, it is the intent of the city council that the courts shall be guided by the rules and regulations of the EEOC ~~[Equal Employment Opportunity Commission]~~ and Federal Court interpretations of Title VII of the Civil Rights Act of 1964~~[, as amended]~~, the Americans with Disabilities Act, ~~[and where appropriate,]~~ the ~~["]~~Age Discrimination in Employment Act of 1967~~[, "as amended]~~, and Chapter 21 (*Employment Discrimination*) of the Texas Labor Code.

(B) The city council designates the Equal Employment/Fair Housing Office a local commission under Chapter 21 (*Employment Discrimination*) of the Texas Labor Code, to exercise the powers and duties provided in that chapter.

### § 5-1-4 UNLAWFUL EMPLOYMENT PRACTICES.

(A) An ~~[It shall be an unlawful employment practice for an]~~ employer may not ~~[to]~~:

(1) fail ~~[Fail]~~ or refuse to hire or to discharge any individual, or otherwise ~~[to]~~



discriminate against an [any] individual with respect to compensation, terms, conditions, or privileges of employment, based on the [because of such] individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [physical] disability; or

- (2) limit [Limit], segregate, or classify an employee or applicant [employees or applicants] for employment in a [any] way which would deprive or tend to deprive an [any] individual of employment opportunities or otherwise adversely affect the individual's status as an employee, based on the [because of such] individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [physical] disability.

(B) An [It shall be an unlawful employment practice for an] employment agency may not [to]:

(1) fail or refuse to refer for employment, or otherwise [to] discriminate against, an [any] individual based on [because of] race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [physical] disability; [-] or [to]

~~(2) classify or refer for employment an [any] individual based on [the basis of]~~ race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [physical] disability.

(C) A [It shall be an unlawful employment practice for a] labor organization may not [to]:

- (1) exclude [Exclude] or to expel from its membership, or otherwise [to] discriminate against, an [any] individual based on [because of] race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [physical] disability; [-]
- (2) limit [Limit], segregate, or classify its membership, or applicants for membership, or [to] classify or fail or refuse to refer for employment an [any] individual in a [any] way which would deprive or tend to deprive the [any] individual of employment opportunities, [or would] limit [such] employment opportunities, or otherwise adversely affect the individual's [his] status as an employee or as an applicant for employment, based on the [because of such] individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or [physical] disability; or [-]
- (3) cause [Cause] or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) ~~An [It shall be an unlawful employment practice for any]~~ employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not ~~[to]~~ discriminate against an [any] individual based on ~~[because of]~~ race, color, religion, sex, sexual orientation, gender identity, national origin, age, or ~~[physical]~~ disability in admission to~~;~~ or employment in a ~~[, any]~~ program established to provide apprenticeship or other training.

~~(E) Unless it is a bona fide occupational qualification for employment, an [It shall be an unlawful employment practice for an]~~ employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not ~~[to]~~ print, ~~[or]~~ publish, or cause to be printed or published a [any] notice or advertisement that indicates a preference, limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability related ~~[relating]~~ to:

- (1) employment by the ~~[such an]~~ employer; ~~[or]~~
- (2) membership in or [any] classification or referral for employment by ~~[such]~~ an employment agency; ~~;~~ ] or
- (3) ~~[relating to]~~ admission to, or employment in, a [any] program established to provide apprenticeship or other training by ~~[such]~~ a joint labor-management committee ~~[indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, national origin, age or physical disability except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, sexual orientation, national origin, age or physical disability when religion, sex, sexual orientation, national origin, age or physical disability is a bona fide occupational qualification for employment]~~.

(F) Based on an individual's opposition to an unlawful employment practice or the individual's filing a charge, or testimony, assistance, or participation in an investigation, proceeding or hearing under this chapter:

- (1) ~~[It shall be an unlawful employment practice for]~~ an employer may not ~~[to]~~ discriminate against an [any] employee or applicant for employment; ~~;~~ ~~[for]~~
- (2) an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-

the-job training programs, may not ~~[to]~~ discriminate against an ~~[any]~~ individual; and ~~[, or for]~~

(3) a labor organization may not ~~[to]~~ discriminate against a [any] member ~~[thereof]~~ or applicant for membership ~~[, because the individual has opposed any practice, made an unlawful employment practice by this chapter, or because the individual has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this chapter].~~

## **§ 5-1-5 VIOLATIONS PROHIBITED.**

A ~~[No]~~ person may not ~~[shall]~~ violate ~~[any provision of]~~ this chapter, or knowingly obstruct or prevent compliance with this chapter.

**PART 8.** Sections 5-3-6 through 5-3-9 are repealed and replaced with new Sections 5-3-6 through 5-3-14 to read:

## **§ 5-1-6 CHARGES.**

(A) A person must file a charge with the Equal Employment/Fair Housing Office not later than the 180<sup>th</sup> day after the date the violation occurred.

(B) A charge under this section must be:

(1) made in writing on the form prescribed by the Equal Employment/Fair Housing Office;

(2) be sworn to by the charging party; and

(3) contain the information required by the Equal Employment/Fair Housing Office.

## **§ 5-1-7 PRELIMINARY REVIEW; REFUSAL.**

(A) Before the Equal Employment/Fair Housing Office accepts a charge, an investigator shall review the charge with the charging party and make a determination that the charge describes a violation of Section 5-3-4 (*Unlawful Employment Practices*), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act or the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code.

(B) If, after a preliminary review, an investigator determines that a charge does not describe a violation of Section 5-3-4 (*Unlawful Employment Practices*) or of Title VII of the Civil Rights Act of 1964, the Age

Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code the Equal Employment/Fair Housing Office shall notify the charging party that the charge will not be accepted and describe the reason for the refusal, not later than the 10<sup>th</sup> day after the determination. The Equal Employment/Fair Housing Office shall maintain a record documenting the reason a charge was not accepted.

**§ 5-1-8 ACCEPTANCE; NOTICE; INVESTIGATION.**

If the Equal Employment/Fair Housing Office accepts a charge, it shall notify the respondent not later than the 10<sup>th</sup> day after acceptance of the charge. If the charge alleges a violation of Section 5-3-4 (*Unlawful Employment Practices*), the Equal Employment/Fair Housing Office shall initiate an investigation.

**§ 5-1-9 NO REASONABLE CAUSE DETERMINATION.**

If, after an investigation, an investigator determines that there is no reasonable cause to believe that a charge is true, the Equal Employment/Fair Housing Office shall issue a determination explaining why there was no reasonable cause to believe a violation had occurred and shall immediately notify the charging party and the respondent of the determination.

**§ 5-1-10 REVIEW OF NO REASONABLE CAUSE DETERMINATION BY COMMISSION.**

(A) A charging party may file with the director a request for review by the Commission of a no reasonable cause determination issued under a charge filed alleging a violation of Section 5-3-4 (*Unlawful Employment Practices*). This request must be filed not later than the 10<sup>th</sup> day after receipt of the notice of the issuance of a no reasonable cause determination under Section 5-3-9 (*Determination*).

(B) For charges filed exclusively under Section 5-3-6 (*Charges*) and not deferred by the EEOC pursuant to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code, if the charging party files a request for review, the Commission, after review, may conduct a hearing and consider evidence presented by the charging party, the respondent, and the Equal Employment/Fair Housing Office. The Commission shall conduct a hearing as prescribed by the Chapter 2001 (*Administrative Procedure Act*) of the Texas Government Code. At the conclusion of the hearing, the Commission may, by majority vote, affirm, reverse, or modify the determination of the Equal Employment/Fair Housing

Office.

**§ 5-1-11 REVIEW OF NO REASONABLE CAUSE DETERMINATION BY EEOC.**

A charging party may file with the EEOC an appeal of a no reasonable cause determination issued under a charge filed alleging a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act of 1990.

**§ 5-1-12 CONCILIATION AGREEMENT.**

(A) If, after investigation of the charge or review by the Commission, it is determined that there is reasonable cause to believe a violation of Section 5-3-4 (*Unlawful Employment Practices*) or a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code has occurred, the Equal Employment/Fair Housing Office shall attempt to resolve the alleged violation through a conciliation agreement.

(B) A respondent may enter into a settlement at any time before a determination is made by the Equal Employment/Fair Housing Office, if the Equal Employment/Fair Housing Office agrees that the settlement is acceptable and complies with the objectives of this chapter.

(C) The Equal Employment/Fair Housing Office, investigator, charging party, and respondent shall treat as confidential any written or oral communications or documentation prepared during the course of attempting to reach a conciliation agreement or predetermination settlement, unless disclosure is required by law, and may not use this information as evidence in a subsequent proceeding without the written consent of all parties.

(D) If the Equal Employment/Fair Housing Office is unable to obtain a conciliation agreement acceptable to the Equal Employment/Fair Housing Office and the charging party, the Equal Employment/Fair Housing Office may refer a case involving a violation of Section 5-3-4 (*Unlawful Employment Practices*) to the city attorney for prosecution in municipal court or for other civil prosecution as authorized by Chapter 21 (*Employment Discrimination*) of the Texas Labor Code. Prosecution in municipal court or by other civil action does not bar the charging party from seeking relief from the EEOC or other civil proceeding.

(E) If no conciliation agreement acceptable to the charging party and the

Equal Employment/Fair Housing Office is reached in a case involving a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act of 1990, the Equal Employment/Fair Housing Office shall send a failure to conciliate letter to the charging party and the respondent and forward the charge to the EEOC for their review.

- (E) The confidentiality rules in 29 CFR §1601.22 apply in all cases deferred to the City by the EEOC.

#### **§ 5-1-13 INVESTIGATIVE ACCESS TO RECORDS AND EVIDENCE.**

In investigating a charge filed under this chapter, the Equal Employment/Fair Housing Office shall have access to, and may examine and copy, records or other evidence maintained by a respondent that the office believes is relevant to a charge under investigation.

#### **§ 5-1-14 LEGAL ASSISTANCE.**

The city attorney shall advise the Equal Employment/Fair Housing Office or the Commission relating to the administration and enforcement of this chapter.

**PART 8.** Section 7-3-10 is renumbered as Section 7-3-15 and amended to read:

#### **§ 5-3-15 [10] EXEMPTIONS.**

~~[Notwithstanding any other provision of this chapter:]~~

(A) If an individual's religion, sex, sexual orientation, gender identity, national origin, age, or disability are a bona fide occupational qualification reasonably necessary for the normal operation of a particular business or enterprise, it is [It shall] not [be] an unlawful employment practice for:

- (1) an employer to hire and employ employees; ~~[, for]~~
- (2) an employment agency to classify, or refer for employment an ~~[any]~~ individual; ~~[, for]~~
- (3) a labor organization to classify its membership or to classify or refer for employment an ~~[any]~~ individual; ~~[,]~~ or ~~[for]~~
- (4) an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an ~~[any]~~ individual in a ~~[any such]~~ program ~~[, on the basis of religion, sex, sexual orientation, national-~~

~~origin, age, or physical disability in those certain instances where religion, sex, sexual orientation, national origin, age or physical disability is a bona fide occupational qualification reasonably necessary for the normal operation of that particular business or enterprise].~~

(B) It is ~~[shall]~~ not ~~[be]~~ an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if:

(1) the ~~[such]~~ school, college or university, or other educational institution or institution of learning is wholly or substantially ~~[, in whole, or in substantial part,]~~ owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society; ~~[,]~~ or

(2) ~~[if]~~ the curriculum of the ~~[such]~~ school, college, university, or other educational institution, or institution of learning is directed toward the propagation of a particular religion.

(C) It is ~~[shall]~~ not ~~[be]~~ an unlawful employment practice for a religious corporation, association, educational institution, or society to hire and employ individuals of a particular religion to perform work connected with the activities of the ~~[carrying on by such]~~ corporation, association, educational institution, or society ~~[of its activities]~~.

(C) If it is not caused by an employer's intentional discrimination based on an employee's race, color, sex, sexual orientation, gender identity, religion, national origin, age, or disability, it is ~~[It shall]~~ not ~~[be]~~ an unlawful practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment based on: ~~[pursuant to]~~

(1) *a bona fide* seniority or merit system; ~~[, or]~~

(2) a system which measures earnings by quantity or quality of production; ~~[,]~~ or ~~[,]~~

~~(3) to employees who work in different locations [, provided that such differences are not the result of an intention to discriminate because of race, color, sex, sexual orientation, religion, national origin, age or physical disability].~~

**PART 9.** This ordinance takes effect on \_\_\_\_\_, 2004.

**PASSED AND APPROVED**

\_\_\_\_\_, 2004

§  
§  
§

\_\_\_\_\_  
Will Wynn  
Mayor

**APPROVED:** \_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:** \_\_\_\_\_  
Shirley A. Brown  
City Clerk