ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE TITLE 2 (ADMINISTRATION), TITLE 4 (BUSINESS REGULATION AND PERMIT REQUIREMENTS), AND TITLE 5 (CIVIL RIGHTS) RELATED TO THE CREATION OF AN OFFICE OF CIVIL RIGHTS AND THE EDUCATION AND ENFORCEMENT OF THE CITY’S FAIR CHANCE HIRING, EARNED SICK TIME, AND NON-DISCRIMINATION ORDINANCES; ADDING SEXUAL HARASSMENT AS AN UNLAWFUL EMPLOYMENT PRACTICE; AND CREATING CIVIL AND CRIMINAL PENALTIES.

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

PART 1. Findings:

(A) On June 28, 2018, the council adopted Resolution 20180628-062 directing the city manager to undertake a review of the city’s civil rights ordinances in Title 4 and Title 5 of City Code and to recommend changes to improve how the City can most effectively enforce and educate residents about these laws.

(B) In response to Resolution 20180628-062, the City’s Equity Office consulted with the Government Alliance on Race and Equity to study the structure, accountability, and authority of civil rights work within governments across the country. The Equity Office also conducted a community engagement process to develop a model for civil rights enforcement and education that reflects the values and priorities of the City’s Strategic Direction 2023.

(C) As a result of the community engagement process, City staff recommended a centralized office that educates, collaborates and enforces the City’s non-discrimination ordinances.

(D) The council finds this ordinance achieves the policy of creating an effective enforcement and educational framework for the City’s civil rights ordinances found in Title 4 and Title 5 of City Code and is consistent with federal and state laws.

PART 2. Title 2 (Administration) of City Code is amended by adding a new Chapter 2-16 (Office of Civil Rights) to read:

CHAPTER 2-16: OFFICE OF CIVIL RIGHTS
§2-16-1  DEFINITIONS.

In this chapter:

(1) CHAPTER 21 means Texas Labor Code Chapter 21.

(2) COMPLAINANT means a person who submits a complaint that alleges a violation of a local civil rights law.

(3) COMPLAINT means a written communication that alleges a person violated a local civil rights law.

(4) DIRECTOR means the director of the Office of Civil Rights.

(5) LOCAL CIVIL RIGHTS LAW means Chapters 4-15 (Fair Chance Hiring) and 4-19 (Earned Sick Time), and Title 5 (Civil Rights) of this Code, or Chapter 21.

(6) OFFICE means the Office of Civil Rights established in this chapter.

(7) RECORD means information created, obtained, or maintained by the office that concerns the filing, investigation, conciliation, or enforcement of a complaint under this chapter.

§2-16-2  OFFICE OF CIVIL RIGHTS.

(A) The Office of Civil Rights is created as an administrative department and shall report to the city manager.

(B) The city manager shall appoint the director of the Office of Civil Rights, who shall supervise and direct all activities of the office and who shall serve as the Civil Rights Officer for the City of Austin.

(C) The office is designated a local commission as provided in Chapter 21 to exercise the powers and duties provided in that chapter.

(D) The office is authorized to:
(1) obtain and take actions to maintain the City’s certification as a substantial equivalent in the U.S. Department of Housing and Urban Development’s Fair Housing Assistance Program;

(2) investigate and settle complaints of discriminatory housing practices which are violations of local, state and federal law;

(3) provide rights and remedies substantially equivalent to those granted under federal law; and

(4) accept housing discrimination complaints referred by the Secretary of the U.S. Department of Housing and Urban Development and by the Civil Rights Division of the Texas Workforce Commission.

(E) In carrying out its duties, the office shall:

(1) educate and inform the public concerning civil rights laws, including those relating to equal employment, disability, fair housing, fair chance hiring, protections for individuals living with HIV, Title VI of the Civil Rights Act of 1964, employment by city contractors, and the role of the office in enforcing such laws and the procedures for making complaints of violations of such laws;

(2) adopt administrative procedures to receive, investigate, and conciliate discrimination complaints made under a local civil rights law;

(3) act to remedy a violation of a local civil rights law as authorized in this Code;

(4) cooperate with and provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices;

(5) cooperate with law enforcement agencies with jurisdiction within the City to develop and include civil rights courses in the curriculum of licensed peace officer training; and

(6) provide a report at least annually to the council and the public on the results of its activities.
(F) The director shall:

(1) adopt rules in accordance with Chapter 1-2 (Adoption of Rules);

(a) to administer and implement this chapter; and

(b) that are substantially equivalent to those provided in federal fair housing and equal opportunity laws and regulations;

(2) maintain the office in compliance with the requirements applicable to a local commission under Chapter 21;

(3) direct and oversee all personnel and activities of the Office of Civil Rights;

(4) issue subpoenas and subpoena duces tecum to compel attendance of witnesses and production of records, and order discovery in the aid of investigations and hearings under local civil rights laws, to the same extent and subject to the same limitations as subpoenas and discovery in a civil action in district court and to carry out the responsibilities of the office;

(5) organize administrative hearings as necessary;

(6) authorize civil actions for violations of local civil rights laws;

(7) have access to city records necessary to carry out the purposes of local civil rights laws; and

(8) make recommendations as appropriate to the city manager, city attorney, and the city council concerning local civil rights laws.

(G) Information and records concerning complaints and individual complainants shall not be disclosed to the public, unless disclosure is required by Texas Government Code Chapter 552 (Public Information). This prohibition does not apply to records of a complaint for which the director has initiated a civil enforcement action after a failure to reach conciliation.

PART 3. City Code Section 2-1-148 (Human Rights Commission) is repealed and replaced with a new Section 2-1-148 to read:
§ 2-1-148 HUMAN RIGHTS COMMISSION.

(A) The Human Rights Commission should be composed of members who as nearly as possible are representative of the several social, economic, religious, cultural, ethnic, and racial groups which comprise the population of the City.

(B) The commission shall:

(1) advise and consult with the city council on all matters involving racial, religious, or ethnic discrimination, and devise practices to promote equal opportunity;

(2) serve in an advisory and consultive capacity to all city departments, advisory boards, and regulatory agencies to assure effective compliance with non-discrimination policies and orders, and recommend to the city manager measures to improve the ability of various departments and agencies to ensure equal protection of any and all persons and groups against discrimination;

(3) recommend to the city council legislation to aid in programs designed to eliminate prejudice and discrimination and encourage community support for the legislation;

(4) aid in the formulation of local community groups in neighborhoods as needed to carry out specific programs;

(5) initiate and facilitate discussions and negotiations between individuals and groups to lessen tensions and improve understanding in the community;

(6) institute and conduct educational programs to promote equal treatment, opportunity and understanding, and sponsor meetings, institutes, forums, and courses of instruction to lead to a clearer understanding and solution of human relations problems;

(7) assist in training city employees to use methods of dealing with intergroup relations that result in respect for equal rights and equal treatment, and cooperate with law enforcement agencies whose primary jurisdiction is within the City to develop and include human rights courses in the curriculum of police training;

(8) conduct research, obtain factual data, and hold public hearings to ascertain the status and treatment of racial, religious, and ethnic
groups in the city and the best means of progressively improving human relations;

(9) provide services and information to the city manager and heads of all city departments and agencies to achieve the purposes of this chapter; and

(10) cooperate with all city, state, county, federal, and other governmental agencies, as well as racial, religious, ethnic, nationality, educational, community, civic, fraternal, benevolent and other groups, associations, societies, and individuals with constructive talents and resources helpful in achieving mutual appreciation of the privileges and the responsibilities of citizenship in a land of freedom enriched by free commerce and full utilization of all human resources from all racial, religious, ethnic, and national groups.

PART 4. Chapter 4-15 (Fair Chance Hiring) of City Code is amended by substituting the phrase “Equal Employment/Fair Housing Office” with the phrase “Office of Civil Rights.”

PART 5. City Code Section 4-19-1 (Definitions) is amended by repealing the definition of “EEO/FHO” and renumbering the remaining definitions accordingly.

PART 6. Chapter 4-19 (Earned Sick Time) of City Code is amended by substituting the phrase “EEO/FHO” with the phrase “Office of Civil Rights.”

PART 7. Subsection (B) of Section 4-19-7 (Investigation of Complaints) of City Code is amended to read as follows:

(B) A person commits an offense if the person fails to comply with a subpoena issued and served on the person as provided in Part (A). The offense is punishable as a Class C misdemeanor as provided in Section 1-1-99 of this Code. A culpable mental state is not required, and need not be proved, for an offense under this section [a necessary element of the offense].

PART 8. City Code Section 5-1-13 (Definitions) is amended to read:

§ 5-1-13 DEFINITIONS.

In this article:

[(1) ADMINISTRATOR means the Equal Employment/Fair Housing Office administrator appointed by the director.]

(1) AGE means the calendar age of an individual 18 years of age or older.
(2) AGGRIEVED PERSON includes a 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.

(3) COMPLAINANT means a person, including the director of the Office of Civil Rights, administrator, or the commission, who files a complaint under Section 5-1-71 (Complaint).

(5) COMMISSION means the Austin Human Rights Commission.

(4) 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 Office of Civil Rights, Equal Employment/Fair Housing Office.

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

(6) 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.

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

(8) DIRECTOR means the director of the Office of Civil Rights, Human Resources Department.

(9) 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.

(10) DISCRIMINATORY HOUSING PRACTICE means an act prohibited by this article.

(11) DWELLING means:
(a) a 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) 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).

[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 of Housing and Urban Development or the Civil Rights Division of the Texas Workforce Commission.]

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

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

(a) one or more persons who are under 18 years old being domiciled with an individual who is either the parent of the persons under 18 years old, the legal guardian or custodian of the persons under 18 years old, or the designee (with written authorization) of the persons under 18 years old;

(b) being pregnant; or

(c) being in the process of securing legal custody of a person who is under 18 years old.

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

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

(a) that is determined by the Office of Civil Rights [Equal Employment/Fair Housing Office], 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 Office of Civil Rights [Equal Employment Opportunity Commission/Fair Housing Office] 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.

(16)[(19)] MAJOR LIFE ACTIVITIES means functions including caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

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

(18)[(21)] 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.

(19)[(22)] 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 (Additional or Substitute Respondent) or an agent of an additional or substitute respondent.

(20)[(23)] SEXUAL ORIENTATION means an individual’s sexuality or sexual [preference or] practice including homosexuality, heterosexuality, [or]
bisexuality, asexuality, or pansexuality.
(21)(24) SOURCE OF INCOME means lawful, regular, and verifiable income including, but not limited to, housing vouchers and other subsidies provided by government or non-governmental entities, child support, or spousal maintenance, but does not include future gifts.

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

(23)(26) 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.

PART 9. Division 2 (Administration) of Article 2 (Discrimination in Housing – Fair Housing Act Compliance) of City Code Chapter 5-1 (Housing Discrimination) is amended by deleting the phrases “Equal Employment/Fair Housing Office” and “Equal Employment/Fair Housing Office’s” and replacing these phrases with the phrases “Office of Civil Rights” and “Office of Civil Rights’s” respectively.

PART 10. Division 4 (Complaint, Investigation, and Administrative Action) of Article 2 (Discrimination in Housing – Fair Housing Act Compliance) of City Code Chapter 5-1 (Housing Discrimination) is repealed and replaced with a new Division 4 to read:

Division 4. Complaint, Investigation, and Administrative Action.

§ 5-1-71 COMPLAINT.

(A) The Office of Civil Rights shall investigate, settle, conciliate, or otherwise resolve alleged discriminatory housing practices.

(B) A complaint must be:

(1) in writing;

(2) under oath; and

(3) in the form prescribed by the Office of Civil Rights.

(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 Office of Civil Rights 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 Office of Civil Rights may file its own complaint.

(E) A complaint may be amended at any time.
(F) Upon the filing of a complaint, the Office of Civil Rights shall issue a written notice to the complainant and the aggrieved person, if different from the complainant:

1. advising that the complaint has been filed, and the date the complaint was accepted for filing;
2. including a copy of the complaint;
3. advising of the time limits applicable to the complaint and of all procedural rights and obligations of the aggrieved person under this article;
4. 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
5. 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 10th day after a complaint is filed, the Office of Civil Rights shall issue a written notice to each respondent, by certified mail or personal service:

1. advising the date the complaint was accepted for filing;
2. identifying the alleged discriminatory housing practice;
3. including a copy of the complaint;
4. 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 10 days after receipt of the notice;
5. 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;
6. advising why the respondent has been joined to the complaint if the respondent is not specifically named in the complaint; and
7. 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 Office of Civil Rights shall commence proceedings with respect to the complaint before the end of the 30th day after receipt of the complaint.

§ 5-1-72 ANSWER.

(A) Not later than the 10th day after receipt of the notice and copy under Subsection (F) of Section 5-1-71 (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 Office of Civil Rights.

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

(D) A respondent’s refusal or failure to file an answer does not inhibit the investigation of a complaint.

§ 5-1-73 INVESTIGATION.

(A) If the state or federal government has referred a complaint to the City or has deferred jurisdiction over the subject matter of the complaint to the City, the Office of Civil Rights shall promptly investigate the allegations set forth in the complaint.

(B) The Office of Civil Rights shall investigate all complaints, and except as provided by Subsection (C), 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 Office of Civil Rights is unable to complete an investigation within the time periods prescribed by Subsection (B), the Office of Civil Rights shall notify the complainant and the respondent in writing of the reasons for the delay.

§ 5-1-74 ADDITIONAL OR SUBSTITUTE RESPONDENT.

(A) The Office of Civil Rights may join a person not named in the complaint as an additional or substitute respondent if in the course of the investigation the
Office of Civil Rights determines that the person is a necessary party in the discriminatory housing complaint.

(B) In addition to the information required in the notice under Subsection (G) Section 5-1-71 (Complaint) the Office of Civil Rights 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 CONCILIATION.

(A) The Office of Civil Rights shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the Office of Civil Rights, 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 Office of Civil Rights 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 Office of Civil Rights 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 an investigation, the Office of Civil Rights 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 TEMPORARY OR PRELIMINARY RELIEF.

(A) If the Office of Civil Rights 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 Office of Civil Rights shall authorize, and the city attorney shall commence, a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.
(B) 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.

(C) The filing of a civil action under this section does not affect the initiation or continuation of an administrative proceeding under Section 5-1-85 (Administrative Hearing).

§ 5-1-77 INVESTIGATIVE REPORT.

(A) The Office of Civil Rights 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) The Office of Civil Rights may amend a final report under this section if additional evidence is discovered.

§ 5-1-78 REASONABLE CAUSE DETERMINATION.

(A) The Office of Civil Rights 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 Office of Civil Rights shall make the determination under Subsection (A) 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 Office of Civil Rights has approved a conciliation agreement relating to the complaint.

(C) If it is impracticable to make the determination within the time period provided by Subsection (B) of this section, the Office of Civil Rights shall notify the complainant and respondent in writing of the reasons for the delay.
(D) If the Office of Civil Rights determines that reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the Office of Civil Rights shall, except as provided by Section 5-1-81 (Dismissal), immediately issue a charge on behalf of the aggrieved person.

§ 5-1-79 CHARGE.

(A) A charge issued under Section 5-1-78 (Reasonable Cause Determination):

(1) must consist of a short and plain statement of the facts on which the Office of Civil Rights 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 Office of Civil Rights issues a charge, the director shall send a copy of the charge with information concerning the election under Section 5-1-83 (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 (Administrative Hearing); and

(2) each aggrieved person on whose behalf the complaint was filed.

§ 5-1-80 LAND USE LAW.

If the Office of Civil Rights determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the Office of Civil Rights may not issue a charge and shall immediately refer the matter to the city attorney for appropriate action.

§ 5-1-81 DISMISSAL.

(A) If the Office of Civil Rights determines that no reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the Office of Civil Rights 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 Office of Civil Rights 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 PENDING CIVIL TRIAL.

The Office of Civil Rights 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 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 (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 Subsection (B) of Section 5-1-79 (Charge) or, in the case of the Office of Civil Rights, not later than the 20th day after the date the charge was issued.

(C) The person making the election shall give notice to the Office of Civil Rights and to all other complainants and respondents to whom the charge relates.

§ 5-1-84 CITY ATTORNEY ACTION FOR ENFORCEMENT.

(A) If a timely election is made under Section 5-1-83 (Election of Judicial Determination) the Office of Civil Rights shall authorize, and not later than the 30th day after the election is made, the city attorney shall file, a civil action on behalf of the director 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 ADMINISTRATIVE HEARING.

(A) If a timely election is not made under Section 5-1-83 (Election of Judicial Determination), the complainant, respondent, or an aggrieved person on whose behalf the complaint was filed may request that the Office of Civil Rights 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 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) The administrative law judge shall issue a written decision, including findings of fact and conclusions of law, within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to issue a decision within such period, the administrative law judge shall notify the Office of Civil Rights, the aggrieved person, and the respondent, in writing of the reasons for not doing so.

(E) If the administrative law judge concludes that a respondent has engaged or is about to engage in a discriminatory housing practice, the administrative law judge shall promptly issue a decision for appropriate relief, which may include administrative penalties under Section 5-1-86 (Administrative Penalties), actual damages suffered by the aggrieved person, or injunctive or other equitable relief.

(F) A respondent who is found to have engaged in or is about to engage in a discriminatory housing practice may appeal the written decision of the administrative law judge to a district court in Travis County within 30 days of the date the decision is issued. The respondent must notify the Office of Civil Rights and the aggrieved person of the appeal in writing within 30 days of the date the decision is issued. If the respondent does not appeal within the required timeframe, the administrative law judge’s decision becomes final. The Office of Civil Rights and the aggrieved person are necessary parties to an appeal.

§ 5-1-86 ADMINISTRATIVE PENALTIES.
(A) An administrative law judge who issues a written decision under Section 5-1-85 (Administrative Hearing) that concludes a respondent has engaged or is about to engage in a discriminatory housing practice may order 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 (B), $25,000 if the respondent has been adjudged 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 (B), $50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

(B) 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 provided in Subsections (A)(2) and (3) may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.

(C) At the request of the Office of Civil Rights, the city attorney may sue to recover a penalty due under this section. Funds collected under this section shall be appropriated to a special revenue fund that shall be administered by the Office of Civil Rights for civil rights education.

§ 5-1-87 EFFECT OF AN ADMINISTRATIVE PENALTY ORDER.

An order issued under Section 5-1-86 (Administrative Penalties) does not affect a contract, sale, encumbrance, or lease that:

1. was consummated before the administrative law judge issued the order; and

2. involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the charge filed under this article.

§ 5-1-88 LICENSED OR REGULATED BUSINESSES.

If the administrative law judge issues a decision 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 Office of Civil Rights shall, not later than the 30th day after the date of the issuance of the decision:

(1) send copies of the findings and the decision to the governmental agency; and

(2) recommend to the governmental agency appropriate disciplinary action.

§ 5-1-89 ORDER IN PRECEDING FIVE YEARS.

If the administrative law judge issues an order against a respondent against whom another order was issued within the preceding five years under Section 5-1-86 (Administrative Penalties), the Office of Civil Rights shall send a copy of each order issued under that section to the Civil Rights Division of the Texas Workforce Commission and to the attorney general.

§ 5-1-90 COOPERATION WITH STATE AND FEDERAL AGENCIES.

(A) The Office of Civil Rights 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 Office of Civil Rights is encouraged to cooperate with the Civil Rights Division of the Texas Workforce Commission in the enforcement of Chapter 301 (Texas Fair Housing Act) of the Texas Property Code, and may assist the Civil Rights Division of the Texas Workforce Commission in any way consistent with the policy of this chapter.

(B) The Office of Civil Rights 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 Civil Rights Division of the Texas Workforce Commission 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.

PART 11. City Code Chapter 5-2 (Discrimination in Public Accommodations) is repealed and replaced with a new Chapter 5-2 to read as follows:
CHAPTER 5-2. DISCRIMINATION IN PUBLIC ACCOMMODATIONS.

§ 5-2-1 DECLARATION OF POLICY.

(A) It is 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 public accommodation without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

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

§ 5-2-2 DEFINITIONS.

In this chapter:

(1) AGE means a person over the age of 18 years.

(2) CHARGING PARTY means the person alleging discrimination in a charge.

(3) DIRECTOR means the director of Office of Civil Rights.

(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) DISCRIMINATION means the direct or indirect exclusion, distinction, segregation, limitation, refusal, denial or any other differentiation in the treatment of a person based on race, color, religion, sex, sexual orientation,
gender identity, national origin, age, or disability in a public accommodation.

(6) INVESTIGATOR means the person investigating a charge.

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

(8) OFFICE OF CIVIL RIGHTS means the office created in Section 2-16-2 (Office of Civil Rights).

(9) PUBLIC ACCOMMODATION means:

(a) an inn, hotel, motel or other lodging establishment for transient guests, excluding an establishment located in a building with not more than five rooms for rent or hire and occupied by the owner or operation as a primary residence;

(b) a restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including a facility located on the premises of a retail establishment or a gasoline station;

(c) a movie theatre, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;

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

(e) a retail establishment that sells goods or services; and

(f) an establishment physically located in the premises of an establishment described in this subsection or containing within the premises of which is physically located a covered establishment, and an establishment which holds itself out as serving patrons of a covered establishment.

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

(11) SEXUAL ORIENTATION means an individual’s sexuality or sexual practice including homosexuality, heterosexuality, bisexuality, asexuality, or pansexuality.
§ 5-2-3 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 II of the Civil Rights Act of 1964.

§ 5-2-4 PROHIBITED PRACTICES.

(A) A person is entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a public accommodation, without discrimination or segregation based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

(B) A person, including the owner, operator, or lessee of a public accommodation may not directly or indirectly exclude, segregate, limit, refuse or deny a person the accommodations, advantages, facilities, benefits, privileges, services, or goods of the public accommodation based on race, color, religion, sex, sexual orientation, gender identification, national origin, age, or disability.

(C) A person, including the owner, operator, or lessee of a public accommodation, may not circulate, issue, display, post, mail, or publish a statement, advertisement, or sign that indicates that the accommodations, advantages, facilities, benefits, privileges, services, or goods of the public accommodation will be denied to an individual based on race, color, religion, sex, sexual orientation, gender identification, national origin, age, or disability, or that the patronage or presence of an individual is objectionable, unwelcome, unacceptable, undesirable, or unsolicited based on race, color, religion, sex, sexual orientation, gender identification, national origin, age or disability.

§ 5-2-5 COMPLAINT PROCEDURES.

(A) The Office of Civil Rights investigates complaints filed under this chapter and may take action to prevent a person from engaging in an 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) Within 10 days of filing, the director shall send notice of the charge to the respondent. The notice shall include the date, place, and specific circumstances of the alleged unlawful public accommodation practice.

(D) Before a charge is accepted for investigative purposes, the director shall review the charge with the charging party and make a determination whether the charge alleges a violation of this chapter. If the director determines during the preliminary review that the charge does not allege a violation of this chapter, the director shall provide the charging party a clear and concise explanation in writing why the charge will not be accepted for investigation. The charging party may appeal a determination under this section under Section 5-2-6 (Dismissal and Appeal).

(E) The director shall maintain records that indicate the reason a charge was not accepted for investigation.

(F) A charge filed under this section shall be on the form approved by the director and shall include an oath or affirmation and any other information required by the office.

§ 5-2-6 DISMISSAL AND APPEAL.

(A) The investigator shall dismiss the charge if the investigator determines that no reasonable cause exists to believe that a discriminatory practice under this chapter occurred. The investigator shall promptly notify the charging party and the respondent of the dismissal in writing.

(B) Within 10 days of receiving the notice of dismissal, the charging party may file a request for a review with the director. The director shall conduct a hearing and provide the charging party an opportunity to appear and present evidence. The director may affirm, reverse, or modify the investigator’s determination.

§ 5-2-7 INFORMAL RESOLUTION.

(A) If the investigator determines that there is reasonable cause to believe that a discriminatory practice under this chapter occurred, the director, or an investigator who has not participated in the investigation, shall attempt to resolve the matter through informal methods, including conference, conciliation, or persuasion.

(B) The information produced during an informal proceeding is confidential, unless disclosure is required by law. Information produced during an
informal proceeding may not be used as evidence in a later proceeding without the written consent of all parties.

(C) An investigator shall ensure that each determination is made as promptly as possible.

(D) The charging party and respondent may agree to settle the complaint before the investigation is complete. If the director determines that the agreement does not meet the objectives of this chapter, the director may continue to investigate the complaint.

§ 5-2-8 REFERRAL.

After investigation, the director shall refer a complaint to the city attorney for appropriate prosecution, if the director believes a violation occurred or will occur and is unable to reach an agreement with the respondent.

§ 5-2-9 ACCESS TO RECORDS.

The director or an investigator shall have access to evidence relating to an investigation under this chapter, and may examine or copy the evidence, unless the information is confidential under applicable law.

§ 5-2-10 VIOLATIONS.

A person may not violate this chapter, or knowingly obstruct or prevent compliance with this chapter.

§ 5-2-11 LEGAL ASSISTANCE FOR THE OFFICE OF CIVIL RIGHTS.

The city attorney shall assign or obtain counsel to assist the Office of Civil Rights in the performance of its functions.

§ 5-2-12 EXEMPTIONS.

(A) This chapter does not apply to a facility owned or operated by the federal, state, or county government, or the University of Texas.

(B) This chapter does not apply to a private club or other establishment not open to the public, unless the facilities of the establishment are made available to the customer of a public accommodation

PART 12. City Code Chapter 5-3 (Discrimination in Employment Generally) is repealed and replaced with a new Chapter 5-3 to read:
CHAPTER 5-3. DISCRIMINATION IN EMPLOYMENT GENERALLY.

§ 5-3-1 DECLARATION OF POLICY.

(A) It is 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 disability.

(B) 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 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.

§ 5-3-2 DEFINITIONS.

In this chapter:

(1) AGE means a person at least 40 years old.

(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) DIRECTOR means the Director of the Office of Civil Rights.

(5) 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) EMPLOYEE means an individual employed by an employer, including a City employee. The term does not include an elected official of the City.

(8) 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 agent. The term does not include the United States, or a corporation wholly owned by the government of the United States; 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 political subdivision. The term does not apply to Section 5-3-5 (Sexual Harassment).

(9) EMPLOYMENT AGENCY means a person who regularly attempts, with or without compensation, to procure employees for an employer or to procure employment opportunities for employees, including the person’s agent.

(10) OFFICE OF CIVIL RIGHTS means the office created in Section 2-16-2 (Office of Civil Rights).

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

(12) INVESTIGATOR means the person investigating a charge.

(13) LABOR ORGANIZATION means a labor organization and its agent, including an organization, 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 which is subordinate to a national or international labor organization.

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

(15) RESPONDENT means the person against whom a charging party alleges discrimination in a charge.
(16) SEX DISCRIMINATION means discrimination on the basis of gender, or any associated condition, including pregnancy, childbirth or related medical conditions. A woman 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 not so affected, but similar in their ability or inability to work.

(17) SEXUAL ORIENTATION means an individual’s sexuality or sexual practice including homosexuality, heterosexuality, bisexuality, asexuality, or pansexuality.

§ 5-3-3 INTERPRETATION.

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 and federal court interpretations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, and Chapter 21 (Employment Discrimination) of the Texas Labor Code.

§ 5-3-4 UNLAWFUL EMPLOYMENT PRACTICES.

(A) An employer may not:

(1) fail or refuse to hire or to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on the individual’s race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or

(2) limit, segregate, or classify an employee or applicant for employment in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the individual’s status as an employee, based on the individual’s race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

(B) An employment agency may not:

(1) fail or refuse to refer for employment, or otherwise discriminate against, an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or
(2) classify or refer for employment an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability.

(C) A labor organization may not:

(1) exclude or to expel from its membership, or otherwise discriminate against, an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

(2) limit, segregate, or classify its membership, or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive the individual of employment opportunities, limit employment opportunities, or otherwise adversely affect the individual’s status as an employee or as an applicant for employment, based on the individual’s race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or

(3) cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(D) An employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not discriminate against an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in admission to or employment in a program established to provide apprenticeship or other training.

(E) Unless it is a bona fide occupational qualification for employment, 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 print, publish, or cause to be printed or published a 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 to:

(1) employment by the employer;

(2) membership in or classification or referral for employment by an employment agency; or
(3) admission to, or employment in, a program established to provide
apprenticeship or other training by a joint labor-management
committee.

(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) an employer may not discriminate against an employee or applicant
for employment;

(2) an employment agency, or joint labor-management committee
controlling apprenticeship or other training or retraining, including
on-the-job training programs, may not discriminate against an
individual; and

(3) a labor organization may not discriminate against a member or
applicant for membership.

§ 5-3-5 SEXUAL HARASSMENT.

(A) Definitions. In this section:

(1) EMPLOYER means a person who:

(a) employs one or more employees; or

(b) acts directly in the interests of an employer in relation to an
employee.

(2) SEXUAL HARASSMENT means an unwelcomed sexual advance, a
request for a sexual favor, or any other verbal or physical conduct of a
sexual nature if:

(a) submission to the advance, request, or conduct is made a term
of the individual’s condition of employment either explicitly or
implicitly;

(b) submission to or rejection of the advance, request, or conduct
by an individual is used as the basis for a decision affecting the
individual’s employment;

(c) the advance, request, or conduct has the purpose or effect of
unreasonably interfering with an individual’s work
performance; or
(d) the advance, request, or conduct has the purpose of effect of creating an intimidating, hostile, or offensive working environment.

(B) An employer commits an unlawful employment practice under this chapter if sexual harassment of an employee occurs and the employer or the employer’s agents or supervisors:

(1) know or should have known that the conduct constituting sexual harassment was occurring; and

(2) fail to take immediate and appropriate corrective action.

§ 5-3-6 VIOLATIONS PROHIBITED.

A person may not violate this chapter, or knowingly obstruct or prevent compliance with this chapter.

§ 5-3-7 CHARGES.

(A) A person must file a charge with the Office of Civil Rights not later than the 180th day after the date the violation occurred, or for a complaint alleging sexual harassment, within 300 days of the alleged sexual harassment.

(B) A charge under this section must be:

(1) made in writing on the form prescribed by the Office of Civil Rights;

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

(3) contain the information required by the Office of Civil Rights.

§ 5-3-8 PRELIMINARY REVIEW; REFUSAL.

(A) Before the Office of Civil Rights accepts a charge, an investigator shall review the charge with the charging party to determine whether 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, the Americans with Disabilities Act of 1990, or Chapter 21 (Employment Discrimination) of the Texas Labor Code.

(B) If an investigator determines a charge does not describe a violation, the director shall notify the charging party in writing, within 10 days of the determination, that the charge will not be accepted and describe the reason for the refusal. The Office of Civil Rights shall maintain a record documenting the reason a charge was not accepted.
§ 5-3-9 ACCEPTANCE; NOTICE; INVESTIGATION.

The Office of Civil Rights shall notify the respondent not later than the 10th day after acceptance of the charge. If the charge alleges a violation of Section 5-3-4 (Unlawful Employment Practices), the Office of Civil Rights shall investigate the charge.

§ 5-3-10 NO REASONABLE CAUSE DETERMINATION.

If an investigator determines no reasonable cause exists to believe a violation of this chapter occurred, the Office of Civil Rights shall issue a written determination to the charging party and the respondent.

§ 5-3-11 REVIEW OF NO REASONABLE CAUSE DETERMINATION.

(A) A charging party may file with the director a request for review of a no reasonable cause determination issued under this chapter. A request must be filed no later than 10 days after the date of receipt of the no reasonable cause determination issued under Section 5-3-10 (No Reasonable Cause Determination).

(B) If a request for review is timely filed under this section, the director shall conduct a hearing and provide the charging party an opportunity to appear and present evidence. Upon conclusion of a hearing, the director may affirm, reverse, or modify the investigator’s determination.

(C) For charges filed exclusively under Section 5-3-7 (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 director shall conduct a hearing and provide the charging party an opportunity to appear and present evidence. The director may affirm, reverse, or modify the investigator’s determination.

§ 5-3-12 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.
§ 5-3-13 CONCILIATION AGREEMENT.

(A) If, after an investigation, the director determines there is reasonable cause to believe 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, the Americans with Disabilities Act of 1990, or Chapter 21 (Employment Discrimination) of the Texas Labor Code has occurred, or if the director reverses or modifies an investigator’s determination under Section 5-3-11 (Review of No Reasonable Cause Determination), the director shall attempt to resolve the alleged violation through a conciliation agreement.

(B) The charging party and respondent may agree to settle the complaint before the investigation is complete. If the director determines the agreement does not meet the objectives of this chapter, the director may continue to investigate the complaint.

(C) The information produced while attempting to reach a conciliation agreement is confidential, unless disclosure is required by law. Information produced while attempting to reach a conciliation agreement may not be used as evidence in a later proceeding without the written consent of all parties.

(D) If the director, charging party, and respondent are unable to obtain a conciliation agreement, the director 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 the charging party, respondent, and director are unable to obtain a conciliation agreement in a charge 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 director shall send a failure to conciliate letter to the charging party and the respondent and forward the charge to the EEOC for review.

(F) The confidentiality rules in 29 CFR § 1601.22 apply in all cases deferred to the City by the EEOC.
§ 5-3-14 INVESTIGATIVE ACCESS TO RECORDS AND EVIDENCE.

In investigating a charge filed under this chapter, the director 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.

§ 5-3-15 LEGAL ASSISTANCE.

The city attorney shall advise the director relating to the administration and enforcement of this chapter.

§ 5-3-16 EXEMPTIONS.

(A) If an individual’s religion, sex, or national origin are a bona fide occupational qualification reasonably necessary for the normal operation of a particular business or enterprise, it is not an unlawful employment practice for:

(1) an employer to hire and employ employees;
(2) an employment agency to classify, or refer for employment an individual;
(3) a labor organization to classify its membership or to classify or refer for employment an individual; or
(4) an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in a program.

(B) It is not 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 school, college or university or other educational institution or institution of learning is wholly or substantially owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society; or
(2) the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(C) It is not 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
corporation, association, educational institution, or society.

(D) Except where an employer intentionally discriminates based on an
employee’s race, color, sex, sexual orientation, gender identity, religion,
national origin, age, or disability, it is not an unlawful practice for an
employer to apply different standards of compensation, or different terms,
conditions, or privileges of employment based on:

(1) a bona fide seniority or merit system;
(2) a system which measures earnings by quantity or quality of
production; or
(3) to employees who work in different locations.

PART 13. City Code Chapter 5-4 (Discrimination in Employment by City Contractors) is
repealed and replaced with a new Chapter 5-4 to read:

CHAPTER 5-4. DISCRIMINATION IN EMPLOYMENT BY CITY
CONTRACTORS.

§ 5-4-1 DEFINITIONS.

In this chapter:

(1) CONTRACTOR includes any person who submits a bid or proposal to
provide labor, goods or services to the City by contract for profit; any person
who supplies or provides labor, goods or services to the City by contract for
profit; any person who is a subcontractor under any such contract.

(2) CHARGING PARTY means the person alleging discrimination in a charge.

(3) DISCRIMINATORY EMPLOYMENT PRACTICE means discrimination
against an individual because of race, creed, color, religion, national origin,
sexual orientation, gender identity, disability, sex or age, unless sex or age is
a bona fide occupational qualification of employment during an employment
action, including recruiting, advertising, hiring, layoff, termination,
classification, training or selection for training, promotion, demotion,
transfer, or compensation.

(4) OFFICE OF CIVIL RIGHTS means the office created in Section 2-16-2
(Office of Civil Rights).

(5) PERSON means any individual and any partnership, firm, association,
corporation, government or other entity.
(6) RESPONDENT means the person against whom a charging party alleges discrimination in a charge.

(7) SELECTIVE INVESTMENT means affirmatively seeking out any person or business which has no financial or business dealings in or with the government or private sector of South Africa.

(8) SIGNIFICANT FINANCIAL LOSS means a procurement where substitution is not economically feasible as determined by a cost benefit analysis conducted by the city manager or where substitution would void a warranty.

(9) SUBCONTRACTOR means any person providing goods, labor or services to a contractor if such goods, labor or services are procured or used in fulfillment of the contractor’s obligations arising from a contract with the City of Austin.

(10) SUBSTANTIALLY-OWNED means at least a 25 percent equity position in the subsidiary corporation.

(11) TO SEEK COMPLIANCE means substantive initiation of divestment activity as determined by the city manager.

§ 5-4-2 DISCRIMINATORY EMPLOYMENT PRACTICES PROHIBITED.

(A) No contractor, nor any agent of any such contractor, shall engage in any discriminatory employment practice defined in this chapter.

(B) No bid or proposal submitted to the City by a contractor shall be considered nor shall any purchase order be issued nor contract be awarded by the City to any contractor unless the contractor has executed an approved form, prescribed by the Office of Civil Rights, to be in force and effect for one year from date of filing, in which the contractor has agreed:

(1) not to engage in any discriminatory employment practice defined in this chapter;

(2) to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment;
(3) to post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Office of Civil Rights setting forth the provisions of this chapter;

(4) to state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age;

(5) to obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which the union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement the policies and provisions of this chapter;

(6) to cooperate fully with the City in connection with any investigation or conciliation effort of the Office of Civil Rights to ensure that the purpose of the provisions against discriminatory employment practice is being carried out; and

(7) to require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of $2,000 or more in connection with any contract with the City subject to the terms of this chapter that they not engage in any discriminatory employment practice as defined in this chapter.

(C) No bid or proposal submitted to the City shall be considered nor shall any purchase order be issued nor contract be awarded by the City to any contractor unless the contractor has provided in writing to the office of minority business affairs the following information:

(1) the names of all subcontractors;

(2) the dollar amount of all subcontracts;

(3) the identity of all minority owned business enterprise or women owned business enterprise subcontractors; and

(4) the dollar amount of minority owned business enterprise or women owned business enterprise subcontracts.
§ 5-4-3 PROMULGATION OF RULES AND REGULATIONS; COMPLAINT AND CONCILIATION PROCEDURE; COMPLIANCE CHECKS.

(A) The Office of Civil Rights shall, subject to the approval of the city council, promulgate rules and regulations necessary to implement this chapter and to carry out its purposes and policies; and shall receive, investigate and conciliate complaints of discriminatory employment practices or failures to comply with this chapter.

(B) Any person claiming to be aggrieved by a discriminatory employment practice prohibited by this chapter shall, within 60 days of the alleged act of discrimination, sign and file a verified complaint setting forth the particulars of the alleged discriminatory employment practice or other violation of this chapter and containing other information as may be required by the Office of Civil Rights.

(C) A complaint shall be filed with the Office of Civil Rights. The Office of Civil Rights shall, within 30 days, investigate or cause to be investigated the complaint.

(D) If an investigation reveals that violations of any of the provisions of this chapter probably exist, the Office of Civil Rights shall immediately endeavor to eliminate or correct the practice or violation complained of by informal methods of conference, conciliation, and persuasion.

(E) The Office of Civil Rights may conduct compliance checks to ascertain the status and progress of compliance under the provisions of this chapter.

§ 5-4-4 PROCEDURE FOR ADMINISTRATIVE HEARINGS.

(A) If conciliation fails to correct or eliminate the practice or violation complained of, the director may set the case for hearing before an administrative law judge. The procedure for the hearing shall be as follows:

(1) The director shall send 10 days notice of the time and place of the hearing personally or through the United States mail, by certified mail with return receipt requested, to the charging party and to the person alleged to have committed the discriminatory employment practice complained of accompanied by a copy of the complaint and a written report of the investigation and the results of the conciliation efforts.
(2) The charging party and the respondent may appear at the hearing in person or by legal counsel and present such statements, testimony or evidence as may be desired.

(B) At the conclusion of a hearing under this section, the administrative law judge shall issue a written ruling, including findings of fact and conclusions of law. The director shall review the ruling and forward the ruling to the city council, along with its recommendations.

(C) After receipt of the ruling and the director’s recommendation, the city council may cause the contract with such contractor to be canceled, terminated or suspended in whole or in part, as the city council deems advisable under the circumstances, and such contractor shall be declared ineligible for conducting further business with the City.

(D) A contractor who is declared ineligible and seeks reinstatement shall make application to the director, and upon the director’s recommendation, the city council shall either restore such eligibility or deny same.

§ 5-4-5 DISMISSEL OF COMPLAINT.

If the director determines a discriminatory employment practice or other violation has not been committed as alleged, or has no jurisdiction to hear the complaint, the director shall dismiss the matter or refer it to the proper agency.

§ 5-4-6 PROTECTION OF PERSON FILING COMPLAINT FROM DISCIPLINARY ACTION.

No person shall be subject to any disciplinary or punitive action in connection with their employment as a result of their filing any complaint under this chapter or giving any evidence in connection therewith.

§ 5-4-7 ANNUAL REPORTS TO CITY COUNCIL.

The Office of Civil Rights shall report annually to the city council on the disposition of all hearings and on all other matters it may deem appropriate to be brought to the attention of the city council, including recommendations it considers necessary or desirable to carry out the policy stated in this chapter.

§ 5-4-8 WAIVER OF APPLICATION OF THIS CHAPTER.

Upon approval of the city council the application of the provisions of this chapter may be waived or suspended in cases or classes of cases where the size or nature of the purchase, contract, job or services or other special circumstances make compliance therewith impracticable or unnecessary.
PART 14. City Code Section 5-5-2 (Definitions) is repealed and replaced with a new Section 5-5-2 to read:

§ 5-5-2 DEFINITIONS.

In this chapter:

(1) AIDS means a medical condition which shall have the same meaning as that defined by the federal Center for Disease Control in Atlanta, Georgia; said definition shall be maintained by the City’s Office of Civil Rights and shall be incorporated within this chapter for all purposes.

(2) BODY FLUIDS means those body tissues, secretions, and excretions which have been shown to contain live HIV particles and which have a proven epidemiologic role in transmission of HIV. These include blood, plasma, semen, seminal fluid and vaginal secretions.

(3) BONA FIDE OCCUPATIONAL QUALIFICATION means a job qualification or requirement that is reasonably related to the satisfactory performance of the duties of a job; and for which there is a factual basis for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety; and there exists no less discriminatory means of satisfying the occupational qualification.

(4) BUSINESS ESTABLISHMENT means any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements consist only of payment of fees or consist of requirements under which a substantial portion of the residents of this City would qualify.

(5) CHARGING PARTY means the person alleging discrimination in a complaint.

(6) DIRECTOR means the director of the Office of Civil Rights.

(7) EMPLOYER means a person engaged in an industry affecting commerce who has 16 or more employees at the time the alleged discrimination occurred.

(8) EMPLOYMENT AGENCY means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such person.
HIV-INFECTED INDIVIDUALS means those persons infected with AIDS or persons with AIDS related complex and healthy individuals infected with the HIV virus. It also includes those persons who are HIV seropositive, which is an indication of exposure to the HIV virus.

INVESTIGATOR means the person investigating a complaint.

LABOR ORGANIZATION means a labor organization engaged in an industry affecting commerce and includes:

(a) Any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that 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;

(b) Any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(c) An agent of a labor organization.

PERSON means any individual, person, firm, corporation, or other organizations or group of persons, however organized, the City and any of its officers, agents, boards, commissions, but does not mean federal or state agencies.

RESPONDENT means the person against whom a charging party alleges discrimination in a complaint.

PART 15. Subsection (B) of City Code Section 5-5-7 (Protection of Persons Who Associate with AIDS-Infected Individuals; Retaliation Against Persons Who Have Acted Pursuant to the Requirement of this Chapter) is amended by substituting the word “commission” with the phrase “Office of Civil Rights.”

PART 16. City Code Section 5-5-9 (Director of Human Resources Department to Administer) is renamed to read:

§ 5-5-9 DIRECTOR OF OFFICE OF CIVIL RIGHTS TO ADMINISTER.

PART 17. City Code Section 5-5-10 (General Enforcement Guidelines) is repealed and replaced with a new Section 5-5-10 to read:
§ 5-5-10 GENERAL ENFORCEMENT GUIDELINES.

(A) Any person who has been discriminated against in violation of the provisions of this chapter may file with the director a request to have the director investigate and mediate the complaint under the provisions of this chapter.

(B) Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

(C) A complaint to the director is not a prerequisite or a bar to the filing of a complaint with the Texas Human Rights commission or to the pursuit of any other remedy provided by law. The pendency of a complaint before the director shall not bar any civil action under this section, but a final judgment in any civil action shall bar any further proceedings by the Office of Civil Rights.

(D) In connection with any investigation of a charge filed under this chapter, the director or investigator shall at all reasonable times have access to, for the purposes of examination and the right to copy, any evidence of any person being investigated or proceeded against that relates to unlawful employment practices and is relevant to the charge under investigation and is not privileged as provided by law.

(E) No person shall knowingly, intentionally or recklessly obstruct, or prevent compliance with this chapter or hinder or interfere with the performance of the proper exercise of a duty, obligation, right or power of the Office of Civil Rights or its representatives, or other officials with duties, obligations, rights and powers established by ordinance.

(F) The city attorney shall assign counsel to assist the Office of Civil Rights in the performance of its functions.

(G) The Office of Civil Rights shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this chapter. The city attorney shall be consulted regarding rules and regulations adopted by the Office of Civil Rights before such rules and regulations become effective. Such rules and regulations shall be in conformity with procedural due process.
PART 18. Subsection (D) of City Code Section 5-5-11 (Filing Complaints; Procedure) is amended to read:

(D) The director may grant expedited review to any complaint filed under this chapter, in accordance with the policy concerning expedited reviews as determined by the director[ in consultation with the commission].

PART 19. City Code Section 5-5-12 (Investigation and Conciliation Procedure) is repealed and replaced with a new Section 5-5-12 to read:

§ 5-5-12 INVESTIGATION AND CONCILIATION PROCEDURE.

(A) Before the Office of Civil Rights accepts a complaint for investigation, an investigator shall review the complaint with the charging party and determine whether the complaint describes a violation of this chapter.

(B) If the investigator determines that there is not reasonable cause to believe that a particular alleged discriminatory practice has occurred, the Office of Civil Rights shall dismiss the complaint and promptly provide the charging party and the respondent with a clear and concise written explanation of the reasons why the complaint will not be accepted for investigation. A charging party may appeal the dismissal of a complaint by filing a request for review with the director within 10 days of receiving the written explanation. If a request for review is timely filed under this section, the director shall conduct a hearing and provide the charging party an opportunity to appear and present evidence. Upon conclusion of the hearing, the director may affirm, reverse, or modify the investigator’s determination.

(C) Complaints shall be made in writing and shall contain such information and be in such form as the director requires. A complaint is confidential, unless disclosure is required by law.

(D) If, after investigation, the director determines there is reasonable cause to believe a violation of this chapter has occurred, or if the director reverses or modifies an investigator’s determination under Subsection (B), the director shall attempt to resolve the alleged violation through a conciliation agreement. Information produced while attempting to reach a conciliation agreement is confidential, unless disclosure is required by law. Information produced while attempting to reach a conciliation agreement may not be used as evidence in a later proceeding without the written consent of all parties.

(E) The charging party and respondent may agree to settle the complaint before the investigation is complete. If the director determines that the agreement
does not meet the objectives of this chapter, the director may continue to investigate the complaint.

(F) If the director, charging party, and respondent are unable to obtain a conciliation agreement, the director may refer the case to the city attorney for prosecution in municipal court.

PART 20. City Code Section 5-5-99 (Penalty) is repealed and replaced with a new section 5-5-99 to read:

§ 5-5-99 CRIMINAL PENALTY.

A person commits an offense if the person violates any provision of this chapter or if the person obstructs or prevents compliance with this chapter. An offense under this section is a Class C misdemeanor punishable as provided in section 1-1-99 (Offenses; General Penalty). A culpable mental state is not required, and need not be proved, for an offense under this section. Each day that a person violates this chapter, whether consecutive or non-consecutive, shall be a separate offense.

PART 21. City Code Section 5-6-2 (Definitions) is repealed and replaced with a new Section 5-6-2 to read:

§ 5-6-2 DEFINITIONS.

In this chapter:

(1) CHARGING PARTY means the person alleging discrimination in a complaint.

(2) CITY means City of Austin.

(3) DIRECTOR means the director of the Office of Civil Rights.

(4) DISABILITY means having a physical or mental impairment which substantially limits one or more major life activities; having a record of such an impairment; or being regarded as having such an impairment.

(a) PHYSICAL OR MENTAL IMPAIRMENT means 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 any mental or psychological
disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(b) MAJOR LIFE ACTIVITIES means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) HAS A RECORD OF SUCH IMPAIRMENT means a history of, or has been misclassified as, having a mental or physical impairment that substantially limits one or more major life activities.

(d) IS REGARDED AS HAVING AN IMPAIRMENT means has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such as limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined above but is treated as having such an impairment.

(5) DISCRIMINATION means any direct or indirect exclusions, distinctions, segregation, limitation, refusal, denial, or any other differentiation in the treatment of a person or persons with disabilities on account of a disability.

(6) FACILITY means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property.

(7) FINANCIAL ASSISTANCE means any grant, loan, contract (other than procurement contract or a contract of insurance or guaranty), or any other arrangement by which the City provides or otherwise makes available assistance in the form of: funds; services of City personnel; or real or personal property or any interest in or use of such property, including transfers or leases of such property for less than fair market value or for reduced consideration; and proceeds from a subsequent transfer or lease of such property if the City share of its fair market value is not returned to the City.

(8) INVESTIGATOR means the person investigating a complaint.

(9) PERSON WITH DISABILITIES means any person who has a disability as defined in "disability" above.

(10) QUALIFIED PERSON WITH DISABILITIES includes:
(a) With respect to employment, a person with disabilities who, with reasonable accommodation, can perform the essential functions of the job in question.

(b) With respect to a City service, a person with disabilities who meets the essential eligibility requirements for the receipt of the service.

(11) RESPONDENT means the person against whom a charging party alleges discrimination in a complaint.

PART 22. Subsection (E) and Subsection (F) of City Code Section 5-6-12 (General Enforcement Guidelines) are amended by deleting the phrase “Human Resources Department” and substituting the phrase “Office of Civil Rights.”

PART 23. City Code Section 5-6-14 (Investigation and Conciliation Procedure) is repealed and replaced with a new Section 5-6-14 to read:

§ 5-6-14 INVESTIGATION AND CONCILIATION PROCEDURE.

(A) Before the Office of Civil Rights accepts a complaint for investigation, an investigator shall review the complaint with the charging party and determine whether the complaint describes a violation of this chapter.

(B) If the investigator determines that there is not reasonable cause to believe that a particular alleged discriminatory practice has occurred, the Office of Civil Rights shall dismiss the complaint and promptly provide the charging party and the respondent with a clear and concise written explanation of the reasons why the complaint will not be accepted for investigation. A charging party may appeal the dismissal of a complaint by filing a request for review with the director within 10 days of receiving the written explanation. If a request for review is timely filed under this section, the director shall conduct a hearing and provide the charging party an opportunity to appear and present evidence. Upon conclusion of the hearing, the director may affirm, reverse, or modify the investigator’s determination.

(C) Complaints shall be made in writing and shall contain such information and be in such form as the director requires. A complaint is confidential, unless disclosure is required by law.

(D) If, after investigation, the director determines there is reasonable cause to believe a violation of this chapter has occurred, or if the director reverses or modifies an investigator’s determination under Subsection (B), the director shall attempt to resolve the alleged violation through a conciliation agreement. Information produced while attempting to reach a conciliation
agreement is confidential, unless disclosure is required by law. Information produced while attempting to reach a conciliation agreement may not be used as evidence in a later proceeding without the written consent of all parties.

(E) The charging party and respondent may agree to settle the complaint before the investigation is complete. If the director determines that the agreement does not meet the objectives of this chapter, the director may continue to investigate the complaint.

(F) If, after investigation, the director determines that there is reasonable cause to believe discrimination occurred and the director is unable to secure from the respondent an acceptable conciliation agreement, the director shall present findings to the city manager. The director may, in cases where the respondent is a City department, recommend to the city manager that corrective measures as the director deems appropriate be taken to eliminate the discriminatory activity. If the respondent is a City contractor, the Office of Civil Rights shall forward its findings and recommendations to the charging party, the respondent, and the city council. After receipt of the findings of the Office of Civil Rights, the city council, if it concurs in such findings, may cause the contract with such contractor to be canceled, terminated, or suspended in whole or in part, as the city council deems advisable under the circumstances. If after review of the case, the city council disagrees with the findings of the Office of Civil Rights, the city council may reverse or modify the findings of the Office of Civil Rights.

(G) Notice shall be provided in City contracts that noncompliance with this chapter by City contractors may result in termination of such contracts.

PART 24. Subsection (A) of City Code Section 5-6-15 (Remedial and/or Voluntary Action) is amended by deleting the phrase “Human Resources Department” and substituting the phrase “Office of Civil Rights.”
PART 25. This ordinance takes effect on _________________, 2021.

PASSED AND APPROVED

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__________________________, 2021

______________________________

Steve Adler
Mayor

APPROVED: ___________________ ATTEST: ___________________

Anne L. Morgan Jannette S. Goodall
City Attorney City Clerk

APPROVED: ___________________ ATTEST: ___________________

Anne L. Morgan Jannette S. Goodall
City Attorney City Clerk