

35 **§2-16-1 DEFINITIONS.**
36

37 In this chapter:

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- 39 (1) CHAPTER 21 means Texas Labor Code Chapter 21.
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- 41 (2) COMPLAINANT means a person who submits a complaint that alleges a
42 violation of a local civil rights law.
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- 44 (3) COMPLAINT means a written communication that alleges a person violated
45 a local civil rights law.
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- 47 (4) DIRECTOR means the director of the Office of Civil Rights.
- 48
- 49 (5) LOCAL CIVIL RIGHTS LAW means Chapters 4-15 (*Fair Chance Hiring*)
50 and 4-19 (*Earned Sick Time*), and Title 5 (*Civil Rights*) of this Code, or
51 Chapter 21.
- 52
- 53 (6) OFFICE means the Office of Civil Rights established in this chapter.
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- 55 (7) RECORD means information created, obtained, or maintained by the office
56 that concerns the filing, investigation, conciliation, or enforcement of a
57 complaint under this chapter.
- 58

59 **§2-16-2 OFFICE OF CIVIL RIGHTS.**
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- 61 (A) The Office of Civil Rights is created as an administrative department and
62 shall report to the city manager.
- 63
- 64 (B) The city manager shall appoint the director of the Office of Civil Rights,
65 who shall supervise and direct all activities of the office and who shall serve
66 as the Civil Rights Officer for the City of Austin.
- 67
- 68 (C) The office is designated a local commission as provided in Chapter 21 to
69 exercise the powers and duties provided in that chapter.
- 70
- 71 (D) The office is authorized to:
- 72

- 73 (1) obtain and take actions to maintain the City's certification as a
74 substantial equivalent in the U.S. Department of Housing and Urban
75 Development's Fair Housing Assistance Program;
76
77 (2) investigate and settle complaints of discriminatory housing practices
78 which are violations of local, state and federal law;
79
80 (3) provide rights and remedies substantially equivalent to those granted
81 under federal law; and
82
83 (4) accept housing discrimination complaints referred by the Secretary of
84 the U.S. Department of Housing and Urban Development and by the
85 Civil Rights Division of the Texas Workforce Commission.
86

87 (E) In carrying out its duties, the office shall:
88

- 89 (1) educate and inform the public concerning civil rights laws, including
90 those relating to equal employment, disability, fair housing, fair
91 chance hiring, protections for individuals living with HIV, Title VI of
92 the Civil Rights Act of 1964, employment by city contractors, and the
93 role of the office in enforcing such laws and the procedures for
94 making complaints of violations of such laws;
95
96 (2) adopt administrative procedures to receive, investigate, and conciliate
97 discrimination complaints made under a local civil rights law;
98
99 (3) act to remedy a violation of a local civil rights law as authorized in
100 this Code;
101
102 (4) cooperate with and provide technical and other assistance to federal,
103 state, local, and other public or private entities that are designing or
104 operating programs to prevent or eliminate discriminatory housing
105 practices;
106
107 (5) cooperate with law enforcement agencies with jurisdiction within the
108 City to develop and include civil rights courses in the curriculum of
109 licensed peace officer training; and
110
111 (6) provide a report at least annually to the council and the public on the
112 results of its activities.
113

114 (F) The director shall:

- 115
- 116 (1) adopt rules in accordance with Chapter 1-2 (*Adoption of Rules*);
- 117
- 118 (a) to administer and implement this chapter; and
- 119
- 120 (b) that are substantially equivalent to those provided in federal fair
- 121 housing and equal opportunity laws and regulations;
- 122
- 123 (2) maintain the office in compliance with the requirements applicable to
- 124 a local commission under Chapter 21;
- 125
- 126 (3) direct and oversee all personnel and activities of the Office of Civil
- 127 Rights;
- 128
- 129 (4) issue subpoenas and subpoena duces tecum to compel attendance of
- 130 witnesses and production of records, and order discovery in the aid of
- 131 investigations and hearings under local civil rights laws, to the same
- 132 extent and subject to the same limitations as subpoenas and discovery
- 133 in a civil action in district court and to carry out the responsibilities of
- 134 the office;
- 135
- 136 (5) organize administrative hearings as necessary;
- 137
- 138 (6) authorize civil actions for violations of local civil rights laws;
- 139
- 140 (7) have access to city records necessary to carry out the purposes of local
- 141 civil rights laws; and
- 142
- 143 (8) make recommendations as appropriate to the city manager, city
- 144 attorney, and the city council concerning local civil rights laws.
- 145

146 (G) Information and records concerning complaints and individual complainants

147 shall not be disclosed to the public, unless disclosure is required by Texas

148 Government Code Chapter 552 (*Public Information*). This prohibition does

149 not apply to records of a complaint for which the director has initiated a civil

150 enforcement action after a failure to reach conciliation.

151 **PART 3.** City Code Section 2-1-148 (*Human Rights Commission*) is repealed and

152 replaced with a new Section 2-1-148 to read:

153 **§ 2-1-148 HUMAN RIGHTS COMMISSION.**

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

158 (B) The commission shall:

- 159 (1) advise and consult with the city council on all matters involving
160 racial, religious, or ethnic discrimination, and devise practices to
161 promote equal opportunity;
- 162 (2) serve in an advisory and consultive capacity to all city departments,
163 advisory boards, and regulatory agencies to assure effective
164 compliance with non-discrimination policies and orders, and
165 recommend to the city manager measures to improve the ability of
166 various departments and agencies to ensure equal protection of any
167 and all persons and groups against discrimination;
- 168 (3) recommend to the city council legislation to aid in programs designed
169 to eliminate prejudice and discrimination and encourage community
170 support for the legislation;
- 171 (4) aid in the formulation of local community groups in neighborhoods as
172 needed to carry out specific programs;
- 173 (5) initiate and facilitate discussions and negotiations between individuals
174 and groups to lessen tensions and improve understanding in the
175 community;
- 176 (6) institute and conduct educational programs to promote equal
177 treatment, opportunity and understanding, and sponsor meetings,
178 institutes, forums, and courses of instruction to lead to a clearer
179 understanding and solution of human relations problems;
- 180 (7) assist in training city employees to use methods of dealing with
181 intergroup relations that result in respect for equal rights and equal
182 treatment, and cooperate with law enforcement agencies whose
183 primary jurisdiction is within the City to develop and include human
184 rights courses in the curriculum of police training;
- 185 (8) conduct research, obtain factual data, and hold public hearings to
186 ascertain the status and treatment of racial, religious, and ethnic

- 187 groups in the city and the best means of progressively improving
188 human relations;
- 189 (9) provide services and information to the city manager and heads of all
190 city departments and agencies to achieve the purposes of this chapter;
191 and
- 192 (10) cooperate with all city, state, county, federal, and other governmental
193 agencies, as well as racial, religious, ethnic, nationality, educational,
194 community, civic, fraternal, benevolent and other groups,
195 associations, societies, and individuals with constructive talents and
196 resources helpful in achieving mutual appreciation of the privileges
197 and the responsibilities of citizenship in a land of freedom enriched by
198 free commerce and full utilization of all human resources from all
199 racial, religious, ethnic, and national groups.

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

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

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

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

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

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

215 **§ 5-1-13 DEFINITIONS.**

216 In this article:

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

219 ~~(1)~~~~(2)~~ AGE means the calendar age of an individual 18 years of age or older.

- 220 (2)[(3)] AGGRIEVED PERSON includes a person who:
- 221 (a) claims to have been injured by a discriminatory housing practice; or
- 222 (b) believes that he will be injured by a discriminatory housing practice
- 223 that is about to occur.
- 224 (3)[(4)] COMPLAINANT means a person, including the director of the Office
- 225 of Civil Rights[~~administrator or the commission~~], who files a complaint
- 226 under Section 5-1-71 (*Complaint*).
- 227 ~~(5) COMMISSION means the Austin Human Rights Commission.]~~
- 228 (4)[(6)] CONCILIATION means the attempted resolution of issues raised by a
- 229 complainant or by the investigation of the complaint, through informal
- 230 negotiations involving the aggrieved person, the respondent, and the Office
- 231 of Civil Rights[~~Equal Employment/Fair Housing Office~~].
- 232 (5)[(7)] CONCILIATION AGREEMENT means a written agreement setting
- 233 forth the resolution of the issues in conciliation.
- 234 (6)[(8)] COVERED MULTIFAMILY DWELLING means:
- 235 (a) buildings consisting of four or more units if such buildings have one
- 236 or more elevators; and
- 237 (b) ground floor units in other buildings consisting of four or more units.
- 238 (7)[(9)] CREED means a set of principles, rules, opinions, or precepts
- 239 formally expressed and seriously adhered to or maintained by a person.
- 240 (8)[(10)] DIRECTOR means the director of the Office of Civil Rights[~~Human~~
- 241 ~~Resources Department~~].
- 242 (9)[(11)] DISABILITY, with respect to an individual, means:
- 243 (a) a physical or mental impairment that substantially limits one or more
- 244 of the major life activities of the individual;
- 245 (b) a record of the impairment; or
- 246 (c) being regarded as having an impairment.
- 247 (10)[(12)] DISCRIMINATORY HOUSING PRACTICE means an act prohibited
- 248 by this article.
- 249 (11)[(13)] DWELLING means:

250 (a) a building, structure, or part of a building or structure that is occupied
251 as, or designed or intended for occupancy as, a residence by one or
252 more families; or

253 (b) vacant land that is offered for sale or lease for the construction or
254 location of a building, structure or part of a building or structure
255 described in Subsection (a).

256 ~~[(14) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the staff in the~~
257 ~~Human Resources Department that handles cases referred to the City by the~~
258 ~~United States Department of Housing and Urban Development or the Civil~~
259 ~~Rights Division of the Texas Workforce Commission.]~~

260 (12)~~(15)~~ FAMILY means a single individual or group of individuals living
261 together under one common roof.

262 (13)~~(16)~~ FAMILIAL STATUS means the status resulting from:

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

268 (b) being pregnant; or

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

271 (14)~~(17)~~ GENDER IDENTITY means a person's individual attributes, actual
272 or perceived, that may be in accord with or opposed to, one's physical
273 anatomy, chromosomal sex, genitalia, or sex assigned at birth.

274 (15)~~(18)~~ HOUSING FOR OLDER PERSONS means housing:

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

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

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

- 286 (i) the existence of significant facilities and services specifically
287 designed to meet the physical or social needs of older persons,
288 or, if such improvements are not practicable, that such housing
289 is necessary to provide important housing opportunities for
290 older persons;
- 291 (ii) that at least 80 percent of the units are occupied by at least one
292 person 55 years of age or older per unit; and
- 293 (iii) the publication of and adherence to policies and procedures
294 demonstrating an intent by the owner or manager to provide
295 housing for persons 55 years of age or older.

296 ~~(16)~~~~(19)~~ MAJOR LIFE ACTIVITIES means functions including caring for
297 one's self, performing manual tasks, walking, seeing, hearing, speaking,
298 breathing, learning and working.

299 ~~(17)~~~~(20)~~ MARITAL STATUS means an individual's status as a single,
300 married, divorced, widowed, or separated person.

301 ~~(18)~~~~(21)~~ PERSON includes one or more individuals, corporations,
302 partnerships, associations, labor organizations, legal representatives, mutual
303 companies, joint-stock companies, trusts, unincorporated organizations,
304 trustees, trustees in cases under Title 11 of the United States Bankruptcy
305 Code, receivers, and fiduciaries.

306 ~~(19)~~~~(22)~~ RESPONDENT means:

- 307 (a) the person accused of a violation of this article in a complaint of
308 discriminatory housing practice; or
- 309 (b) any person identified as an additional or substitute respondent under
310 Section 5-1-74 (*Additional or Substitute Respondent*) or an agent of an
311 additional or substitute respondent.

312 ~~(20)~~~~(23)~~ SEXUAL ORIENTATION means an individual's sexuality or sexual
313 ~~[preference or]~~practice including homosexuality, heterosexuality, ~~[or]~~
314 bisexuality, asexuality, or pansexuality.

315 ~~(21)~~[(24)] SOURCE OF INCOME means lawful, regular, and verifiable income
316 including, but not limited to, housing vouchers and other subsidies provided
317 by government or non-governmental entities, child support, or spousal
318 maintenance, but does not include future gifts.

319 ~~(22)~~[(25)] STUDENT STATUS means an individual's status as a student
320 enrolled in any type of educational program or institution.

321 ~~(23)~~[(26)] TO RENT includes to lease, sublease, to let, or to otherwise grant for
322 a consideration the right to occupy premises not owned by the occupant.

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

328 **PART 10.** Division 4 (*Complaint, Investigation, and Administrative Action*) of Article
329 2 (*Discrimination in Housing – Fair Housing Act Compliance*) of City Code Chapter 5-1
330 (*Housing Discrimination*) is repealed and replaced with a new Division 4 to read:

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

332 **§ 5-1-71 COMPLAINT.**

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

335 (B) A complaint must be:

336 (1) in writing;

337 (2) under oath; and

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

339 (C) An aggrieved person may, not later than one year after an alleged
340 discriminatory housing practice has occurred or terminated, whichever is
341 later, file a complaint with the Office of Civil Rights alleging the
342 discriminatory housing practice.

343 (D) Not later than one year after an alleged discriminatory housing practice has
344 occurred or terminated, whichever is later, the Office of Civil Rights may
345 file its own complaint.

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

- 347 (F) Upon the filing of a complaint, the Office of Civil Rights shall issue a
348 written notice to the complainant and the aggrieved person, if different from
349 the complainant:
- 350 (1) advising that the complaint has been filed, and the date the complaint
351 was accepted for filing;
 - 352 (2) including a copy of the complaint;
 - 353 (3) advising of the time limits applicable to the complaint and of all
354 procedural rights and obligations of the aggrieved person under this
355 article;
 - 356 (4) advising of the aggrieved person's right to commence a civil action as
357 provided by federal and state laws and the time period which such
358 action may be filed; and
 - 359 (5) advising that retaliation against any person who files a complaint or
360 assists or otherwise participates in the investigation of a complaint is a
361 discriminatory housing practice.
- 362 (G) Not later than the 10th day after a complaint is filed, the Office of Civil
363 Rights shall issue a written notice to each respondent, by certified mail or
364 personal service:
- 365 (1) advising the date the complaint was accepted for filing;
 - 366 (2) identifying the alleged discriminatory housing practice;
 - 367 (3) including a copy of the complaint;
 - 368 (4) advising of the time limits applicable to complaint processing and of
369 all procedural rights and obligations of the respondent under this
370 article, including the right to submit an answer to the complaint within
371 10 days after receipt of the notice;
 - 372 (5) advising of the aggrieved person's right to commence a civil action as
373 provided by federal law and the time period within which such action
374 may be filed;
 - 375 (6) advising why the respondent has been joined to the complaint if the
376 respondent is not specifically named in the complaint; and
 - 377 (7) advising that retaliation against any person who files a complaint or
378 assists or otherwise participates in the investigation of a complaint is a
379 discriminatory housing practice.

380 (H) The Office of Civil Rights shall commence proceedings with respect to the
381 complaint before the end of the 30th day after receipt of the complaint.

382 **§ 5-1-72 ANSWER.**

383 (A) Not later than the 10th day after receipt of the notice and copy under
384 Subsection (F) of Section 5-1-71 (*Complaint*), a respondent may file an
385 answer to the complaint.

386 (B) An answer must be:

387 (1) in writing;

388 (2) under oath; and

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

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

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

393 **§ 5-1-73 INVESTIGATION.**

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

398 (B) The Office of Civil Rights shall investigate all complaints, and except as
399 provided by Subsection (C), shall complete an investigation no later than the
400 100th day after the date the complaint is filed, or if it is unable to complete
401 the investigation within the 100-day period, shall dispose of all
402 administrative proceedings related to the investigation not later than one
403 year after the date the complaint is filed.

404 (C) If the Office of Civil Rights is unable to complete an investigation within the
405 time periods prescribed by Subsection (B), the Office of Civil Rights shall
406 notify the complainant and the respondent in writing of the reasons for the
407 delay.

408 **§ 5-1-74 ADDITIONAL OR SUBSTITUTE RESPONDENT.**

409 (A) The Office of Civil Rights may join a person not named in the complaint as
410 an additional or substitute respondent if in the course of the investigation the

411 Office of Civil Rights determines that the person is a necessary party in the
412 discriminatory housing complaint.

- 413 (B) In addition to the information required in the notice under Subsection (G)
414 Section 5-1-71 (*Complaint*) the Office of Civil Rights shall include in a
415 notice to a respondent joined under this section an explanation of the basis
416 for the determination that the person is properly joined as a respondent.

417 **§ 5-1-75 CONCILIATION.**

- 418 (A) The Office of Civil Rights shall, during the period beginning with the filing
419 of a complaint and ending with the filing of a charge or a dismissal by the
420 Office of Civil Rights, to the extent feasible, engage in conciliation with
421 respect to the complaint.
- 422 (B) A conciliation agreement is a written agreement between a respondent and
423 the complainant and is subject to Office of Civil Rights approval.
- 424 (C) A conciliation agreement may provide for binding arbitration or other
425 method of dispute resolution. Dispute resolution that results from a
426 conciliation agreement may authorize appropriate relief, including monetary
427 relief.
- 428 (D) A conciliation agreement shall be made public, unless the complainant and
429 respondent agree otherwise and the Office of Civil Rights determines that
430 disclosure is not necessary to further the purposes of this article.
- 431 (E) Nothing said or done in the course of conciliation may be made public or
432 used as evidence in a subsequent proceeding under this article without the
433 written consent of the persons concerned.
- 434 (F) After completion of an investigation, the Office of Civil Rights shall make
435 available to the aggrieved person and the respondent, at any time,
436 information derived from the investigation and the final investigation report
437 related to the investigation.

438 **§ 5-1-76 TEMPORARY OR PRELIMINARY RELIEF.**

- 439 (A) If the Office of Civil Rights concludes at any time following the filing of a
440 complaint that prompt judicial action is necessary to carry out the purposes
441 of this article, the Office of Civil Rights shall authorize, and the city attorney
442 shall commence, a civil action for appropriate temporary or preliminary
443 relief pending final disposition of the complaint.

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

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

450 **§ 5-1-77 INVESTIGATIVE REPORT.**

451 (A) The Office of Civil Rights shall prepare a final investigative report showing:

452 (1) the names and dates of contacts with witnesses;

453 (2) a summary of correspondence and other contacts with the aggrieved
454 person and the respondent showing the dates of the correspondence
455 and contacts;

456 (3) a summary description of other pertinent records;

457 (4) a summary of witness statements; and

458 (5) answers to interrogatories.

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

461 **§ 5-1-78 REASONABLE CAUSE DETERMINATION.**

462 (A) The Office of Civil Rights shall determine based on the facts whether
463 reasonable cause exists to believe that a discriminatory housing practice
464 occurred or is about to occur.

465 (B) The Office of Civil Rights shall make the determination under Subsection
466 (A) not later than the 100th day after the date a complaint is filed unless:

467 (1) it is impracticable to make the determination; or

468 (2) the Office of Civil Rights has approved a conciliation agreement
469 relating to the complaint.

470 (C) If it is impracticable to make the determination within the time period
471 provided by Subsection (B) of this section, the Office of Civil Rights shall
472 notify the complainant and respondent in writing of the reasons for the
473 delay.

- 474 (D) If the Office of Civil Rights determines that reasonable cause exists to
475 believe that a discriminatory housing practice occurred or is about to occur,
476 the Office of Civil Rights shall, except as provided by Section 5-1-81
477 (*Dismissal*), immediately issue a charge on behalf of the aggrieved person.

478 **§ 5-1-79 CHARGE.**

- 479 (A) A charge issued under Section 5-1-78 (*Reasonable Cause Determination*):
- 480 (1) must consist of a short and plain statement of the facts on which the
481 Office of Civil Rights has found reasonable cause to believe that a
482 discriminatory housing practice occurred or is about to occur;
 - 483 (2) must be based on the final investigative report; and
 - 484 (3) need not be limited to the facts or grounds alleged in the complaint.
- 485 (B) Not later than the 20th day after the Office of Civil Rights issues a charge,
486 the director shall send a copy of the charge with information concerning the
487 election under Section 5-1-83 (*Election of Judicial Determination*) of this
488 article to:
- 489 (1) each respondent, together with a notice of the opportunity for a
490 hearing provided by Section 5-1-85 (*Administrative Hearing*); and
 - 491 (2) each aggrieved person on whose behalf the complaint was filed.

492 **§ 5-1-80 LAND USE LAW.**

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

497 **§ 5-1-81 DISMISSAL.**

- 498 (A) If the Office of Civil Rights determines that no reasonable cause exists to
499 believe that a discriminatory housing practice occurred or is about to occur,
500 the Office of Civil Rights shall:
- 501 (1) issue a short and plain written statement of the facts explaining the
502 determination of no reasonable cause; and
 - 503 (2) dismiss the complaint and promptly notify the aggrieved person and
504 the respondent of the dismissal, including the written statement of
505 facts.

506 (B) The Office of Civil Rights may make public disclosure of each dismissal
507 under this section. The aggrieved person and the respondent may request
508 that no public disclosure be made, but the fact of dismissal, including the
509 names of the parties, but not the statement of facts, shall be available to the
510 public upon request.

511 **§ 5-1-82 PENDING CIVIL TRIAL.**

512 The Office of Civil Rights may not issue a charge under this section
513 regarding an alleged discriminatory housing practice after the beginning of the trial
514 of a civil action commenced by the aggrieved party under federal or state law or
515 this article seeking relief with respect to that discriminatory housing practice.

516 **§ 5-1-83 ELECTION OF JUDICIAL DETERMINATION.**

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

521 (B) The election must be made no later than the 20th day after the date of receipt
522 by the electing person of service under Subsection (B) of Section 5-1-79
523 (*Charge*) or, in the case of the Office of Civil Rights, not later than the 20th
524 day after the date the charge was issued.

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

528 **§ 5-1-84 CITY ATTORNEY ACTION FOR ENFORCEMENT.**

529 (A) If a timely election is made under Section 5-1-83 (*Election of Judicial*
530 *Determination*) the Office of Civil Rights shall authorize, and not later than
531 the 30th day after the election is made, the city attorney shall file, a civil
532 action on behalf of the director in a district court seeking relief under this
533 section.

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

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

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

539 **§ 5-1-85 ADMINISTRATIVE HEARING.**

- 540 (A) If a timely election is not made under Section 5-1-83 (*Election of Judicial*
541 *Determination*), the complainant, respondent, or an aggrieved person on
542 whose behalf the complaint was filed may request that the Office of Civil
543 Rights provide for a hearing on the charge. A hearing under this section shall
544 be conducted by an administrative law judge.
- 545 (B) Except as provided by Subsection (C), Chapter 2001 (*Administrative*
546 *Procedure Act*) of the Texas Government Code governs a hearing and an
547 appeal of a hearing under this section.
- 548 (C) A hearing under this section may not continue on an alleged discriminatory
549 housing practice after the beginning of the trial of a civil action commenced
550 by the aggrieved person under this article or federal or state law seeking
551 relief with respect to that discriminatory housing practice.
- 552 (D) The administrative law judge shall issue a written decision, including
553 findings of fact and conclusions of law, within 60 days after the end of the
554 hearing under this section, unless it is impracticable to do so. If the
555 administrative law judge is unable to issue a decision within such period, the
556 administrative law judge shall notify the Office of Civil Rights, the
557 aggrieved person, and the respondent, in writing of the reasons for not doing
558 so.
- 559 (E) If the administrative law judge concludes that a respondent has engaged or is
560 about to engage in a discriminatory housing practice, the administrative law
561 judge shall promptly issue a decision for appropriate relief, which may
562 include administrative penalties under Section 5-1-86 (*Administrative*
563 *Penalties*), actual damages suffered by the aggrieved person, or injunctive or
564 other equitable relief.
- 565 (F) A respondent who is found to have engaged in or is about to engage in a
566 discriminatory housing practice may appeal the written decision of the
567 administrative law judge to a district court in Travis County within 30 days
568 of the date the decision is issued. The respondent must notify the Office of
569 Civil Rights and the aggrieved person of the appeal in writing within 30 days
570 of the date the decision is issued. If the respondent does not appeal within
571 the required timeframe, the administrative law judge's decision becomes
572 final. The Office of Civil Rights and the aggrieved person are necessary
573 parties to an appeal.

574 **§ 5-1-86 ADMINISTRATIVE PENALTIES.**

- 575 (A) An administrative law judge who issues a written decision under Section 5-
576 1-85 (*Administrative Hearing*) that concludes a respondent has engaged or is
577 about to engage in a discriminatory housing practice may order a civil
578 penalty against the respondent in an amount that does not exceed:
- 579 (1) \$10,000 if the respondent has not been adjudged to have committed
580 any prior discriminatory housing practice;
- 581 (2) except as provided by Subsection (B), \$25,000 if the respondent has
582 been adjudged to have committed one other discriminatory housing
583 practice during the five-year period ending on the date of the filing of
584 this charge; and
- 585 (3) except as provided by Subsection (B), \$50,000 if the respondent has
586 been adjudged to have committed two or more discriminatory housing
587 practices during the seven-year period ending on the date of the filing
588 of the charge.
- 589 (B) If the acts constituting the discriminatory housing practice that is the object
590 of the charge are committed by the same individual who has been previously
591 adjudged to have committed acts constituting a discriminatory housing
592 practice, the civil penalties provided in Subsections (A)(2) and (3) may be
593 imposed without regard to the period of time within which any other
594 discriminatory housing practice occurred.
- 595 (C) At the request of the Office of Civil Rights, the city attorney may sue to
596 recover a penalty due under this section. Funds collected under this section
597 shall be appropriated to a special revenue fund that shall be administered by
598 the Office of Civil Rights for civil rights education.

599 **§ 5-1-87 EFFECT OF AN ADMINISTRATIVE PENALTY ORDER.**

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

- 602 (1) was consummated before the administrative law judge issued the
603 order; and
- 604 (2) involved a bona fide purchaser, encumbrancer, or tenant who did not
605 have actual notice of the charge filed under this article.

606 **§ 5-1-88 LICENSED OR REGULATED BUSINESSES.**

607 If the administrative law judge issues a decision with respect to a
608 discriminatory housing practice that occurred in the course of a business subject to

609 a licensing or regulation by a governmental agency, the Office of Civil Rights
610 shall, not later than the 30th day after the date of the issuance of the decision:

- 611 (1) send copies of the findings and the decision to the governmental
612 agency; and
- 613 (2) recommend to the governmental agency appropriate disciplinary
614 action.

615 **§ 5-1-89 ORDER IN PRECEDING FIVE YEARS.**

616 If the administrative law judge issues an order against a respondent against
617 whom another order was issued within the preceding five years under Section 5-1-
618 86 (*Administrative Penalties*), the Office of Civil Rights shall send a copy of each
619 order issued under that section to the Civil Rights Division of the Texas Workforce
620 Commission and to the attorney general.

621 **§ 5-1-90 COOPERATION WITH STATE AND FEDERAL AGENCIES.**

- 622 (A) The Office of Civil Rights is encouraged to cooperate with the secretary of
623 Housing and Urban Development and the attorney general of the United
624 States in the enforcement of the Fair Housing Act of 1968, 42 U.S.C.
625 § 3601, et seq., and may assist the secretary or attorney general in any way
626 consistent with the policy of this chapter. The Office of Civil Rights is
627 encouraged to cooperate with the Civil Rights Division of the Texas
628 Workforce Commission in the enforcement of Chapter 301 (*Texas Fair*
629 *Housing Act*) of the Texas Property Code, and may assist the Civil Rights
630 Division of the Texas Workforce Commission in any way consistent with
631 the policy of this chapter.
- 632 (B) The Office of Civil Rights shall treat a complaint referred by the secretary of
633 Housing and Urban Development or the attorney general of the United
634 States under the Fair Housing Act of 1968, 42 U.S.C. § 3601, et seq., or by
635 the Civil Rights Division of the Texas Workforce Commission under
636 Chapter 301 (*Texas Fair Housing Act*) of the Texas Property Code as a
637 complaint filed under this article. No action will be taken under this article
638 against a person for a discriminatory housing practice if the referred
639 complaint was filed with the governmental entity later than one year after an
640 alleged discriminatory housing practice occurred or terminated.

641 **PART 11.** City Code Chapter 5-2 (*Discrimination in Public Accommodations*) is
642 repealed and replaced with a new Chapter 5-2 to read as follows:

644 **CHAPTER 5-2. DISCRIMINATION IN PUBLIC ACCOMMODATIONS.**

645 **§ 5-2-1 DECLARATION OF POLICY.**

- 646 (A) It is the policy of the City to bring about through fair, orderly and lawful
647 procedures, the opportunity of each person to obtain goods and services in a
648 public accommodation without regard to race, color, religion, sex, sexual
649 orientation, gender identity, national origin, age, or disability.
- 650 (B) This policy is established upon a recognition of the inalienable rights of each
651 individual to obtain goods and services in a public accommodation without
652 regard to race, color, religion, sex, sexual orientation, gender identity,
653 national origin, age or; and further that the denial of such rights through
654 considerations based on race, color, religion, sex, sexual orientation, gender
655 identity, national origin, age, or disability is detrimental to the health, safety
656 and welfare of the inhabitants of the City and constitutes an unjust denial or
657 deprivation of these inalienable rights within the power and the proper
658 responsibility of government to prevent.

659 **§ 5-2-2 DEFINITIONS.**

660 In this chapter:

- 661 (1) AGE means a person over the age of 18 years.
- 662 (2) CHARGING PARTY means the person alleging discrimination in a charge.
- 663 (3) DIRECTOR means the director of Office of Civil Rights.
- 664 (4) DISABILITY means, with respect to an individual:
- 665 (a) a physical or mental impairment that substantially limits one or more
666 major life activity of the individual, including caring for one's self,
667 performing manual tasks, walking, seeing, hearing, speaking,
668 breathing, learning, and working;
- 669 (b) a record of the impairment; or
- 670 (c) being regarded as having an impairment.
- 671 (5) DISCRIMINATION means the direct or indirect exclusion, distinction,
672 segregation, limitation, refusal, denial or any other differentiation in the
673 treatment of a person based on race, color, religion, sex, sexual orientation,

674 gender identity, national origin, age, or disability in a public
675 accommodation.

676 (6) INVESTIGATOR means the person investigating a charge.

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

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

682 (9) PUBLIC ACCOMMODATION means:

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

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

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

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

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

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

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

703 (11) SEXUAL ORIENTATION means an individual's sexuality or sexual
704 practice including homosexuality, heterosexuality, bisexuality, asexuality, or
705 pansexuality.

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§ 5-2-3 INTERPRETATION.

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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.

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§ 5-2-4 PROHIBITED PRACTICES.

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(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.

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(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.

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(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.

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§ 5-2-5 COMPLAINT PROCEDURES.

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(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.

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

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- 738 (C) Within 10 days of filing, the director shall send notice of the charge to the
739 respondent. The notice shall include the date, place, and specific
740 circumstances of the alleged unlawful public accommodation practice.
- 741 (D) Before a charge is accepted for investigative purposes, the director shall
742 review the charge with the charging party and make a determination whether
743 the charge alleges a violation of this chapter. If the director determines
744 during the preliminary review that the charge does not allege a violation of
745 this chapter, the director shall provide the charging party a clear and concise
746 explanation in writing why the charge will not be accepted for investigation.
747 The charging party may appeal a determination under this section under
748 Section 5-2-6 (*Dismissal and Appeal*).
- 749 (E) The director shall maintain records that indicate the reason a charge was not
750 accepted for investigation.
- 751 (F) A charge filed under this section shall be on the form approved by the
752 director and shall include an oath or affirmation and any other information
753 required by the office.

754 **§ 5-2-6 DISMISSAL AND APPEAL.**

- 755 (A) The investigator shall dismiss the charge if the investigator determines that
756 no reasonable cause exists to believe that a discriminatory practice under this
757 chapter occurred. The investigator shall promptly notify the charging party
758 and the respondent of the dismissal in writing.
- 759 (B) Within 10 days of receiving the notice of dismissal, the charging party may
760 file a request for a review with the director. The director shall conduct a
761 hearing and provide the charging party an opportunity to appear and present
762 evidence. The director may affirm, reverse, or modify the investigator's
763 determination.

764 **§ 5-2-7 INFORMAL RESOLUTION.**

- 765 (A) If the investigator determines that there is reasonable cause to believe that a
766 discriminatory practice under this chapter occurred, the director, or an
767 investigator who has not participated in the investigation, shall attempt to
768 resolve the matter through informal methods, including conference,
769 conciliation, or persuasion.
- 770 (B) The information produced during an informal proceeding is confidential,
771 unless disclosure is required by law. Information produced during an

772 informal proceeding may not be used as evidence in a later proceeding
773 without the written consent of all parties.

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

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

780 **§ 5-2-8 REFERRAL.**

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

784 **§ 5-2-9 ACCESS TO RECORDS.**

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

788 **§ 5-2-10 VIOLATIONS.**

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

791 **§ 5-2-11 LEGAL ASSISTANCE FOR THE OFFICE OF CIVIL RIGHTS.**

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

794 **§ 5-2-12 EXEMPTIONS.**

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

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

800 **PART 12.** City Code Chapter 5-3 (*Discrimination in Employment Generally*) is
801 repealed and replaced with a new Chapter 5-3 to read:

802 **CHAPTER 5-3. DISCRIMINATION IN EMPLOYMENT GENERALLY.**

803 **§ 5-3-1 DECLARATION OF POLICY.**

804 (A) It is the policy of the City to bring about through fair, orderly and lawful
805 procedures, the opportunity for each person to obtain employment without
806 regard to race, color, religion, sex, sexual orientation, gender identity,
807 national origin, age, or disability.

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

816 **§ 5-3-2 DEFINITIONS.**

817 In this chapter:

- 818 (1) AGE means a person at least 40 years old.
- 819 (2) CHARGE means a complaint filed by a charging party alleging
820 discrimination under Section 5-3-4 (*Unlawful Employment Practices*), Title
821 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment
822 Act, the Americans with Disabilities Act of 1990, or Chapter 21
823 (Employment Discrimination) of the Texas Labor Code.
- 824 (3) CHARGING PARTY means the person alleging discrimination in a charge.
- 825 (4) DIRECTOR means the Director of the Office of Civil Rights.
- 826 (5) DISABILITY, with respect to an individual, means:
- 827 (a) a physical or mental impairment that substantially limits one or more
828 of the major life activities of the individual;
- 829 (b) a record of the impairment; or
- 830 (c) being regarded as having an impairment.
- 831 (6) EEOC means the Equal Employment Opportunity Commission.

- 832 (7) EMPLOYEE means an individual employed by an employer, including a
833 City employee. The term does not include an elected official of the City.
- 834 (8) EMPLOYER means a person who has 15 or more employees for each
835 working day in each of 20 or more calendar weeks in the current or
836 preceding calendar year, and the person's agent. The term does not include
837 the United States, or a corporation wholly owned by the government of the
838 United States; a bona fide private membership club (other than a labor
839 organization) which is exempt from taxation under Section 501(c) of the
840 Internal Revenue Code of 1954; or the state, a state agency, or political
841 subdivision. The term does not apply to Section 5-3-5 (*Sexual Harassment*).
- 842 (9) EMPLOYMENT AGENCY means a person who regularly attempts, with or
843 without compensation, to procure employees for an employer or to procure
844 employment opportunities for employees, including the person's agent.
- 845 (10) OFFICE OF CIVIL RIGHTS means the office created in Section 2-16-2
846 (*Office of Civil Rights*).
- 847 (11) GENDER IDENTITY means a person's individual attributes, actual or
848 perceived, that may be in accord with or opposed to, one's physical
849 anatomy, chromosomal sex, genitalia, or sex assigned at birth.
- 850 (12) INVESTIGATOR means the person investigating a charge.
- 851 (13) LABOR ORGANIZATION means a labor organization and its agent,
852 including an organization, agency, or employee representation committee,
853 group, association, or plan in which employees participate and which exists
854 for the purpose, in whole or in part, of dealing with employers concerning
855 grievances, labor disputes, wages, rates of pay, hours, or other terms or
856 conditions of employment, and any conference, general committee, joint or
857 system board, or joint council which is subordinate to a national or
858 international labor organization.
- 859 (14) RELIGION means all aspects of religious observance and practice, as well
860 as belief, unless an employer demonstrates the inability to reasonably
861 accommodate an employee's or prospective employee's religious
862 observance or practice without undue hardship on the conduct of the
863 employer's business.
- 864 (15) RESPONDENT means the person against whom a charging party alleges
865 discrimination in a charge.

866 (16) **SEX DISCRIMINATION** means discrimination on the basis of gender, or
867 any associated condition, including pregnancy, childbirth or related medical
868 conditions. A woman affected by pregnancy, childbirth, or related medical
869 conditions shall be treated the same for all employment related purposes,
870 including receipt of benefits under fringe benefit programs, as a person not
871 so affected, but similar in their ability or inability to work.

872 (17) **SEXUAL ORIENTATION** means an individual's sexuality or sexual
873 practice including homosexuality, heterosexuality, bisexuality, asexuality, or
874 pansexuality.

875 **§ 5-3-3 INTERPRETATION.**

876 In construing this chapter, it is the intent of the city council that the courts
877 shall be guided by the rules and regulations of the EEOC and federal court
878 interpretations of Title VII of the Civil Rights Act of 1964, the Americans with
879 Disabilities Act, the Age Discrimination in Employment Act of 1967, and Chapter
880 21 (*Employment Discrimination*) of the Texas Labor Code.

881 **§ 5-3-4 UNLAWFUL EMPLOYMENT PRACTICES.**

882 (A) An employer may not:

- 883 (1) fail or refuse to hire or to discharge any individual, or otherwise
884 discriminate against an individual with respect to compensation,
885 terms, conditions, or privileges of employment, based on the
886 individual's race, color, religion, sex, sexual orientation, gender
887 identity, national origin, age, or disability; or
- 888 (2) limit, segregate, or classify an employee or applicant for employment
889 in a way which would deprive or tend to deprive an individual of
890 employment opportunities or otherwise adversely affect the
891 individual's status as an employee, based on the individual's race,
892 color, religion, sex, sexual orientation, gender identity, national origin,
893 age, or disability.

894 (B) An employment agency may not:

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

- 898 (2) classify or refer for employment an individual based on race, color,
899 religion, sex, sexual orientation, gender identity, national origin, age
900 or disability.
- 901 (C) A labor organization may not:
- 902 (1) exclude or to expel from its membership, or otherwise discriminate
903 against, an individual based on race, color, religion, sex, sexual
904 orientation, gender identity, national origin, age, or disability.
- 905 (2) limit, segregate, or classify its membership, or applicants for
906 membership, or classify or fail or refuse to refer for employment an
907 individual in a way which would deprive or tend to deprive the
908 individual of employment opportunities, limit employment
909 opportunities, or otherwise adversely affect the individual's status as
910 an employee or as an applicant for employment, based on the
911 individual's race, color, religion, sex, sexual orientation, gender
912 identity, national origin, age, or disability; or
- 913 (3) cause or attempt to cause an employer to discriminate against an
914 individual in violation of this section.
- 915 (D) An employer, labor organization, or joint labor-management committee
916 controlling apprenticeship or other training or retraining, including on-the-
917 job training programs, may not discriminate against an individual based on
918 race, color, religion, sex, sexual orientation, gender identity, national origin,
919 age, or disability in admission to or employment in a program established to
920 provide apprenticeship or other training.
- 921 (E) Unless it is a bona fide occupational qualification for employment, an
922 employer, labor organization, employment agency, or joint labor-
923 management committee controlling apprenticeship or other training or
924 retraining, including on-the-job training programs, may not print, publish, or
925 cause to be printed or published a notice or advertisement that indicates a
926 preference, limitation, specification, or discrimination based on race, color,
927 religion, sex, sexual orientation, gender identity, national origin, age, or
928 disability related to:
- 929 (1) employment by the employer;
- 930 (2) membership in or classification or referral for employment by an
931 employment agency; or

- 932 (3) admission to, or employment in, a program established to provide
933 apprenticeship or other training by a joint labor-management
934 committee.
- 935 (F) Based on an individual's opposition to an unlawful employment practice or
936 the individual's filing a charge, or testimony, assistance, or participation in
937 an investigation, proceeding or hearing under this chapter:
- 938 (1) an employer may not discriminate against an employee or applicant
939 for employment;
- 940 (2) an employment agency, or joint labor-management committee
941 controlling apprenticeship or other training or retraining, including
942 on-the-job training programs, may not discriminate against an
943 individual; and
- 944 (3) a labor organization may not discriminate against a member or
945 applicant for membership.

946 **§ 5-3-5 SEXUAL HARASSMENT.**

947 (A) Definitions. In this section:

- 948 (1) EMPLOYER means a person who:
- 949 (a) employs one or more employees; or
- 950 (b) acts directly in the interests of an employer in relation to an
951 employee.
- 952 (2) SEXUAL HARASSMENT means an unwelcomed sexual advance, a
953 request for a sexual favor, or any other verbal or physical conduct of a
954 sexual nature if:
- 955 (a) submission to the advance, request, or conduct is made a term
956 of the individual's condition of employment either explicitly or
957 implicitly;
- 958 (b) submission to or rejection of the advance, request, or conduct
959 by an individual is used as the basis for a decision affecting the
960 individual's employment;
- 961 (c) the advance, request, or conduct has the purpose or effect of
962 unreasonably interfering with an individual's work
963 performance; or

964 (d) the advance, request, or conduct has the purpose or effect of
965 creating an intimidating, hostile, or offensive working
966 environment.

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

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

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

973 **§ 5-3-6 VIOLATIONS PROHIBITED.**

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

976 **§ 5-3-7 CHARGES.**

977 (A) A person must file a charge with the Office of Civil Rights not later than the
978 180th day after the date the violation occurred, or for a complaint alleging
979 sexual harassment, within 300 days of the alleged sexual harassment.

980 (B) A charge under this section must be:

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

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

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

984 **§ 5-3-8 PRELIMINARY REVIEW; REFUSAL.**

985 (A) Before the Office of Civil Rights accepts a charge, an investigator shall
986 review the charge with the charging party to determine whether the charge
987 describes a violation of Section 5-3-4 (*Unlawful Employment Practices*),
988 Title VII of the Civil Rights Act of 1964, the Age Discrimination in
989 Employment Act, the Americans with Disabilities Act of 1990, or Chapter
990 21 (*Employment Discrimination*) of the Texas Labor Code.

991 (B) If an investigator determines a charge does not describe a violation, the
992 director shall notify the charging party in writing, within 10 days of the
993 determination, that the charge will not be accepted and describe the reason
994 for the refusal. The Office of Civil Rights shall maintain a record
995 documenting the reason a charge was not accepted.

996 **§ 5-3-9 ACCEPTANCE; NOTICE; INVESTIGATION.**

997 The Office of Civil Rights shall notify the respondent not later than the 10th
998 day after acceptance of the charge. If the charge alleges a violation of Section
999 5-3-4 (*Unlawful Employment Practices*), the Office of Civil Rights shall
1000 investigate the charge.

1001 **§ 5-3-10 NO REASONABLE CAUSE DETERMINATION.**

1002 If an investigator determines no reasonable cause exists to believe a
1003 violation of this chapter occurred, the Office of Civil Rights shall issue a written
1004 determination to the charging party and the respondent.

1005 **§ 5-3-11 REVIEW OF NO REASONABLE CAUSE DETERMINATION.**

- 1006 (A) A charging party may file with the director a request for review of a no
1007 reasonable cause determination issued under this chapter. A request must be
1008 filed no later than 10 days after the date of receipt of the no reasonable cause
1009 determination issued under Section 5-3-10 (*No Reasonable Cause*
1010 *Determination*).
- 1011 (B) If a request for review is timely filed under this section, the director shall
1012 conduct a hearing and provide the charging party an opportunity to appear
1013 and present evidence. Upon conclusion of a hearing, the director may affirm,
1014 reverse, or modify the investigator's determination.
- 1015 (C) For charges filed exclusively under Section 5-3-7 (*Charges*) and not
1016 deferred by the EEOC pursuant to Title VII of the Civil Rights Act of 1964,
1017 the Age Discrimination in Employment Act, the Americans with Disabilities
1018 Act, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code,
1019 if the charging party files a request for review, the director shall conduct a
1020 hearing and provide the charging party an opportunity to appear and present
1021 evidence. The director may affirm, reverse, or modify the investigator's
1022 determination.

1023
1024 **§ 5-3-12 REVIEW OF NO REASONABLE CAUSE DETERMINATION BY**
1025 **EEOC.**

1026 A charging party may file with the EEOC an appeal of a no reasonable cause
1027 determination issued under a charge filed alleging a violation of Title VII of the
1028 Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the
1029 Americans with Disabilities Act of 1990.

1030 § 5-3-13 CONCILIATION AGREEMENT.

- 1031 (A) If, after an investigation, the director determines there is reasonable cause to
1032 believe a violation of Section 5-3-4 (*Unlawful Employment Practices*), Title
1033 VII of the Civil Rights Act of 1964, the Age Discrimination in Employment
1034 Act, the Americans with Disabilities Act of 1990, or Chapter 21
1035 (*Employment Discrimination*) of the Texas Labor Code has occurred, or if
1036 the director reverses or modifies an investigator's determination under
1037 Section 5-3-11 (*Review of No Reasonable Cause Determination*), the
1038 director shall attempt to resolve the alleged violation through a conciliation
1039 agreement.
- 1040 (B) The charging party and respondent may agree to settle the complaint before
1041 the investigation is complete. If the director determines the agreement does
1042 not meet the objectives of this chapter, the director may continue to
1043 investigate the complaint.
- 1044 (C) The information produced while attempting to reach a conciliation
1045 agreement is confidential, unless disclosure is required by law. Information
1046 produced while attempting to reach a conciliation agreement may not be
1047 used as evidence in a later proceeding without the written consent of all
1048 parties.
- 1049 (D) If the director, charging party, and respondent are unable to obtain a
1050 conciliation agreement, the director may refer a case involving a violation of
1051 Section 5-3-4 (*Unlawful Employment Practices*) to the city attorney for
1052 prosecution in municipal court or for other civil prosecution as authorized by
1053 Chapter 21 (*Employment Discrimination*) of the Texas Labor Code.
1054 Prosecution in municipal court or by other civil action does not bar the
1055 charging party from seeking relief from the EEOC or other civil proceeding.
- 1056 (E) If the charging party, respondent, and director are unable to obtain a
1057 conciliation agreement in a charge involving a violation of Title VII of the
1058 Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the
1059 Americans with Disabilities Act of 1990, the director shall send a failure to
1060 conciliate letter to the charging party and the respondent and forward the
1061 charge to the EEOC for review.
- 1062 (F) The confidentiality rules in 29 CFR § 1601.22 apply in all cases deferred to
1063 the City by the EEOC.

1066 **§ 5-3-14 INVESTIGATIVE ACCESS TO RECORDS AND EVIDENCE.**

1067 In investigating a charge filed under this chapter, the director shall have
1068 access to, and may examine and copy, records or other evidence maintained by a
1069 respondent that the office believes is relevant to a charge under investigation.

1070 **§ 5-3-15 LEGAL ASSISTANCE.**

1071 The city attorney shall advise the director relating to the administration and
1072 enforcement of this chapter.

1073 **§ 5-3-16 EXEMPTIONS.**

1074 (A) If an individual's religion, sex, or national origin are a bona fide
1075 occupational qualification reasonably necessary for the normal operation of
1076 a particular business or enterprise, it is not an unlawful employment practice
1077 for:

- 1078 (1) an employer to hire and employ employees;
- 1079 (2) an employment agency to classify, or refer for employment an
1080 individual;
- 1081 (3) a labor organization to classify its membership or to classify or refer
1082 for employment an individual; or
- 1083 (4) an employer, labor organization, or joint labor-management
1084 committee controlling apprenticeship or other training or retraining
1085 programs to admit or employ an individual in a program.

1086 (B) It is not an unlawful employment practice for a school, college, university or
1087 other educational institution or institution of learning to hire and employ
1088 employees of a particular religion if:

- 1089 (1) the school, college or university or other educational institution or
1090 institution of learning is wholly or substantially owned, supported,
1091 controlled, or managed by a particular religion or by a particular
1092 religious corporation, association, or society; or
- 1093 (2) the curriculum of the school, college, university, or other educational
1094 institution or institution of learning is directed toward the propagation
1095 of a particular religion.

1096 (C) It is not an unlawful employment practice for a religious corporation,
1097 association, educational institution, or society to hire and employ individuals

1098 of a particular religion to perform work connected with the activities of the
1099 corporation, association, educational institution, or society.

1100 (D) Except where an employer intentionally discriminates based on an
1101 employee's race, color, sex, sexual orientation, gender identity, religion,
1102 national origin, age, or disability, it is not an unlawful practice for an
1103 employer to apply different standards of compensation, or different terms,
1104 conditions, or privileges of employment based on:

- 1105 (1) a bona fide seniority or merit system;
- 1106 (2) a system which measures earnings by quantity or quality of
1107 production; or
- 1108 (3) to employees who work in different locations.

1109 **PART 13.** City Code Chapter 5-4 (*Discrimination in Employment by City Contractors*) is
1110 repealed and replaced with a new Chapter 5-4 to read:

1111 **CHAPTER 5-4. DISCRIMINATION IN EMPLOYMENT BY CITY**
1112 **CONTRACTORS.**

1113 **§ 5-4-1 DEFINITIONS.**

1114 In this chapter:

- 1115 (1) **CONTRACTOR** includes any person who submits a bid or proposal to
1116 provide labor, goods or services to the City by contract for profit; any person
1117 who supplies or provides labor, goods or services to the City by contract for
1118 profit; any person who is a subcontractor under any such contract.
- 1119 (2) **CHARGING PARTY** means the person alleging discrimination in a charge.
- 1120 (3) **DISCRIMINATORY EMPLOYMENT PRACTICE** means discrimination
1121 against an individual because of race, creed, color, religion, national origin,
1122 sexual orientation, gender identity, disability, sex or age, unless sex or age is
1123 a bona fide occupational qualification of employment during an employment
1124 action, including recruiting, advertising, hiring, layoff, termination,
1125 classification, training or selection for training, promotion, demotion,
1126 transfer, or compensation.
- 1127 (4) **OFFICE OF CIVIL RIGHTS** means the office created in Section 2-16-2
1128 (*Office of Civil Rights*).
- 1129 (5) **PERSON** means any individual and any partnership, firm, association,
1130 corporation, government or other entity.

- 1131 (6) RESPONDENT means the person against whom a charging party alleges
1132 discrimination in a charge.
- 1133 (7) SELECTIVE INVESTMENT means affirmatively seeking out any person or
1134 business which has no financial or business dealings in or with the
1135 government or private sector of South Africa.
- 1136 (8) SIGNIFICANT FINANCIAL LOSS means a procurement where
1137 substitution is not economically feasible as determined by a cost benefit
1138 analysis conducted by the city manager or where substitution would void a
1139 warranty.
- 1140 (9) SUBCONTRACTOR means any person providing goods, labor or services
1141 to a contractor if such goods, labor or services are procured or used in
1142 fulfillment of the contractor's obligations arising from a contract with the
1143 City of Austin.
- 1144 (10) SUBSTANTIALLY-OWNED means at least a 25 percent equity position in
1145 the subsidiary corporation.
- 1146 (11) TO SEEK COMPLIANCE means substantive initiation of divestment
1147 activity as determined by the city manager.

1148 **§ 5-4-2 DISCRIMINATORY EMPLOYMENT PRACTICES PROHIBITED.**

- 1149 (A) No contractor, nor any agent of any such contractor, shall engage in any
1150 discriminatory employment practice defined in this chapter.
- 1151 (B) No bid or proposal submitted to the City by a contractor shall be considered
1152 nor shall any purchase order be issued nor contract be awarded by the City
1153 to any contractor unless the contractor has executed an approved form,
1154 prescribed by the Office of Civil Rights, to be in force and effect for one
1155 year from date of filing, in which the contractor has agreed:
- 1156 (1) not to engage in any discriminatory employment practice defined in
1157 this chapter;
- 1158 (2) to take affirmative action to ensure that applicants are employed, and
1159 that employees are treated during employment without discrimination
1160 being practiced against them as defined in this chapter, including
1161 affirmative action relative to employment, promotion, demotion or
1162 transfer, recruitment or recruitment advertising, layoff or termination,
1163 rate of pay or other forms of compensation, and selection for training
1164 or any other terms, conditions or privileges of employment;

- 1165 (3) to post in conspicuous places, available to the employees and
1166 applicants for employment, notices to be provided by the Office of
1167 Civil Rights setting forth the provisions of this chapter;
- 1168 (4) to state in all solicitations or advertisements for employees placed by
1169 or on behalf of the contractor, that all qualified applicants will receive
1170 consideration for employment without regard to race, creed, color,
1171 religion, national origin, sexual orientation, gender identity, disability,
1172 sex or age;
- 1173 (5) to obtain a written statement from any labor union or labor
1174 organization furnishing labor or service to the contractors in which the
1175 union or organization has agreed not to engage in any discriminatory
1176 employment practices as defined in this chapter and to take
1177 affirmative action to implement the policies and provisions of this
1178 chapter;
- 1179 (6) to cooperate fully with the City in connection with any investigation
1180 or conciliation effort of the Office of Civil Rights to ensure that the
1181 purpose of the provisions against discriminatory employment practice
1182 is being carried out; and
- 1183 (7) to require of all subcontractors having 15 or more employees who
1184 hold any subcontract providing for the expenditure of \$2,000 or more
1185 in connection with any contract with the City subject to the terms of
1186 this chapter that they not engage in any discriminatory employment
1187 practice as defined in this chapter.
- 1188 (C) No bid or proposal submitted to the City shall be considered nor shall any
1189 purchase order be issued nor contract be awarded by the City to any
1190 contractor unless the contractor has provided in writing to the office of
1191 minority business affairs the following information:
- 1192 (1) the names of all subcontractors;
- 1193 (2) the dollar amount of all subcontracts;
- 1194 (3) the identity of all minority owned business enterprise or women
1195 owned business enterprise subcontractors; and
- 1196 (4) the dollar amount of minority owned business enterprise or women
1197 owned business enterprise subcontracts.

1198 **§ 5-4-3 PROMULGATION OF RULES AND REGULATIONS;**
1199 **COMPLAINT AND CONCILIATION PROCEDURE; COMPLIANCE**
1200 **CHECKS.**

- 1201 (A) The Office of Civil Rights shall, subject to the approval of the city council,
1202 promulgate rules and regulations necessary to implement this chapter and to
1203 carry out its purposes and policies; and shall receive, investigate and
1204 conciliate complaints of discriminatory employment practices or failures to
1205 comply with this chapter.
- 1206 (B) Any person claiming to be aggrieved by a discriminatory employment
1207 practice prohibited by this chapter shall, within 60 days of the alleged act of
1208 discrimination, sign and file a verified complaint setting forth the particulars
1209 of the alleged discriminatory employment practice or other violation of this
1210 chapter and containing other information as may be required by the Office of
1211 Civil Rights.
- 1212 (C) A complaint shall be filed with the Office of Civil Rights. The Office of
1213 Civil Rights shall, within 30 days, investigate or cause to be investigated the
1214 complaint.
- 1215 (D) If an investigation reveals that violations of any of the provisions of this
1216 chapter probably exist, the Office of Civil Rights shall immediately
1217 endeavor to eliminate or correct the practice or violation complained of by
1218 informal methods of conference, conciliation, and persuasion.
- 1219 (E) The Office of Civil Rights may conduct compliance checks to ascertain the
1220 status and progress of compliance under the provisions of this chapter.

1221 **§ 5-4-4 PROCEDURE FOR ADMINISTRATIVE HEARINGS.**

- 1222 (A) If conciliation fails to correct or eliminate the practice or violation
1223 complained of, the director may set the case for hearing before an
1224 administrative law judge. The procedure for the hearing shall be as follows:
- 1225 (1) The director shall send 10 days notice of the time and place of the
1226 hearing personally or through the United States mail, by certified mail
1227 with return receipt requested, to the charging party and to the person
1228 alleged to have committed the discriminatory employment practice
1229 complained of accompanied by a copy of the complaint and a written
1230 report of the investigation and the results of the conciliation efforts.

- 1231 (2) The charging party and the respondent may appear at the hearing in
1232 person or by legal counsel and present such statements, testimony or
1233 evidence as may be desired.
- 1234 (B) At the conclusion of a hearing under this section, the administrative law
1235 judge shall issue a written ruling, including findings of fact and conclusions
1236 of law. The director shall review the ruling and forward the ruling to the city
1237 council, along with its recommendations.
- 1238 (C) After receipt of the ruling and the director's recommendation, the city
1239 council may cause the contract with such contractor to be canceled,
1240 terminated or suspended in whole or in part, as the city council deems
1241 advisable under the circumstances, and such contractor shall be declared
1242 ineligible for conducting further business with the City.
- 1243 (D) A contractor who is declared ineligible and seeks reinstatement shall make
1244 application to the director, and upon the director's recommendation, the city
1245 council shall either restore such eligibility or deny same.

1246 **§ 5-4-5 DISMISSAL OF COMPLAINT.**

1247 If the director determines a discriminatory employment practice or other
1248 violation has not been committed as alleged, or has no jurisdiction to hear the
1249 complaint, the director shall dismiss the matter or refer it to the proper agency.

1250 **§ 5-4-6 PROTECTION OF PERSON FILING COMPLAINT FROM**
1251 **DISCIPLINARY ACTION.**

1252 No person shall be subject to any disciplinary or punitive action in
1253 connection with their employment as a result of their filing any complaint under
1254 this chapter or giving any evidence in connection therewith.

1255 **§ 5-4-7 ANNUAL REPORTS TO CITY COUNCIL.**

1256 The Office of Civil Rights shall report annually to the city council on the
1257 disposition of all hearings and on all other matters it may deem appropriate to be
1258 brought to the attention of the city council, including recommendations it considers
1259 necessary or desirable to carry out the policy stated in this chapter.

1260 **§ 5-4-8 WAIVER OF APPLICATION OF THIS CHAPTER.**

1261 Upon approval of the city council the application of the provisions of this
1262 chapter may be waived or suspended in cases or classes of cases where the size or
1263 nature of the purchase, contract, job or services or other special circumstances
1264 make compliance therewith impracticable or unnecessary.

1265 **PART 14.** City Code Section 5-5-2 (*Definitions*) is repealed and replaced with a new
1266 Section 5-5-2 to read:

1267 **§ 5-5-2 DEFINITIONS.**

1268 In this chapter:

- 1269 (1) AIDS means a medical condition which shall have the same meaning as that
1270 defined by the federal Center for Disease Control in Atlanta, Georgia; said
1271 definition shall be maintained by the City's Office of Civil Rights and shall
1272 be incorporated within this chapter for all purposes.
- 1273 (2) BODY FLUIDS means those body tissues, secretions, and excretions which
1274 have been shown to contain live HIV particles and which have a proven
1275 epidemiologic role in transmission of HIV. These include blood, plasma,
1276 semen, seminal fluid and vaginal secretions.
- 1277 (3) BONA FIDE OCCUPATIONAL QUALIFICATION means a job
1278 qualification or requirement that is reasonably related to the satisfactory
1279 performance of the duties of a job; and for which there is a factual basis for
1280 believing that a person of the excluded group would be unable to perform
1281 satisfactorily the duties of the job with safety; and there exists no less
1282 discriminatory means of satisfying the occupational qualification.
- 1283 (4) BUSINESS ESTABLISHMENT means any entity, however organized,
1284 which furnishes goods or services to the general public. An otherwise
1285 qualifying establishment which has membership requirements is considered
1286 to furnish services to the general public if its membership requirements
1287 consist only of payment of fees or consist of requirements under which a
1288 substantial portion of the residents of this City would qualify.
- 1289 (5) CHARGING PARTY means the person alleging discrimination in a
1290 complaint.
- 1291 (6) DIRECTOR means the director of the Office of Civil Rights.
- 1292 (7) EMPLOYER means a person engaged in an industry affecting commerce
1293 who has 16 or more employees at the time the alleged discrimination
1294 occurred.
- 1295 (8) EMPLOYMENT AGENCY means any person regularly undertaking with or
1296 without compensation to procure employees for an employer or to procure
1297 for employees opportunities to work for an employer and includes an agent
1298 of such person.

- 1299 (9) HIV-INFECTED INDIVIDUALS means those persons infected with AIDS
1300 or persons with AIDS related complex and healthy individuals infected with
1301 the HIV virus. It also includes those persons who are HIV seropositive,
1302 which is an indication of exposure to the HIV virus.
- 1303 (10) INVESTIGATOR means the person investigating a complaint.
- 1304 (11) LABOR ORGANIZATION means a labor organization engaged in an
1305 industry affecting commerce and includes:
- 1306 (a) Any organization of any kind, any agency, or employee representation
1307 committee, group, association, or plan so engaged in which employees
1308 participate and that exists for the purpose, in whole or in part, of
1309 dealing with employers concerning grievances, labor disputes, wages,
1310 rates of pay, hours, or other terms or conditions of employment;
- 1311 (b) Any conference, general committee, joint or system board, or joint
1312 council so engaged that is subordinate to a national or international
1313 labor organization; and
- 1314 (c) An agent of a labor organization.
- 1315 (12) PERSON means any individual, person, firm, corporation, or other
1316 organizations or group of persons, however organized, the City and any of
1317 its officers, agents, boards, commissions, but does not mean federal or state
1318 agencies.
- 1319 (13) RESPONDENT means the person against whom a charging party alleges
1320 discrimination in a complaint.

1321 **PART 15.** Subsection (B) of City Code Section 5-5-7 (*Protection of Persons Who*
1322 *Associate with AIDS-Infected Individuals; Retaliation Against Persons Who Have Acted*
1323 *Pursuant to the Requirement of this Chapter*) is amended by substituting the word
1324 “commission” with the phrase “Office of Civil Rights.”

1325 **PART 16.** City Code Section 5-5-9 (*Director of Human Resources Department to*
1326 *Administer*) is renamed to read:

1327 **§ 5-5-9 DIRECTOR OF OFFICE OF CIVIL RIGHTS TO ADMINISTER.**

1328 **PART 17.** City Code Section 5-5-10 (*General Enforcement Guidelines*) is repealed and
1329 replaced with a new Section 5-5-10 to read:

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1332 **§ 5-5-10 GENERAL ENFORCEMENT GUIDELINES.**

- 1333 (A) Any person who has been discriminated against in violation of the
1334 provisions of this chapter may file with the director a request to have the
1335 director investigate and mediate the complaint under the provisions of this
1336 chapter.
- 1337 (B) Nothing in this chapter shall preclude any aggrieved person from seeking
1338 any other remedy provided by law.
- 1339 (C) A complaint to the director is not a prerequisite or a bar to the filing of a
1340 complaint with the Texas Human Rights commission or to the pursuit of any
1341 other remedy provided by law. The pendency of a complaint before the
1342 director shall not bar any civil action under this section, but a final judgment
1343 in any civil action shall bar any further proceedings by the Office of Civil
1344 Rights.
- 1345 (D) In connection with any investigation of a charge filed under this chapter, the
1346 director or investigator shall at all reasonable times have access to, for the
1347 purposes of examination and the right to copy, any evidence of any person
1348 being investigated or proceeded against that relates to unlawful employment
1349 practices and is relevant to the charge under investigation and is not
1350 privileged as provided by law.
- 1351 (E) No person shall knowingly, intentionally or recklessly obstruct, or prevent
1352 compliance with this chapter or hinder or interfere with the performance of
1353 the proper exercise of a duty, obligation, right or power of the Office of
1354 Civil Rights or its representatives, or other officials with duties, obligations,
1355 rights and powers established by ordinance.
- 1356 (F) The city attorney shall assign counsel to assist the Office of Civil Rights in
1357 the performance of its functions.
- 1358 (G) The Office of Civil Rights shall have authority from time to time to issue,
1359 amend, or rescind suitable procedural regulations to carry out the provisions
1360 of this chapter. The city attorney shall be consulted regarding rules and
1361 regulations adopted by the Office of Civil Rights before such rules and
1362 regulations become effective. Such rules and regulations shall be in
1363 conformity with procedural due process.

1366 **PART 18.** Subsection (D) of City Code Section 5-5-11 (*Filing Complaints; Procedure*)
1367 is amended to read:

1368 (D) The director may grant expedited review to any complaint filed under this
1369 chapter, in accordance with the policy concerning expedited reviews as
1370 determined by the director [~~in consultation with the commission~~].

1371 **PART 19.** City Code Section 5-5-12 (*Investigation and Conciliation Procedure*) is
1372 repealed and replaced with a new Section 5-5-12 to read:

1373 **§ 5-5-12 INVESTIGATION AND CONCILIATION PROCEDURE.**

1374 (A) Before the Office of Civil Rights accepts a complaint for investigation, an
1375 investigator shall review the complaint with the charging party and
1376 determine whether the complaint describes a violation of this chapter.

1377 (B) If the investigator determines that there is not reasonable cause to believe
1378 that a particular alleged discriminatory practice has occurred, the Office of
1379 Civil Rights shall dismiss the complaint and promptly provide the charging
1380 party and the respondent with a clear and concise written explanation of the
1381 reasons why the complaint will not be accepted for investigation. A charging
1382 party may appeal the dismissal of a complaint by filing a request for review
1383 with the director within 10 days of receiving the written explanation. If a
1384 request for review is timely filed under this section, the director shall
1385 conduct a hearing and provide the charging party an opportunity to appear
1386 and present evidence. Upon conclusion of the hearing, the director may
1387 affirm, reverse, or modify the investigator's determination.

1388 (C) Complaints shall be made in writing and shall contain such information and
1389 be in such form as the director requires. A complaint is confidential, unless
1390 disclosure is required by law.

1391 (D) If, after investigation, the director determines there is reasonable cause to
1392 believe a violation of this chapter has occurred, or if the director reverses or
1393 modifies an investigator's determination under Subsection (B), the director
1394 shall attempt to resolve the alleged violation through a conciliation
1395 agreement. Information produced while attempting to reach a conciliation
1396 agreement is confidential, unless disclosure is required by law. Information
1397 produced while attempting to reach a conciliation agreement may not be
1398 used as evidence in a later proceeding without the written consent of all
1399 parties.

1400 (E) The charging party and respondent may agree to settle the complaint before
1401 the investigation is complete. If the director determines that the agreement

1402 does not meet the objectives of this chapter, the director may continue to
1403 investigate the complaint.

1404 (F) If the director, charging party, and respondent are unable to obtain a
1405 conciliation agreement, the director may refer the case to the city attorney
1406 for prosecution in municipal court.

1407 **PART 20.** City Code Section 5-5-99 (*Penalty*) is repealed and replaced with a new
1408 section 5-5-99 to read:

1409 **§ 5-5-99 CRIMINAL PENALTY.**

1410 A person commits an offense if the person violates any provision of this
1411 chapter or if the person obstructs or prevents compliance with this chapter. An
1412 offense under this section is a Class C misdemeanor punishable as provided in
1413 section 1-1-99 (*Offenses; General Penalty*). A culpable mental state is not
1414 required, and need not be proved, for an offense under this section. Each day that a
1415 person violates this chapter, whether consecutive or non-consecutive, shall be a
1416 separate offense.

1417 **PART 21.** City Code Section 5-6-2 (*Definitions*) is repealed and replaced with a new
1418 Section 5-6-2 to read:

1419 **§ 5-6-2 DEFINITIONS.**

1420 In this chapter:

- 1421 (1) **CHARGING PARTY** means the person alleging discrimination in a
1422 complaint.
- 1423 (2) **CITY** means City of Austin.
- 1424 (3) **DIRECTOR** means the director of the Office of Civil Rights.
- 1425 (4) **DISABILITY** means having a physical or mental impairment which
1426 substantially limits one or more major life activities; having a record of such
1427 an impairment; or being regarded as having such an impairment.
- 1428 (a) **PHYSICAL OR MENTAL IMPAIRMENT** means any physiological
1429 disorder or condition, cosmetic disfigurement, or anatomical loss
1430 affecting one or more of the following body systems: neurological;
1431 musculoskeletal; special sense organs; respiratory, including speech
1432 organs; cardiovascular; reproductive, digestive; genitourinary; hemic
1433 and lymphatic; skin; and endocrine; or any mental or psychological

- 1434 disorder, such as mental retardation, organic brain syndrome,
1435 emotional or mental illness, and specific learning disabilities.
- 1436 (b) MAJOR LIFE ACTIVITIES means functions such as caring for one's
1437 self, performing manual tasks, walking, seeing, hearing, speaking,
1438 breathing, learning, and working.
- 1439 (c) HAS A RECORD OF SUCH IMPAIRMENT means a history of, or
1440 has been misclassified as, having a mental or physical impairment that
1441 substantially limits one or more major life activities.
- 1442 (d) IS REGARDED AS HAVING AN IMPAIRMENT means has a
1443 physical or mental impairment that does not substantially limit major
1444 life activities but that is treated by a recipient as constituting such as
1445 limitation; has a physical or mental impairment that substantially
1446 limits major life activities only as a result of the attitudes of others
1447 toward such impairment; or has none of the impairments defined
1448 above but is treated as having such an impairment.
- 1449 (5) DISCRIMINATION means any direct or indirect exclusions, distinctions,
1450 segregation, limitation, refusal, denial, or any other differentiation in the
1451 treatment of a person or persons with disabilities on account of a disability.
- 1452 (6) FACILITY means all or any portion of buildings, structures, equipment,
1453 roads, walks, parking lots, or other real or personal property.
- 1454 (7) FINANCIAL ASSISTANCE means any grant, loan, contract (other than
1455 procurement contract or a contract of insurance or guaranty), or any other
1456 arrangement by which the City provides or otherwise makes available
1457 assistance in the form of: funds; services of City personnel; or real or
1458 personal property or any interest in or use of such property, including
1459 transfers or leases of such property for less than fair market value or for
1460 reduced consideration; and proceeds from a subsequent transfer or lease of
1461 such property if the City share of its fair market value is not returned to the
1462 City.
- 1463 (8) INVESTIGATOR means the person investigating a complaint.
- 1464 (9) PERSON WITH DISABILITIES means any person who has a disability as
1465 defined in "disability" above.
- 1466 (10) QUALIFIED PERSON WITH DISABILITIES includes:

1467 (a) With respect to employment, a person with disabilities who, with
1468 reasonable accommodation, can perform the essential functions of the
1469 job in question.

1470 (b) With respect to a City service, a person with disabilities who meets
1471 the essential eligibility requirements for the receipt of the service.

1472 (11) RESPONDENT means the person against whom a charging party alleges
1473 discrimination in a complaint.

1474 **PART 22.** Subsection (E) and Subsection (F) of City Code Section 5-6-12 (*General*
1475 *Enforcement Guidelines*) are amended by deleting the phrase “Human Resources
1476 Department” and substituting the phrase “Office of Civil Rights.”

1477 **PART 23.** City Code Section 5-6-14 (*Investigation and Conciliation Procedure*) is
1478 repealed and replaced with a new Section 5-6-14 to read:

1479 **§ 5-6-14 INVESTIGATION AND CONCILIATION PROCEDURE.**

1480 (A) Before the Office of Civil Rights accepts a complaint for investigation, an
1481 investigator shall review the complaint with the charging party and
1482 determine whether the complaint describes a violation of this chapter.

1483 (B) If the investigator determines that there is not reasonable cause to believe
1484 that a particular alleged discriminatory practice has occurred, the Office of
1485 Civil Rights shall dismiss the complaint and promptly provide the charging
1486 party and the respondent with a clear and concise written explanation of the
1487 reasons why the complaint will not be accepted for investigation. A charging
1488 party may appeal the dismissal of a complaint by filing a request for review
1489 with the director within 10 days of receiving the written explanation. If a
1490 request for review is timely filed under this section, the director shall
1491 conduct a hearing and provide the charging party an opportunity to appear
1492 and present evidence. Upon conclusion of the hearing, the director may
1493 affirm, reverse, or modify the investigator’s determination.

1494 (C) Complaints shall be made in writing and shall contain such information and
1495 be in such form as the director requires. A complaint is confidential, unless
1496 disclosure is required by law.

1497 (D) If, after investigation, the director determines there is reasonable cause to
1498 believe a violation of this chapter has occurred, or if the director reverses or
1499 modifies an investigator’s determination under Subsection (B), the director
1500 shall attempt to resolve the alleged violation through a conciliation
1501 agreement. Information produced while attempting to reach a conciliation

1502 agreement is confidential, unless disclosure is required by law. Information
1503 produced while attempting to reach a conciliation agreement may not be
1504 used as evidence in a later proceeding without the written consent of all
1505 parties.

1506 (E) The charging party and respondent may agree to settle the complaint before
1507 the investigation is complete. If the director determines that the agreement
1508 does not meet the objectives of this chapter, the director may continue to
1509 investigate the complaint.

1510 (F) If, after investigation, the director determines that there is reasonable cause
1511 to believe discrimination occurred and the director is unable to secure from
1512 the respondent an acceptable conciliation agreement, the director shall
1513 present findings to the city manager. The director may, in cases where the
1514 respondent is a City department, recommend to the city manager that
1515 corrective measures as the director deems appropriate be taken to eliminate
1516 the discriminatory activity. If the respondent is a City contractor, the Office
1517 of Civil Rights shall forward its findings and recommendations to the
1518 charging party, the respondent, and the city council. After receipt of the
1519 findings of the Office of Civil Rights, the city council, if it concurs in such
1520 findings, may cause the contract with such contractor to be canceled,
1521 terminated, or suspended in whole or in part, as the city council deems
1522 advisable under the circumstances. If after review of the case, the city
1523 council disagrees with the findings of the Office of Civil Rights, the city
1524 council may reverse or modify the findings of the Office of Civil Rights.

1525 (G) Notice shall be provided in City contracts that noncompliance with this
1526 chapter by City contractors may result in termination of such contracts.

1527 **PART 24.** Subsection (A) of City Code Section 5-6-15 (*Remedial and/or Voluntary*
1528 *Action*) is amended by deleting the phrase “Human Resources Department” and
1529 substituting the phrase “Office of Civil Rights.”

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1531 **PART 25.** This ordinance takes effect on _____, 2021.

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1533 **PASSED AND APPROVED**

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§
§

_____, 2021 § _____

Steve Adler
Mayor

APPROVED: _____

Anne L. Morgan
City Attorney

ATTEST: _____

Jannette S. Goodall
City Clerk

DRAFT