

ORDINANCE NO. 20051215-010

AN ORDINANCE AMENDING CHAPTER 5-1 OF THE CITY CODE RELATING TO HOUSING DISCRIMINATION, CHAPTER 5-3 OF THE CITY CODE RELATING TO DISCRIMINATION IN EMPLOYMENT GENERALLY, AND CHAPTER 5-4 OF THE CITY CODE RELATING TO DISCRIMINATION IN EMPLOYMENT BY CITY CONTRACTORS.

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

PART 1. Section 5-1-2(A) (*Scope*) of the City Code is amended to read:

§5-1-2 SCOPE.

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

PART 2. Definitions 14 and 16 in Section 5-1-13 (*Definitions*) of the City Code are amended to read:

- (14) **EQUAL EMPLOYMENT/FAIR HOUSING OFFICE** means the staff in the Human Resources Department that handles cases referred to the city by the United States Department of Housing and Urban Development or the Civil Rights Division of the Texas Workforce Commission [~~Texas Commission on Human Rights~~].
- (16) **FAMILIAL [~~FAMILY~~] STATUS** means the status resulting from:
- (a) one or more persons who are under 18 years old being domiciled with an individual who is either the parent of the persons under 18 years old, the legal guardian or custodian of the persons under 18 years old, or the designee (with written authorization) of the persons under 18 years old;

(b) being pregnant; or

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

PART 3. Section 5-1-17 (*Appraisal Exemption*) of the City Code is amended to read:

§ 5-1-17 APPRAISAL EXEMPTION.

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

PART 4. Section 5-1-51 (*Discrimination in Sale or Rental of Housing*) of the City Code is amended to read:

§5-1-51 DISCRIMINATION IN SALE OR RENTAL OF HOUSING

- (A) A person may not refuse to sell or rent a dwelling to a person who has made a bona fide offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make unavailable or deny a dwelling to any person based on race, color, religion, sex, sexual orientation, gender identity, age, familial ~~[family]~~ status, disability, marital status, student status, creed, or national origin.
- (B) A person may not discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with the sale or rental, based on race, color, religion, sex, sexual orientation, gender identity, age, familial ~~[family]~~ status, disability, marital status, student status, creed, or national origin.
- (C) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance, but does not permit discrimination based on a disability.

PART 5. Section 5-1-52 (*Publication Indicating Discrimination*) of the City Code is amended to read:

§5-1-52 PUBLICATION INDICATING DISCRIMINATION

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

marital status, student status, creed, or national origin, or an intention to make such a preference, limitation, or discrimination.

PART 6. Section 5-1-53 (*Availability for Inspection*) of the City Code is amended to read:

§5-1-53 AVAILABILITY FOR INSPECTION

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

PART 7. Section 5-1-54 (*Entry into Neighborhood*) of the City Code is amended to read:

§5-1-54 ENTRY INTO NEIGHBORHOOD

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

PART 8. Section 5-1-56 (A) (*Residential Real Estate Related Transaction*) of the City Code is amended to read:

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

PART 9. Section 5-1-57 (*Brokerage Services*) of the City Code is amended to read:

§5-1-57 BROKERAGE SERVICES.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such organization, service, or facility because of race, color, religion, sex, sexual orientation, gender identity, disability, age, familial [~~family~~] status, marital status, student status, creed, or national origin.

PART 10. Section 5-1-76(A) (*Temporary or Preliminary Relief*) of the City Code is amended to read:

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

PART 11. Section 5-1-84(A) (*City Attorney Action for Enforcement*) of the City Code is amended to read:

- (A) If a timely election is made under Section 5-1-83 (*Election of Judicial Determination*) the Equal Employment/Fair Housing Office shall request, and not later than the 30th day after the election is made, the city attorney shall file, a civil action on behalf of the administrator [~~aggrieved person~~] in a district court seeking relief under this section.

PART 12. Section 5-1-89 (*Order in Preceding Five Years*) of the City Code is amended to read:

§5-1-89 ORDER IN PRECEDING FIVE YEARS

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

PART 13. Section 5-1-90 (*Cooperation with State and Federal Agencies*) is amended to read:

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

- (A) The Equal Employment/Fair Housing Office is encouraged to cooperate with the secretary of Housing and Urban Development and the attorney general of the United States in the enforcement of the Fair Housing Act of 1968, 42 U.S.C. §3601, et seq., and may assist the secretary or attorney general in any way consistent with the policy of this chapter. The Equal Employment/Fair Housing Office is encouraged to cooperate with the Civil Rights Division of

the Texas Workforce Commission [~~Texas Commission on Human Rights~~] in the enforcement of Chapter 301 (*Texas Fair Housing Act*) of the Texas Property Code, and may assist the Civil Rights Division of the Texas Workforce Commission [~~Texas Commission on Human Rights~~] in any way consistent with the policy of this chapter.

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

PART 14. Section 5-3-2 (*Definitions*) of the City Code is amended to add a definition to read as follows and renumber the remaining definitions accordingly:

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

PART 15. Section 5-4-1 (*Definitions*) of the City Code is amended to add new definitions of "Administrator" and "Equal Employment/Fair Housing Office", to amend the definition of "Discriminatory Employment Practice", and to renumber the remaining definitions accordingly to read:

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

- (3) ~~(2)~~ DISCRIMINATORY EMPLOYMENT PRACTICE means discrimination against an [~~any~~] individual because of race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age, unless sex or age is a [~~or~~] bona fide occupational qualification [~~qualifications~~] of employment, during an employment action, including [~~in any manner involving employment, including the~~] recruiting [~~of applicants for employment~~], advertising, hiring, layoff, termination [~~of employment~~], classification, training or [~~and~~] selection for training, promotion, demotion, transfer, or compensation [~~or any other terms, conditions or privileges of employment~~].

- (4) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the staff in the Human Resources Department that handles and investigates cases under this chapter.

PART 16. Section 5-4-2 (B) (*Discriminatory Employment Practices Prohibited*) of the City Code is amended to read:

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

- (1) not [Not] to engage in any discriminatory employment practice defined in this chapter; [-]
- (2) to [To] take affirmative action to ensure that applicants are employed, and that employees are treated during employment without discrimination being practiced against them as defined in this chapter, including affirmative action relative to [~~Such affirmative action shall include, but not be limited to,~~] employment, promotion [~~upgrading~~], demotion or transfer, [~~;~~] recruitment or recruitment advertising, layoff or termination, [~~;~~] rate of pay or other forms of compensation, [~~;~~] and selection for training or any other terms, conditions or privileges of employment; [-]
- (3) to [~~To~~] post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office [~~Austin Human Rights Commission~~] setting forth the provisions [~~provision~~] of this chapter; [-]
- (4) to [~~To~~] state in all solicitations or advertisements for employees place by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age; [-]
- (5) to [~~To~~] obtain a written statement from any labor union or labor organization furnishing labor or service to the contractors in which the [such] union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to

take affirmative action to implement the policies and provisions of this chapter; [-]

- (6) to ~~[To]~~ cooperate fully with the City and the Equal Employment/Fair Housing Office ~~[Austin Human Rights Commission]~~ in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office ~~[Austin Human Rights Commission]~~ to ensure that the purpose of the provisions against discriminatory employment practice is being carried out; and [-]
- (7) to ~~[To]~~ require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they not engage in any discriminatory employment practice as ~~[is]~~ defined in this chapter.

PART 17. Section 5-4-3 (*Promulgation of Rules and Regulations; Complaint and Conciliation Procedure; Compliance Checks*) of the City Code is amended to read:

§5-4-3 PROMULGATION OF RULES AND REGULATIONS; COMPLAINT AND CONCILIATION PROCEDURE; COMPLIANCE CHECKS

- (A) The Equal Employment/Fair Housing Office ~~[Austin Human Rights Commission]~~ shall ~~[have right, power, authority and responsibility]~~, subject to the approval of the mayor and city council, promulgate ~~[of promulgating]~~ rules and regulations necessary to implement ~~[for the implementation of]~~ this chapter and to carry ~~[for the carrying]~~ out its ~~[of the]~~ purposes and policies ~~[thereof]~~; and shall receive, investigate and conciliate complaints of discriminatory employment practices or failures to comply with this chapter.
- (B) Any person claiming to be aggrieved by a discriminatory employment practice prohibited ~~[hereunder or]~~ by ~~[noncompliance with]~~ this chapter ("charging party") shall, within 60 days of the alleged act of discrimination, sign and file a verified complaint setting forth the particulars of the alleged discriminatory employment practice or other violation of this chapter and containing [such] other information as may be required by the Equal Employment/Fair Housing Office ~~[Austin Human Rights Commission]~~. A complaint ~~[Such complaints]~~ shall be filed with the Equal Employment/Fair Housing Office ~~[commission]~~. The Equal Employment/Fair Housing Office ~~[commission]~~ shall, within 30 days ~~[thereafter]~~, investigate or cause to be investigated the complaint. If an ~~[In the event such]~~ investigation reveals that violations of any of the provisions of this chapter probably exist, the Equal Employment/Fair Housing Office ~~[commission]~~ shall immediately endeavor to eliminate or correct the

practice or violation complained of by informal methods of conference, conciliation, and persuasion.

- (C) The Equal Employment/Fair Housing Office may ~~[commission shall have power to]~~ conduct compliance checks to ascertain the status and progress of compliance under the provisions of this chapter.

PART 18. Section 5-4-4(A) (*Procedure for Public Hearings*) of the City Code is amended to read:

- (A) If [In the event] conciliation fails to correct [5] or eliminate [7] the practice or violation complained of, the Equal Employment/Fair Housing Office shall refer the case to the Austin Human Rights Commission which shall hold a public hearing ~~[thereon]~~. The procedure for the public hearing ~~[herein provided]~~ shall be as follows:

- (1) The Equal Employment/Fair Housing Office shall send ten [Ten] days notice of the time and place of the [such] hearing ~~[shall be served]~~ personally or through the United States mail, by certified mail with return receipt requested, to [upon] the charging party and to [upon] the person alleged to have committed the discriminatory employment practice complained of ("respondent") accompanied by a copy of the complaint and a written report of the investigation and the results of the conciliation efforts.
- (2) The charging party and the respondent may ~~[shall be entitled to]~~ appear at the hearing in person or by legal counsel and ~~[to]~~ present such statements, testimony or evidence as may be desired.

PART 19. Section 5-4-5 (*Dismissal of Complaint*) of the City Code is amended to read:

§5-4-5 DISMISSAL OF COMPLAINT.

If the Austin Human Rights Commission determines during the ~~[at any stage in the investigation or subsequent]~~ proceedings that a discriminatory employment practice or other violation has not been committed as alleged, or that it is without jurisdiction to hear the [such] complaint, it shall dismiss the matter or refer it [same] to the proper agency.

PART 20. Section 5-4-7 (*Annual Reports to City Council*) of the City Code is amended to read:

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

The Austin Human Rights Commission shall report annually to the city council on the disposition of all hearings ~~[complaints]~~ and on all other matters it may deem

appropriate to be brought to the attention of the city council, including [any] recommendations it considers [~~may consider~~] necessary or desirable [~~in order~~] to carry out the policy stated in this chapter.

PART 21. This ordinance takes effect on December 26, 2005.

PASSED AND APPROVED

December 15, 2005 §
 §
 § Will Wynn
 Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk