

City of Houston, Texas, Ordinance No. 2014-_____

AN ORDINANCE AMENDING CHAPTERS 2, 15 AND 17 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, PROHIBITING DISCRIMINATION ON THE BASIS OF PROTECTED CHARACTERISTICS IN CITY EMPLOYMENT, CITY SERVICES, CITY CONTRACTING PRACTICES, HOUSING, PUBLIC ACCOMMODATIONS, AND PRIVATE EMPLOYMENT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT UNLAWFUL; PROVIDING FOR A PENALTY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City Council finds that all persons living in, working in or visiting the City are entitled to be treated with equal dignity and respect and have the right to be free from discriminatory and unequal treatment; and

WHEREAS, the City of Houston seeks to provide an environment that is free of any type of discrimination based on sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, or pregnancy (“Protected Characteristics”); and

WHEREAS, the City Council finds that achieving and maintaining a discrimination-free environment is necessary to effectively serve the public by enabling the City to recruit and train qualified employees and to procure and provide services to the public; and

WHEREAS, the City Council finds that it is in the best interests of the City and its citizens to incorporate the nondiscrimination policy of the City into contracts entered into by the City for which it spends public funds; and

WHEREAS, the City Council finds that discrimination on the basis of Protected Characteristics in privately owned and operated public accommodations, including restaurants, bars, entertainment venues and places of public amusement, hotels and motels and public conveyances (“Public Accommodations”) results in the unjust exclusion of persons and a diminution of their dignity, respect, and status contrary to the public policy of the City and the Constitutional principles on which the United States was founded; and

WHEREAS, the City Council finds that it is necessary, appropriate and the proper responsibility of government to make discrimination in Public Accommodations unlawful in the City; and

As amended 5/14/2014

WHEREAS, the City Council finds that discrimination in employment results in the unequal treatment of persons and a diminution of their dignity, respect and status contrary to the public policy of the City and the Constitutional principles on which the United States was founded; and

WHEREAS, the City Council finds that it is necessary, appropriate, and the proper responsibility of government to make discrimination in Private Employment unlawful in the City; and

WHEREAS, the City Council recognizes the rights of each person to obtain housing without regard to Protected Characteristics; and

WHEREAS, the City Council finds that discrimination in housing on the basis of Protected Characteristics is contrary to the public policy of the City and the Constitutional principles on which the United States was founded; and

WHEREAS, the City Council finds that it is in the best interests of the City and its citizens to make discrimination in housing on the basis of Protected Characteristics unlawful in the City; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Chapter 17 of the Code of Ordinances, Houston, Texas, is hereby amended in its entirety to read as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

Section 2A. That the following definition of *employer* in Section 17-2 of the Code of Ordinances shall become effective on the first anniversary of the effective date of this Ordinance:

“*Employer* means a person who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person’s agent. The term does not include a person’s contractor or vendor with respect to the conduct of the contractor or vendor toward the employees of said contractor or vendor; the United States, or a corporation wholly owned by the government of the

United States; a bona fide private membership club which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; the state, a state agency, or political subdivision; or a religious organization.”

That the following definition of *employer* in Section 17-2 of the Code of Ordinances shall become effective on the second anniversary of the effective date of this Ordinance:

“*Employer* means a person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person’s agent. The term does not include a person’s contractor or vendor with respect to the conduct of the contractor or vendor toward the employees of said contractor or vendor; the United States, or a corporation wholly owned by the government of the United States; a bona fide private membership club which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; the state, a state agency, or political subdivision; or a religious organization.”

Section 3. That Article XIV of Chapter 2 of the Code of Ordinances, Houston, Texas, is hereby repealed and reserved.

Section 4. That Section 15-17 of the Code of Ordinances, Houston, Texas, is hereby amended to read as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the thirtieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this ____ day of _____, 2014.

Mayor of the City of Houston

Prepared by Legal Dept. _____
DMF:DFM:DAN:asw 5/1/2014 City Attorney
Requested by the Honorable Annise D. Parker, Mayor
L.D. File No. 0391300324001

EXHIBIT A

As amended 5/14/2014

Chapter 17
EQUAL RIGHTS

ARTICLE I. IN GENERAL

Sec. 17-1. Public policy declared.

It is the policy of the city that all of its residents and persons subject to its jurisdiction shall not be subject to discrimination based on an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy.

Sec. 17-2. Definitions.

In this chapter:

Age means, for purposes of sections that address non-discrimination, 40 or more years of age.

City employment and employment opportunities shall include, but are not limited to, decisions that adversely affect an employee's pay, status, position or assignment, including opportunities for overtime pay and advancement, and includes decisions regarding recruitment, job application procedures, referrals for employment, selection and hiring, appointment, compensation, promotions, demotions, transfers, layoffs, recalls, training, educational opportunities, and all forms of discipline, including indefinite suspensions/terminations.

Contractor means any person, including subcontractors, who through a contract or other arrangement, has received, is to receive, or is receiving public funds for work, goods, or services delivered or rendered to the city.

Disability means a mental or physical impairment that substantially limits at least one major life activity, a record of the impairment, or being regarded as having the impairment. This term does not include the current, illegal use of or addiction to a controlled substance as defined under state and federal law.

Discriminate means to intentionally distinguish, differentiate, separate, or segregate to the advantage or disadvantage of any person on the basis of a protected characteristic, except as required by federal or state law or court order.

Employee means an individual employed by an employer.

Employer means a person who has 50 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person's agent. The term does not include a person's contractor or vendor with respect to the conduct of the contractor or vendor toward the employees of said contractor or vendor; the United States, or a corporation wholly owned by the government of the United States; a bona fide private membership club which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; the state, a state agency, or political subdivision; or a religious organization.

Familial status means the status of a person resulting from being domiciled with an individual younger than 18 years of age in regard to whom the person:

- (1) Is the parent or legal custodian; or
- (2) Has the written permission of the parent or legal custodian for domicile with the individual; or
- (3) Is in the process of obtaining legal custody.

Gender identity means an individual's innate identification, appearance, expression or behavior as either male or female, although the same may not correspond to the individual's body or gender as assigned at birth.

Genetic information means information about an individual's genetic tests, the genetic tests about an individual's family members, and the manifestation of disease or disorder in family members of an individual. The term does not include the age, sex, race, color, ethnicity, national origin, religion, or disability of any individuals.

Inspector general means the person in charge of the Office of the Inspector General created by Executive Order No. 1-39 or his or her designee.

Military status means a person who is serving or has served in the uniformed service, and who, if discharged, was discharged or released under conditions other than dishonorable. *Uniformed services* is defined as set forth in 20 C.F.R. 1002.5(o).

Person means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee or receiver.

Place of public accommodation means every business with a physical location in the city, whether wholesale or retail, which is open to the general

public and offers for compensation any product, service, or facility. The term includes, but is not limited to, all hotels, motels, restaurants, bars, lounges, nightclubs or cabarets where food or beverages are sold or offered for sale, theaters, washaterias, bowling alleys, skating rinks, golf courses, and other places of public amusement, and all public conveyances, as well as the stations or terminals thereof. For purposes of article IV of this chapter, the leasing office, visitor parking area and model units of a multi-family housing facility shall not be considered a *place of public accommodation*.

Protected characteristic means an individual's sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity or pregnancy.

Religion means all aspects of religious observance and practice, as well as belief.

Religious organization means:

- (1) A religious corporation, association, social service or society;
- (2) A school, college, university, or other educational institution or institution of learning, if the institution is, in whole or in substantial part, controlled, managed, owned, or supported by a religion, religious corporation, association or society; or the curriculum of the institution is directed toward the propagation of a religion; or
- (3) A nonprofit institution or organization operated, supervised, or controlled by a religious corporation, association, social service or society.

Retaliation, in connection with employment, means conduct or decisions that a reasonable employee would view as materially adverse and whose purpose or effect is to discourage employees from exercising their rights under this article, city policy, or law.

Sex means the biological differences between men and women, and gender.

Sexual orientation means the actual or perceived status of a person with respect to his or her sexuality.

Secs. 17-3--17-30. Reserved.

ARTICLE II. CITY EMPLOYMENT AND CITY SERVICES

Sec. 17-31. Prohibition against discrimination in city employment.

It is the policy of the city that the city will not discriminate in city employment and employment opportunities on the basis of any protected characteristic. For purposes of this section, *discriminate* includes, but is not limited to, any act or demonstration of preference or antipathy in making decisions regarding employment that adversely affect an employee's pay, status, position, or assignment, including opportunities for overtime pay and advancement, and includes decisions regarding recruitment, job application procedures, referrals for employment, selection and hiring, appointment, compensation, promotions, demotions, transfer, retention, layoffs, recalls, training, educational opportunities, and all forms of discipline, including indefinite suspensions/terminations.

This policy applies to city officials and all employees regardless of civil service status, classification, pay grade, length of employment, or full-time or part-time status.

Sec. 17-32. Prohibition against discrimination in city services.

It is the policy of the city that the city will not discriminate on the basis of any protected characteristic in authorizing or making available the use of city facilities or in the delivery of city programs, services or activities.

Sec. 17-33. Enforcement.

(a) It is the policy of the city that no employee or official of the city shall engage in any act or practice prohibited by this article.

(b) An employee or official found in violation of this article shall be subject to disciplinary action up to and including indefinite suspension/termination or removal from office pursuant to applicable city ordinances, city charter provisions, executive orders, administrative procedures, laws, and policies. An employee who believes he or she has been subject to discrimination in violation of this article shall submit a written complaint to the inspector general not later than 180 days after the alleged violation occurs.

(c) The provisions of this article shall be enforced pursuant to applicable city ordinances, city charter provisions, executive orders, administrative procedures, laws, and policies.

(d) The office of the inspector general is responsible for investigating all facts and circumstances that reasonably appear to constitute a violation of this article.

Sec. 17-34. Retaliation prohibited.

No city employee or official shall retaliate against any person who has filed a complaint in good faith pursuant to this section. If the inspector general determines that retaliation has occurred, the city employee or official shall be subject to discipline, up to and including indefinite suspension.

Secs. 17-35--17-40. Reserved.

ARTICLE III. CONTRACTING

Sec. 17-41. Prohibition against discrimination in awarding contracts.

It is the policy of the city that the city will not discriminate in the consideration, award, or administration of any contract entered into between the city and any person (including, but not limited to, any contractor, vendor, supplier, lessee, or lessor) for the provision of any works, goods, or services of any type to the city. The language of section 15-17 of this Code shall be included in every contract entered into by the city. The language of this article shall not be interpreted to conflict with provisions of chapter 15 of this Code.

Sec. 17-42. Prohibition against discrimination in the performance of a contract; penalties; retaliation prohibited.

(a) It shall be unlawful for any contractor to discriminate against any person on the basis of any protected characteristic, except as required by federal or state law or court order, in the performance of any contract entered into with the city. A person employed in connection with a city contract who has a good faith belief that he or she is the victim of discrimination may file a complaint with the inspector general on a form prescribed by the inspector general. Any person claiming to be aggrieved by an unlawful employment action in connection with the performance of a city contract shall file a verified complaint in writing no later than 180 days after the alleged violation.

(b) If a contractor is found to have violated this section in connection with any city contract, the inspector general shall refer the matter to the city attorney for appropriate action to serve the best interests of the city, including the use of remedies provided by the city's contract with the contractor.

(c) No contractor shall retaliate against any person who has filed a complaint in good faith pursuant to this section. If the inspector general determines that retaliation has occurred, he shall refer the matter to the city attorney pursuant to subsection (b) of this section.

Sec. 17-43. Investigation of complaints of discrimination in the performance of a contract; procedures.

(a) The office of the inspector general shall investigate the complaint and determine whether a violation as defined in this article has occurred. In addition to other investigative tools, the inspector general may take statements and inspect relevant records. If the inspector general is not able to obtain voluntary cooperation in connection with its investigation, he shall refer the matter to the city attorney for appropriate action.

(b) If the complaint is found to be deficient, the inspector general shall dismiss the case. All investigations conducted pursuant to this article shall be conducted in a confidential manner and records of any such investigations shall be confidential to the extent permitted by law.

(c) Upon completion of the investigation of the complaint, if the inspector general determines that the complaint alleges a violation of this article, the inspector general shall affirmatively engage in conciliation of the complaint. If no resolution is achieved, the inspector general shall refer the matter to the city attorney for appropriate action.

Secs. 17-44--17-50. Reserved.

ARTICLE IV. PUBLIC ACCOMMODATIONS

Sec. 17-51. Prohibition against discrimination in public accommodations.

(a) It shall be unlawful for any place of public accommodation or any employee or agent thereof to intentionally discriminate against any person on the basis of any protected characteristic, except as required by federal or state law or court order.

[PENDING MOTION BY COUNCIL MEMBER DAVIS TO DELETE SUBSECTION (B) BELOW IN ITS ENTIRETY]

(b) It shall be unlawful for any place of public accommodation or any employee or agent thereof to intentionally deny any person entry to any restroom, shower room, or similar facility if that facility is consistent with and appropriate to that person's expression of gender identity. It shall be a defense to prosecution for discrimination on the basis of gender identity under this article, however, if the defendant had a good faith belief that the gender or gender identity of the person discriminated against was not consistent with the gender designation of the facility. For purposes of this section, a defendant has a good faith belief if the manner in which the person represented or expressed gender to others (e.g. behavior, clothing, hairstyles, activities, voice or mannerisms) is not consistent with the gender designation of the facility the person

attempted to access. Nothing in this section shall require construction of a new bathroom, shower room, or similar facility.

(c) It shall be a defense to prosecution for discrimination on the basis of disability under this article that the alleged discrimination resulted from a condition or structural feature for which a variance had been received from the city under applicable ordinance or regulation. It shall also be a defense to prosecution for discrimination on the basis of accessibility that the place of public accommodation is in compliance with applicable state or federal law relating to accessibility.

(d) It shall be unlawful for a person to file a complaint in bad faith under this article. For purposes of this article, *bad faith* means wholly without foundation in law or fact, or done solely for the purpose of harassment.

Sec. 17-52. Investigation of alleged violations; procedures.

(a) Any person claiming to be aggrieved by an unlawful public accommodation practice shall file a verified complaint in writing with the office of the inspector general not later than 180 days after the alleged violation occurred. Multiple complaints involving the same incident and alleging the same discrimination shall be treated as one alleged violation for investigation and penalty. If the complaint states a claim that is within the jurisdiction of a federal or state agency, the inspector general may refer the complaint to the appropriate agency for further action and discontinue the investigation of the complaint.

(b) Except as to complaints that are referred to a federal or state agency, the office of the inspector general shall investigate the complaint and determine whether a violation as defined in this article has occurred. In addition to other investigative tools, the inspector general may take statements and inspect relevant records. If the inspector general is not able to obtain voluntary cooperation in connection with its investigation, the city attorney, in consultation with the inspector general, may request city council to issue a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents. City council may issue such subpoena if it determines that there is reasonable cause to believe that this article may have been violated.

(c) If the complaint is found to be deficient or untimely, the inspector general shall dismiss the case. All investigations conducted pursuant to this article shall be conducted in a confidential manner and records of any such investigations shall be confidential to the extent permitted by law. The inspector general shall complete the investigation of the complaint no later than one year after the filing of the complaint.

(d) Upon completion of the investigation of the complaint, if the inspector general determines that the complaint alleges a violation of this article, the inspector general shall affirmatively engage in conciliation of the complaint. If no such resolution is

achieved, the inspector general shall refer the matter to the city attorney for appropriate action in accordance with this article.

(e) No finding, conciliation or adjudication under this article shall be admissible in connection with the city's licensing, permitting, or regulatory matters.

Sec. 17-53. Effect of provisions on civil remedies.

This article shall neither add to nor detract from any civil remedies now available to persons complaining of discrimination under this article.

Sec. 17-54. Exemptions.

This article shall not apply to:

- (1) Any hotel, motel, restaurant, bar, lounge, nightclub, cabaret, theater, bowling alley, skating rink, golf course, or similar facility operated by a bona fide private club when the accommodations, advantages, facilities, and services of the entity are restricted to the members of such club and their guests and not for the purpose of evading this article; or
- (2) Any bona fide social, fraternal, educational, civic, or religious organization, or to any private kindergarten, day care center or nursery school, when the profits of such accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit of such organization.
- (3) Any facility owned or operated by a federal, state, county or other local governmental entity.
- (4) Discounts of any product, service, or facility for any person on the basis of age or military status.

Sec. 17-55. Criminal penalties for violation.

(a) A person who violates a provision of this article commits a criminal offense, a Class C misdemeanor. A person is guilty of a separate criminal offense for each day or part of a day during which a violation is committed, continued, or permitted.

(b) A criminal offense under this article is punishable in municipal court by a fine of not less than \$250.00 nor more than \$500.00. In no event shall the aggregate of all fines relating to the same complaint filed by a complainant exceed \$5000.00.

(c) A person prosecuted for a violation of this article shall be entitled to a trial by jury in municipal court.

Secs. 17-56--17-60.Reserved.

ARTICLE V. PRIVATE EMPLOYMENT

Sec. 17-61. Prohibition against discrimination in employment.

(a) It shall be unlawful for any employer to intentionally discriminate in employment and employment opportunities on the basis of any protected characteristic. For purposes of this section, *discriminate* includes but is not limited to, any intentional act or demonstration of preference or antipathy in making decisions regarding employment that adversely affect an employee's pay, status, position, or assignment, including opportunities for overtime pay and advancement, and includes decisions regarding recruitment, job application procedures, referrals for employment, selection and hiring, appointment, compensation, promotions, demotions, transfer, retention, layoffs, recalls, training, educational opportunities, and all forms of discipline, including terminations.

(b) It shall be unlawful for any employer to retaliate against any person who has filed a complaint in good faith pursuant to this article.

(c) An employer may assert any applicable affirmative defenses available under Texas or federal discrimination laws as a defense to prosecution under this article.

(d) It shall be unlawful for a person to file a complaint in bad faith under this article. For purposes of this article, *bad faith* means wholly without foundation in law or fact, or done solely for the purpose of harassment.

Sec. 17-62. Investigation of alleged violations; procedures.

(a) Any employee claiming to be aggrieved by an unlawful employment practice shall file a verified complaint in writing with the office of the inspector general not later than 180 days after the alleged violation occurred. If the complaint states a claim that is within the jurisdiction of a federal or state agency, the inspector general shall refer the complaint to the appropriate agency for further action and discontinue the investigation of the complaint.

(b) Except as to complaints that are referred to a federal or state agency, the office of the inspector general shall investigate the complaint and determine whether a violation as defined in this article has occurred. In addition to other investigative tools, the inspector general may take statements and inspect relevant records. If the inspector general is not able to obtain voluntary cooperation in connection with its investigation, the city attorney, in consultation with the inspector general, may request the city council to issue a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents. City

council may issue such subpoena if it determines that there is reasonable cause to believe that this article may have been violated.

(c) If the complaint is found to be deficient or untimely, the inspector general shall dismiss the case. All investigations conducted pursuant to this article shall be conducted in a confidential manner and records of any such investigations shall be confidential to the extent permitted by law. The inspector general shall complete the investigation of the complaint no later than one year after the filing of the complaint.

(d) Upon completion of the investigation of the complaint, if the inspector general determines that the complaint alleges a violation of this article, the inspector general shall affirmatively engage in conciliation of the complaint. If no such resolution is achieved, the inspector general shall refer the matter to the city attorney for appropriate action in accordance with this article.

(e) No finding, conciliation or adjudication under this article shall be admissible in connection with the city's licensing, permitting, or regulatory matters.

Sec. 17-63. Effect of provisions on civil remedies.

This article shall neither add to nor detract from any civil remedies now available to persons complaining of discrimination under this article.

Sec. 17-64. Criminal penalties for violation.

(a) A person who violates a provision of this article commits a criminal offense, a Class C misdemeanor. A person is guilty of a separate criminal offense for each day or part of a day during which a violation is committed, continued, or permitted.

(b) A criminal offense under this article is punishable in municipal court by a fine of not less than \$250.00 nor more than \$500.00. In no event shall the aggregate of all fines relating to the same complaint filed by a complainant exceed \$5000.00.

(c) A person prosecuted for a violation of this article shall be entitled to a trial by jury in municipal court.

Secs. 17-65--17-100. Reserved.

ARTICLE VI. FAIR HOUSING

DIVISION 1. GENERAL PROVISIONS

Sec. 17-101. Prohibition against discrimination in housing.

It is the policy of the City of Houston to promote housing opportunities for all persons. Such policy is established upon the recognition of the rights of each individual to obtain housing without regard to a protected characteristic; and further that the denial of such rights through considerations based on a protected characteristic is detrimental to the health, safety, and welfare of the inhabitants of the city and constitutes an unjust denial or deprivation of such rights which are within the power and the proper responsibility of the city to prevent.

Sec. 17-102. Purpose.

The purposes of this article are:

- (1) To provide for fair housing practices in the city;
- (2) To create a procedure for investigating and settling complaints of discriminatory housing practices and any residential real estate-related transactions; and
- (3) To provide rights and remedies substantially equivalent to those granted under the Federal Fair Housing Act.

Sec. 17-103. Office established.

There is hereby established within the housing and community development department the office of fair housing. The mission of the office of fair housing shall be to monitor and evaluate fair housing opportunities in the city and to hear fair housing complaints under this article.

Sec. 17-104. General duties of the office of fair housing.

The duties of the fair housing staff shall be:

- (1) To study the nature and extent of discriminatory housing practices in both the private and public sectors;
- (2) To evaluate and assess the city's activities in connection with the development of fair housing opportunities in the city;

- (3) To recommend to the mayor and city council reasonable provisions and programs to further fair housing opportunities in the city; and
- (4) To investigate, process, and hear fair housing complaints under division 5 of this article, and complaints referred by federal or state agencies that are filed under state or federal housing laws.

Sec. 17-105. Fair housing administrator.

(a) There is hereby created the office of fair housing administrator, who shall be in charge of the office of fair housing. The fair housing administrator, who shall be appointed by the mayor and confirmed by the city council, shall have the responsibility for implementing and enforcing this article and may establish such rules and regulations as are determined necessary to perform the duties of that office.

(b) The fair housing administrator shall cooperate with the Secretary of Housing and Urban Development and the Attorney General of the United States in the enforcement of the federal Fair Housing Act, and may assist the secretary or attorney general in any way consistent with the policy of this article. The fair housing administrator is encouraged to cooperate with the Texas Workforce Commission, Civil Rights Division, in the enforcement of the Texas Fair Housing Act.

(c) The fair housing administrator shall treat a complaint referred by the Secretary of Housing and Urban Development or the Attorney General of the United States under the federal Fair Housing Act, or by the Texas Workforce Commission, Civil Rights Division, under the Texas Fair Housing Act, 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.

(d) The fair housing administrator may order discovery in aid of investigations under this article. Such discovery may be ordered to the same extent and is subject to the same limitations as would apply if the discovery were ordered in aid of a civil action in a state district court of Harris County, Texas.

Secs. 17-106--17-110. Reserved.

DIVISION 2. DEFINITIONS

Sec. 17-111. General definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessible means capable of being approached, entered, and used by a person with a physical disability

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a housing accommodation that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by a person with other disabilities.

Aggrieved person means a person who claims to have been injured by a discriminatory housing practice or believes that a person will be injured by a discriminatory housing practice that is about to occur.

Building entrance on an accessible route means an accessible entrance to a covered multi-family dwelling that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to the public streets or sidewalks, if available.

Complainant means a person, including the fair housing administrator, who files a complaint under section 17-131 of this Code.

Conciliation means the attempted resolution of issues raised by a complaint or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the complainant if different from the aggrieved person, the respondent and the fair housing administrator.

Conciliation agreement means a written agreement setting forth the resolution of the issues in the conciliation.

Covered multi-family dwelling means a building consisting of 4 or more dwelling units if the building has one or more elevators; and a ground floor dwelling unit in any other building consisting of four or more dwelling units.

Defense means a defense to criminal prosecution in municipal court as explained in the Texas Penal Code. *Defense* also means, where specifically provided, an exemption from a civil action.

Discriminatory housing practice means conduct that is an offense under division 3 of this article.

Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Dwelling unit means a single unit of residence for a family.

Fair housing administrator means the fair housing administrator of the fair housing office designated to enforce and administer this article and includes the fair housing administrator's designated representative and the inspector general.

Federal Fair Housing Act means the Fair Housing Act of 1968, 42 U.S.C. § 3601, et seq., as amended.

Housing accommodation means:

- a. Any building, structure, or part of a building or structure that is occupied, or designed or intended for occupancy as a residence for one or more families; and
- b. Any vacant land that is offered for sale or lease for the construction or location of a building, structure, or part of a building or structure described by part a of this definition.

Rent means and includes to lease, sublease, let or otherwise grant for consideration the right to occupy premises not owned by the occupant.

Residential real estate-related transaction means:

- a. The making or purchasing of loans or the providing of other financial assistance:
 - [1] For purchasing, constructing, improving, repairing, or maintaining a housing accommodation; or
 - [2] Secured by residential real estate; or
- b. The selling, brokering, or appraising of residential real property.

Respondent means a person identified in a complaint or charge as having committed a discriminatory housing practice under this article.

Texas Fair Housing Act means the act set forth in Chapter 301, Texas Property Code.

DIVISION 3. DISCRIMINATORY HOUSING PRACTICES

Sec. 17-112. Discriminatory housing practices.

(a) A person commits an offense if he or she, because of a protected characteristic:

- (1) Refuses to negotiate with a person for the sale or rental of a housing accommodation or otherwise denies or makes unavailable a housing accommodation to a person;
- (2) Refuses to sell or rent, or otherwise makes unavailable, a housing accommodation to another person after the other person makes an offer to buy or rent the accommodation; or
- (3) Discriminates against a person in the terms, conditions, or privileges of, or in providing a service or facility in connection with, the sale or rental of a housing accommodation.

(b) A person commits an offense if he or she, because of a protected characteristic:

- (1) Represents to a person that a housing accommodation is not available for inspection, sale, or rental if the accommodation is available;
- (2) Discriminates against a prospective buyer or renter in connection with the showing of a housing accommodation; or
- (3) With respect to a multiple listing service, real estate brokers' organization, or other business relating to selling or renting housing accommodations:
 - a. Denies a person access to or membership in the business; or
 - b. Discriminates against a person in the terms or conditions of access to or membership in the business.

(c) A person commits an offense if he or she:

- (1) For profit, induces or attempts to induce another person to sell or rent a housing accommodation by a representation that a person of a protected characteristic is in proximity to, is present in, or may enter into the neighborhood in which the housing accommodation is located;
- (2) Makes an oral or written statement indicating a preference or a policy of discrimination based on a protected characteristic; or

- (3) Prints or publicizes or causes to be printed or publicized an advertisement that expresses a preference or policy of discrimination based on a protected characteristic in the selling or renting of a housing accommodation.

(d) A person who engages in a residential real estate-related transaction commits an offense if he or she, because of a protected characteristic, discriminates against a person:

- (1) In making a residential real estate-related transaction available; or
- (2) In the terms or conditions of a residential real estate-related transaction.

(e) A person commits an offense if he or she:

- (1) Discriminates in the sale or rental of a housing accommodation to any buyer or renter because of a disability of:
 - a. That buyer or renter;
 - b. A person residing in or intending to reside in the housing accommodation after it is sold, rented, or made available; or
 - c. Any person associated with that buyer or renter; or
- (2) Discriminates against any person in the terms, conditions, or privileges of sale or rental of a housing accommodation, or in the provision of services or facilities in connection with the housing accommodation, because of a disability of:
 - a. That person;
 - b. A person residing in or intending to reside in the housing accommodation after it is sold, rented, or made available; or
 - c. Any person associated with that person.

(f) A person commits an offense if he or she:

- (1) Refuses to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability, if the modifications may be necessary to afford the person with a disability full use of the premises; except that, in the case of a rental, the landlord may, where reasonable to do so, condition

permission for modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

- (2) Refuses to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- (3) Fails to design or construct a covered multi-family dwelling for first occupancy after March 13, 1991, in such a manner as to have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site; or
- (4) Fails to design and construct a covered multi-family dwelling, for first occupancy after March 13, 1991, in such a manner that:
 - a. The public use and common use portions of the dwellings are readily accessible to and usable by a person with a disability;
 - b. All the doors designed to allow passage into and within all premises within the dwelling are sufficiently wide to allow passage by a person with a disability in a wheelchair; and
 - c. All dwellings contain the following features of adaptive design:
 - [1] An accessible route into and through the dwelling unit;
 - [2] Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - [3] Reinforcements in the bathroom walls to allow installation of grab bars; and
 - [4] Kitchens and bathrooms laid out in such a manner that an individual in a wheelchair can maneuver about the space.

It shall be an affirmative defense to prosecution for discrimination on the basis of disability under items (3) and (4) of this subsection for failing to design or construct a covered multi-family dwelling if the construction of the covered multi-family dwelling was in compliance with applicable state or federal laws relating to disability at the time of construction.

(g) A person commits an offense if he or she coerces, intimidates, threatens, or otherwise interferes with any person in the exercise or enjoyment of, or on account of

that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article.

(h) A person commits an offense if he or she retaliates against any person for making a complaint or testifying, assisting, or participating in any manner in a proceeding under this article.

(i) The provisions of this article do not apply to discrimination based on age.

(j) It shall be unlawful for a person to file a complaint in bad faith under this article. For purposes of this article, *bad faith* means wholly without foundation in law or fact, or done solely for the purpose of harassment.

Secs. 17-113--17-120. Reserved.

DIVISION 4. EXEMPTIONS

Sec. 17-121. Certain sales and rentals exempted.

(a) Except as provided in subsection (b) of this section, and in accordance with federal law:

- (1) The sale or rental of a single-family house sold or rented by an owner does not constitute an unlawful action under this article if the owner does not:
 - a. Own more than 3 single-family houses at any one time; or
 - b. Own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than 3 single family houses at any time; and
- (2) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than 4 families living independently of each other does not constitute an unlawful act under this article if the owner maintains and occupies one of the living quarters as the owner's residence.

(b) The exemption in item (1) of subsection (a) of this section applies only when there is one sale or rental in a 24-month period, if:

- (1) The owner was not the most recent resident of the house at the time of or prior to the sale or rental;

- (2) The private, bona fide individual owner has sold or rented the house without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and
- (3) The private, bona fide individual owner has sold or rented the dwelling without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of the federal Fair Housing Act.

Nothing in this section shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect transfer of title.

Sec. 17-122. Religious organizations and private clubs exemption.

(a) This article does not prohibit a religious organization or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from, in accordance with federal law:

- (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or
- (2) Giving preference to persons of the same religion, unless membership in the religion is restricted because of a protected characteristic.

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

Sec. 17-123. Housing for the elderly exempted.

The provisions of this article relating to familial status, ~~and age~~ and pregnancy do not apply to housing for older persons.

Sec. 17-124. 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 a protected characteristic.

Sec. 17-125. Effect on other law.

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

Sec. 17-126. Effect on deed restrictions and other laws.

This article shall not be interpreted to interfere with the enforcement of a lawful deed restriction or a limitation on the number of persons who may occupy a dwelling unit that is otherwise permissible under federal or state law.

Secs. 17-127--17-130. Reserved.

DIVISION 5. ADMINISTRATIVE/COURT ENFORCEMENT

Sec. 17-131. Complaints.

(a) Complaints may be filed not later than one year after an alleged discriminatory housing practice has occurred or terminated. Any aggrieved person may file a complaint. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person. The fair housing administrator may also file a complaint if he has reasonable cause to believe that a person has committed a discriminatory housing practice. If the complaint, other than a complaint referred pursuant to subsection (b) of this section, states a claim that is within the jurisdiction of a federal or state agency, the fair housing administrator may refer the complaint to the appropriate agency for further action and discontinue the investigation of the complaint.

(b) The fair housing administrator shall treat complaints referred by the Secretary of Housing and Urban Development or the Attorney General of the United States under the federal Fair Housing Act or by the Texas Workforce Commission, Civil Rights Division, under the Texas Fair Housing Act as though filed under subsection (a) above.

(c) A complaint must be made:

- (1) In writing; and
- (2) Under oath or affirmation by an aggrieved person, or by an individual on behalf of an aggrieved person, stating: "I declare under penalty of perjury that the foregoing is true and correct."

(d) Each complaint must contain substantially the following information:

- (1) The name and address of the respondent.

- (2) Name, address and signature of the complainant.
- (3) The name and address of the aggrieved person if different from the complainant.
- (4) Date of the occurrence or termination of the discriminatory housing practice and the date of filing of the complaint.
- (5) A description and address of the dwelling that is involved in a discriminatory housing practice.
- (6) A concise statement of the facts constituting the alleged discriminatory housing practice, including the basis for the discrimination (specifying the relevant protected characteristic).

(e) A complaint may be reasonably and fairly amended at any time.

(f) Except as to complaints that are referred to a federal or state agency, within 10 days after the filing of a complaint, the fair housing administrator shall:

- (1) Give the complainant, and the aggrieved person if different from the complainant, written notice that the complaint has been received; and
- (2) Advise the complainant, and aggrieved person if different from the complainant, of the time limits applicable to the complaint and of any rights and choice of forums under this article.

(g) Not later than the 10th day after the filing of the complaint, the fair housing administrator shall serve on each respondent:

- (1) A written notice that a complaint alleging the commission of a discriminatory housing practice has been filed against the respondent; identifying the alleged discriminatory housing practice; advising the respondent of the procedural rights and obligations of a respondent under this article, including the right to file a written, signed and verified informal answer to the complaint within 10 days after service of notice of the complaint; and setting out the rights and remedies of the aggrieved person under the article; and
- (2) A copy of the original complaint.

Sec. 17-132. Answer.

(a) Not later than the 10th day after receipt of the notice and copy of the complaint under subsection (g) of section 17-131 of this Code, a respondent shall file an answer to the complaint.

(b) An answer to a complaint:

- (1) Must be made in writing;
- (2) May include the assertion of any defense that might be available to a defendant in a court of law;
- (3) Must be signed and affirmed by the respondent; and
- (4) Must include an affirmation that states: "I declare under penalty of perjury that the foregoing is true and correct."

(c) An answer may be reasonably and fairly amended at any time before the fair housing administrator refers the matter to the city attorney for prosecution. The fair housing administrator shall furnish a copy of each amended complaint or answer, respectively, to each respondent or complainant, and to any aggrieved person who is not the complainant, as promptly as is practicable.

(d) The filing of an answer does not inhibit the investigation of a complaint.

Sec. 17-133. Investigation.

(a) If the federal government or the state of Texas has referred a complaint to the fair housing office or has deferred jurisdiction over the subject matter of a complaint to the fair housing office, the fair housing office shall initiate an investigation of the allegations set forth in the complaint.

(b) The fair housing office shall investigate all complaints within 30 days after a complaint is filed, and, except as provided by subsection (c) of this section, shall complete an investigation within 100 days after the date of filing of the complaint, and shall dispose of all administrative proceedings related to the investigation not later than one year after the date the complaint is filed.

(c) The fair housing administrator shall seek the voluntary cooperation of any person to:

- (1) Obtain access to premises, records, documents, individuals, and any other possible source of information;

- (2) Examine, record, and copy necessary materials; and
- (3) Take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.

(d) If the fair housing office is unable to complete an investigation within the time periods prescribed by subsection (b) of this section the fair housing administrator shall notify the complainant and the aggrieved person, if different from the complainant, and the respondent, in writing, of the reasons for the delay.

(e) The fair housing administrator shall assist in the investigation of complaints submitted to the fair housing office, and in preparing reports required under this article.

(f) Upon completion of an investigation where the fair housing administrator has made a determination that a discriminatory housing practice has in fact occurred, if the fair housing administrator is unable to secure from the respondent an acceptable conciliation agreement, then the fair housing administrator shall refer matters within the jurisdiction of HUD to HUD and refer all other matters to the city attorney for appropriate action in accordance with this article.

(g) The fair housing administrator and the city attorney are authorized and encouraged to cooperate with the Secretary of Housing and Urban Development pursuant to the provisions of Title VIII of the Federal Fair Housing Act and may render such service to the secretary as they shall deem appropriate to further the policies of this article and may accept reimbursement from the Secretary for services rendered to assist in carrying out the provisions of the above cited federal law.

(h) An investigation shall remain open until a reasonable cause determination is made under section 17-137 of this Code, a conciliation agreement is executed and approved under section 17-135 of this Code, or the complaint is dismissed under section 17-139 of this Code. Unless impracticable to do so, the fair housing administrator shall complete the investigation within the 100-day period prescribed in subsection (b) of this section.

(i) This section does not limit the authority of the fair housing administrator to conduct such other investigations or to use such other lawful enforcement procedures as the fair housing administrator considers necessary to enforce this article.

(j) The fair housing administrator shall prepare a final investigative report showing:

- (1) The names of and dates of contact with witnesses;
- (2) A summary, including dates, of correspondence and other contacts with the aggrieved person and the respondent;

- (3) A summary description of other pertinent records;
- (4) A summary of witness statements; and
- (5) Answers to interrogatories, if any.

Sec. 17-134. Additional or substitute respondent.

(a) The fair housing administrator may join a person not named in the complaint as an additional or substitute respondent if, in the course of the investigation, the fair housing administrator determines that the person should be accused of a discriminatory housing practice. Within 10 days after the fair housing administrator's determination, any additional or substitute respondent shall be served with notice and a copy of the complaint, as provided in subsection (g) of section 17-131 of this Code.

(b) In addition to the information required in the notice under subsection (c) of section 17-91 of this Code the fair housing administrator shall include in the notice to a respondent joined under this section an explanation of the basis for the determination that the person is properly joined as a respondent. The added respondent shall be given an opportunity to file an answer to the complaint within 10 days after receipt of the notice, as provided in section 17-132 of this Code.

Sec. 17-135. Conciliation.

(a) The fair housing administrator shall, during the period beginning with the filing of a complaint and ending with issuance of charge under section 17-138 of this Code, the dismissal of complaint under section 17-139 of this Code, or the dismissal of a criminal action in municipal court, after consulting with the city attorney, where feasible, engage in conciliation with respect to the complaint. In conciliating a complaint, the administrator shall try to achieve a just resolution and obtain assurances that the respondent will satisfactorily remedy any violation of the aggrieved person's rights and take action to assure the elimination of both present and future discriminatory housing practices.

(b) The fair housing administrator shall conduct a conciliation negotiation of any complaint received by the fair housing office, provided that all final conciliation agreements shall be submitted to the city attorney for review and approval.

(c) If a conciliation agreement is executed under this section, a party to the agreement may not be prosecuted in municipal court, nor may the fair housing administrator issue a charge against a party, for the discriminatory housing practice specified in the conciliation agreement under this section unless the fair housing administrator determines that the agreement has been violated and notifies the city attorney in writing of the violation.

(d) A conciliation agreement must be in writing in the form approved by the city attorney and must be signed and verified by the respondent, the complainant, and the aggrieved person if different from the complainant, subject to approval of the fair housing administrator who shall indicate approval by signing the agreement. A conciliation agreement is deemed executed upon its signing and verification by all parties to the agreement.

(e) A conciliation agreement executed under this section must contain:

- (1) Identification of each discriminatory housing practice and each corresponding respondent that gives rise to the conciliation agreement under this section that the parties agree to make subject to the limitation on prosecution in subsection (c) of this section;
- (2) An identification of the housing accommodation subject to the conciliation agreement;
- (3) A statement that each party entering into the conciliation agreement agrees not to violate this article or the conciliation agreement; and
- (4) Any other term or condition agreed to by the parties.

(f) The conciliation agreement may provide for binding arbitration or other method of dispute resolution. Dispute resolution resulting from a conciliation agreement may authorize appropriate relief, including monetary relief (in the form of damages, including humiliation and embarrassment, and attorney fees) and equitable relief (such as access to the housing accommodation at issue, or to a comparable housing accommodation, and provision of services at facilities in connection with a housing accommodation).

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

(h) After completion of the investigation, the fair housing administrator shall make available to the aggrieved person and the respondent, at any time, information derived from the investigation as well as the final investigative report.

(i) A conciliation agreement may be made public, unless the aggrieved person and the respondent request non-disclosure and the fair housing administrator determines that disclosure is not required to further the purposes of this article. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the fair housing administrator may publish tabulated descriptions of the results of all conciliation efforts.

(j) If the aggrieved person brings a civil action under a local, state, or federal law seeking relief for the alleged discriminatory housing practice and the trial in the action begins, the fair housing administrator shall terminate efforts to conciliate the complaint unless the court specifically requests assistance from the fair housing administrator. The fair housing administrator may also terminate efforts to conciliate the complaint if:

- (1) The respondent fails or refuses to confer with the fair housing administrator;
- (2) The aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or
- (3) The fair housing administrator finds, for any reason, that voluntary agreement is not likely to result.

Sec. 17-136. Violation of conciliation agreement.

(a) A person commits an offense if, after the person executes a conciliation agreement under section 17-135 of this Code, he or she violates any term or condition contained in the agreement.

(b) It is no defense to criminal prosecution in municipal court under this section that, with respect to a discriminatory housing practice that gave rise to the conciliation agreement under section 17-135 of this Code:

- (1) The respondent did not commit the discriminatory housing practice; or
- (2) The fair housing administrator did not have probable cause to believe the discriminatory housing practice was committed.

(c) If the fair housing administrator determines that a conciliation agreement has been violated, the fair housing administrator shall give written notice to all parties subject to the agreement.

(d) When the fair housing administrator has reasonable cause to believe that a respondent has breached a conciliation agreement, the fair housing administrator shall refer the matter to the city attorney for appropriate action in accordance with this article.

Sec. 17-137. Reasonable cause determination.

(a) A panel consisting of a fair housing investigator representative, the city attorney, and the fair housing administrator, shall determine based on all the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.

(b) The panel shall make the determination under subsection (a) of this section not later than the 100th day after the date a complaint is filed unless:

- (1) It is impracticable to make the determination; or
- (2) The city attorney has approved a conciliation agreement relating to the complaint.

(c) If it is impracticable to make the determination within the time period provided by subsection (b) of this section, the panel shall notify the complainant, and the aggrieved person if different from the complainant, and the respondent, in writing, of the reasons for the delay.

(d) If the city attorney determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred, the city attorney shall issue to the fair housing administrator a short and plain written statement of the facts upon which the city attorney based the no reasonable cause determination. If the city attorney issues such a statement, the panel shall automatically determine that no reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur.

(e) If the panel determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the city attorney shall proceed with appropriate enforcement action.

Sec. 17-138. Charge.

(a) A charge issued under section 17-137 of this Code:

- (1) Must consist of a short and plain statement of the facts upon which the fair housing administrator and the city attorney have found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
- (2) Must be based on the final investigative report; and
- (3) Need not be limited to the facts or grounds alleged in the complaint.

(b) Not later than the twentieth day after the fair housing administrator issues a charge, the fair housing staff shall send a copy of the charge to:

- (1) Each respondent; and
- (2) Each aggrieved person on whose behalf the complaint was filed.

Sec. 17-139. Dismissal.

(a) A complaint shall be dismissed by the fair housing administrator during the investigation and prior to referral to the city attorney when the fair housing administrator determines that:

- (1) The complaint was not timely filed;
- (2) The location of the alleged discriminatory housing practice is not within the city's jurisdiction;
- (3) The alleged discriminatory housing practice is not a violation of this article;
- (4) The complainant, or the aggrieved person if different from the complainant, refuses to cooperate with the fair housing administrator in the investigation of the complaint or enforcement of the executed conciliation agreement; or
- (5) The complainant, or the aggrieved person if different from the complainant, cannot be located after the fair housing administrator has performed a reasonable search.

(b) A criminal action may be dismissed by a municipal judge upon motion of the city attorney, if after the city attorney files the action charging a respondent with a discriminatory housing practice, a conciliation agreement is executed under section 17-135 of this Code before the trial begins in municipal court.

(c) The fair housing administrator shall notify the complainant, the aggrieved person if different from the complainant, and the respondent of the dismissal of the complaint, including a written statement of facts, and may make public disclosure of the dismissal unless the respondent requests that no public disclosure be made.

Sec. 17-140. Criminal penalties for violation.

(a) A person who violates a provision of this chapter commits a criminal offense, a Class C misdemeanor. A person is guilty of a separate criminal offense for each day or part of a day during which a violation is committed, continued, or permitted.

(b) A criminal offense under this article is punishable in municipal court by a fine of not less than \$250.00 nor more than \$500.00. In no event shall the aggregate of all fines relating to the same complaint filed by a complainant exceed \$5000.00.

(c) A person prosecuted for a violation of this article shall be entitled to a trial by jury in municipal court.

EXHIBIT B

Sec. 15-17. Equal employment opportunity clause.

All contracts entered into by the city involving the expenditure of \$10,000.00 or more of city funds ("nonexempt city contracts") shall incorporate an equal employment opportunity clause, which shall read as follows:

"EQUAL EMPLOYMENT OPPORTUNITY

- "1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, or any other legally protected characteristic. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, or any other legally protected characteristic. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier, or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the city setting forth the provisions of this equal employment opportunity clause.
- "2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to sex, race, color, ethnicity, national origin, age, familial status, marital status, military status, religion, disability, sexual orientation, genetic information, gender identity, pregnancy, or any other legally protected characteristic.
- "3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the said labor union or workers' representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, as amended or superseded, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- "4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246, as amended or superseded, and the rules, regulations, and relevant orders of the secretary of labor or other federal agency responsible for enforcement of the equal opportunity and affirmative action provisions applicable and will likewise furnish all information and reports

required by the mayor and/or contract administrator(s) for purposes of investigation to ascertain and effect compliance with this program.

- "5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, as amended or superseded, and by the rules, regulations, and orders of the secretary of labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate city and federal officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and workforce statistics of the contractor, subcontractor, vendor, supplier, or lessee.
- "6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's noncompliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further city contracts in accordance with procedures provided in Executive Order No. 11246, as amended or superseded, and such other sanctions may be imposed and remedies invoked as provided in the said executive order, or by rule, regulation, or order of the secretary of labor, or as may otherwise be provided by law.
- "7. The contractor shall include the provisions of paragraphs 1—8 of this equal employment opportunity clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the secretary of labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended or superseded, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- "8. The contractor shall file and shall cause each of his subcontractors, if any, to file compliance reports with the city in the form and to the extent as may be prescribed by the mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor."