

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CHAPTER 17, “HUMAN RELATIONS” OF THE CODE OF THE CITY OF FORT WORTH (2015), AS AMENDED, TO REFLECT REORGANIZATION OF CERTAIN FORMER HUMAN RELATIONS ADMINISTRATOR FUNCTIONS AS PART OF THE NEWLY CREATED DIVERSITY AND INCLUSION DEPARTMENT UNDER THE AUSPICES OF THE CITY MANAGER AND CITY COUNCIL; TO REVISE THE PROCESS FOR INVESTIGATING COMPLAINTS, INCLUDING EXPLICIT SUBPOENA AND DISCOVERY AUTHORITY, CLARIFIED DEADLINES AND APPEAL PROCEDURES, AND PROCESSES FOR ACCESSING COMPLAINT INFORMATION; TO CLARIFY THE TERMS OF APPOINTMENT OF MEMBERS TO THE HUMAN RELATIONS COMMISSION; TO UPDATE REFERENCES TO OUTSIDE LAWS RELATED TO LEGAL AUTHORITIES AND THRESHOLDS; AND TO MAKE MINOR CONFORMING CHANGES AND CORRECTIONS, INCLUDING RENUMBERING AND REORDERING CERTAIN PROVISIONS AND SUBSECTIONS; PROVIDING FOR INCREASED CIVIL PENALTY AMOUNTS; MAKING THIS ORDINANCE CUMULATIVE OF PRIOR ORDINANCES AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A SAVING CLAUSE; DIRECTING PUBLICATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, Chapter 17 of the Code of the City of Fort Worth, entitled “Human Relations” sets forth the public policy of the City of Fort Worth that all of its residents and persons subject to its jurisdiction should enjoy equal freedom to pursue their aspirations and that discrimination against any individual or group because of race, creed, color, sex, religion, disability, age, national origin, familial status, sexual orientation, transgender, gender identity or gender expression is detrimental to the peace, progress and welfare of the city; and

**WHEREAS**, the City of Fort Worth has sought to further fulfill this public policy by the establishment of a new department, the Department of Diversity and Inclusion, to promote the values of diversity, equity, inclusion, and access as they apply to the City's employee and labor relations, its provision of municipal services and capital investments, and the quality of life that all Fort Worth residents experience; and

**WHEREAS**, the City Council of the City of Fort Worth (“City Council”) desires to amend Chapter 17 “Human Relations”, Article II “Human Relations Commission” and Article III “Discrimination” to reflect administrative and organizational updates, including provisions related to the creation of the Diversity and Inclusion Department; regulatory edits, including provisions to align personnel policies and procedures with City of Fort Worth practices and policies; policy edits, updates and additions, including provisions to aid in the investigation of complaints of discrimination in Public Accommodations, Employment and Housing; conforming edits, including provisions to align investigative methods and procedures with federal processing criteria and current vernacular; non-substantive corrections, including correction to grammar, punctuation and

sentence structure; and to provide updates to the Fair Housing civil penalty amounts to be consistent with the law.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS THAT:**

### **SECTION 1.**

Chapter 17, “Human Relations,” of the Code of the City of Fort Worth (2015), as previously amended (collectively, the “City Code”), is hereby revised and amended as set forth in Exhibit “A” attached hereto and incorporated herein for all purposes.

### **SECTION 2.**

The civil penalties prescribed in Subsection (d)(2) (renumbered from Subsection (c)(2)) of Section 17-98 of Chapter 17, “Human Relations,” of the Code of the City of Fort Worth (2015), as previously amended (collectively, the “City Code”), are hereby increased to read as follows:

- (2) Civil penalties to the city for vindication of the public interest in an amount that does not exceed:
- a. ~~Eleven thousand dollars (\$11,000)~~ \$19,787 if the respondent has not been adjudged by a court to have committed a prior discriminatory housing practice;
  - b. Except as provided by subsection ~~(e)~~(d)(2)d. below, ~~\$27,000~~ \$49,467 if the respondent has been adjudged by a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;
  - c. Except as provided by subsection ~~(e)~~(d)(2)d. below ~~\$55,000~~ \$98,935 if the respondent has been adjudged by a court to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.
  - d. If the acts constituting the discriminatory housing practice that is the subject of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in subsections (b) and (c) above may be imposed without regard to the period of time within which any other discriminatory housing practice occurred;.

### **SECTION 3.**

This Ordinance shall be cumulative of all ordinances of the City, except where the provisions of this Ordinance are in direct conflict with the provisions of such other ordinances, in which case the conflicting provisions of such other ordinances are hereby repealed.

**SECTION 4.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance or attached exhibit shall be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance or any remaining phrases, clauses, sentences, paragraphs and sections in the attached exhibit, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 5.**

All rights, remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of the Code of Fort Worth which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 6.**

The City Secretary of the City of Fort Worth, Texas is hereby directed to publish the caption and penalty of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013 of the Texas Local Government Code.

**SECTION 7.**

This Ordinance shall be in full force and effect following its adoption and publication as required by law.

**AND IT IS SO ORDAINED.**

ADOPTED: \_\_\_\_\_

EFFECTIVE: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_

Assistant City Attorney

M&C: \_\_\_\_\_

## ARTICLE I: IN GENERAL

### § 17-1. – PUBLIC POLICY DECLARED.

It is hereby declared to be public policy of the city that all of its residents and persons subject to its jurisdiction should enjoy equal freedom to pursue their aspirations and that discrimination against any individual or group because of race, creed, color, sex, religion, disability, age, national origin, familial status, sexual orientation, transgender, gender identity or gender expression is detrimental to the peace, progress and welfare of the city.

*(Code 1964, § 2-53; Ord. No. 5802, § 1; Ord. No. 6447, § 1, 3-1-71; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 1, 10-15-01; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

§§ 17-2---17-15 RESERVED.

## ARTICLE II: HUMAN RELATIONS COMMISSION

### § 17-16. – CREATED; COMPENSATION OF MEMBERS.

The city council shall appoint citizens to a commission on human relations, which shall be known as the Fort Worth human relations commission. The commission shall be composed of 11 members, who shall be appointed by the city council on an at-large basis and who shall serve in places numbered one through 11. Each member of the commission shall be a resident of the city. As nearly as is reasonably possible, the membership shall be fairly representative of the population of the city. The members of the human relations commission shall serve without compensation.

*(Code 1964, § 2-54; Ord. No. 5802, § 1; Ord. No. 5815, § 1; Ord. No. 5879, § 1; Ord. No. 9254, § 1, 11-20-84; Ord. No. 11598, § 1, 6-21-94; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

### § 17-17. – TERMS OF MEMBERS; FILLING VACANCIES.

Each member of the human relations commission shall be appointed to serve a term of two years; ~~provided, however, that members appointed to odd-numbered places shall serve terms which expire October 1, 1985, and members appointed to even-numbered places shall serve terms which expire October 1, 1986. Thereafter, all members appointed sh\_ all serve two-year terms. No member shall serve more than three consecutive two-year terms., and the terms of current members of the commission shall be counted toward the limit on the~~

~~number of terms to be served.~~ If any member of the commission resigns or terminates his or her service for any reason before his or her term has expired, the city council shall appoint a qualified successor to fill any vacancy which may result, to serve for the remainder of the term.

*(Code 1964, § 2-55; Ord. No. 5802, § 1; Ord. No. 5815, § 1; Ord. No. 5879, § 1; Ord. No. 9254, § 2, 11-20-84; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-18. – POWERS AND DUTIES.**

The human relations commission shall have the following duties:

- (a) To advise and consult with the city council and the city manager on matters involving discrimination based on age, race, color, sex, religion, disability, national origin, familial status, sexual orientation, transgender, gender identity or gender expression.
- (b) To recommend to the city council and the city manager measures designed to eliminate prejudice and discrimination;
- (c) To promote and encourage communications between and cooperation of all groups interested in bettering community relations.

*(Code 1964, § 2-56; Ord. No. 5802, § 1; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 § 1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-19. – ORGANIZATION.**

Members of the human relations commission shall be sworn to uphold the Constitution and the laws of the United States and the state and the Charter of the city. Immediately following their appointment and annually thereafter, the members of the commission shall meet to elect a chairman, ~~and vice-chairman, and secretary.~~ ~~The commission shall adopt rules and regulations, subject to the approval of the city council, pertaining to the performance of its duties and the time and frequency of its meetings.~~

*(Code 1964, § 2-57; Ord. No. 5802, § 1; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-20. – ~~APPOINTMENT OF EMPLOYEES.~~**

(a) ~~Administrator~~Director.

- (1) ~~The human relations commission shall have the power to appoint an administrator, whose appointment shall be subject to the review of the city~~

~~manager and the approval of the city council. During the absence of an administrator, the city manager shall appoint an acting administrator to serve until the human relations commission appoints a new administrator.~~

~~(2) The salary of the administrator shall be set by the human relations commission in accordance with the classification and compensation plan for city employees and shall be approved by the city manager and by the city council.~~

~~(3)(1) The administrator-director of the diversity and inclusion department shall receive administrative supervision and support from the city manager or his or her designee. The administrator-director shall carry out the policy directives of the human relations commission and support the human relations commission in the performance of their duties.~~

~~(4)(2) The performance of the administrator-director shall be evaluated, in consultation with the human relations commission, annually by the chair of the human relations commission, three (3) members of the human relations commission appointed by the chair and the city manager or his or her designee.~~

~~(5) Either the human relations commission or the city manager may terminate the administrator with the concurrence of the other. In the event the human relations commission and the city manager do not agree on the termination of the administrator, the city council will determine whether termination is warranted.~~

*(b) Staff.*

(1) The administrator-director shall supervise all other staff, who shall be governed by the personnel rules of the city and the classification and compensation plan for the city.

(2) The number of staff members shall be determined by the approved budget.

*(Code 1964, § 2-58; Ord. No. 5960, § 1, 6-10-68; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-21. – FUNDING.**

(a) The director, in accordance with budget and city manager directives, will prepare and present the annual budget to for the human relations commission for input. The annual budget and its staff supervised by its administrator shall be subject to the recommendation of the human relations commission, and shall be reviewed by the city manager and approved by the city council.

(b) The human relations commission shall not make any expenditure of any money, nor incur any liability during any current year, beyond the amount of money appropriated or set apart in the annual budget to the human relations commission as authorized and approved by the city council.

*(Code 1964, § 2-59; Ord. No. 5960, § 1, 6-10-68; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§§ 17-22. - SUBPOENAS: DISCOVERY.**

The director, or his or her designee, may issue subpoenas and order discovery (e.g., requests for productions, requests for admissions, interrogatories, and depositions) in aid of investigations and hearings under this Chapter to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in District Court.

*(Code 1964, § 2-59; Ord. No. 5960, § 1, 6-10-68; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§§ 17-23---17-35 RESERVED.**

## **ARTICLE III: DISCRIMINATION**

### **DIVISION 1: GENERALLY**

**§§ 17-36---17-45 RESERVED.**

### **DIVISION 2. - PLACES OF PUBLIC ACCOMMODATION**

**§ 17-46. - DEFINITIONS.**

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

**AGE.** In the context of unlawful discrimination on the basis of age, the prohibitions in this division shall be limited to individuals who are at least ~~shall mean over the age of 40 years of age.~~ sixty-two (62) years.

**AGENCY.** The diversity and inclusion department's staff supervised by its director.

**BAR AND LOUNGE.** Every bar, lounge or tavern licensed by the state to serve alcoholic beverages of any content, including wines and beer, for consumption on the premises, other than restaurants and nightclubs as defined in this section.

**ADMINISTRATOR-DIRECTOR.** The individual designated by the city manager as the administrator-director of the diversity and inclusion department, or the director's designee. ~~human relations commission.~~

**DISABILITY.** Has the same definition as it has in § 17-66 of this chapter.

**DISCRIMINATION.** Disparate treatment or treatment resulting in disparate effect, which shall include but not be limited to withholding or denying of entry, services or facilities, or any other advantage offered to the general public by a place of public accommodation.

**GENDER EXPRESSION.** A person's external characteristics and behaviors including, but not limited to, dress, grooming, mannerisms, speech patterns and social interactions that are socially identified with a particular gender.

**GENDER IDENTITY.** A person's innate, deeply felt sense of gender, which may or may not correspond to the person's body or sex listed on their original birth certificate.

**HOTEL AND MOTEL.** Every establishment offering lodging to transient guests for compensation, but such terms shall not apply to any such establishment if the majority of occupants are permanent residents and have their fixed place of domicile therein.

**NIGHTCLUB.** Nightclubs, cabarets or coffeehouses offering facilities for public entertainment, social recreation or group amusement or relaxation, and also offering for sale any beverage, whether alcoholic or nonalcoholic.

**PLACES OF PUBLIC ACCOMMODATION.** Every business within the city, whether wholesale or retail, which is open to the general public and offers for compensation any product, service or facility. The term "place of public accommodation" shall include all hotels, motels, restaurants, bars, lounges, nightclubs or cabarets where food or beverages are sold or offered for sale, theaters, retail houses, washaterias, bowling alleys, skating rinks, golf courses, all public conveyances, as well as the stations or terminals thereof, kindergartens, day care centers and nursery schools.

**RESTAURANT.** Every cafe, cafeteria, coffee shop, sandwich shop, parlor or luncheonette which offers food or beverages for purchase and consumption on

the premises, but shall not include places at which alcoholic beverages are sold other than as an accompaniment to meals.

**SEXUAL ORIENTATION.** Heterosexuality, homosexuality or bisexuality or being identified with such orientation.

**THEATER.** Every place, whether indoors or out-of-doors, at which any theatrical performance, moving picture show, musical concert, circus or carnival is offered for consumption.

**TRANSGENDER.** A person who experiences and/or expresses their gender differently from conventional or cultural expectations including, but not limited to those who express a gender that does not match the sex listed on their original birth certificate or who physically alter their sex.

*(Code 1964, §§ 13A-11, 13A-13; Ord. No. 6205, §§ 2, 3, 11-24-69; Ord. No. 6505, §§ 1, 2, 6-28-71; Ord. No. 7906, §§ 1, 3, 5-1-79; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2, 10-15-01; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

*Cross reference:*

*Definitions and rules of construction generally, § 1-2.*

## **§ 17-47. - EXEMPTIONS**

This division shall not apply to any hotel, motel, restaurant, bar, lounge, nightclub, cabaret or theater operated by a bona fide private club when the accommodations, advantages, facilities and services are restricted to the members of such club and their guests; nor to any bona fide social, fraternal, educational, civic, political 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.

*(Code 1964, § 13A-11; Ord. No. 6205, § 3, 11-24-69; Ord. No. 6505, § 2, 6-28-71; Ord. No. 7906, § 1, 5-1-79; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2, 10-15-01; Ord. No. 19374-09-2010, § 1,(Exh. A) 9-28-10, eff. 10-1-2010)*

## **§ 17-48. – UNLAWFUL ACTS.**

(a) It shall be unlawful for any person or any employee or agent thereof:

- (1) To discriminate against, withhold from or deny any person, because of race, color, religion, sex, national origin, disability, age, sexual

orientation, transgender, gender identity or gender expression any of the advantages, facilities or services offered to the general public by a place of public accommodation;

(2) To refuse admission to or to expel from any place of public accommodation any person for alleged noncompliance with a dress code, personal conduct restriction, or identification requirement unless such place of public accommodation has previously posted a notice specifying the details of such code, restriction or requirement in a conspicuous, clearly visible location at each public entrance to the place of public accommodation; provided, however, it shall be an exception to this requirement that such refusal or expulsion was required by law.

(b) It shall not be unlawful for any person or any employee or agent thereof to deny any person entry to any restroom, shower room, bathhouse or similar facility which has been designated for use by persons of the opposite sex.

(c) It shall be a defense to prosecution for discrimination on the basis of disability under this division that the alleged discrimination resulted from a condition or structural feature for which a variance had been received from the City of Fort Worth.

*(Code 1964, § 13A-12; Ord. No. 6205, § 1, 11-24-69; Ord. No. 7906, § 2, 5-1-79; Ord. No. 7962, § 1, 8-28-79; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2, 10-15-01; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-49. – INVESTIGATION OF ALLEGED VIOLATIONS; FILING COMPLAINT.**

(a) It is the intention of the city council that the ~~human relations commission~~ diversity and inclusion department's staff, supervised by its ~~administrator~~ director, shall be the agency (the "agency") to receive and investigate all complaints of alleged violations of this division, ~~and that such agency shall attempt to resolve such complaints by informal methods of conference, conciliation and persuasion. If the agency cannot resolve an alleged violation of this division, the administrator shall be authorized to request that a complaint be filed in municipal court.~~

(b) A complaint under this division must be brought within 90 calendar days of the occurrence of the alleged discriminatory act. Any such complaint shall be in writing, under oath or affirmation, and shall contain such information and be in such form as the agency requires.

- (c) Upon filing of said complaint the director or his or her designee, not later than the 10<sup>th</sup> day after the complaint is received, will notify parties to the complaint that a complaint has been filed
- (d) The agency shall attempt to resolve such complaints by informal methods of conference, conciliation and persuasion. An investigation shall remain open until as provided in this division, a conciliation agreement is executed and approved, a determination as to reasonable cause is made or the complaint is dismissed.
- (e) If, upon finding of reasonable cause to believe that a violation of this division has occurred, and the agency cannot resolve the alleged violation through informal methods of conference, conciliation and persuasion, of this division, the administrator/director of the agency shall be authorized to request refer that the a complaint to the city attorney requesting that a complaint be filed thereon in municipal court. ~~upon finding reasonable cause to believe that a violation has occurred.~~
- ~~(a)~~(f) If, following the execution of a written conciliation agreement between the agency and a party charged with a violation under this division, the administrator/director of the agency receives sufficient evidence that gives him or her probable cause to believe that the party who has executed a conciliation agreement has violated the terms of this division after the conciliation agreement had been executed, the administrator/director of the agency shall be authorized to request that a complaint be filed thereon in municipal court.

**§ 17-50. – PROHIBITIONS AND REQUIREMENTS WITH RESPECT TO DISCLOSURE OF INFORMATION**

- (a) Nothing said or done, or documents produced, in the course of conciliation efforts under this division may be made public or used as evidence in a subsequent proceeding without the written consent of the persons involved.
- (b) Notwithstanding paragraph (a), the director shall make available to the aggrieved person and the respondent, at any time, upon request following the completion of the investigation, information derived from an investigation and any final investigative report relating to that investigation.

*(Code 1964, § 13A-14; Ord. No. 6205, § 4, 11-24-69; Ord. No. 7962, § 2, 8-28-79; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2, 10-15-01; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-51. –DISMISSAL AND APPEAL**

- (a) If after investigation there is a determination that there is no reasonable cause to believe that an unfair practice under this Division has been, is being or is about to

be committed, the complaint shall be dismissed and parties to the complaint shall be notified of this action. If a complainant expresses a desire to file an appeal, the director must allow the complainant reasonable access to review, but not copy, non-confidential materials in the case file. The determination of what is considered confidential shall be made by the director or director's designee.

(b) The complainant may appeal a no reasonable cause determination to the Commission within 20 days of the date the determination is signed by the director by filing a written statement of appeal with the director.

(1) The director must receive the written statement within 20 days of the date that the decision was issued. If the director does not receive the written appeal within 20 days the case will be dismissed and the same shall be entered on the records of the department.

(2) The only grounds for appeal of a no reasonable cause determination is that the evidence in the case file does not support the no reasonable cause decision. The appeal letter must contain a written statement describing the reasons for the appeal, a description of the evidence in the case file that the complainant believes the commission should consider, and why consideration of that evidence should have resulted in a reasonable cause determination.

(c) The director shall promptly notify the commission and respondent of the appeal. Within 10 days after being notified of the appeal, the respondent can file a statement of why the no reasonable cause determination should be upheld. The respondent will not be granted access to review the materials in the case file.

(d) The commission can only consider whether the evidence in the case file supports the director's finding. The commission does not re-investigate the complaint or look at new information.

(e) The commission shall promptly consider and act upon such appeal by (1) affirming the director's determination; (2) reversing the decision and directing the director to enter a cause determination; or (3) if the commission believes the director should investigate further, remand the complaint to the director with a request for specific further investigation.

(f) In the event no appeal is taken, or such appeal results in affirmance or if the Commission has not decided the appeal within 60 days from the date the appeal statement is filed, the determination of the director shall be final and the complaint deemed dismissed and the same shall be entered on the records of the Department. Any party aggrieved by the final dismissal may appeal the order to an appropriate court.

*Code 1964, § 13A-14; Ord. No. 6205, § 4, 11-24-69; Ord. No. 7962, § 2, 8-28-79; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2,*

10-15-01; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-5052. – EFFECT OF PROVISIONS ON CIVIL REMEDIES.**

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

(Code 1964, § 13A-15; Ord. No. 6205, § 5, 11-24-69; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2, 10-15-01; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-5153. – PENALTY.**

Any person violating any provision of this division shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in §1-6 of this Code.

(Code 1964, § 13A-16; Ord. No. 6205, § 7, 11-24-69; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 14832, § 2, 10-15-01; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§§ 17-5254---17-65-64 RESERVED**

**DIVISION 3. - EMPLOYMENT PRACTICES**

**§ 17-65. - DECLARATION OF POLICY.**

- (a) Pursuant to the authority stated in Texas Labor Code Section 21.151, these ordinances related to fair employment are hereby adopted.
- (b) It is hereby declared to be the policy of the city to bring about, through fair, orderly and lawful procedures, the opportunity for each person to obtain employment without regard to his or her race, color, religion, national origin, sex, disability, age, sexual orientation, transgender, gender identity or gender expression.
- (c) It is further declared that this policy is grounded upon a recognition of the right of individual to work to earn wages and obtain a share of the wealth of this city through gainful employment of his or her own choice without regard to race, color, religion, national origin, sex, disability, age, sexual orientation, transgender, gender identity or gender expression; and further, that the denial of such rights through considerations based upon race, color, religion, national origin, sex, disability, age, sexual orientation, transgender, gender identity or gender expression is detrimental to the health, safety and welfare of the inhabitants of the city and constitutes an unjust denial or deprivation of

such inalienable right which is within the power and the proper responsibility of government to prevent.

(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

## **§ 17-66. - DEFINITIONS.**

Whenever the following terms are used in this division, they shall have the meanings respectively ascribed to them in this section:

**AGE.** In the context of unlawful discrimination, the prohibitions in this division shall be limited to individuals who are at least 40 years of age.

**AGENCY.** The Fort Worth human relations commission diversity and inclusion department's staff supervised by its administrator director.

### **AUXILIARY AIDS AND SERVICES.**

- (1) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- (2) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- (3) Acquisition or modification of equipment or devices; and
- (4) Other similar services and actions.

**COMMISSION.** The Fort Worth human relations commission.

**COVERED ENTITY.** An employer, employment agency, labor organization, or joint labor-management committee.

**ADMINISTRATOR DIRECTOR.** The individual designated by the city manager as the administrator director of the diversity and inclusion department, or the director's designee human relations commission.

**DIRECT THREAT.** A significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

**DISABILITY.** With respect to an individual:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

**EMPLOYEE.** An individual employed by an employer.

**EMPLOYER.**

(1) *Generally.* In general, the term **EMPLOYER** means a person engaged in an industry affecting commerce 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 any agent of such person.

(2) *Exceptions.* The term **EMPLOYER** does not include:

- a. The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
- b. A bona fide private membership club (other than a labor organization) that is exempt from taxation under § 501(c) of Title 26.

**GENDER EXPRESSION.** A person's external characteristics and behaviors including, but not limited to, dress, grooming, mannerisms, speech patterns and social interactions that are socially identified with a particular gender.

**GENDER IDENTITY.** A person's innate, deeply felt sense of gender, which may or may not correspond to the person's body or sex listed on their original birth certificate.

**ILLEGAL USE OF DRUGS.**

(1) *Generally.* In general, the term **ILLEGAL USE OF DRUGS** means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. § 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act [21 U.S.C.A. §§ 801 et seq.] or other provisions of federal law.

- (2) *Drugs*. The term **DRUG** means a controlled substance, as defined in schedules I through V of § 202 of the Controlled Substances Act [21 U.S.C.A. § 812].

**PERSON, ETC.** The terms **PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, COMMERCE** and **INDUSTRY AFFECTING COMMERCE**, shall have the same meaning given such terms in 42 U.S.C. § 2000e, or its successor statute.

**QUALIFIED INDIVIDUAL WITH A DISABILITY.** An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this division, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

**REASONABLE ACCOMMODATION.** May include:

- (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

**SEXUAL ORIENTATION.** Heterosexuality, homosexuality or bisexuality or being identified with such orientation.

**TRANSGENDER.** A person who experiences and/or expresses their gender differently from conventional or cultural expectations including, but not limited to those who express a gender that does not match the sex listed on their original birth certificate or who physically alter their sex.

**UNDUE HARDSHIP.**

- (1) In general the term **UNDUE HARDSHIP** means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subsection (2) of this definition.

- (2) Factors to be considered in determining whether an accommodation would impose an undue hardship on a covered entity, ~~factors to be considered~~ include:
- a. The nature and cost of the accommodation needed under this chapter;
  - b. The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
  - c. The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
  - d. The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

*(Code 1964, § 13A-21; Ord. No. 7278, § 1, 12-22-75; Ord. No. 7400, § 1, 8-9-76; Ord. No. 12570, § 1, 7-9-96; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

## **§ 17-67. - DISCRIMINATION PROHIBITED.**

- (a) It shall be unlawful for any covered entity to discriminate against any individual because of age, race, color, religion, sex, disability, national origin, sexual orientation, transgender, gender identity or gender expression in any manner involving employment, including the recruitment of applicants for employment, advertising, hiring, layoff, recall, termination of employment, promotion, demotion, transfer, compensation, employment classification, training and selection for training or any other terms, conditions or privileges of employment.
- (b) No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.
- (c) As used in this section, the term **DISCRIMINATE** includes:

- (1) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;
- (2) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this division (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);
- (3) Utilizing standards, criteria, or methods of administration:
  - a. That have the effect of discrimination on the basis of disability; or
  - b. That perpetuate the discrimination of others who are subject to common administrative control.
- (4) Excluding, or otherwise denying, equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.
- (5)
  - a. Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
  - b. Denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant.
- (6) Using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and
- (7) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual,

or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

- (d) The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.
- (e) **PROHIBITED EXAMINATION OR INQUIRY** means except as provided in subsection (h)(2) below, a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.
- (f) Acceptable inquiry. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions.
- (g) Employment entrance examination. A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if:
  - (1) All entering employees are subjected to such an examination regardless of disability;
  - (2) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:
    - a. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
    - b. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
    - c. Government officials investigating compliance with this chapter shall be provided relevant information on request; and
  - (3) The results of such examination are used only in accordance with this subchapter.
- (h) Examination and inquiry.

- (1) *Prohibited examinations and inquiries.* A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.
- (2) *Acceptable examinations and inquiries.* A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite. A covered entity may make inquiries into the ability of an employee to perform job-related functions.
- (3) *Requirement.* Information obtained under subsection (h)(2) regarding the medical condition or history of any employee are subject to the requirements of subsections(g)(2) and (g)(3) above.

(i) Defenses.

- (1) *In general.* It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.
- (2) *Qualification standards.* The term **QUALIFICATION STANDARDS** may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.
- (3) *Religious entities.*
  - a. *In general.* This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.
  - b. *Religious tenets requirement.* Under this division, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.
- (4) *List of infectious and communicable diseases.*

- a. *In general.* The list of infectious diseases shall be that published by the Secretary of Health and Human Services of the United States or any successor official, as provided by federal law.
  - b. *Applications.* In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the secretary of health and human services under subsection (i)(3)a. above, and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.
  - c. *Construction.* Nothing in this chapter shall be construed to preempt, modify, or amend any state, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility published by the secretary of health and human services.
- (j) Illegal use of drugs and alcohol.
- (1) *Qualified individual with a disability.* For purposes of this division, the term **QUALIFIED INDIVIDUAL WITH A DISABILITY** shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.
  - (2) *Rules of construction.* Nothing in subsection (j)(1) of this section shall be construed to exclude as a qualified individual with a disability an individual who:
    - a. Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
    - b. Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
    - c. Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subsection (j)(2)a. or (j)(2)b. above is no longer engaging in the illegal use of drugs.

(3) *Authority of covered entity.* A covered entity:

- a. May prohibit the illegal use of drugs and the use of alcohol at the workplace by an employee;
- b. May require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;
- c. May require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.);
- d. May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and
- e. May, with respect to federal regulations regarding alcohol and the illegal use of drugs, require that:
  1. Employees comply with the standards established in such regulations of the department of defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the department of defense);
  2. Employees comply with the standards established in such regulations of the nuclear regulatory commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the nuclear regulatory commission); and
  3. Employees comply with the standards established in such regulations of the department of transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are

employed in such positions (as defined in the regulations of the department of transportation).

(4) *Drug testing.*

- a. *In general.* For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.
- b. *Construction.* Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(k) Bidding on contracts with the city; covenant required.

(1) No bid submitted to the city by an employer or general contractor shall be considered, nor shall any purchase order be issued nor contract awarded by the city to such employer or general contractor, unless such employer or general contractor has executed as a provision contained in such purchase order, contract or agreement a covenant assuring that its employees are not discriminated against, as prohibited by the terms of this division.

(2) It shall be the responsibility, obligation and duty of any such employer or general contractor to ascertain and furnish covenants to the city that no labor organization, subcontractor or employment agency either furnishing or referring employee applicants to such employer is discriminating against its employees, as prohibited by the terms of this division.

(l) Notice requirement. Any employer, general contractor, labor organization or employment agency subject to the provisions of this division shall post, in a conspicuous place available to all employees and applicants for employment, notices apprising employees and applicants of this division.

(Code 1964, § 13A-22; Ord. No. 7278, § 2, 12-22-75; Ord. No. 7400, § 1, 8-9-76; Ord. No. 12570, § 1, 7-9-96; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-68. - MAINTENANCE OF INDEPENDENT CONTRACTOR RELATIONSHIP.**

Neither this division nor any section or provision of this division shall be interpreted or applied so as to interfere with, impair or destroy the independent contractor relationship between the city and any person bidding on or engaged in the performance of any existing contract for public work as an independent contractor of the city.

(Code 1964, § 13A-23; Ord. No. 7278, § 3, 12-22-75; Ord. No. 12570, § 1, 7-9-96; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-69. - ENFORCEMENT.**

- (a) It is the intention of the city council that the ~~human relations commission~~ diversity and inclusion department's staff supervised by its ~~administrator~~ director shall be the agency (the "agency") authorized to enforce the provisions of this division.
- (b) Following a complaint, and provided that there is justifiable reason to believe there is a violation of any provision of this division, the agency is authorized to investigate and resolve any such complaint involving any employer, general contractor, labor organization or employment agency subject to the provisions of this division. If such complaint cannot be resolved in a manner satisfactory to such agency, it may refer same to the city attorney and/or to the appropriate federal office. Nothing said or done, or documents produced during, and as a part of any such investigation, or attempt at resolution shall be made public without the written consent of the persons concerned.
- (c) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved which alleges that an employer, general contractor, employment agency or labor organization has engaged in an unlawful employment practice, the agency may cause a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) to be served upon such employer, general contractor, employment agency or labor organization (hereinafter referred to as "respondent") within ten days and may make an investigation thereof.
  - (1) Any such charge shall be in writing, under oath or affirmation, and shall contain such information and be in such form as the agency requires. Such charge shall be filed within 180 days after the alleged unlawful employment practice occurred. Such charges shall not be made public.
  - (2) Should the agency determine, after such investigation, that there is not reasonable cause to believe that the charge is true, such agency shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of such action.
  - (3) If the aforesaid investigation determines that there is reasonable cause to believe that the charge is true, the agency may endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation and persuasion.

*(Code 1964, § 13A-24; Ord. No. 7278, § 4, 12-22-75; Ord. No. 12570, § 1, 7-9-96; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-70. – PROHIBITIONS AND REQUIREMENTS WITH RESPECT TO DISCLOSURE OF INFORMATION**

- (a) Nothing said or done, or documents produced, in the course of conciliation efforts under this division may be made public or used as evidence in a subsequent proceeding without the written consent of the persons involved.
- (b) Notwithstanding paragraph (a), the director shall make available to the aggrieved person and the respondent, at any time, upon request following the completion of the investigation, information derived from an investigation and any final investigative report relating to that investigation.

*(Code 1964, § 13A-24; Ord. No. 7278, § 4, 12-22-75; Ord. No. 12570, § 1, 7-9-96; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-7071. - CERTAIN PRACTICES NOT UNLAWFUL.**

- (a) This division shall not apply to any employer with respect to the employment of aliens outside the city, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- (b) Notwithstanding any other provisions of this division:
  - (1) It shall not be unlawful for an employer to hire and employ employees, for an employment agency to classify or refer for employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his or her religion, sex or national origin in those certain instances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
  - (2) It shall not be unlawful for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part,

owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society, or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion.

- (c) Notwithstanding any other provision of this division, it shall not be unlawful for an employer to fail or refuse to hire and employ an individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if:
  - (1) The occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any order of the President; and
  - (2) Such individual has not fulfilled or has ceased to fulfill that requirement.
- (d) Notwithstanding any other provision of this division, it shall not be unlawful for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of age, race, color, religion, sex, disability, national origin, sexual orientation, transgender, gender identity or gender expression nor shall it be unlawful for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of age, race, color, religion, sex, disability, national origin, sexual orientation, transgender, gender identity or gender expression. It shall not be unlawful under this division for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section § 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 206(d)).
- (e) Nothing contained in this division shall be interpreted to require any employer, employment agency, labor organization or joint labor-management committee subject to this division to grant preferential treatment to any individual or to any group because of the age, race, color, religion, sex, disability, national origin, sexual orientation, transgender, gender identity or gender expression

of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons with disabilities or of any age group, race, color, religion, sex, national origin, sexual orientation, transgender, gender identity or gender expression employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of with disabilities or of such age group, race, color, religion, sex, national origin, sexual orientation, transgender, gender identity or gender expression in any community, state, section or other area, or in the available work force in any community, state, section or other area.

- (f) Nothing contained in this division shall be construed to repeal or modify any federal, state, territorial or local law creating special rights or preference for veterans or Indians.
- (g) Nothing in this division shall be construed to make unlawful discrimination based upon the ages of persons who are less than forty (40) years old.
- (h) Nothing in this division shall be interpreted to make unlawful discrimination with respect to aliens who entered and reside in the United States illegally.

*(Code 1964, § 13A-25; Ord. No. 7278, § 5, 12-22-75; Ord. No. 7400, § 1, 8-9-76; Ord. No. 8957, § 1, 10-25-83; Ord. No. 10093, § 1, 4-12-88; Ord. No. 12570, § 1, 7-9-96; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), passed 9-28-10, eff. 10-1-2010)*

**§ 17-7472. - VIOLATIONS; PENALTY.**

Any person, firm, association of persons, company or corporation, or their agents, servants or employees, who violate, disobey, omit, neglect or refuse to comply with any provision of this division shall be punished by a fine not to exceed \$500.00, and each day that a violation exists is hereby declared to be a distinct and separate offense and punishable as such, all as provided for in § 1-6 of this code.

*(Code 1964, § 13A-29; Ord. No. 7278, § 9, 12-22-75; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-7273---17-85 RESERVED.**

**DIVISION 4: FAIR HOUSING**

**§ 17-86. - DECLARATION OF POLICY.**

(a) Pursuant to the authority stated in Texas Local Government Code Section 214.903, these ordinances related to fair housing are hereby adopted.

~~(a)~~(b) It is hereby declared to be the policy of the city to bring about, through fair, orderly and lawful procedures, the opportunity for each person to obtain housing without regard to his or her race, color, religion, national origin, sex, disability, familial status, sexual orientation, transgender, gender identity or gender expression.

~~(b)~~(c) It is further declared that this policy is grounded upon a recognition of the right of every person to have access to adequate housing of his or her own choice without regard to race, color, religion, national origin, sex, disability, familial status, sexual orientation, transgender, gender identity or gender expression; and further, that the denial of such rights through considerations based upon race, color, religion, national origin, sex, disability, familial status, sexual orientation, transgender, gender identity or gender expression is detrimental to the health, safety and welfare of the inhabitants of the city and constitutes an unjust denial or deprivation of such inalienable right which is within the power and the proper responsibility of government to prevent.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-87. - DEFINITIONS.**

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

**AGENCY.** ~~The Fort Worth Human Relations Commission~~diversity and inclusion department and its staff supervised by its ~~administrator~~director.

**AGGRIEVED PERSON.** Includes any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that he/she will be injured by a discriminatory housing practice that is about to occur.

**COMMISSION.** The Fort Worth human relations commission.

**COMMITTEE.** The housing committee of the Fort Worth human relations commission.

**COMPLAINANT.** A person, including the director or the commission, who files a complaint under § 17-90 of this division.

**CONCILIATION.** The attempted resolution of issues raised by a complainant or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the respondent and the ~~administrator~~director.

**CONCILIATION AGREEMENT.** A written agreement setting forth the resolution of the issues in conciliation.

**~~ADMINISTRATOR-DIRECTOR.~~** The individual designated by the city manager as administrator-director of the diversity and inclusion department, or the director's designee.~~human relations commission.~~

**DISABILITY:**

(1) **DISABILITY** means, with respect to a person:

- a. A physical or mental impairment which substantially limits one or more of such person's major life activities;
- b. A record of having such an impairment; or
- c. Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance as defined under state or federal law.

1. **DISCRIMINATION ON THE BASIS OF DISABILITY** means:

- a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
  1. That buyer or renter;
  2. A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
  3. Any person associated with that buyer or renter.
- b. For purposes of this subsection, **DISCRIMINATION** includes:
  1. A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises

occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

2. A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
3. In connection with the design and construction of covered multi-family dwellings for first occupancy after March 12, 1991, a failure to design and construct those dwellings in a manner that:
  - I. The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
  - II. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons in wheelchairs; and
  - III. All premises within such dwellings contain the following features of adaptive design:
    - A. An accessible route into and through the dwelling;
    - B. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
    - C. Reinforcements in bathroom walls to allow later installation of grab bars; and
    - D. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- c. Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for people with physical disabilities (commonly cited as "ANSI-A117.1") suffices to satisfy the requirements of subsection (2)(b)(3) above.
- d. **COVERED MULTIFAMILY DWELLING** means:

1. Buildings consisting of four or more units if such buildings have one or more elevators; and
  2. Ground floor units in other buildings consisting of four (4) or more units.
- e. Nothing in this division shall be construed to invalidate or limit any law of a state or political subdivision of a state, or other jurisdiction in which this division shall be effective that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required by this division.
  - f. Nothing in this subsection (2)f. of this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

***DISCRIMINATORY HOUSING PRACTICE.*** An act prohibited by §17-88 of this division.

***DWELLING.***

- (1) Any building, structure, or part of a building or structure that is occupied as or designed or intended for occupancy as a ~~residency~~ residence by one or more families; or
- (2) 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 subsection (1) immediately above.

***FAMILIAL STATUS.*** In this division, a discriminatory act is committed because of ***FAMILIAL STATUS*** if the act is committed because the person who is the subject of discrimination is:

- (1) Pregnant;
- (2) Domiciled with an individual younger than 18 years of age in regard to whom the person:
  - a. Is the parent or legal custodian;
  - b. Has the written permission of the parent or legal custodian for domicile with that person; or

- c. Is in the process of obtaining legal custody of an individual younger than 18 years of age.

***FAMILY.*** Includes a single individual or group of individuals living together under one common roof.

***GENDER EXPRESSION.*** A person's external characteristics and behaviors including, but not limited to, dress, grooming, mannerisms, speech patterns and social interactions that are socially identified with a particular gender.

***GENDER IDENTITY.*** A person's innate, deeply felt sense of gender, which may or may not correspond to the person's body or sex listed on their original birth certificate.

***PERSON.*** Includes an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

***RESPONDENT.***

- (1) The person accused in a complaint of discriminatory housing practice;  
or
- (2) Any person identified as an addition or substitute respondent under § 17-90 of this division.

***SEXUAL ORIENTATION.*** Heterosexuality, homosexuality or bisexuality or being identified with such orientation.

***TO RENT.*** Includes to lease, to sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

~~***SEXUAL ORIENTATION*** means heterosexuality, homosexuality or bisexuality or being identified with such orientation.~~

***TRANSGENDER.*** A person who experiences and/or expresses their gender differently from conventional or cultural expectations including, but not limited to those who express a gender that does not match the sex listed on their original birth certificate or who physically alter their sex.

(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-88. - DISCRIMINATION PROHIBITED.**

(a) *Sale or rental.*

(1) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression.

(2) A person may not discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental, because of race, color, religion, sex, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression.

(b) *Publication.* 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, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression, or an intention to make such a preference, limitation, or discrimination.

(c) *Inspection.* A person may not represent to any person because of race, color, religion, sex, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection, sale or rental.

(d) *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, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression.

(e) *Residential real estate related transaction.*

(1) 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, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression.

(2) In this section, **RESIDENTIAL REAL ESTATE RELATED TRANSACTION** means any of the following:

- a. The making or purchasing of loans or providing other financial assistance:
    - 1. For purchasing, construction, improving, repairing or maintaining a dwelling; or
    - 2. Secured by residential real estate;
  - b. The selling, brokering or appraising of residential real property.
- (f) *Brokerage services.* A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership or participation in such an organization, service, or facility because of race, color, religion, sex, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression.

(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-89. - EXEMPTIONS; EXCLUSIONS.**

(a) *Housing for ~~elderly~~ older persons exempted.*

- (1) The provisions of this division relating to familial status do not apply to housing for older persons.
- (2) In this section **HOUSING FOR OLDER PERSONS** means housing:
  - a. That the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons under a federal or state program;
  - b. Intended for, and solely occupied by, persons 62 years of age or older; or
  - c. Intended and operated for occupancy by at least one person 55 years of age or older per unit as determined by the Secretary of the United States Department of Housing and Urban Development. To the extent that such a determination falls within the jurisdiction of the commission, the following factors at minimum must be present for the dwelling(s) to qualify for the exemption:

1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and
2. That at least 80% of the units are occupied by at least one person 55 years of age or older per unit; and
3. The publication of, and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(b) *Certain sales and rentals exempted.*

(1) Subject to subsection (b)(2) below, § 17-88 does not apply to:

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

1. The owner does not:

I. Own more than three single-family houses at any one time; or

II. Own any interest in, nor is there owned or reserved on his 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 three single-family houses at any one time; and

2. The house was sold or rented without:

I. The use of the sales or rental facilities or services of a real estate broker, agent, or salesman licensed under state law, or of an employee or agent of a licensed broker, agent or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or

II. The publication, posting, or mailing of a notice, statement or advertisement prohibited by § 17-88.

b. The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residence.

(2) The exemption of subsection (b)(1)(a)(1) of this section applies to only one sale or rental in a 24-month period if the owner was not the most recent resident of the house at the time of the sale or rental.

(c) *Religious organization, nonprofit organization and private club exemption.*

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

- a. 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
- b. Giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color or national origin.

(2) This division 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.

(d) *Appraisal exemption.* This division does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression.

(e) *Effect on other law.*

(1) This division does not affect reasonable maximum safe occupancy regulations for dwellings.

(2) This division does not affect any requirement of nondiscrimination in any other local, state or federal law.

(Ord. No. 11075, § 1, 4-21-92; Ord. No. 11384, § 1(A), 8-17-93; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-90. - ENFORCEMENT.**

(a) It is the intention of the city council that the ~~human relations commission~~ diversity and inclusion department and its staff supervised by its ~~administrator~~ director shall be the agency (the "agency") authorized to enforce the provisions of this division under the supervision of the city manager or his or her designee as

provided under § 2 of Chapter V of the Charter, as further provided hereinafter, and as further provided under state and federal law.

- (b) ~~The commission shall delegate to the administrator director and staff the duty of day-to-day implementation and enforcement of this division, subject to its policy directives and its approval of any rules and regulations recommended by the administrator director to aid implementation and enforcement.~~
- (c) The ~~administrator director~~ 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., as amended, and may assist the secretary or attorney general in any way consistent with the policy of this division. The ~~administrator director~~ is encouraged to cooperate with the ~~Civil Rights Division of the Texas Commission on Human Rights Workforce Commission~~ in the enforcement of the Texas Fair Housing Act, and may assist the ~~Civil Rights Division of the Texas Commission on Human Rights Workforce Commission~~ in any way consistent with the policy of this division.
- (d) The ~~administrator director~~ may order discovery in aid of investigations under this division. 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 ~~Texas Sstate district District court Court of Tarrant County, Texas.~~

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-91. - COMPLAINT AND ANSWER.**

- (a) An aggrieved person, or any authorized representative of an aggrieved person, may file a complaint with the ~~administrator director~~ not later than one year after an alleged discriminatory housing practice has occurred or terminated. A complaint may also be filed by the ~~administrator director~~, not later than one year after an alleged discriminatory housing practice has occurred or terminated, if the ~~administrator director~~ has reasonable cause to believe that a person has committed a discriminatory housing practice.
- (b) The ~~administrator director~~ 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., as amended, or by the ~~Civil Rights Division of the Texas Workforce Commission on Human Rights~~ under the Texas Fair Housing Act, Texas Property Code, Chapter 301, Article 1f, Vernon's Texas Revised Civil Statutes, as amended, as a complaint filed under subsection (a) above. No action will be taken under this division 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.

(c) A complaint must be in writing, made under oath or affirmation, and contain the following information:

- (1) Name and address of the respondent.
- (2) Name, address, and signature of the complainant.
- (3) 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 date of the filing of the complaint.
- (5) Description and address of the housing accommodation involved in the discriminatory housing practice, if appropriate.
- (6) Concise statement of the facts of the discriminatory housing practice, including the basis of the discrimination (race, color, sex, religion, disability, familial status, national origin, sexual orientation, transgender, gender identity or gender expression).

(d) Upon the filing of a complaint, the ~~administrator~~ director shall, in writing:

- (1) Notify the complainant, and the aggrieved person if different from the complainant, that a complaint has been filed; and
- (2) Advise the complainant, and the aggrieved person if different from the complainant, of time limits applicable to the complaint and of any rights, obligations, and remedies of the aggrieved person under this division.

(e) Not more than ten days after the filing of a complaint, the ~~administrator~~ director shall, in writing:

- (1) Notify the respondent named in the complaint that a complaint, alleging the commission of a discriminatory housing practice, has been filed against the respondent;
- (2) Furnish a copy of the complaint to the respondent;
- (3) Advise the respondent of the procedural rights and obligations of the respondent, including the right to file a written, signed, and verified informal answer to the complaint within ten days after service of notice of the complaint; and

- (4) Advise the respondent of other rights and remedies available to the aggrieved person under this division.
- (f) Not later than the tenth day after service of the notice and copy of the complaint, unless an extension is granted by the director, a respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:
- (1) Name, address, telephone number, and signature of the respondent or the respondent's attorney, if any.
  - (2) Concise statement of facts in response to the allegations in the complaint and facts of any defense or exemption.
  - (3) Advise that retaliation against any person who files a complaint or assists or otherwise participates in the investigation of a complaint is a discriminatory housing practice.
- (g) A complaint or answer may be amended at any reasonable time prior to a determination as to reasonable cause as hereinafter provided. The ~~administrator~~ director shall furnish a copy of each amended complaint ~~or answer, respectively,~~ to the respondent ~~or and~~ complainant, and any aggrieved person if different from the complainant, as promptly as is practicable.
- (h) The ~~administrator~~ director may not disclose or permit to be disclosed to the public the identity of a respondent while the complaint is in the process of being investigated and prior to completion of all negotiations relative to a conciliation agreement.
- (i) A complaint, except a referred complaint described in subsection (b) of this section, shall be finally disposed of either through dismissal, execution of a conciliation agreement, or issuance of a charge within one year after the date on which the complaint was filed unless it is impracticable to do so, in which case, the ~~administrator~~ director shall notify the complainant, the aggrieved person if different from the complainant, and the respondent, in writing, of the reasons for the delay.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 18909-11-209 §1, 11-10-09; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

## **§ 17-92. - INVESTIGATION.**

- (a) Not more than 30 days after the filing of a complaint by an aggrieved person or by the ~~administrator~~ director, the ~~administrator~~ director shall commence an

investigation of the complaint to determine whether there is reasonable cause to believe a discriminatory housing practice was committed and the facts of the discriminatory housing practice.

(b) The ~~administrator~~ director 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.

(c) The ~~administrator~~ director may, at the ~~administrator's~~ director's discretion or at the request of the respondent, the complainant, or the aggrieved person if different from the complainant, issue a subpoena or subpoena duces tecum to compel attendance of a witness or the production of relevant materials or documents, pursuant to the authority of the city under Chapter V, § 7 of the City Charter. Failure to comply with a subpoena issued under this subsection (c) is a criminal offense and is punishable as provided by ordinance.

(d) An investigation shall remain open until as provided in this division, a determination as to reasonable cause is made, a conciliation agreement is executed and approved or the complaint is dismissed. Unless impracticable to do so, the ~~administrator~~ director shall complete the investigation within 100 days after the date of filing of the complaint. If the ~~administrator~~ director is unable to complete the investigation within the 100-day period, the ~~administrator~~ director shall notify the complainant, the aggrieved party if different from the complainant, and respondent, in writing, of the reasons for the delay.

(e) This section does not limit the authority of the ~~administrator~~ director to conduct such other investigations or to use such other enforcement procedures, otherwise lawful, as the ~~administrator~~ director considers necessary to enforce this chapter.

(f) The ~~administrator~~ director 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.

(g) Prohibitions and requirements with respect to disclosure of information:

(1) Nothing said or done, or documents produced, in the course of conciliation efforts under this division may be made public or used as evidence in a subsequent proceeding without the written consent of the persons involved.

~~(4)~~(2) Notwithstanding paragraph (a), the director shall make available to the aggrieved person and the respondent, at any time, upon request following the completion of the investigation, information derived from an investigation and any final investigative report relating to that investigation.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-93. - TEMPORARY OR PRELIMINARY RELIEF.**

(a) If at any time following the filing of a complaint the ~~administrator~~director concludes that prompt judicial action is necessary to carry out the purposes of this division, the ~~administrator~~director may request the city attorney to initiate a civil action in the state district court of Tarrant County, Texas for appropriate temporary or preliminary relief pending final disposition of the complaint.

(b) On receipt of the ~~administrator's~~director's request, the city attorney shall promptly file the action in the state district court. Venue is in Tarrant County, Texas.

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

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-94. - CONCILIATION.**

(a) During the period beginning with the filing of a complaint and ending with the issuance of a charge, the dismissal of the complaint, or the dismissal of the criminal action in municipal court, the ~~administratedirector~~director shall try to conciliate the complaint. In conciliating a complaint, the ~~administrator~~director 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) If a conciliation agreement is executed under this section, a party to the agreement may not be prosecuted in municipal court, nor may the ~~administrator~~ director issue a charge against a party, for the discriminatory housing practice specified in the agreement under subsection (d)(1) below unless the ~~administrator~~ director determines that the agreement has been violated and notifies the city attorney in writing of the violation.

(c) A conciliation agreement must be in writing 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 ~~administrator~~ director who shall indicate approval by signing the agreement. A conciliation agreement is executed upon its signing and verification by all parties to the agreement.

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

(1) An identification of the discriminatory housing practice and corresponding respondent that gives rise to the conciliation agreement under subsection (a) above and the identification of any other discriminatory housing practice and the respondent that the parties agree to make subject to the limitation on prosecution of subsection (b) above;

(2) An identification of the housing accommodation subject to the conciliation agreement; and

(3) A statement that each party entering into conciliation agreement agrees:

a. Not to violate this chapter or the conciliation agreement; and

b. That the respondent shall file with the ~~administrator~~ director a periodic activity report, if required by the terms of the conciliation agreement and/or any applicable state or federal laws or regulations.

1. The party who prepares the activity report must sign and verify the report.

2. An activity report must be filed each month on the date specified in the conciliation agreement for the period specified by the conciliation agreement, or by applicable law or regulations if different.

(e) In addition to the requirements of subsection (d) above, a conciliation agreement may include any other term or condition agreed to by the parties, including, but not limited to:

(1) Monetary relief in the form of damages, including humiliation and embarrassment and attorney fees; and

(2) Equitable relief such as access to the housing accommodation at issue, or to a comparable housing accommodation, and provision of services and facilities in connection with a housing accommodation.

- (f) Nothing said or done, or documents produced, during the course of conciliation efforts may be made public or used as evidence in a subsequent proceeding under this chapter without the written consent of any person concerned.
- (g) A conciliation agreement shall be made public, unless the aggrieved person or the respondent requests nondisclosure and the administrator-director determines that disclosure is not required to further the purposes of this division. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the administrator-director may publish tabulated descriptions of the results of all conciliation efforts.
- (h) 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 administrator-director shall terminate efforts to conciliate the complaint unless the court specifically requests assistance from the administrator-director. The administrator-director may also terminate efforts to conciliate the complaint if:
- (1) The respondent fails or refuses to confer with the administrator-director;
  - (2) The aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or
  - (3) The administrator-director finds, for any reason, that voluntary agreement is not likely to result.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-95. - VIOLATION OF CONCILIATION AGREEMENT.**

- (a) A person commits an offense if, after the person executes a conciliation agreement under § 17-94, he or she materially violates any term or condition contained in the agreement.
- (b) It is no defense to criminal prosecution in municipal court or to civil action in state district court under this section that, with respect to a discriminatory housing practice that gave rise to the conciliation agreement under § 17-94:
- (1) The respondent did not commit the discriminatory housing practice; or

(2) The ~~administrator~~ director did not have probable cause to believe the discriminatory housing practice was committed.

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

(d) When the ~~administrator~~ director has reasonable cause to believe that respondent has materially breached a conciliation agreement, the ~~administrator~~ director shall refer the matter to the city attorney's office with a recommendation that a civil action be filed for the enforcement of the agreement. The ~~administrator~~ director shall also file a criminal action in municipal court for a violation of the agreement.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00, eff. 10-1-2010)*

**§ 17-96. - REFERRAL OF COMPLAINT TO HEARING; ELECTION OF COURT PROCEEDING; REASONABLE CAUSE DETERMINATION AND CHARGE.**

(a) Upon completion of the investigation and informal endeavors at conciliation by the ~~administrator~~ director, but within 100 days of the filing of the complaint with the ~~administrator~~ director and if conciliation has not been effected, the ~~administrator~~ director may refer the matter complained of to the committee, together with the answer of the respondent, if any, and a full report of his or her investigation and activities in the matter.

(b) In lieu of a hearing before the committee as set out in § 17-96(c) below, a complainant, respondent or an aggrieved person on whose behalf a charge is filed, may elect in writing to have the claims asserted in the complaint decided in state district court provided in § 17-98 of this Code or as provided for under Article II, §§ 2.06 and 2.08 of the Texas Fair Housing Act (~~V.T.R.C.S. Article 1f,~~ Texas Property Code, Chapter 301, as amended or any successor statute) and Chapter ~~819337~~ of the Texas Workforce Commission Civil Rights Division adopted rules ~~on Human Rights Procedural Rules~~. This election may be made at any reasonable time under the foregoing laws but must be made not later than 20 days after the receipt by the electing person of notice that a hearing under subsection (c) has been requested.

(c) The committee shall order a hearing if respondent or complainant requests same. If respondent or complainant does not request a hearing, same shall be deemed to have been waived and the committee shall direct the ~~administrator~~ director to issue a determination of reasonable cause and a charge, if it finds the preponderance of the credible evidence so warrants.

- (d) The commission shall adopt rules and procedures for the conduct of hearings. The hearing panel shall be appointed by the commission chair and include members of the human relations commission in whole or in part. Reasonable notice and opportunity for discovery shall be given to all parties. The hearing shall be conducted in a fair and impartial manner and shall be public as required by Tex. Government Code Chapter 551. Witnesses appearing at such hearing may be required to present testimony under oath or by solemn affirmation. Evidence of the matter alleged within the complaint may be presented by the city attorney or his or her assistant. The complainant, and the person or persons alleged to have committed or to be about to commit the discriminatory housing practice, may appear personally or by representative and with or without counsel and shall have the right to present proof and cross-examine witnesses in all matters relating to the complaint and subsequent related matters. If a person or persons alleged to have committed or to be about to commit a discriminatory housing practice shall fail to appear at the committee hearing either personally or by representative after notice as provided above, then such hearing shall be deemed waived by such person or persons.
- (e) The hearing panel shall make such findings as a majority of its members deem are supported by the preponderance of the credible evidence. Such findings shall be in writing and shall be forwarded to the ~~administrator~~ director together with the hearing panel's determination that reasonable cause or no reasonable cause exists to believe that a discriminatory housing practice has been committed.
- (f) A charge shall be issued by the ~~administrator~~ director upon a panel finding of reasonable cause and:
- (1) Shall consist of a short and plain written statement of the facts upon which the committee has found reasonable cause to believe that a discriminatory housing practice has occurred;
  - (2) Shall be based on the final investigative report, the evidence adduced at the hearing, if any; and
  - (3) Need not be limited to the facts or grounds alleged in the complaint filed with the commission under this division.
- (g) Any charge issued by the ~~administrator~~ director will be forwarded within ten days to the city attorney for action as hereinafter provided. Copies of the charge will be served on the complainant, the aggrieved person, if different from the complainant, and any respondents.
- (h) The ~~administrator~~ director may not issue a charge and the city attorney may not bring or maintain a civil action in state district court for an alleged discriminatory housing practice after the aggrieved person has brought a civil action under local, state, or federal law seeking relief for the alleged discriminatory housing practice

and the trial in the action has begun. If a charge may not be issued by the ~~administrator~~ director or a civil action may not be brought or maintained by the city attorney because of the trial of a civil action brought by the aggrieved party, the ~~administrator~~ director shall notify the complainant, the aggrieved person if different from the complainant, and any respondents, in writing.

- (i) Any final action, together with the findings or orders thereon, of the hearing panel, commission and/or the ~~administrator~~ director are subject to judicial review as provided by state law.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 11167, § 1(A), 9-8-92; Ord. No. 11384, § 1(B), 8-17-93; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 16032, § 1, 7-13-04; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

### **§ 17-97. - DISMISSAL AND APPEAL OF COMPLAINT.**

- (a) A complaint may be dismissed by the ~~administrator~~ director during the investigation and prior to referral to the committee when the ~~administrator~~ director determines that:

- (1) The complaint was not filed within the required time period;
- (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 division;
- (4) The complainant or aggrieved person refuses to cooperate with the ~~administrator~~ director in the investigation of the complaint or enforcement of the executed conciliation agreement;
- (5) The complainant, or the aggrieved person if different from the complainant, cannot be located after the ~~administrator~~ director has performed a reasonable search; or
- (6) A conciliation agreement has been executed by the respondent, complainant, and aggrieved person if different from the complainant.

- (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 before the trial begins in municipal court.

- (c) The ~~administrator~~ director 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 make public disclosure of the dismissal by issuing a press release, unless the respondent requests that no public disclosure be made.

- (d) The complainant may appeal a no reasonable cause determination to the commission within 20 days of the date the determination is signed by the director by filing a written statement of appeal with the director. If a complainant expresses a desire to file an appeal, the director must allow the complainant reasonable access to review, but not copy, non-confidential materials in the case file. The determination of what is considered confidential shall be made by the director or director's designee.
- (1) The director must receive the written statement within 20 days of the date that the decision was issued. If the director does not receive the written appeal within 20 days the case will be dismissed and the same shall be entered on the records of the department.
- (2) The only grounds for appeal of a no reasonable cause decision is that the evidence in the case file does not support the no reasonable cause decision. The appeal letter must contain a written statement describing the reasons for the appeal, a description of the evidence in the case file that the complainant believes the commission should consider, and why consideration of that evidence should have resulted in a reasonable cause determination.
- (e) The director shall promptly notify the commission and respondent of the appeal. Within 10 days after being notified of the appeal, the respondent can file a statement of why the no reasonable cause decision should be upheld. The respondent will not be granted access to review the materials in the case file.
- (f) The commission can only consider whether the evidence in the case file supports the director's finding. The commission does not re-investigate the complaint or look at new information.
- (g) The commission shall promptly consider and act upon such appeal by (1) affirming the director's determination; (2) reversing the decision and directing the director to enter a cause determination; or (3) if the commission believes the director should investigate further, remand the complaint to the director with a request for specific further investigation.
- (h) In the event no appeal is taken, or such appeal results in affirmance or if the commission has not decided the appeal within 60 days from the date the appeal statement is filed, the determination of the director shall be final and the complaint deemed dismissed and the same shall be entered on the records of the department. Any party aggrieved by the final dismissal may appeal the order to an appropriate court.

(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)

**§ 17-98. - CIVIL ACTION IN STATE DISTRICT COURT IN COMPLAINTS ALLEGING DISCRIMINATION BASED ON RACE, COLOR, SEX, RELIGION, NATIONAL ORIGIN, DISABILITY, OR FAMILIAL STATUS.**

(a) If the director has issued a charge, or if a party has elected under §17-96(b) to have the claims raised by the complaint resolved in court, the city attorney, upon the request of the director, after receiving from the director a copy of the charge, and after consulting with the City Manager, will initiate and maintain a civil action on behalf of the aggrieved person in the Texas State District Court seeking relief under this chapter. Venue is Tarrant County, Texas.

~~(a)(b)~~ If a respondent has been found by the administrator-director and the city attorney to have materially breached an executed conciliation agreement or if the administrator has issued a charge, or if a party has elected under § 17-96(b) to have the claims raised by the complaint resolved in court, the city attorney, upon the request of the administrator-director, shall after consulting with the City Manager, will initiate and maintain a civil action on behalf of the aggrieved person in the Texas state-State district-District court-Court seeking relief under this chapter. Venue is in Tarrant County, Texas.

~~(b)(c)~~ An aggrieved person may intervene in the action.

~~(e)(d)~~ If the court finds in the civil action that the conciliation agreement has been violated or a discriminatory housing practice has occurred, the court may award:

(1) Actual and punitive damages to the aggrieved person;

(2) Civil penalties to the city for vindication of the public interest in an amount that does not exceed:

a. ~~Eleven thousand dollars (\$11,000.00)~~ \$19,787 if the respondent has not been adjudged by a court to have committed a prior discriminatory housing practice;

b. Except as provided by subsection (de)(2)d. below, ~~\$27,500.00~~ \$49,467 if the respondent has been adjudged by a court to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the charge;

c. Except as provided by subsection (de)(2)d. below, ~~\$55,000.00~~ \$98,935 if the respondent has been adjudged by a court to have committed two or

more discriminatory housing practices during the seven-year period ending on the date of the filing of the charge.

- d. If the acts constituting the discriminatory housing practice that is the subject of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in subsections (b) and (c) above may be imposed without regard to the period of time within which any other discriminatory housing practice occurred;
- (3) Reasonable attorney's fees to the city and the aggrieved person;
  - (4) Costs of court, including witness and expert witness fees; and
  - (5) Any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the discriminatory housing practice or ordering appropriate affirmative action.
- ~~(d)~~(e) \_\_\_\_ If actual damages are sought for the benefit of an aggrieved person who does not intervene in the civil action, the court may not award the actual damages if the aggrieved person has not complied with discovery orders entered by the court.
- ~~(e)~~(f) \_\_\_\_ The city shall not be subject to orders for sanctions for the failure of the complainant, if other than the ~~administrator~~director, or aggrieved person to comply with discovery requests of the defendant or discovery orders of the court.
- ~~(f)~~(g) \_\_\_\_ Any resolution of a charge before a final order is signed by the state district court under this section requires the consent of the aggrieved person on whose behalf the charge is issued.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 11167, § 1(B), 9-8-92; Ord. No. 11384, § 1(C), 8-17-93; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, §§ 1, 2(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-99. - ENFORCEMENT BY PRIVATE PERSONS IN COMPLAINTS ALLEGING DISCRIMINATION BASED ON RACE, COLOR, SEX, RELIGION, NATIONAL ORIGIN, DISABILITY, OR FAMILIAL STATUS.**

- (a) An aggrieved person may file a civil action in state district court not later than two years after the occurrence or termination of an alleged discriminatory housing practice or after the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to the discriminatory housing practice or the material breach of the conciliation agreement.

- (b) An aggrieved person may file an action under this section whether or not a complaint has been filed under this division and without regard to the status of any complaint filed under this division, except as provided in subsection (c) below.
- (c) An aggrieved person may not file an action under this section for an alleged discriminatory housing practice that forms the basis of a charge issued by the ~~administrator~~ director if:
- (1) The ~~administrator~~ director has obtained a conciliation agreement with the consent of the aggrieved person; or
  - (2) The city attorney has filed a civil action on the charge in state district court on behalf of the aggrieved person.
- (d) In an action under this section, if the court finds that a discriminatory housing practice has occurred, the court may award to the plaintiff:
- (1) Actual and punitive damages;
  - (2) Reasonable attorney's fees;
  - (3) Court costs; and
  - (4) Subject to § 17-100 of this division, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the discriminatory housing practice or ordering appropriate affirmative action.
- (e) A court in a civil action brought under this section may award reasonable attorney's fees to the prevailing party and assess court costs against the non-prevailing party.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

#### **§ 17-100. - EFFECT OF CIVIL ACTION ON CERTAIN CONTRACTS.**

Relief granted under § 17-98 or § 17-99 does not affect a contract, sale, encumbrance, or lease that:

- (1) Was consummated before the granting of the relief; and
- (2) Involved a bona fide purchaser, encumbrancer, or tenant who did not have actual notice of the filing of a complaint under this chapter or a civil action under § 17-101.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-101. - SERVICE OF NOTICE AND COMPUTATION OF TIME.**

- (a) For purposes of this chapter, any notice, paper, or document required to be served on any person under this chapter may be served in person or by United States mail to the person's last known address.
- (b) When service is by mail, three days will be added to the prescribed time period allowed under this chapter for timely filing.
- (c) Service is complete and time periods begin to run at the time the required notice, paper, or document is delivered in person or deposited in a United States postal receptacle.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-102. - ADDITIONAL REMEDIES.**

The procedures prescribed by this division do not constitute an administrative prerequisite to another action or remedy available to the city or to an aggrieved person under federal or state law.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-103. - EDUCATION AND PUBLIC INFORMATION.**

The ~~administrator~~ director may conduct educational and public information activities that are designed to promote the policy of this division.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-104. - EFFECT ON OTHER LAW.**

This division does not affect any local, state, or federal restriction:

- (a) On the maximum number of occupants permitted to occupy a dwelling unit; or
- (b) Relating to health or safety standards.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-105. - INTERFERENCE WITH EXERCISE OF RIGHTS UNLAWFUL.**

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this division, including the giving of testimony or provision of information in aid of investigation or discovery under this division.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**§ 17-106. - CRIMINAL PENALTIES FOR VIOLATION.**

- (a) A person who violates a provision of § 17-88, 17-95 or 17-105 of this chapter commits a misdemeanor criminal offense. A person is guilty of a separate offense for each day or part of a day during which a violation is committed, continued, or permitted.
- (b) A criminal offense under this division is punishable in municipal court as provided by § 1-6 of this Code.

*(Ord. No. 11075, § 1, 4-21-92; Ord. No. 13981, § 1, 10-26-99; Ord. No. 14344, § 1, 9-26-00; Ord. No. 19374-09-2010, § 1(Exh. A), 9-28-10, eff. 10-1-2010)*

**DIVISION 5: REASONABLE ACCOMMODATION OR MODIFICATION FOR RESIDENTIAL USES**

**§ 17-107 PURPOSE.**

- (a) It is the policy of the City of Fort Worth, pursuant to the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act and applicable state laws, to provide individuals with disabilities reasonable accommodations (including modifications or exceptions) in the city's zoning, land use and other regulations, rules, policies and practices, to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities, or developers of housing for people with disabilities, flexibility in the application of land use, zoning, building and other regulations, policies, practices and procedures, including waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities to ensure a person with a disability has an equal opportunity to use and enjoy a dwelling.

- (b) This division provides a procedure for making requests for accommodations in land use, zoning, building regulations and other regulations, policies, practices, and procedures of the jurisdiction to comply fully with the intent and purpose of applicable laws, including federal laws, in making a reasonable accommodation.
- (c) Nothing in this division shall require persons with disabilities or operators of homes for persons with disabilities acting or operating in accordance with applicable zoning or land use laws or practices to seek a reasonable accommodation under this division. Nothing in this division shall require the City of Fort Worth to agree to requested accommodations that are unreasonable.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

#### **§ 17-108 APPLICABILITY.**

- (a) The provisions of this division apply to residential uses that will be used by persons with disabilities.
- (b) The accommodation granted shall be considered personal to the individual(s) and shall not run with the land. If the structure is sold, or otherwise changes ownership, an accommodation granted to the previous owner is not transferable to the new owner. Notwithstanding, the accommodation shall be in force and effect as long as the person(s) or group of persons with disabilities for whom the accommodation was sought resides on the property that is the subject of the accommodation. It is the duty of the owner to notify the director of this event. The city shall allow the new owner an opportunity to renew and/or modify a granted reasonable accommodation in accordance with this division. In the event that the reasonable accommodation is not renewed or modified within 60 days from the date of change in ownership, the accommodation will lapse and the structure will have to comply with all requirements of this division
- (c) Nothing in this division will require the city to expend any funds to achieve a reasonable accommodation except and to the extent required by state or federal law.
- (d) Nothing in this division will alter a person with disabilities' obligation to comply with other applicable federal, state and city regulations.
- (e) The city shall prominently display a notice at the counter in the planning and development department advising those with disabilities or their representatives that they may request a reasonable accommodation in accordance with the procedures established in this division. A copy of the notice shall be available upon request.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

## **§ 17-109 DEFINITIONS.**

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

**DIRECTOR.** The planning and development department head or city official with authority to administer, implement, or enforce a requirement that is the basis of the request for reasonable accommodation.

**PERSON WITH DISABILITIES.** For the purposes of this division, has the meaning set forth in the federal Fair Housing Act and the American with Disabilities Act and is an individual who has a physical or mental impairment that limits one or more of the major life activities of such individual, is regarded as having such impairment, or has a record of such impairment. While a person recovering from substance abuse is considered a person with a disability under 42 U.S.C. § 3602(h), a person who is currently engaged in illegal use of controlled substances is not.

**REASONABLE ACCOMMODATION (INCLUSIVE OF MODIFICATION).** The act of making a dwelling unit or housing facility(ies) readily accessible to and usable by a person with disabilities, through the removal of constraints in the city's land use, zoning, permit and processing procedures. All accommodations may be not reasonable, and the reasonableness of a request will be determined by the director or city manager's designee upon appeal.

**REQUIREMENT.** A provision of the City Code or an administrative policy, program or procedure.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

## **§ 17-110 EFFECT.**

A reasonable accommodation controls over a conflicting city regulation or requirement.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

## **§ 17-111 REQUESTS FOR ACCOMMODATION; APPLICATION.**

- (a) An application for an accommodation may be made by any person(s) with a disability, his or her representative, or a developer or provider of housing for persons with disabilities.
- (b) A request for accommodation may be submitted at any time the accommodation may be necessary to afford the person with a disability equal opportunity to use

and enjoy the dwelling. A written acknowledgment of the request shall be sent to the applicant within ten days of receipt by the director.

- (c) Requests for an accommodation may include a modification or exception to the rules, standards and practices for the siting, development, and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to a dwelling of his or her choice.
- (d) An individual requesting an accommodation shall direct the request to the director of the planning and development department, orally, which shall be transcribed by the city into writing if requested by the applicant or if it is apparent to a city employee or staff that assistance is needed in filling out the application form (e.g., if the individual is unable to write), or in writing. The individual shall submit an application for a reasonable accommodation using the appropriate city form, to be provided by the director. The city shall assist the applicant with furnishing all information maintained by the city with respect to an accommodation. The applicant shall provide the following:
  - (1) Name and address of the person or entity requesting accommodation. If the applicant is applying on behalf of a person with a disability, the name and address of the person with a disability shall also be provided.
  - (2) Address of the property for which the accommodation is requested.
  - (3) Indication of whether that the applicant is:
    - a. Person with a disability;
    - b. Applying on behalf of a person with a disability; or
    - c. A developer or provider of housing for one or more person(s) with a disability.
  - (4) Description of the disability at issue, the requested accommodation, and the specific regulation(s), policy, practice or procedure for which the accommodation is sought. In the event that the specific individuals who are expected to reside at the property are not known to a provider in advance of making the application, the provider shall not be precluded from filing the application, but shall submit details describing the range of disabilities that prospective residents are expected to have to qualify for the housing.
  - (5) Description of whether the specific accommodation requested by the applicant is necessary for the person(s) with the disability to use and enjoy the dwelling, or is necessary to make the provision of housing for persons with disabilities financially or practically feasible.

- (6) Any other information the Director concludes is necessary in order to make the findings required by § 17-113 to the extent permissible under applicable local, state and federal laws. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry. (See Joint Statement of The Department of Housing and Urban Development and The Department of Justice: Reasonable Accommodations Under the Fair Housing Act #18.)
- (e) Any personal information regarding disability status identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and/or person with a disability and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city manager's designee. The applicant need provide only the information necessary for the city to evaluate the reasonable accommodation request.
- (f) If the person with the disability needs assistance to make a request for accommodation, the director will provide assistance, including transcribing a verbal request into a written request.
- (g) A fee shall not be required for an application for an accommodation.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

#### **§ 17-112 REVIEW AUTHORITY.**

- (a) A request for accommodation shall be reviewed, and a determination made, by the director, using the criteria set forth in § 17-113.
- (b) The director shall issue a written decision on a request for accommodation within 30 calendar days of the date of the application, and may either grant, grant with alterations or conditions, or deny a request for an accommodation in accordance with the required findings set forth in § 17-113.
- (c) If necessary to reach a determination on the request for accommodation, the director may request further information from the applicant consistent with applicable laws, specifying in detail the additional information that is required. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city manager's designee. If a request for additional information is made, the running of the 30

calendar day period to issue a decision is stayed until the applicant responds to the request.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

**§ 17-113 REQUIRED FINDINGS.**

- (a) The written decision to grant, grant with alterations or conditions, or deny a request for accommodation shall be based on the following factors to the extent they are consistent with applicable laws:
  - (1) Whether the housing that is the subject of the request for accommodation will be used by a person with a disability protected under the applicable laws.
  - (2) Whether the requested accommodation is necessary to make a dwelling available to a person with disabilities protected under the applicable laws.
  - (3) Whether the requested accommodation would pose an undue financial or administrative burden on the city. The determination of undue financial and administrative burden will be done on a case-by-case basis.
  - (4) Whether the requested accommodation would require a fundamental alteration in the nature of a city program or law, including but not limited to zoning and land use.
- (b) In making findings, the director may grant with alterations or conditions, reasonable accommodations, if the director determines that the applicant's initial request would impose an undue financial or administrative burden on the city, or fundamentally alter a city program or law. The alterations or conditions shall provide an equivalent level of benefit to the applicant with respect to:
  - (1) Enabling the person(s) with a disability to use and enjoy the dwelling; and
  - (2) Making the provision of housing for person(s) with a disability financially or practically feasible.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

**§ 17-114 WRITTEN DECISION.**

- (a) The written decision of the director on an application for an accommodation shall explain in detail the basis of the decision, including the director's findings on the criteria set forth in § 17-113. All written decisions shall give notice of the applicant's right to appeal and to request assistance in the appeal process as set forth in § 17-115. The notice of the decision shall be sent to the applicant by

certified mail and electronic mail, if the applicant's electronic mail address is known to the city.

- (b) The written decision of the director shall be final unless the applicant files an appeal to the city manager's designee in accordance with § 17-115. Nothing herein shall prohibit the applicant, or persons on whose behalf a specific application was filed, from reapplying for an accommodation based on additional grounds or changed circumstances. Nor shall this provision be construed to affect in any way the rights of a person to challenge the denial of a request for reasonable accommodation as violating the Fair Housing Act, the ADA or any other applicable state, federal or local law.
- (c) If the director fails to render a written decision on the request for accommodation within the 30 calendar day period established in § 17-112, the accommodation request shall be deemed granted.
- (d) A request for accommodation stays all proceedings in furtherance of the enforcement of any requirement that is the subject of the request. An accommodation request does not affect an applicant's obligation to comply with other applicable regulations not at issue in the requested accommodation.
- (e) The director shall retain, for the duration of the accommodation and at least five years thereafter, written records of each request and all related records, including the city's responses and decisions.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*

## **§ 17-115 APPEALS.**

- (a) An applicant, or a person on whose behalf an application was filed, may appeal the written decision to deny or grant an accommodation with alterations or conditions or a denial of the accommodation no later than 30 calendar days from the date the decision is mailed.
- (b) An appeal must be in writing (or reduced to writing as provided by subsection (c), below) and include grounds for appeal. Any personal information related to the disability status identified by the applicant as confidential shall be retained in a manner so as to protect the privacy rights of the applicant and shall not be made available for public inspection unless required by the Texas Public Information Act. Any information received regarding the disability status identified, including but not limited to medical records, will be returned to the applicant within ten days of the decision of the city manager's designee.
- (c) If an applicant needs assistance appealing a written decision, the city will provide assistance transcribing a verbal request into a written appeal to ensure that the appeals process is accessible.

- (d) An applicant shall not be required to pay a fee to appeal a written decision.
- (e) An appeal will be decided by the city manager's designee. In considering an appeal of a decision of the director, the city manager's designee shall consider:
  - (1) The application requesting the accommodation;
  - (2) The director's decision;
  - (3) The applicant's written statement of the grounds of the appeal; and
  - (4) The provisions of this division, in order to determine whether the director's decision was consistent with applicable fair housing laws and the required findings in § 17-113.
- (f) If a written decision on the appeal is not rendered within 30 calendar days from the date the appeal is received, the requested accommodation shall be deemed granted.
- (g) The decision of the city manager's designee is final.

*(Ord. 22098-03-2016, § 1, passed 3-1-2016)*