

Ordinance No. 21-035

**An ordinance adopting the "Anti-Discrimination" Chapter of the Code of the City of Arlington, Texas, 1987; providing this ordinance be cumulative; providing for severability, governmental immunity, injunctions, and publication; and becoming effective ten days after first publication**

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

1.

That the "Anti-Discrimination" Chapter of the Code of the City of Arlington, Texas, 1987, shall be and read as follows:

**ARTICLE I**

**GENERAL PROVISIONS**

**Section 1.01 Declaration of Policy**

- A. The City of Arlington celebrates its diverse population, and as such seeks to promote the rights of every individual to work and earn wages through gainful employment, to obtain and enjoy goods, services, facilities and accommodations in all places of public accommodation, and to obtain housing.
- B. It is the policy of the City of Arlington to ensure that no one is denied employment, housing, or public accommodations based on race, color, national origin, age, religion, sex, or disability.
- C. The City of Arlington recognizes that legal protections extended to most protected classes under federal and state law have not been completely extended to protect individuals against discrimination based on their sexual orientation or gender identity.

**Section 1.02 Definitions**

In this Chapter:

ADMINISTRATOR means the person designated by the City Manager or designee to receive, investigate, and conciliate complaints under this Chapter and includes the administrator's designated representatives.

CITY means the city of Arlington, Texas.

COMPLAINANT means a person, including the administrator, who files a complaint under this Chapter.

CONCILIATION means the attempted resolution of issues raised in a complaint filed under this Chapter, or raised in the investigation of the complaint, through informal negotiations involving the complainant, the respondent, and the administrator.

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

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

EMPLOYEE means any individual employed by an employer. The term does not include an elected official.

EMPLOYER means any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and includes any agent of such a person. The term does not include a bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954, as amended.

EMPLOYMENT AGENCY means any person, and any agent of a person, who regularly undertakes, with or without compensation, to procure:

1. employees for an employer; or
2. opportunities for a person to work for an employer.

GENDER IDENTITY means an individual's real or perceived gender identity as male, female, both, or neither. For purposes of this Chapter, an individual's gender is determined solely by that individual's own perception of their gender.

LABOR ORGANIZATION means a labor organization and any of its agents, and includes: any organization, agency, or employee representation committee, group, association, or plan in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

PERSON means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and other legal entities.

PLACE OF PUBLIC ACCOMMODATION means any of the following establishments if they are open to the general public and, for compensation, offer any product, service, or facility to the general public:

1. any inn, hotel, motel, or other establishment that provides lodging to transient guests, other than an establishment:
  - a. located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as a residence; or
  - b. in which the majority of the occupants are permanent residents and maintain their fixed place of domicile in the establishment;
2. any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of a retail establishment or gasoline station;
3. any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment;
4. any bar, tavern, pub, drinking establishment, or facility where alcoholic beverages are served;
5. any retail or wholesale establishment selling any kind of goods or services;  
or
6. any public conveyance, including stations and terminals.

REASONABLE CAUSE means that there is sufficient evidence to allege that a respondent has violated this Chapter. Evidence is sufficient if a reasonable person would believe that further inquiry into whether a violation occurred is warranted.

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

RELIGIOUS ORGANIZATION means:

1. a religious corporation, association, or society; or
2. a school, college, university, or other educational institution or institution of learning, if:
  - a. the institution is, in whole or in substantial part, controlled, managed, owned, or supported by a religion, religious corporation, association, or society; or

- b. the curriculum of the institution is directed toward the propagation of a religion.

RESPONDENT means a person identified in a complaint as having committed an unlawful practice under this Chapter, and any person identified as an additional or substitute respondent.

SEXUAL ORIENTATION means the actual or perceived status of an individual with respect to the individual's sexuality. Heterosexual, homosexual, and bisexual are examples of sexual orientation.

UNLAWFUL PRACTICE means a discriminatory act or practice relating to employment or public accommodations that is prohibited under this Chapter.

**Section 1.03 Administration**

- A. This policy shall be administered by a designee of the City Manager.
- B. The administrator of this policy shall reserve the right to refer a complainant to the appropriate governmental agency when that agency would have jurisdiction to investigate and resolve the alleged complaint.
- C. If the complainant is alleging an unlawful act that is not within the jurisdiction of a governmental agency to investigate and resolve, the administrator shall investigate and attempt to resolve the complaint when appropriate.

**Section 1.04 Exceptions**

This Chapter does not apply to:

- 1. a religious organization;
- 2. the United States government, any of its departments or agencies, or any corporation wholly owned by it; or
- 3. the government of the State of Texas or any of its departments, agencies, or political subdivisions.

**Section 1.05 Unlawful Employment Practices**

- A. Employers. It is unlawful for an employer, because of race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity to:

1. fail or refuse to hire, or to discharge, any person;
2. discriminate against any person with respect to compensation, terms, conditions, or privileges of employment; or
3. limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee.

B. Employment agencies. It is unlawful for an employment agency to:

1. fail or refuse to refer for employment, or to otherwise discriminate against, any person because of race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity; or
2. classify or refer for employment any person on the basis of sexual orientation or gender identity.

C. Labor organizations. It is unlawful for a labor organization to:

1. exclude or expel from its membership, or to otherwise discriminate against, any person because of race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity;
2. fail or refuse to refer for employment any person because of race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity;
3. limit, segregate, or classify its members or applicants for membership in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
4. cause or attempt to cause an employer to discriminate against a person in violation of this Chapter.

D. Training programs. It is unlawful for an employer, a labor organization, or a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to discriminate against any person because of race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity in the admission to, or employment in, any program established to provide apprenticeship or other training.

E. Notices and advertisements.

1. It is unlawful for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification, or discrimination based on race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity.
  2. It is unlawful for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification, or discrimination based on race, national origin, age, religion, sex, disability, sexual orientation or gender identity.
  3. It is unlawful for a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification, or discrimination based on race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity.
  4. Nothing in this subsection prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination based on race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity when that status is a bona fide occupational qualification for employment.
- F. Exception. This section does not apply to, and does not require, the provision of employee benefits to a person for the benefit of the person's domestic partner.

#### **Section 1.06 Unlawful Public Accommodation Practices**

- A. Discrimination in public accommodations. It is unlawful for any owner, proprietor, or lessee of any place of public accommodation, because of race, color, national origin, age, religion, sex, disability, sexual orientation or gender identity:
1. to directly or indirectly exclude, segregate, limit, refuse, or deny to any person any of the accommodations, advantages, facilities, benefits, privileges, services, or goods offered to the general public at that place; or
  2. to circulate, issue, display, post, mail, or otherwise publish a statement, advertisement, or sign indicating that:
    - a. a person will be denied accommodations, advantages, facilities, benefits, privileges, services, or goods at that place; or

- b. the patronage or presence of a person at that place is objectionable, unwelcome, unacceptable, undesirable, or unsolicited.
- B. Defense. A complaint may be dismissed if the refusal to admit a person to a place of public accommodation or the expulsion of a person from a place of public accommodation was required by law.
- C. Exceptions. This section does not apply to:
  - 1. a hotel, restaurant, bar, lounge, nightclub, cabaret, theater, bowling alley, skating rink, or golf course when the accommodations, advantages, facilities, and services are restricted to members of a club and their guests; or
  - 2. any bona fide social, fraternal, educational, civic, political, or religious organization, when the profits of the accommodations, advantages, facilities, and services (above reasonable and necessary expenses) are solely for the benefit of the organization.

#### **Section 1.07 Unlawful Intimidation, Retaliation, and Coercion**

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, negotiation or proceeding under this Chapter.

#### **Section 1.08 Procedures for Filing Complaints**

- A. Any person who claims to have been injured by an unlawful practice may file a complaint with the administrator. A complaint may also be filed by the administrator if the administrator has reasonable cause to believe that a person has committed an unlawful practice. A complaint must be filed within 90 calendar days after an alleged unlawful practice has occurred.
- B. A complaint must be in writing on a form provided by the administrator, made under oath or affirmation, and contain the following information:
  - 1. name and address of the respondent;
  - 2. name, address, email address and signature of the complainant;
  - 3. date of occurrence of the alleged unlawful practice; and

4. statement of the facts upon which the allegation of an unlawful practice are based.
- C. Promptly after the filing of a complaint, the administrator shall, in writing:
1. notify the respondent named in the complaint that a complaint alleging the commission of an unlawful practice has been filed against the respondent;
  2. furnish a copy of the complaint to the respondent; and
  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 15 days after service of notice of the complaint.
- D. Not later than the 15th day after service of the notice and copy of the complaint, 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; and
  2. concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

#### **Section 1.09 Investigation and Report**

- A. Upon the filing of a complaint, the administrator shall commence a prompt and full investigation to determine the facts behind the complaint and whether there is reasonable cause to believe an unlawful practice was committed, except that no investigation may commence if, after personally reviewing the allegations with the complainant, the administrator determines that the complaint does not come within the scope of this Chapter. Within 15 days after determining that a particular complaint does not come within the scope of this Chapter, the administrator shall give the complainant a clear and concise explanation, in writing, of the reasons why it does not and take no further action on the complaint.
- B. The burden of proof shall be on the complainant that an unlawful act occurred.
- C. The administrator shall complete an investigation within 60 days of receiving the complaint. The City Manager or designee shall grant one extension of 30 days to the administrator to conclude an investigation upon a showing of good cause.
- D. In connection with any investigation of a complaint filed under this Chapter, the administrator shall seek the voluntary cooperation of any person to:

1. obtain access to premises, records, documents, individuals, and any other possible source of information;
  2. examine, record, and copy necessary materials; and
  3. take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.
- E. The administrator may, at the administrator's discretion or at the request of the respondent or the complainant, request the mayor's office to issue a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents pursuant to its power under Section 11.02, Administration Chapter of the Arlington City Ordinances.
- F. The administrator shall prepare a final investigative report showing, at a minimum, the names and dates of contacts with witnesses; a summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts; a summary description of other pertinent records; and a summary of witness statements. A final report under this section may be amended if additional evidence is discovered. If there are legal questions involved, the complaint will be sent to the city legal department for review.
- G. After completion of the investigation, the administrator shall make available to the complainant and the respondent, at any time, information derived from the investigation and the final investigation report related to the investigation.

#### **Section 1.10 Conciliation**

- A. During or after the investigation, but subsequent to the mailing of the notice of the complaint to the respondent, the administrator shall, if it appears that an unlawful practice has occurred, attempt to conciliate the complaint. In conciliating a complaint, the administrator shall try to achieve a just resolution and obtain assurances that the respondent will satisfactorily remedy any violation of the complainant's rights and take action to ensure the elimination of both present and future unlawful practices in compliance with this Chapter. This can include the voluntary discontinuance of the unlawful practice by the respondent and adequate assurances of future compliance with this Chapter combined with an educational component. Nothing said or done during the course of conciliation may be made public or be used as evidence in a subsequent proceeding under this Chapter. For these purposes, complaints and proceedings under this article shall be considered as litigation.
- B. A conciliation agreement executed under this section must be in writing in a form approved by the city attorney and must be signed and verified by the respondent and the complainant, subject to approval of the administrator who shall indicate approval by signing the agreement. A conciliation agreement is executed upon its

signing and verification by all parties to the agreement. An agreement shall be a public document.

### **Section 1.11 Disposition of a Complaint**

- A. The administrator may dismiss a complaint:
1. during the investigation when the administrator determines that:
    - a. the complaint was not filed within the required time period;
    - b. the location of the alleged unlawful practice is not within the city's jurisdiction;
    - c. the alleged unlawful practice is not a violation of this Chapter;
    - d. the complainant refuses to cooperate with the administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;
    - e. the complainant cannot be located after the administrator has performed a reasonable search; or
    - f. a conciliation agreement has been executed by the complainant and respondent.
- B. The administrator shall, in writing, notify the complainant and the respondent of the dismissal of a complaint and include a statement of the reasons for the dismissal.

### **Section 1.12 Referral to Outside Agency**

If the parties are unable to reach a resolution to a complaint after an attempt at conciliation, or the respondent does not elect to engage in the conciliation process, the administrator will provide the complainant with the findings of their investigation and provide the complainant with referral assistance for a state or federal agency that has jurisdiction over the complaint.

### **Section 1.13 Effect of Provisions on Civil Remedies**

This Chapter shall neither add to, nor detract from, any civil remedies now available to persons complaining of discrimination under this Chapter. This Chapter does not create a private cause of action.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

6.

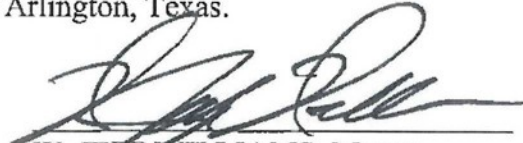
The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

7.


This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 8th day of June, 2021, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 15th

day of June, 2021, by a vote of 6 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

  
W. JEFF WILLIAMS, Mayor

ATTEST:

  
ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:  
TERIS SOLIS, City Attorney

BY 