



City of Denton

City Hall
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Denton, Texas
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AGENDA INFORMATION SHEET

DEPARTMENT: City Manager’s Office

ICM: Sara Hensley

DATE: September 14, 2021

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding an overview of the previous February 25, 2020 and October 13, 2020 Council work sessions, federal and state civil rights law, and research of comprehensive non-discrimination ordinances.

BACKGROUND

Introduction

On June 9, 2021, Council Member Maguire requested a work session for Council to revisit the issue of a comprehensive non-discrimination ordinance for the City of Denton. The request was made in a one-minute pitch to Council on June 15, 2021 and was approved.

Staff has made prior presentations to City Council on non-discrimination ordinances and topics on February 25, 2020 and October 13, 2020. The work sessions covered the Human Rights Campaign Municipal Equality Index, an overview of federal and state civil rights laws, a Supreme Court decision regarding employment matters, and research compiled on comprehensive non-discrimination ordinances. To view video of the work session presentation and discussion, please visit the Public Meetings archive on the City website (click [here](#) to view the February 25, 2020 archived recording and materials; click [here](#) to view the October 13, 2020 archived recording and materials). Staff will review some of this prior information and provide updates on actions taken since.

Municipal Equality Index Scorecard

The City of Denton is one of 506 cities nation-wide that are rated by the Human Rights Campaign (HRC), a civil rights organization founded in 1980 representing the LGBTQ community. The HRC has developed a Municipal Equality Index (MEI) scorecard to annually examine and rate how inclusive municipal laws, policies, and services are to the LGBTQ people who live and work in the community. In 2020, the City of Denton scored a total of 63 out of 100 possible points in the index. This is higher than Denton’s previous scores (2016- 35, 2017- 44, 2018- 52, and 2019-57).

HRC-MEI Scorecard	Possible Points for 2020*	Denton 2020
I. Non-Discrimination Laws	30 (4)	0 (0)
II. Municipality as Employer	28 (1)	20 (0)
III. Municipal Services	12 (12)	10 (4)
IV. Law Enforcement	22	22
V. Leadership on LGBTQ Equality	8 (5)	7 (0)
Total**	100 (22)	63

*Possible points shown in parentheses represent eligible bonus points

**Some cities may score bonus points in sections, but the total score for a city cannot exceed 100

In the scorecard, the City of Denton does not receive points in Section 1.

- **Section 1 Non-Discrimination Laws** evaluates whether discrimination on the basis of sexual orientation and gender identity is prohibited by the city, county, or state in areas of private employment, housing, and public accommodations. There are a few municipalities in Texas that have adopted comprehensive non-discrimination ordinances prohibiting discrimination in the areas of private employment, housing, and public accommodations.

DISCUSSION

Federal and State Law and Precedent Cases

Before reviewing the research on surveyed cities that have a comprehensive non-discrimination ordinance, the following provides some information on federal and state law in the areas of employment, housing, and public accommodations.

1. **Employment** – Title VII of the Civil Rights Act of 1964 prohibits discrimination on race, color, religion, sex or national origin. Texas law prohibits discrimination in employment based on a person’s race, religion, gender, national origin, age, or disability. Federal and state law did not expressly include a prohibition against discrimination based upon a person’s sexual orientation or gender identity.

On October 8, 2019, however, there were three cases heard before the Supreme Court related to whether discrimination on the basis of sexual orientation or gender identity is covered by the Title VII of the Civil Rights Act. The case on gender identity was [*R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission \(EEOC\)*](#), No. 18-107, and the cases on sexual orientation were [*Bostock v Clayton County, GA*](#), No. 17-1618, and [*Altitude Express Inc. v. Zarda*](#), No. 17-1623. The Court combined the three cases to rule on the question of whether or not Title VII of the Civil Rights Act prohibits discrimination in employment based on sexual orientation and gender identity.

On June 15, 2020, the Court issued the 6-3 majority opinion holding that Title VII of the Civil Rights Act of 1964 also covers sexual orientation and gender identity, making it illegal for employers to discriminate because of a person’s sex. This ruling upholds those from lower courts who ruled sexual orientation or gender identity discrimination was a form of sex discrimination.

The Court wrote in its decision that an employer violates Title VII when it intentionally fires an individual employee based in part on sex. The Court further discussed that since “discrimination requires an employer to intentionally treat individual employees differently because of their sex, an employer who intentionally penalizes an employee for being homosexual or transgender also violates Title VII.” Justice Neil Gorsuch opined for the majority in the Court’s ruling and specifically mentioned that no other federal or state laws prohibiting sex discrimination were brought before the Court to hear in this case, and that the Court does not “purport to address bathrooms, locker rooms, or anything else of the kind.” Justice Gorsuch also made it a point to mention for those concerned about potential violations of religious freedoms that religious freedom was not a question put before the Court in this case.

Equal Employment Opportunity Commission (EEOC)

If an individual believes they have been unlawfully discriminated against in employment matters on the basis of sexual orientation or gender identity, they can file a complaint through the EEOC.

- Private sector and state/local government employees may file a charge of discrimination by contacting the EEOC at 1-800-669-4000 or go to <https://www.eeoc.gov/how-file-charge-employment-discrimination>.

- Federal government employees may initiate the complaint process by contacting an EEO counselor at your agency; more information is available at <https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process>.

The EEOC has updated its website with a guidance document based on the Supreme Court’s decision in *Bostock v. Clayton* found here: <https://www.eeoc.gov/laws/guidance/what-you-should-know-eeoc-and-enforcement-protections-lgbt-workers>.

2. **Housing** – The Texas Fair Housing Act and the U.S. Fair Housing Act prohibit discriminatory housing practices in the sale, rental and financing of dwellings based on race, color, national origin, religion, sex, physical or mental disability, or familial status (presence of a child under age 18 living with parents or legal custodians, person securing custody of children under 18, or a pregnant woman).

On January 20, 2021, President Biden issued Executive Order 13988 which directs all federal agencies to explicitly prohibit sex discrimination and fully enforce those statutes to combat discrimination based on sexual orientation and gender identity. A subsequent [memorandum](#) in February 2021 from Acting Assistant Secretary for Fair Housing and Equal Opportunity details **HUD’s directive to enforce the Fair Housing Act to include the prohibition of discrimination based on sexual orientation and gender identity. Therefore, HUD will accept and investigate all jurisdictional complaints of sex discrimination, including discrimination because of gender identity or sexual orientation**, and enforce the Fair Housing Act where it finds such discrimination occurred.

Persons who believe they have experienced housing discrimination may file a complaint by contacting HUD's Office of Fair Housing and Equal Opportunity at (800) 669-9777 (voice) or (800) 877-8339 (TTY/Relay). Housing discrimination complaints may also be submitted online at hud.gov/fairhousing.

3. **Public Accommodations** - Texas currently has no statewide law prohibiting discrimination against the protected classes of race, color, religion, sex, national origin, sexual orientation, gender identity/ expression, age, or disability.

Federal law, specifically Title II of the Civil Rights Act of 1964, states that all persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, and privileges, advantages, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, religion, or national origin. However, the Civil Rights Act of 1964 has not been amended to include sexual orientation or gender identity. In general, “public accommodations” include businesses (but not all) or buildings that are open to (or offer services to) the general public, such as hotels, restaurants, and places of entertainment.

The Department of Justice Civil Rights Division, Housing and Civil Enforcement Section, works to protect rights of individuals including the right to patronize places of business that provide public accommodations. The [Department of Justice](#) can bring a lawsuit under Title II of the Civil Rights Act of 1964 when there is reason to believe that a person has engaged in a pattern or practice of discrimination in violation of Title II. The Department can obtain injunctive, but not monetary, relief in such cases. Individuals can also file suit to enforce their rights under Title II and other federal and state statutes may also provide remedies for discrimination in places of public accommodation.

Research of Local Non-Discrimination Ordinances in Texas

The attached presentation (*Exhibit 2*) attempts to provide a high-level summary and comparison of the ordinances and programs of the cities of Plano, Arlington, Dallas, Fort Worth, and Austin across key components. The full text of the ordinances and other resources, such as websites, can be found in the links provided here:

- City of Plano
 - [Chapter 2 Administration, Article I In General, Section 2-11 Equal Rights Policy](#)
 - [City of Plano Equal Rights Ordinance website page](#)
 - [City of Plano Equal Rights Ordinance FAQs](#)
- City of Arlington (adopted June 15, 2021)
 - [City of Arlington Anti-Discrimination Ordinance](#)
 - [City of Arlington Fair Housing Code](#)
- City of Dallas
 - [Chapter 20A Fair Housing](#)
 - [Chapter 46 Unlawful Discriminatory Practices Relating to Sexual Orientation and Gender Identity and Expression](#)
 - [City of Dallas Fair Housing and Human Rights Office website page](#)
- City of Fort Worth
 - [Chapter 17 Human Relations, Article III Discrimination](#)
 - [City of Fort Worth Diversity & Inclusion Department website page](#)
- City of Austin
 - [Title 5 – Civil Rights Chapter 5-1 – Housing Discrimination](#)
 - [Title 5 – Civil Rights Chapter 5-2 – Discrimination in Public Accommodations](#)
 - [Title 5 – Civil Rights Chapter 5-3 – Discrimination in Employment Generally](#)
 - [City of Austin Equal Employment and Fair Housing Office website page](#)

State and Local Agencies with Authority to Administer Federal Laws

In the presentation, it is shared that the cities of Dallas, Fort Worth, and Austin are Fair Housing Assistance Program (FHAP) agencies with HUD and the cities of Fort Worth and Austin have workshare agreements with the EEOC as Federal Employment Protection Agencies (FEPA). The following is a brief explanation of those programs with links to more information.

- [Fair Housing Assistance Program \(FHAP\) Agency](#) – Through FHAP, HUD provides some funds to state and local agencies to administer fair housing laws that HUD has determined to be substantially equivalent to the Fair Housing Act (referred to as “Substantially Equivalent Agencies”). There are two phases in determining whether an agency is substantially equivalent. In the first phase, the Assistant Secretary for Fair Housing and Equal Opportunity determines whether, “on its face,” the state or local law provides rights, procedures, remedies and judicial review provisions that are substantially equivalent to the Fair Housing Act. If so, HUD offers the agency interim certification for up to three years. During the three years of interim certification, the agency builds its capacity to operate as a fully certified substantially equivalent agency.

In the second phase, the Assistant Secretary for Fair Housing and Equal Opportunity determines whether, “in operation,” the state or local law provides rights, procedures, remedies and the availability of judicial review that are substantially equivalent to the Fair Housing Act. An affirmative conclusion that the state or local law is substantially equivalent both on its face and in operation will result in HUD offering the agency certification. Certification is for a term of five

years. During the five years of certification, the agency's ability to maintain certification will be assessed. The specific requirements to become a FHAP are enumerated in [24 C.F.R. part 115](#).

While HUD provides resources to Substantially Equivalent Agencies in the form of training, technical assistance and funding, the agencies must demonstrate a commitment to thorough and professional complaint processing. This includes all phases of complaint processing, from accurate identification of issues at intake, through complete and sound investigations, to following through on administrative or judicial enforcement to ensure that victims of unlawful housing discrimination obtain full remedies and the public interest is served. Local resources from the jurisdiction should include both funding and the legal resources necessary to pursue administrative and/or judicial enforcement. In Texas, for state and local agencies, the Texas Workforce Commission and the cities of Dallas, Fort Worth, Austin, Corpus Christi, and Garland are [listed as FHAPs](#) on HUD's website.

- [Fair Employment Practice Agencies \(FEPA\)](#) – The EEOC may contract with state or local agencies under a [workshare agreement](#) for the agencies to process employment discrimination charges. In Texas, for state and local agencies, the Texas Workforce Commission Civil Rights Division and cities of Fort Worth and Austin are [listed as FEPAs](#) on EEOC's website. The EEOC operates 3 field offices in Dallas, San Antonio, and El Paso.

Current Data

Following the October 13, 2020 work session presentation, City Council asked staff for any information on the number of fair housing complaints received and those that were subsequently referred to HUD. The City tracks complaints related to housing, however, most complaints received are related to landlord-tenant disputes and not potential violations of fair housing (discrimination). Of 39 complaints received in FY19-20 and YTD FY20-21, only one complainant was assisted with information on filing with HUD as a potential fair housing violation within the City of Denton. The City does not receive any information from HUD on the number of complaints received as HUD does not track by jurisdiction with their agency.

Below is some additional information on complaints from the last two fiscal years that were reported to the City's Community Services Department:

Twenty-two (22) housing complaint calls were logged in FY19-20.

- Staff assisted one (1) complainant with information on filing with HUD.
- One (1) referral was made to housing navigator for the list of landlords who would accept Criminal history.
- Six (6) were referred to the City's Rental Inspection program as a result of tenant complaint that a landlord was not completing necessary repairs.
- The remaining fourteen (14) were Landlord/Tenant civil disputes outside of the City's authority. Staff provides referral to Texas Tenant's Union, etc.

Seventeen (17) complaints have been logged YTD in FY20-21.

- Five (5) were outside the City's jurisdiction but staff still offered to assist with filing. Individuals did not follow-through with staff.
- One (1) had already filed through the North Texas Fair Housing Center but was unhappy with HUD decision and wanted help finding a lawyer. Referred her back to her Lawyer, F. Raza, at North Texas Fair Housing Center.
- One (1) was related to Emotional Support Animal and questions about what a landlord can require. Complaint was not Fair Housing or state violation. Staff provided ADA education and referral to legal aid.
- One (1) was a roommate property dispute.

- The remaining nine (9) were Landlord/Tenant civil disputes outside of the City’s authority. Staff provides referral to Texas Tenant’s Union, etc.

City of Arlington Ordinances

On June 15, 2021, the City of Arlington adopted two Anti-Discrimination Ordinances, one that revised their existing fair housing ordinance and the other to include public accommodations and employment. Their local policy will be administered by an administrator, yet to be determined by the City Manager, who will attempt to investigate and resolve and conciliate complaints when appropriate. They also may refer the complaint(s) to the appropriate governmental agency (e.g. HUD), where it may be appropriate to do so.

Arlington’s ordinance outlines a new system for filing complaints, including how to file, how the City will respond, and a timeline for all procedural steps. When speaking with staff from the City of Arlington, they emphasized that the ordinance is focused on education and conciliation to try to resolve any complaints and bring into compliance.

EXHIBITS

1. Agenda Information Sheet (including research and links)
2. Presentation

Respectfully submitted:
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