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# **Work Session Comprehensive Non-Discrimination Ordinance Research**

## **September 14, 2021**



# Background

- On June 9, Council Member Maguire requested a work session for Council to revisit the issue of a comprehensive non-discrimination ordinance; the one-minute pitch request was approved by Council on June 15
- Previous research on non-discrimination ordinances covering sexual orientation and gender identity was provided in work sessions on February 25, 2020 and October 13, 2020
- Today, staff will review information regarding the following:
  - Overview of Federal and State Law
  - Overview of comprehensive Non-Discrimination Ordinances of the 5 cities in Texas: Plano, Arlington, Dallas, Fort Worth, and Austin
  - Provide information on housing complaints referred by the City (as requested in October 13, 2020 work session)



# Federal and State Law

Area:	Sexual Orientation (SO) & Gender Identity (GI) Covered?	More Information:
Employment	Yes	<ul style="list-style-type: none"><li>On June 15, 2020, the Supreme Court ruled that <b>sexual orientation and gender identity is covered by Title VII of the Civil Rights Act of 1964</b></li><li><b>U.S. Equal Employment Opportunity Commission (EEOC)</b> handles and investigates complaints</li></ul>
Housing	Yes, in part and in practice by HUD	<ul style="list-style-type: none"><li>Texas Fair Housing Act and U.S. Fair Housing Act prohibit discriminatory housing practices based on race, color, national origin, religion, sex, physical or mental disability, or familial status</li><li>Per <b>Executive Order and HUD memorandum in Feb. 2021, HUD interprets the Fair Housing Act to bar discrimination on the basis of sexual orientation and gender identity.</b> HUD will accept and investigate all jurisdictional complaints of sex discrimination, including discrimination because of gender identity or sexual orientation</li><li><b>HUD's Equal Access Rule</b> requires equal access to HUD programs without regard to a person's actual or perceived sexual orientation, gender identity, or marital status. Housing providers that receive HUD funding or have HUD-insured loans are subject to the Rules</li></ul>
Public Accommodations	No	<ul style="list-style-type: none"><li><b>Title II of the federal Civil Rights Act of 1964</b> provides for equal enjoyment of the goods, services, facilities, and accommodations of any place of public accommodation without discrimination or segregation on the ground of race, color, religion, or national origin. Sex discrimination is not included</li><li>The Department of Justice can bring a lawsuit under Title II when there is reason to believe that a person engaged in a pattern or practice of discrimination</li></ul>

# Local Non-Discrimination Ordinances

- Some local governments have passed **Non-Discrimination Ordinances (NDOs) to add protections for those classes not covered expressly** under federal or state law, which may include sexual orientation or gender identity, in addition to other classes
- According to the Movement Advancement Project (MAP) (1), as of Jan. 1, 2021, there are 21 states and at least 330 municipalities that fully and explicitly prohibit discrimination against LGBTQ people in employment, housing, and accommodations
  - **In Texas, 5 cities have an ordinance** prohibiting discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations
  - **These ordinances are generally based on and mirror existing state and federal law** for employment, housing, and public accommodations, but extend the classes expressly covered



# Local Non-Discrimination Ordinance Parameters

- As stated, the local NDO's in Texas are generally based on and mirror existing state and federal law for employment, housing, and public accommodations, but extend the classes expressly covered
  - For example, the definitions of housing types covered generally mirror federal law
- The Texas Religious Freedom and Restoration Act, or RFRA, prohibits government from infringing on religion and allows individuals to challenge laws that “substantially” burden their practice of religion
  - Each of these NDO's takes into account this law in Texas and provides for broad or specific exemptions for religion



# Local Non-Discrimination Ordinance Parameters

- Dallas, Fort Worth, and Austin have proven to have offices substantially equivalent to federal agencies and have been granted authority by those agencies to help enforce federal law
  - Cities are able to use those processes and staffing also for administration of local ordinances
- Plano and Arlington do not
  - Plano refers complaints where possible and, since 2014, has not investigated any complaints
  - Arlington may refer out to other agencies and, since its adoption in June 2021, still determining how and who will administer and investigate if one is received

## Fair Housing Assistance Program (FHAP) Agency

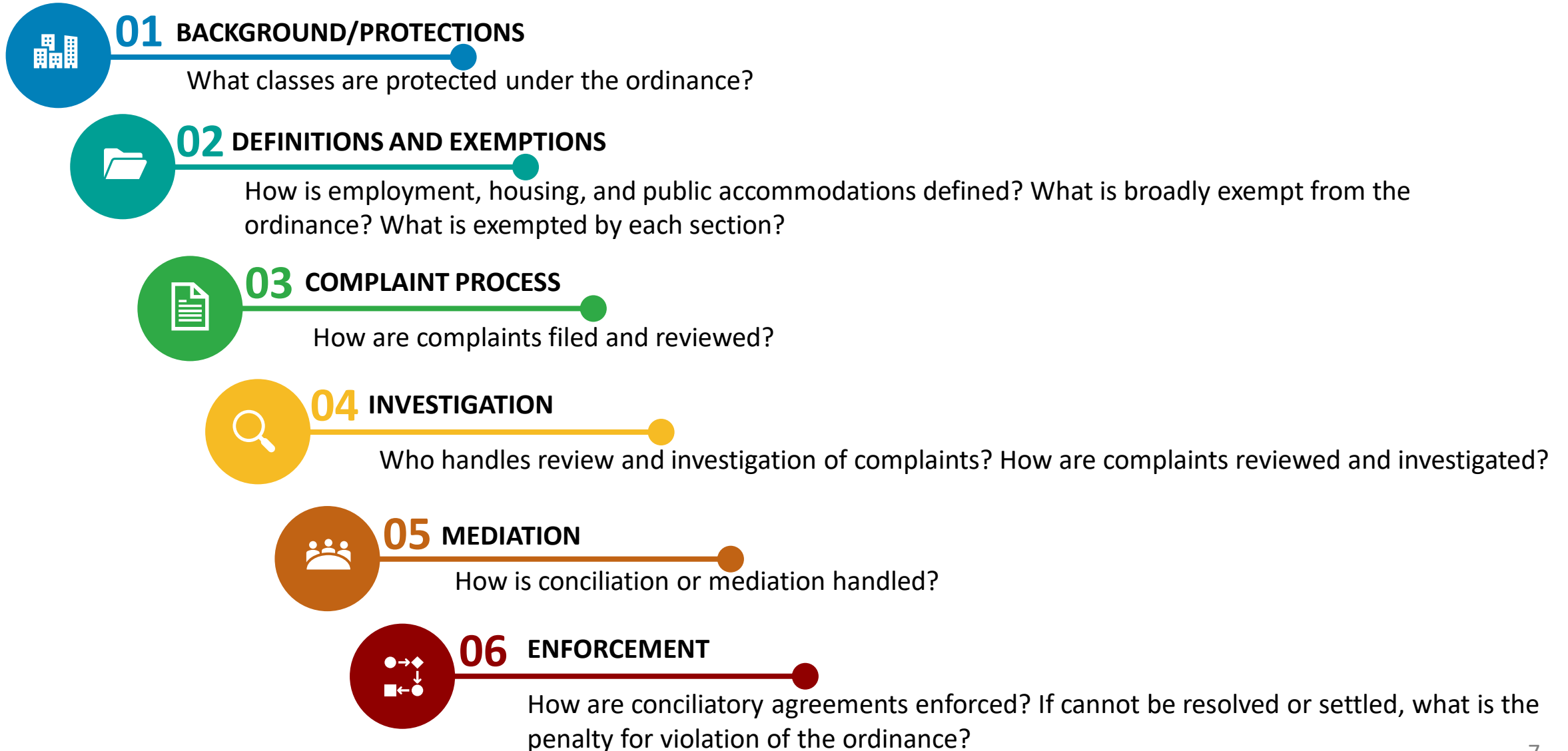
- HUD provides some authority and funds to state and local agencies to administer fair housing laws **that HUD has determined to be substantially equivalent**
- Must apply to HUD to become a FHAP agency and demonstrate in two phases that an agency is substantially equivalent: (1) “on its face” for interim certification for 3 years, and (2) “in operation”
- Must provide the **same rights, procedures, remedies, and availability for judicial review** that are substantially equivalent to Fair Housing Act

## Fair Employment Practice Agency (FEPA)

- EEOC may contract with state or local agencies under a **workshare agreement** for the agencies to process employment discrimination charges



# Non-Discrimination Ordinance Components



# City of Plano

## OVERVIEW

- Ordinance **adopted in Dec. 2014**; incorporated in Municipal Code in Ch. 2 Administration, Equal Rights Policy
- Prohibits discrimination in employment, housing, and public accommodations and extends to cover U.S. military/veteran status, genetic information, sexual orientation, and gender identity

## EXEMPTIONS

- **Broad exemptions** in Ordinance for:
  - **Religious, political, and non-profit organizations, and educational institutions**
  - The **U.S. government and State of Texas**, and departments and agencies
  - **Private clubs** that are restricted to members of the club and guests and are not open to the general public
- **Public restrooms are exempt** from the Ordinance

## COMPLAINTS

- The City has received **9 official complaints** under the Ordinance; the last complaint was received in 2016
  - **Of those, zero (0) complaints have reached the required level** to warrant an investigation
- Initial review by City Manager or designee (currently Human Resources Director)

## INVESTIGATION

- **City refers complaints to federal and state agencies** if it within those agencies' jurisdiction
- **For others, an investigation panel would consist of a 5-person panel**, with 3 director level staff appointed by City Manager and 2 rotating external business community reps. City Attorney or designee would serve as legal advisor

## MEDIATION

- **Initial review** to determine if refer, deny, or accept the complaint
- If accepted, the **5-person panel** would schedule meetings and review
- If reasonable cause would be determined and a religious accommodation was not granted, the matter would be **referred to a neutral third-party mediator** paid for by the City

## ENFORCEMENT

- If an agreement cannot be reached, **referred to City Attorney's Office for review** for possible criminal enforcement (citation issuance)
  - discretion to decline criminal enforcement depending on the facts and evidence of each case and the legal burden required for criminal enforcement
- Violations of the ordinance will be **subject up to a \$500 fine, per offense**



# City of Arlington

## OVERVIEW

- In 1987, Arlington adopted the “Anti-Discrimination” Chapter of the Code of the City of Arlington, Texas
  - Amended in June 2021 to add gender identity and sexual orientation
- Arlington also has a Fair Housing Ordinance that was amended in June 2021 to include gender identity and sexual orientation to its protected classes

## EXEMPTIONS

- Broad exemptions for:
  - A religious organization
  - The U.S. government or State of Texas, and departments and agencies
- Some specific exemptions underneath each subsection of housing, employment, and public accommodations

## COMPLAINTS

- Adopted on June 15, 2021
- Arlington has not received any complaints under their Ordinance

## INVESTIGATION

- City Manager designates administrator to oversee process and may refer out to other agencies where appropriate
- The investigation would be completed by the administrator who would provide a full investigative report upon completion
- Have not yet determined who will be the administrator; may be part of a new staff position to be hired

## MEDIATION

- Administrator conducts full review of evidence, including examining records and interviewing witnesses
- If it appears an unlawful practice has occurred, during or after the investigation, staff attempt to conciliate the complaint and reach an agreement with both parties

## ENFORCEMENT

- If unable to conciliate, the case is referred to the state or federal agency that has jurisdiction
- There is no penalty/fine for ordinance violations

# City of Dallas

## OVERVIEW

- In 2002, Dallas adopted Ch. 46 “Unlawful Discriminatory Practices Relating to Sexual Orientation” prohibiting discrimination in housing, employment, and public accommodations
  - Ch. 46 was **amended in 2016** to add gender identity and expression
- Dallas also has a Fair Housing Ordinance (Ch. 20A) and is a certified federal Fair Housing Assistance Program (FHAP) agency

## EXEMPTIONS

- **Broad exemptions in Ch. 46** for:
  - A **religious organization**
  - The **U.S. government or State of Texas**, and departments and agencies
- **Some specific exemptions underneath each section** of housing, employment, and public accommodations

## COMPLAINTS

- **Since 2002, 91 complaints** have been filed with the City
  - 40- Employment, 38- Housing, 12 – Public Accommodations, and 1- Retaliation



## INVESTIGATION

- City of Dallas is a certified federal Fair Housing Assistance Program (**FHAP**) agency
- **City of Dallas Office of Fair Housing and Human Rights**; the office has **4 Fair Housing Investigators** on staff



## MEDIATION

- **Initial review** to establish if it occurred in Dallas and an issue covered under the ordinance
- **Investigator conducts full review** of evidence, including examining records and interviewing witnesses
- If it appears an unlawful practice has occurred, during or after the investigation, **staff attempt to conciliate** the complaint and reach an agreement with both parties



## ENFORCEMENT

- Office of Fair Housing and Human Rights enforces conciliation agreements
- If unable to conciliate, the case is **referred to the City Attorney’s Office** to determine whether to proceed with prosecution of the complaint in municipal court
- An offense is punishable by a **fine of not less than \$200 or more than \$500**

# City of Fort Worth

## OVERVIEW

- Fort Worth's **Ch. 17 Human Relations** was adopted more than 50 years ago
  - **Amended in 2000** to prohibit discrimination based on sexual orientation **and in 2009** based on gender identity
- Fort Worth has been a federal Fair Housing Assistance Program (**FHAP**) agency and a federal Fair Employment Practice Agency (**FEPA**) for more than 40 years

## EXEMPTIONS

- **No broad exemptions** for entire Ch. 17
- **Some specific exemptions underneath each section** (of housing, employment, public accommodations, and reasonable accommodation or modification for residential uses)
  - E.g. for religious organizations, private clubs
- **Public restrooms are exempt**

## COMPLAINTS

- **In FY18**, there were:
  - 93 housing complaints filed
  - 172 fair employment charges filed
  - 7 public accommodations complaints filed

## INVESTIGATION

- Fort Worth is a certified federal **FHAP** agency and **FEPA** agency
- **City of Fort Worth Diversity & Inclusion Department; 9 FTEs and 2 PT** staff including investigators, coordinator, intake specialist, admin, and asst director
- Staff supervised by an Administrator reporting to the **Fort Worth Human Relations Commission (FWHRC)**, an appointed body

## MEDIATION

- **Initial review** to meet the jurisdictional and prima facie elements as outlined by HUD, EEOC, and/or local ordinance
- Once established, City **begins an investigation**, including interview, documentation, onsite investigations, and reports
- **Can close in 4 ways:** Admin Closure, Conciliation/Settlement, No Reasonable Cause, or Reasonable Cause

## ENFORCEMENT

- If solved through conciliation agreement, Diversity & Inclusion Department monitors, tracks, and ensures compliance
- An offense under the Ordinance is punishable by a fine of not more than \$500

# City of Austin

## OVERVIEW

- Austin has **Title 5 Civil Rights Chapter** with 6 individual sections
- Austin is a federal Fair Housing Assistance Partner (**FHAP**) agency and has authority to enforce 6 federal statutes under **agreement with EEOC**

## EXEMPTIONS

- **No broad exemptions** for entire Title 5 Civil Rights Chapter
- **Some specific exemptions underneath each section** (of housing, employment, public accommodations, fair chance hiring, HIVs/AIDS ordinance, and employment by City contractors)
  - E.g. for religious organizations, private clubs

## COMPLAINTS

- **Since 2005, 78 official complaints filed under local ordinance**
  - Of those, 53 have warranted a full investigation
- **Under agreements with HUD and EEOC**, Austin investigates/conciliates **approx. 160 cases per year**

## INVESTIGATION

- Austin is a certified federal **FHAP** agency and has authority to enforce 6 federal statutes under **agreement with EEOC**
- **City of Austin Equal Employment/Fair Housing Office (EEFHO); 7 FTEs**, inclusive of investigators, mediators, administrator, etc.
- **Human Rights Commission**, appointed body

## MEDIATION

- **Review and intake** process
- **Investigation begins**; settlement efforts can begin and continue during the investigation
- If settled, closed without further investigation. If efforts fail, continue with thorough investigation (evidence, interviews, on-site visits to determine if no cause or cause)

## ENFORCEMENT

- If settled through conciliation agreement, Legal Department handles enforcement of those agreements
- If not settled, and a cause determination is issued, **the case is forward to the city attorney** for prosecution in municipal court or other civil prosecution as authorized by state law

# Current Practices

- If the City receives potential complaints, how are they handled now?
  - **Employment**
    - Refer to Equal Employment Opportunity Commission (1-800-669-4000) or [www.eeoc.gov/how-file-charge-employment-discrimination](http://www.eeoc.gov/how-file-charge-employment-discrimination)) (*note: in recent history, staff has not received any calls*)
  - **Housing**
    - Community Services staff assist in coordinating and referring calls
    - What types of general housing complaints are received? (*data is on the next slide*)

Landlord-Tenant Disputes	<ul style="list-style-type: none"><li>• Most calls fit this category</li><li>• Staff help to refer to an agency if assistance is needed</li><li>• City provides a general human services grant program for non-profit agencies (currently funding RISE)</li></ul>
Barriers to Housing / Housing Assistance	<ul style="list-style-type: none"><li>• Staff help to refer to an agency that can assist based upon individual or family's circumstances</li><li>• City provides a general human services grant program for non-profit agencies (currently funding housing non-profits), a specific annual grant for rapid rehousing, and a specific annual grant for the UWDC Barriers Fund</li></ul>
Rental Inspections by Request	<ul style="list-style-type: none"><li>• Community Services Rental Inspection Program can inspect a unit by request and with permission of the tenant</li></ul>
Potential Fair Housing Violation	<ul style="list-style-type: none"><li>• Staff help to refer to HUD if a potential violation of fair housing</li></ul>

# Requested Housing Complaint Data

- During the October 13, 2020 Work Session, Council requested staff to provide the number of housing complaints received by City staff and those that were subsequently referred to HUD as potential fair housing violations
- Of 39 complaints tracked in last two years, only one was assisted with filing with HUD as a potential violation of fair housing

- In FY19-20, twenty-two (22) housing complaint calls were tracked

- Assisted one (1) complainant with filing with HUD
- One (1) referral made to housing navigator
- Six (6) were referred to the City's Rental Inspection program
- Remaining fourteen (14) were Landlord/Tenant civil disputes outside of the City's authority

- In FY20-21, seventeen (17) complaints have been tracked

- Five (5) were outside the City's municipal jurisdiction
- One (1) had already filed through the North Texas Fair Housing Center but was unhappy with HUD decision, wanted help finding a lawyer
- One (1) was related to Emotional Support Animal and questions about what a landlord can require
- One (1) was a roommate property dispute
- Remaining nine (9) were Landlord/Tenant civil disputes outside of the City's authority

# Direction

- Staff is seeking direction from Council on any next steps:
  1. Direct staff to begin to draft a model (ordinance, process, and staffing)
    - Which ordinance and model should be a template?
    - Additional work session(s) will be needed to review specific components and receive Council direction
    - Staff will need to develop an estimate staffing/financial resources needed to implement based upon the ordinance and model
    - Public outreach and feedback process should be considered
  2. Request staff to develop other alternatives or options to accomplish a specific goal(s)
    - E.g. educational resources, funding or grants to housing advocacy or legal aid groups, programs to encourage or incentivize certain objectives
  3. Provide other direction

# Review

Area:	SO/GI Covered by Federal Law?	What currently happens?
<b>Employment</b>	Yes	<ul style="list-style-type: none"><li>• Assist in referring to EEOC</li></ul>
<b>Housing</b>	Yes, in part and in practice by HUD	<ul style="list-style-type: none"><li>• Assist in referring to HUD if potential fair housing violation</li><li>• Assist in referring to non-profit agencies or other resources if needing assistance with various housing matters</li></ul>
<b>Public Accommodations</b>	No	<ul style="list-style-type: none"><li>• Sex-based discrimination is not specifically covered by state or federal law, but could be the subject of a civil lawsuit</li></ul>

