
Work Session Comprehensive Non-Discrimination Ordinance Draft Development

November 9, 2021



Background

- 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
- On June 9, 2021, Council Member Maguire requested a work session for Council to revisit a comprehensive non-discrimination ordinance; the one-minute pitch request was approved by Council on June 15
- In a work session on Sept. 14, 2021, staff reviewed 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
 - Information on housing complaints referred by the City of Denton (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">On June 15, 2020, the Supreme Court ruled that sexual orientation and gender identity is covered by Title VII of the Civil Rights Act of 1964U.S. Equal Employment Opportunity Commission (EEOC) handles and investigates complaints
Housing	Yes, in part and in practice by HUD	<ul style="list-style-type: none">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 statusPer 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. HUD will accept and investigate all jurisdictional complaints of sex discrimination, including discrimination because of gender identity or sexual orientationHUD's Equal Access Rule 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
Public Accommodations	No	<ul style="list-style-type: none">Title II of the federal Civil Rights Act of 1964 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 includedThe 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

Sept. 14 Work Session Discussion

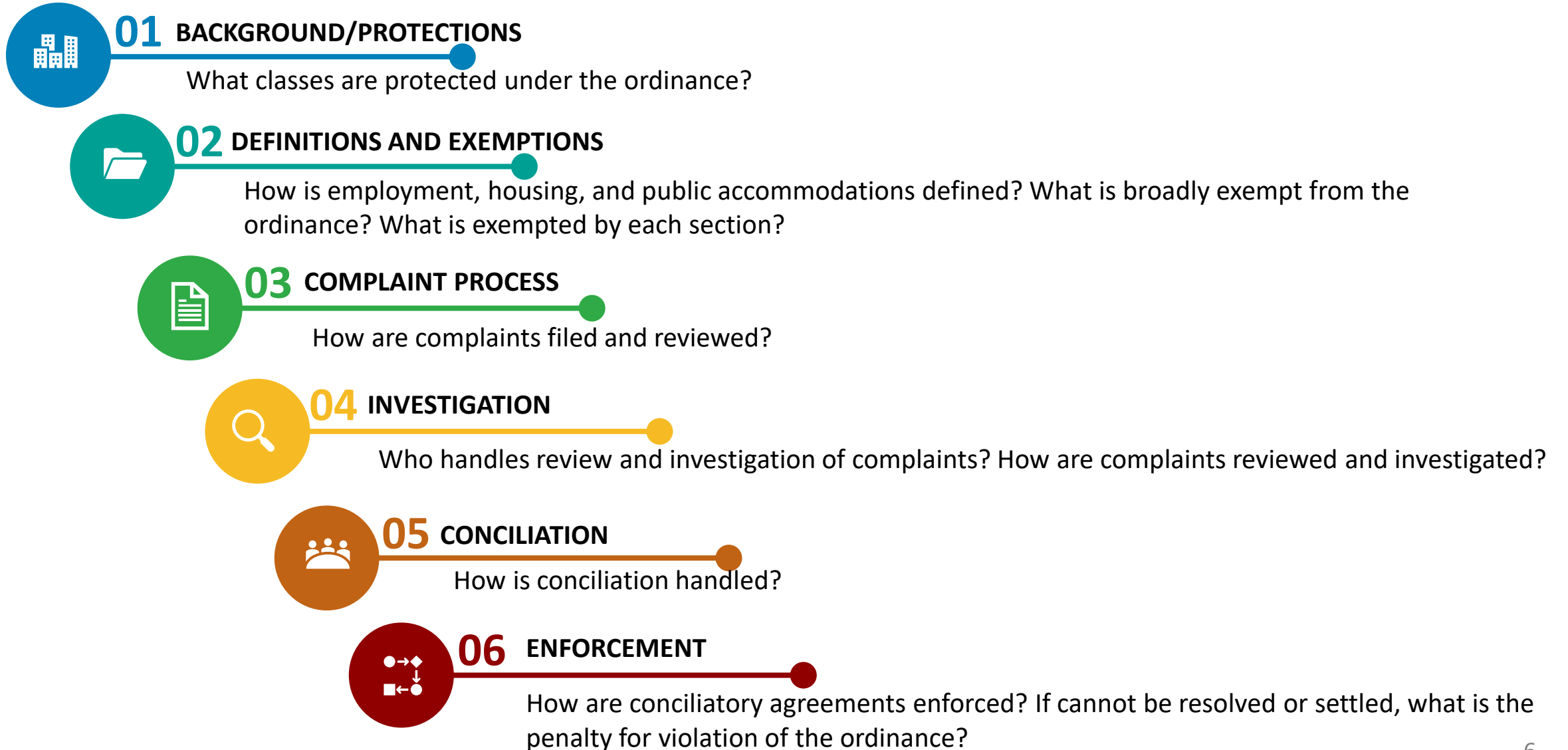
- Council discussion and direction at the September 14 work session:
 - Consensus of City Council was for staff to begin drafting a model (ordinance, process, and staffing)
 - Council provided feedback to use the City of Plano's adopted ordinance as a *general* framework and template for drafting (with a consensus to refer complaints to federal and state agencies where possible)
 - Each Council Member also highlighted different elements or processes that they preferred from other ordinances
- Objectives for today:
 - 1) Review major components of a draft non-discrimination ordinance
 - 2) Review options for administration and resources
 - 3) Receive direction on next steps

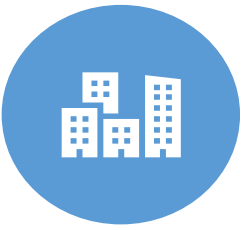


1. Non-Discrimination Ordinance Components



Non-Discrimination Ordinance Components





OVERVIEW, *Draft Ordinance Development*

- Requires City Council approval to be adopted into municipal code
- Includes a mission statement expressing Denton's stance against discrimination
- Covers non-discrimination in housing, employment, and public accommodations
- Covers federally and state protected groups and extends to expressly prohibit discrimination based on sexual orientation and gender identity
- Language largely mirrors what is found in federal and state non-discrimination laws
- Repeals City of Denton's Fair Housing Ordinance to combine and create one Equal Rights Ordinance for the 3 areas (housing, employment, and public accommodations)
- Focused on education and conciliation where possible
- Delayed effective date from 120 days from adoption:
 - To establish processes and take necessary steps to prepare for implementation
 - To educate the public and business community on the ordinance



DEFINITIONS & EXCLUSIONS, *Draft Ordinance Development*

- Across housing, employment, and public accommodations, the following are proposed to be protected classes:
 - Race, color, national origin, age, religion, disability, sex, sexual orientation, and gender identity
- Except as required by state or federal law, this ordinance shall not apply to the following:
 - (a) Religious organizations;
 - (b) The United States government or any of its departments or agencies;
 - (c) The State of Texas, or any of its departments, agencies, or political subdivisions.
- There are specific exclusions by each of 3 areas (housing, employment, and public accommodations), which generally mirror the exclusions found in federal and state non-discrimination laws



DEFINITIONS & EXCLUSIONS, *Draft Ordinance Development*

- Policy items briefly discussed and require further direction:

Direction
needed

**Public
Accommodations:**

**Sex-Segregated
Restrooms and
Any Other Similar
Facilities**

- **Does Council wish to include the following provision?**
 - *It shall not be a violation of this Ordinance to deny the opposite sex access to facilities inside a public accommodation segregated on the basis of sex for privacy such as restrooms, shower facilities, locker rooms, dressing rooms or any similar facility*
- Cities of Plano and Fort Worth include this provision; whereas the cities of Dallas, Austin, and Arlington do not
- What does this mean?
 - Such a provision would allow a business the ability to deny a patron from using a sex-segregated facility that does not align with their gender assigned at birth
 - Such a provision would allow a business to let patrons use the restroom (or any other similar facility) of their choice or for the business to create gender neutral facilities



DEFINITIONS & EXCLUSIONS, *Draft Ordinance Development*

Direction
needed

Housing:

Add a Provision to
Prohibit
Discrimination
based on Source
of Income for
Veterans

- **Does Council wish to include a provision that discrimination based on source of income for veterans for housing is prohibited?**
- In Texas, local governments cannot prohibit source of income discrimination in housing broadly; however, there is a specific carve out for veterans' source of income (*State Local Government Code 250.007*)
- If adopted locally, a landlord **could not deny housing to a veteran on the basis of income** (such as using a VASH voucher)
 - **However, a landlord could still set and maintain minimum requirements**, such as having a security deposit or no criminal history. These requirements are most often the barriers to housing
 - **The City and its partners continue to try to remove such barriers** to housing through various programs and advocacy, including the Barriers Fund, Veteran Navigator Program, and Doors for Denton County initiative
- Any complaint and investigation would need to be handled locally; cannot be referred to HUD
- City has not received any complaints from veterans being denied housing due to VASH Vouchers (see housing complaint data from Sept. 14, 2021 presentation)



COMPLAINTS, *Draft Ordinance Development*

- 90 days to file a complaint from when an alleged violation occurred
- Create system for filing complaints

City Manager or designee designates an administrator

Establishes how to file a complaint

Describes how the City responds

Sets the timeline for all procedural steps

- Create process for preliminary review of complaint

Refer the complainant to another public agency if within their jurisdiction;

Deny the complaint due to incomplete information;

Deny the complaint because it is legally deficient or untimely;

Accept the complaint for investigation

Referral Outline

Note: This could change if federal or state laws or agencies become more expansive with their jurisdiction

Area:	(1) <u>Refer to Appropriate Public Agency:</u>	(2) <u>If It Cannot Be Referred and Ordinance Criteria are Met, then Accept Locally:</u>
Employment	<ul style="list-style-type: none"> Assist in referring to Equal Employment Opportunity Commission (EEOC) or Texas Workforce Commission (<i>currently protect on the basis of race, color, national origin, age, religion, disability, sex, sexual orientation, or gender identity</i>) 	<ul style="list-style-type: none"> Not applicable <ul style="list-style-type: none"> <i>All defined protected classes could be referred</i>
Housing	<ul style="list-style-type: none"> Assist in referring to US Housing and Urban Development (HUD) if potential fair housing violation (<i>currently protected on the basis of race, color, national origin, religion, disability, familial status, sex, sexual orientation, or gender identity</i>) Assist in referring to non-profit agencies or other resources if needing assistance with various housing matters 	<ul style="list-style-type: none"> All defined protected classes could be referred, except for age <ul style="list-style-type: none"> <i>Alleged violations of this basis (not otherwise legally provided for) would be investigated by the City</i>
Public Accommodations	<ul style="list-style-type: none"> Assist in referring to US Justice Department (<i>currently protected on the basis of race, color, religion, or national origin</i>) Assist in referring to appropriate agency if related to ADA 	<ul style="list-style-type: none"> All defined protected classes could be referred, except for age, religion, sex, sexual orientation or gender identity <ul style="list-style-type: none"> <i>Alleged violations on these bases would be investigated by the City</i>



INVESTIGATION, *Draft Ordinance Development*

- Investigation process coordinated through designated administrator

Sets timeline for investigation

Outlines notification and rights of Respondent

Establishes investigation process including interviews and collection of information

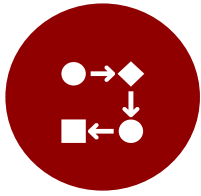
Requires delivery of a final investigative report

- If during or after the investigation, the City Manager or their designee determines that there is reasonable cause to believe discrimination occurred, the City shall attempt to conciliate the complaint



CONCILIATION, *Draft Ordinance Development*

- Use education to bring “unlawful” practices into compliance
- Concludes with assurances of “future compliance”
- Communications made and documents related to a conciliation effort, including a finalized conciliation agreement, may not be confidential under the Texas Government Code Dispute Resolution Act Chapter 2009, or Chapter 154.073 of the Civil Practice & Remedies Code, and may be subject to a PIA request. If a request for documentation related to a conciliation effort is received, an opinion on whether the information must be released will be sought from the Attorney General’s Office
- If a conciliation agreement cannot be reached, the matter could be reviewed for criminal enforcement if that provision is provided for in the ordinance



ENFORCEMENT, *Draft Ordinance Development*

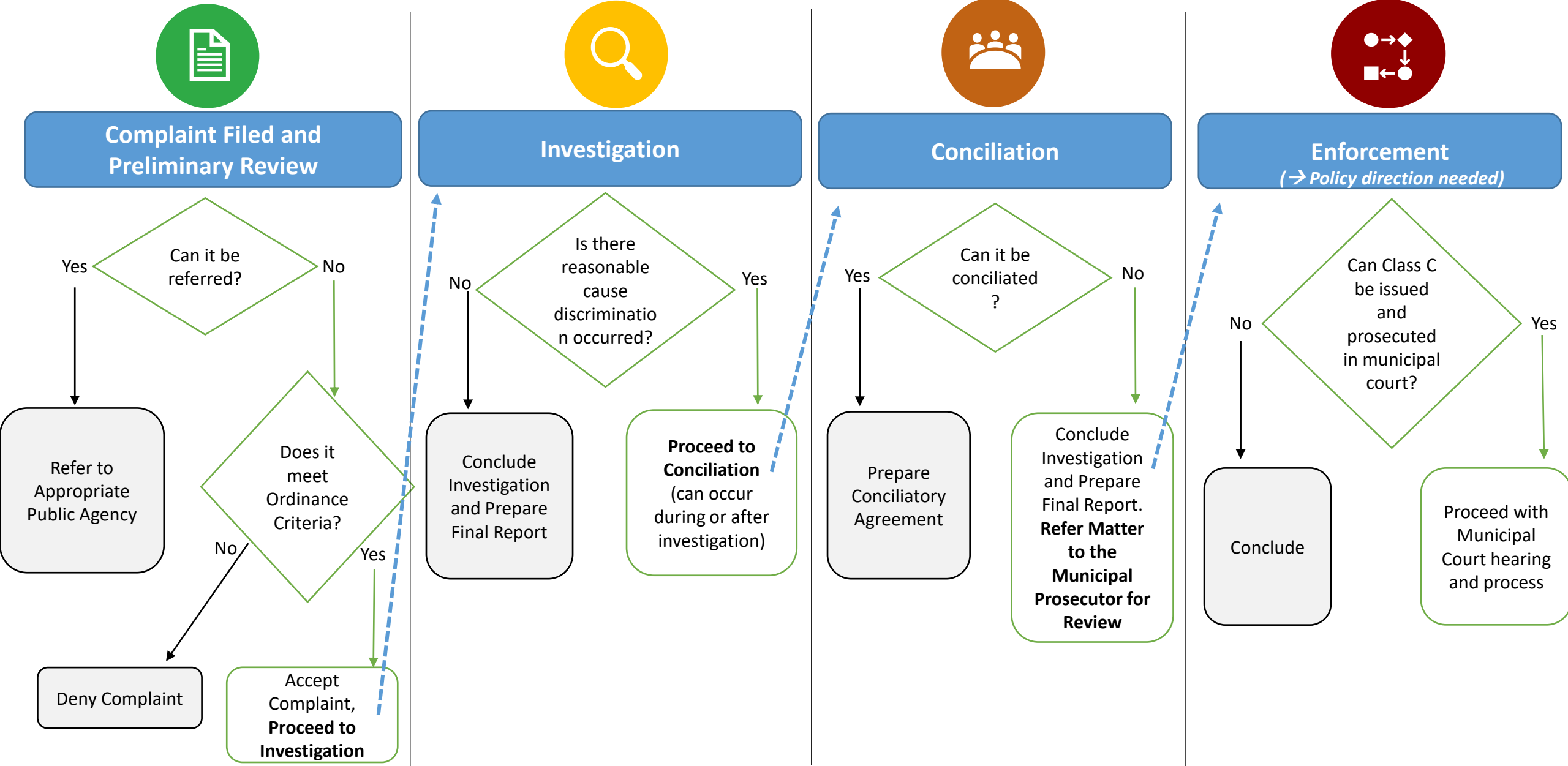
- Focused on education and conciliation wherever possible
- If unable to conciliate and reach an agreement, a violation may be referred to City Attorney's office for review for possible enforcement of a Class C misdemeanor, subject up to a \$500 fine per offense
 - For this type of code violation, the maximum fine is \$500

Direction
needed

Enforcement
Mechanism

- **Does Council wish to either:**
 1. Focus on conciliation, provide no penalty or fine
 2. Provide for a possible Class C misdemeanor (\$500 fine) and prosecution in municipal court
- Other cities:
 - Plano – focused on conciliation, can be a Class C penalty (*have had zero complaints investigated or mediated*)
 - Arlington – focused on conciliation, no penalty (*have zero complaints, ordinance just passed in summer 2021*)
 - Austin, Dallas, Fort Worth – conciliation, can be a Class C penalty for violations of their local ordinance (*complaints handled by their Human Rights offices*)

PROCESS OVERVIEW, *Draft Ordinance Development*



Other Considerations, *Draft Ordinance Development*

- The following are other considerations or factors that Council should be aware of regarding a potential ordinance:
 - What information may be subject to public disclosure?
 - What is the risk to the privacy or reputation of an individual or business? To both the complainant and respondent?
 - What is the risk for a potential lawsuit? (e.g. defamation)
 - What is the liability for City employees/officials who are involved in the evaluation/investigation/decision of these complaints?

2. Administration and Resources



Administration and Resources

- Ordinance language is drafted broadly for City Manager or designee to designate an administrator to receive, investigate, and conciliate complaints under this ordinance
- Staff has developed options for how the administration of this ordinance could be handled with recommendations
- 3 Options:
 1. Contract with a Firm for the Necessary Professional Services (Recommended)
 2. Hire a Full-Time Position (Not Recommended)
 3. Form a Staff and Business Representative Panel (Not Recommended)

Administration and Resources

Option #1 (Recommended)

Description:

- Use a contracted firm on an as-needed basis to handle the initial review, and if required, the investigation and conciliation stages of a complaint
- If investigated or conciliated, contracted firm makes a recommendation to City staff

Considerations:

- Neutral third-party
- Have the knowledge, skills, and abilities to conduct an investigation and conciliation to proper standards and best practices
- Best option for maintaining neutrality and managing risk
- Estimated annual budget: \$30,000 - \$50,000
 - Will need to go through a procurement process to determine interest from firms and pricing
- Utilize and pay for services on as needed basis
- If complaint is not within jurisdiction of ordinance, then Community Services staff can assist with referring to other agencies, resources, or assistance



Administration and Resources

Option #2 (Not Recommended)

Description:

- Hire a full-time staff position with experience, training, and skillsets necessary
 - Prior experience in conducting public investigations and leading legal proceedings with a preference for experience with civil/human rights matters

Considerations:

- Not recommended at this time, but could be a future option or recommendation once there is some experience with implementation of the ordinance and the volume of work
- A full-time position would likely be necessary in order to recruit a qualified individual and maintain training and standards
- Volume is likely not enough for full-time equivalent work; additional time could be used for other services/programs depending upon the individual and skillsets
- Estimated annual budget: \$120,000+
- Could place staff member in a difficult position if professional decisions are not accepted and respected



Administration and Resources

Option #3 (Not Recommended)

Description:

- Use a Panel with 3 Directors and 2 Business Representatives (Plano concept)

Considerations:

- Not recommended by staff
- Added workload on senior leadership in the organization; time to properly train and schedule without impacting other City business priorities; placing top leadership staff in a difficult position
- Unknown for how business representatives would apply, be selected, remain neutral, and be trained appropriately
- Plano has never used or tested this method; conceptual only
- If not done to proper standards, could increase the integrity of the process and the outcome, and increase risk for the City

3. Next Steps



Next Steps

- Staff is seeking feedback and direction from Council:
 - Feedback or questions on draft ordinance
 - Direction on items outlined as needing policy direction (*slides 8, 9, & 15*)
 - Feedback on options and resources for administration of the new ordinance (*slides 18-20*)
- Staff is also seeking feedback on next steps:
 - Schedule another work session to continue development and refinement of a draft ordinance and process
 - Next work session could be in January 2022
 - Receive Council direction on what level of community/business involvement is desired in the draft development