

ORDINANCE NO. _____

An ordinance adding Article 16 to Chapter IV of the Los Angeles Municipal Code establishing the Los Angeles Civil and Human Rights Ordinance.

WHEREAS, the City of Los Angeles, with its diverse population, wishes to establish public policy that promotes understanding between and among communities and to discourage discrimination that denies equal treatment to any individual because of an immutable characteristic or real or perceived status.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

ARTICLE 16

CIVIL AND HUMAN RIGHTS LAW

Section 1. A new Article 16 entitled "**Civil and Human Rights Law**" is added to Chapter IV of the Los Angeles Municipal Code to read as follows:

SEC. 51.00. TITLE AND PURPOSE.

This article shall be known as the "Los Angeles Civil and Human Rights Ordinance." The City of Los Angeles has benefited, and will continue to benefit, from the economic, cultural and educational contributions of a wide range of groups and communities who are all too often targets of abuse and discrimination.

The City of Los Angeles has a duty to protect and promote public welfare within its boundaries and to protect residents and visitors against discrimination, threats and retaliation based on a real or perceived status. Such discriminatory and prejudicial practices pose a substantial threat to the health, safety and welfare of our community. This ordinance tasks the Civil and Human Rights Commission and its Executive Director to investigate complaints of discrimination and enforce against violators. By holding businesses and individuals accountable for discriminatory behavior, the City will make clear that discrimination will not be tolerated.

The importance of discouraging discrimination that denies equal treatment to any individual in private employment, housing, education or commerce is one of the highest mandates for the welfare of those living in, working in and visiting the City.

SEC. 51.01. AUTHORITY.

This article is adopted pursuant to the powers vested in the City of Los Angeles under the laws and Constitution of the State of California and the City Charter,

including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution.

SEC. 51.02. DEFINITIONS.

As used in this article, the following terms shall have the following meanings:

“Appellant” means a person who files an administrative appeal under this article.

“Appellee” means a person against whom an administrative appeal is filed under this article.

“City” means the City of Los Angeles.

“Commission” means the Civil and Human Rights Commission.

“Compensatory Penalty” means a monetary penalty imposed as penalty for discrimination in violation of this article resulting in injury to the Complainant. The term injury shall be liberally construed in favor of a Complainant.

“Complainant” means a person who files, with the Director, a complaint alleging that his, her, or their right, granted or protected by this article, has been violated by another person.

“Director” means the Executive Director of the Commission.

“Hearing Officer” means an independent decision-maker designated by the Commission, such as pro tem judges provided by the Los Angeles Superior Court, administrative law judges from the State of California’s Office of Administrative Hearings, and individuals trained in dispute resolution with a minimum of 25 hours of classroom and practical training and experience performing duties related to mediation and conflict resolution in accordance with the requirements of the California Dispute Resolution Programs Act of 1986 (16 CCR Section 3622), who shall be subject to disqualification for bias, prejudice, conflict, or any other reason for which a judicial hearing officer may be disqualified. Hearing Officers shall not be City employees.

“Respondent” means a person against whom a complaint is filed under this article.

SEC. 51.03. DISCRIMINATION PROHIBITED.

A. No person shall discriminate against another person in private employment, housing, education or commerce, because of that person's actual or perceived race, color, ethnicity, creed, age, national origin, religion, citizenship status, gender, gender identity or expression, sexual orientation, disability, medical condition, genetic information, marital status, partnership status, employment status, income status, military status or veteran status.

B. For purposes of this section, a violation by an agent or employee is imputed to that person's principal or employer when the agent or employee acts within the scope of the agency or employment relationship.

C. Exceptions.

a. Nothing in this section shall be construed to require anyone to refer for employment, hire or continue to employ an individual when such action would be in violation of federal law.

b. Nothing in this section shall be construed to prohibit any person from complying with any legal obligation under federal or state law, including, but not limited to, any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified tenant.

c. Nothing in this section shall be construed to prohibit a person from:

i. Prohibiting the illegal use of drugs or the use of alcohol at the workplace;

ii. Prohibiting on duty impairment from the use of drugs or the use of alcohol; or

iii. Conducting employee drug testing, when such testing is otherwise lawful.

d. Nothing in this section shall be construed to prohibit an employer, employment agency, or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from considering any substantial job-related qualifications, including but not limited to: 1) a current and valid professional or occupational license; 2) a certificate, registration, permit, or other credential; 3) a minimum level of education or training; or 4) a minimum level of professional, occupational, or field experience.

D. Defenses.

a. It shall be an affirmative defense that the Complainant could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

SEC. 51.04. RETALIATION PROHIBITED.

No person shall discriminate in any manner or retaliate against any person for exercising rights protected under this article. Rights protected under this article include, but are not limited to: 1) the right to inform any person of his, her, or their potential rights under this article and to assist him, her, or them in asserting such rights; and 2) the right to file a complaint or inform any person about any other person's alleged noncompliance with this article. This section shall apply to retaliation against any Complainant who mistakenly, but in good faith, alleges a violation by a Respondent. Taking adverse action against a person within 90 calendar days of that person's exercise of rights protected under this article shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

SEC. 51.05. ENFORCEMENT.

A. **Reporting Violations.** Any person whose rights, granted or protected by this article, have been violated, even if that person's only injury is the deprivation of that right granted or protected without physical or monetary damages, may report a complaint to the Director. The Director shall encourage reporting pursuant to this article by keeping confidential, to the maximum extent permitted by law, the name and other identifying information of the Complainant. With the authorization of the Complainant, the Director may disclose the Complainant's name and identifying information as necessary to conduct investigations under this article or for other appropriate purposes. The Director shall disclose the name and identifying information of the Complainant at the time the Director issues a notice of violation to the Respondent.

B. **Investigation.** The Director shall be responsible for investigating violations of this article. A Respondent shall cooperate fully in any investigation by the Director. The Director shall have access to the Respondent's business sites, housing locations and places of labor subject to this ordinance during business hours to inspect books and records, and to interview any relevant witnesses. Respondents shall provide the Director with their legal name, address, and telephone number in writing. The Director may request the Commission to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of any books, papers, records or other items relevant to inquiries, investigations and enforcement actions under this article.

C. **Settlement.** The Director shall have the authority, at any time, to enter into a settlement agreement with a Respondent. The Director shall present any such settlement agreement to the Commission for approval, which shall have the authority

only to approve or disapprove of the agreement. A settlement disapproved by the Commission shall be remanded to the Executive Director, who shall resume enforcement authority over the matter, including the authority to present a new settlement to the Commission.

D. **Determination.** Whenever the Director finds that a violation of Section 51.03 or Section 51.04 has occurred, the Director shall publicly issue a notice of violation, which shall, in addition to describing the violation, impose administrative penalties, Compensatory Penalties, if any, and corrective actions, if any, consistent with Section 51.07. The Director shall serve the notice of violation, by First Class mail, on the respective Complainant and Respondent. The date of service shall be the date of the postmark on the mailing.

SEC. 51.06. INDIVIDUAL REMEDIES FOR VIOLATIONS.

A. **Civil Enforcement.** A Complainant may bring a civil action in a court of competent jurisdiction against any person violating this article and shall be entitled to such legal or equitable relief as may be appropriate, including, without limitation, damages, restitution, injunctive relief, and reasonable attorneys' fees and costs. Nothing in this section shall preclude, or otherwise limit a civil action by the City, or a separate or criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this article. The right of a Complainant to bring a civil action under this section shall not be waived by private agreement.

SEC. 51.07. PENALTIES AND CORRECTIVE ACTIONS FOR VIOLATIONS.

A. **Administrative Penalties, Compensatory Penalties, and Corrective Actions.** In addition to any of the remedies and penalties set forth in this article or any other law, where the Director determines that a Respondent has violated Section 51.03 or Section 51.04, the Director shall impose an administrative penalty. The Director also may impose Compensatory Penalties unless the Complainant has been previously awarded punitive damages in a civil case arising out of the same act or transaction. The cumulative amount of the penalties imposed shall not exceed \$125,000, except upon a finding by the Director that a violation was the result of a Respondent's harassing or violent act, in which case the cumulative amount of the penalties shall not exceed \$250,000. The Director may also order a Respondent to undertake corrective actions to remedy the violation or prevent future violations. Such administrative penalties, Compensatory Penalties, and corrective actions shall be set forth in the notice of violation.

B. **Criminal Penalties.** Any person who willfully resists, obstructs or interferes with the Commission, the Director, or the Hearing Officer in the performance of any duty under this article shall be guilty of a misdemeanor and be punishable by a fine of not more than \$1,000 and by imprisonment in the County Jail for a period of not more than six months.

C. **Payments to City; Due Date; Late Payment Penalty.** Administrative penalties and Compensatory Penalties shall be due and payable to the City within 30 calendar days from the date of the Director's notice of violation. Failure to timely pay a penalty will result in the assessment of a late fee, assessed daily at a rate of 7 percent per annum of the outstanding amount of the penalty and late fees, if any. The City may collect any unpaid penalty, including the late fee, by means of a civil action, injunctive relief, specific performance and the recordation of a lien against real property in accordance with applicable law. Any administrative penalties recovered pursuant to this section shall be paid to the City. Any Compensatory Penalties recovered pursuant to this section shall be paid to the Complainant.

D. **Severity of Penalties.** The Director shall impose penalties for violations of this article only after considering factors, including but not limited to: 1) the extent of harm caused by the violation; 2) the nature and persistence of the violation; 3) the length of time over which the violation occurs; 4) past violations; 5) any action taken to mitigate the violation; and 6) the financial burden to the Respondent.

SEC. 51.08. ADMINISTRATIVE HEARING.

A. **Request for Hearing.** A Respondent may file with the Commission a request for hearing within 15 calendar days from the date the notice of violation is served upon the Respondent. In order to be considered timely, the request for hearing must be postmarked or received by the Commission within the 15 calendar days. The request for hearing must: 1) be in writing; 2) specify in detail the objections to the notice of violation; and 3) indicate the Respondent's preferred return mailing address.

B. **Hearing Date.** As soon as practicable after receiving the request for a hearing, the Commission or its designee shall select a Hearing Officer to hear and rule on the notice of violation. The Hearing Officer shall fix a date, time and place for the hearing. Written notice of the time and place for the hearing shall be served, by First Class mail, on the Director and on the Respondent at the return address indicated on the request for a hearing. Service of the notice of hearing must be made at least 20 calendar days prior to the date of the hearing. The hearing shall be held no later than 45 calendar days after service of the notice of hearing, unless that time is extended by mutual agreement.

C. **Notice of Hearing.** Except as otherwise provided by law, the failure of the Respondent to receive a properly addressed and mailed notice of the hearing shall not affect the validity of any proceedings under this article. Service by First Class mail, postage prepaid, shall be effective on the date of mailing.

D. **Stay of Enforcement.** The accrual of penalties shall be stayed until the final determination of the hearing.

E. **Failure to Request Hearing.** Upon the failure of a Respondent to file a request for hearing in accordance with the provisions of this section or to appear at the

hearing, the Director's notice of violation shall immediately become final and enforceable.

F. **Submittals for the Hearing.** No fewer than seven calendar days prior to the hearing, the Director and the Respondent shall submit to the Hearing Officer, with simultaneous service by First Class mail to one another, the statement of issues to be determined by the Hearing Officer, a statement of the evidence to be offered and the witnesses to be presented at the hearing, and any other relevant evidence.

G. **Conduct of Hearing.** The Hearing Officer shall conduct all hearings under this section and may accept evidence on which persons would commonly rely in the conduct of their business affairs, including, but not limited to, the following:

1. A notice of the Director, which shall be considered to be prima facie evidence of the violation(s) specified therein; and
2. Oral and written testimony under penalty of perjury relating to the violation(s) and the appropriate means of correcting the violation(s).

The hearing shall be open to the public and shall be audio recorded. Any party to the hearing may, at their own expense, cause the hearing to be video recorded or transcribed by a certified court reporter. The Director shall have the burden of proof by a preponderance of the evidence in each hearing. The Hearing Officer may continue the hearing and order the production of additional information from the Director or Respondent prior to issuing a written decision. The Commission may adopt written procedures for the conduct of hearings pursuant to this article, including, but not limited to, the use of witnesses and evidence.

H. **Hearing Officer's Findings and Determinations.** Within 30 calendar days after the conclusion of the hearing, the Hearing Officer shall make findings in the form of an administrative ruling based on the record of the hearing and may uphold or reject the violation(s) referenced in the Director's notice of violation in whole or in part. The Hearing Officer also may uphold the notice of violation and increase, reduce, waive or conditionally increase, reduce or waive the administrative penalties, Compensatory Penalties, or both, based on specific findings of aggravating or mitigating circumstances drawn from the evidence presented at the hearing. The Hearing Officer may impose, reduce, waive or conditionally reduce or waive conditions imposed by the Director including the modification of deadlines for the correction of violations or the payment of outstanding penalties. The Hearing Officer shall serve the administrative ruling, by First Class mail, on the Director and Respondent. The date of service shall be the date of the postmark on the mailing.

I. **Payment of Penalties.** Penalties imposed by the Hearing Officer pursuant to this article shall be due and payable in accordance with Section 51.07.

SEC. 51.09. ADMINISTRATIVE APPEAL.

A. **Notice of Appeal.** The Director or Respondent may file a notice of appeal with the Commission within 15 calendar days of the date of service of the administrative ruling. In order to be considered timely, the notice of appeal must be postmarked or received by the Commission within the 15 calendar days. The notice of appeal must: 1) be in writing; 2) specify in detail the basis for the appeal; and 3) indicate the Appellant's preferred return mailing address.

B. **Appeal Process.** As soon as practicable after receiving the written notice of appeal, the Commission shall determine whether to issue a final ruling based upon the administrative record or to set a hearing to decide on the administrative appeal.

1. If the Commission elects to issue a final ruling based upon the administrative record, the Commission shall issue such ruling within 30 calendar days of receipt of the notice of appeal.

2. If the Commission elects to conduct a hearing on the administrative appeal, the hearing shall be noticed, scheduled and conducted in accordance with Section 51.08, except that the Commission shall act in place of the Hearing Officer. Within 30 calendar days after the conclusion of the hearing, the Commission shall rule on the appeal.

C. **Standard of Review.** The Commission shall review the Hearing Officer's ruling under an abuse of discretion standard.

D. **Failure to Appeal.** Failure of the Appellant to file a notice of appeal in accordance with the provisions of this section or to appear at the Commission appeal hearing shall constitute a failure to exhaust administrative remedies. In such instance, the Hearing Officer's ruling shall become final and enforceable.

E. **Submittals for the Hearing.** No fewer than seven calendar days prior to the appeal, the Appellant and Appellee shall submit to the Commission, with simultaneous service by First Class mail to one another, the statement of issues to be determined by the Commission, a statement of the evidence to be offered and the witnesses to be presented at the hearing, and any other relevant evidence.

F. **Commission Ruling.** If the Commission finds that the Hearing Officer's ruling is based upon an abuse of discretion, the Commission may reject the ruling of the Hearing Officer in whole or in part. In so doing, the Commission may: 1) reinstate, reduce, waive or conditionally reduce or waive the administrative penalties; 2) reinstate, reduce, waive or conditionally reduce or waive the Compensatory Penalties; 3) impose, reduce, waive or conditionally reduce or waive conditions imposed in the ruling; and 4) alter deadlines for the correction of violations or the payment of the outstanding penalties.

G. **Final Order.** The ruling of the Commission pursuant to this section shall constitute a final order, which shall be served on the Director and the Respondent by Certified mail. The Commission's final order is subject to judicial review, pursuant to California Code of Civil Procedure Section 1094.5.

SEC. 51.10. OTHER REMEDIES NOT AFFECTED.

The administrative enforcement procedures established in this article shall be in addition to any other criminal, civil or other remedy established by law to address violations of this article. A ruling by the Hearing Officer or the Commission issued pursuant to this article shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to prosecute or abate a violation or to seek compensation for damages suffered.

SEC. 51.11. ADMINISTRATIVE PROCEDURES.

Pursuant to Sec. 22.1210 of the Los Angeles Administrative Code, the Commission shall promulgate and enforce rules and administrative procedures, including, but not limited to, evidentiary rules created for the fair and efficient conduct of hearings and appeals in order to better carry out the purposes of this article.

SEC. 51.12. REPORTS.

The Director shall provide annual reports to the City Council on the implementation of this Ordinance.

SEC. 51.13. PRIVATE PURPOSE.

The City Council finds that this Ordinance is intended to promote the investigation of and enforcement against discrimination between and against private parties. Nothing in this article is intended to create a private right of action against, or authorize the Commission or the Director to investigate allegations of discrimination by, public officials, employees or agencies in federal, state or local government.

SEC. 51.14. NO CONFLICT WITH STATE LAW.

This article is not intended to conflict with state law. This article shall be interpreted to be compatible with state enactments and in furtherance of the public purposes that those enactments encompass. To the extent that the Fair Employment and Housing Act (FEHA), Cal. Gov. Code, § 12900 *et seq.*, has occupied the field of enforcement of discrimination in employment and housing encompassed by the provisions of that act, this article shall provide no separate remedy. Notwithstanding the foregoing, this article is intended to remedy those discriminatory actions in housing and employment and provide remedies to those protected classes that are not encompassed by the provisions of FEHA.

SEC. 51.15. NO CONFLICT WITH FEDERAL LAW.

This article is not intended to conflict with federal law or stand as an obstacle or conflict with any efforts by the federal government to enforce Federal laws.

SEC. 51.16. OPERATIVE DATE.

The provisions of this article shall become operative on January 1, 2020.

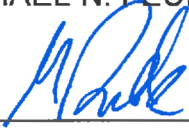
Sec. 2. **SEVERABILITY.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each provision thereof irrespective of whether any one or more provisions are found invalid, unconstitutional or otherwise unenforceable.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By



MICHAEL DUNDAS
Deputy City Attorney

Date

7/19/2019

File No. _____

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____