

**L.A.'s Civil and Human Rights Ordinance**  
November 2018

**LOCAL ENFORCEMENT NOW CAMPAIGN OBJECTIVES**

☐ As the Immigrant Affairs, Civil Rights, and Equity Committee establishes a commission and finalizes the language of the Civil and Human Rights Ordinance on Thursday November 1, 2018, the Local Enforcement Now Campaign seeks to ensure the strongest worker protection through the following suggestions:

- **The Legislative Intent Should Support the City Being a Champion and Advocate for Employment Discrimination Protection:**

Currently, the purpose of the civil and human rights ordinance ("Ordinance") is to establish a Civil and Human Rights Commission ("Commission") to discourage discrimination. Further, the ordinance states that it is not intended to conflict with state law. This language alone is not enough: The city's legislative intent must advocate for the City to vigorously participate in legislative advocacy to minimize any state interference with the City's ability to protect against discrimination. Governor Brown has directed the Department of Fair Employment and Housing to develop recommendations for local enforcement. Now is the time for the city of L.A to show its leadership and advocate for local rights to protect worker rights. Employment discrimination is the most common basis of all civil rights complaints filed in the state of California. National consideration requires the city to take a stand as residents grow distrustful of federal agencies that are witnessing downsizing and elimination in the civil rights sector, under the current administration. The state alone does not have the capacity to address the large amount of employment discrimination claims. The city of Los Angeles must be the champion for employment discrimination protection.

- **The City is Prepared to Act Before State Preemption is Lifted:**

The current draft of the Ordinance states that it is not intended to conflict with state law. The City might interpret this statement to mean that the city has no duty to enforce employment discrimination protections. This interpretation is incorrect. Currently, San Francisco, Santa Clara, and San Diego have a discrimination dispute resolution program.

The City must implement the following:

- ☐ Public communication campaign that educates the community about the Commission and how to identify discrimination.
- ☐ Education of employers on Ordinance and FEHA liability.
- ☐ Culturally appropriate outreach to workers about the Ordinance AND FEHA rights and statutory time limits for complaints.
- ☐ Intake assistance.
- ☐ Investigations including fact gathering through subpoenas, workplace site visit, collection of data, mediation, intake assistance, and outreach.
- ☐ Partnerships with community-based organizations to strengthen access to protections and drive complaints.
- ☐ Referrals and formal partnerships with state and federal agencies.

- **The City Should Co-Enforce Employment Discrimination Protection with the Bureau of Contract Administration:**

Date: 11/01/2018

Submitted in IACRE Committee

Council File No: 18-0086

Item No. 2

Deputy: Comm. from Public

The current draft of the Ordinance mandates other agencies to cooperate with the Commission but fails to encourage and/or mandate co-enforcement with agencies that are already enforcing employment rights. The City should partner and co-enforce employment discrimination protection with the Bureau of Contract Administration (BCA.) The Commission should have the flexibility to recommend placing employment discrimination claims under the jurisdiction of the BCA and integrating anti-employment discrimination rights. The BCA is charged with enforcing employment discrimination protection through the Ban the Box legislation and wage enforcement utilizing a community partnership service model. There is no need to re-invent the wheel, the City should work with BCA to develop strong employment discrimination protection. Co-enforcement with BCA should be implemented immediately.

- **The Civil and Human Rights Ordinance Needs Money and Resources to Be Effective:**

The current draft allocates one million dollars to the commission. It also gives recommendations for salaries. However, this budget fails to take into account salaries based on the city scale or union salaries and benefits. Additionally, the Ordinance does not have a public communications/education budget to inform residents of the Ordinance. In order for the Ordinance to adequately enforce and address claims it must have adequate resources and funding. Without funding and resources, the Ordinance will lack the capacity to address discrimination protection in the City. Additionally, San Francisco's Human Rights Division, which focuses only on discrimination, has a budget of \$3,384,000. The City of Los Angeles' estimated workforce is four times that of San Francisco.

□ In addition, to further strengthen the Ordinance and maximize its impact, we must still address and resolve many issues, and determinations made in consultation with key community stakeholders, including the Black Workers' Center, must be included. Below are some of the major issues:

- The Ordinance should clearly state that it is more protective than federal or state law in specific aspects, and that it prevails in these particular areas. The Ordinance's entire relationship to state and federal law, including FEHA and Unruh, should be clarified further.
- We should clearly determine the scope of the Commission's mandate and powers. As proposed, its mandate to investigate "group tensions, prejudice, intolerance, bigotry and disorder" writ large may be too broad, potentially putting other powers at risk. The relationship between the Commission's jurisdiction and the ability to bring a claim to a court of competent jurisdiction should be clearer.
- Commissioners should represent communities disproportionately experiencing discrimination.
- We should determine the appropriateness or need of certain penalties, especially criminal ones.
- "Discrimination," the core focus of the Ordinance, should be clearly defined. In particular, one need not prove discriminatory intent; rather, discriminatory impact should be sufficient.
- Language throughout the Ordinance should be gender neutral. Relatedly, the definition of "Protected Status" should include "gender," "gender identity," and "gender expression." The definition of "Sexual Orientation" should read to say the "*actual or perceived* homosexuality, heterosexuality, or asexuality." In addition, the "Protected Status" definition does not include many grounds of discrimination recognized by international human rights treaty law, such as language, ethnic or social origin (in addition to national origin) or other opinion (in addition to political opinion).
- We should have a clear understanding of how community engagement will be carried out and by whom. For example, there are no staff positions that are geared to such efforts.

Date: 11/01/2018

Submitted in IACRE Committee

Council File No: 18-0086

Item No. 2

Deputy: Comm. from Public

**ATTACHMENT 1**

**FOR VOTE BY THE COMMITTEE ON IMMIGRANT AFFAIRS,  
CIVIL RIGHTS, AND EQUITY**

**ORDINANCE NO. \_\_\_\_\_**

An ordinance adding Chapter 32 to Division 22 of the Los Angeles Administrative Code establishing a Civil and Human Rights Commission and Executive Director.

**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; and

**WHEREAS**, the City of Los Angeles will vigorously participate in legislative advocacy to minimize any state restrictions on the City's authority to protect against discrimination.

**NOW, THEREFORE,**

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

Section 1. A new Chapter 32 entitled "**Civil and Human Rights Commission**" is added to Division 22 of the Los Angeles Administrative Code to read as follows:

**CHAPTER 32, ARTICLE 1**

**CIVIL AND HUMAN RIGHTS COMMISSION CREATION AND ORGANIZATION**

**Sec. 22.1200. Civil and Human Rights Commission.**

(a) **Establishment.** A Civil and Human Rights Commission is hereby created, which shall have the powers, duties and responsibilities set forth in this chapter and elsewhere in the City Charter, Los Angeles Municipal Code and Los Angeles Administrative Code. The Commission shall have thirteen members.

(b) **Appointment.** Members shall be appointed as follows. ~~The Mayor shall nominate seven members who will be confirmed by the City Council.~~ Each member of the Council shall nominate a candidate for the Commission to the Committee on Immigrant Affairs, Civil Rights, and Equity. The Committee on Immigrant Affairs, Civil Rights, and Equity will recommend to the President of the City Council fifteen nominees for membership on the Commission. The President of the City Council, in consultation with the members of the Committee on Immigrant Affairs, Civil Rights, and Equity, or any successor committee with jurisdiction over matters involving discrimination and civil rights, will nominate the fifteen members of the Commission to be confirmed by the City Council. Members may be removed in accordance with Charter Section 502.

**(c) Terms of Office.**

(1) The members of the Commission shall have three-year, staggered terms beginning with the first day of July of the respective years. The original ~~thirteen~~ fifteen members shall be appointed for such terms as shall cause 6 seven terms to expire on the date of June 30 in two years, and ~~seven~~ eight terms to expire on the date of June 30 in three years.

(2) If there is a vacancy within 45 days ~~the authority that nominated or appointed that member~~ the Committee on Immigrant Affairs, Civil Rights, and Equity shall nominate ~~or appoint the name of~~ an appointee to serve for the next term or remainder of the unexpired term. Any nomination ~~by the Mayor or~~ by the Committee on Immigrant Affairs, Civil Rights, and Equity ~~President of the City Council~~ will be deemed approved if within 45 days the Council has not disapproved the appointment. If disapproved ~~the Mayor or President of the City Council~~ the Committee on Immigrant Affairs, Civil Rights, and Equity shall submit a new nomination within 45 days. ~~If the Mayor does not submit a nomination within the 45 days, the President of the Council shall have an additional 45 days to submit a nomination to the Council for approval.~~ If the Committee on Immigrant Affairs, Civil Rights, and Equity ~~President of the Council~~ fails to submit a nomination, the appointment shall be made by resolution by the City Council within 45 days from the expiration of the 45-day period in which the Council failed to Act.

(3) Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of the term.

**(d) Qualifications**

No person who is required by ordinance to be registered as a lobbyist shall be appointed to the Commission whose members are required to file financial disclosure statements pursuant to the California Political Reform Act. Members shall be ~~residents of the City of Los Angeles~~ persons who have a demonstrated background or interest in human rights, civil rights, anti-discrimination initiatives, and equity. Members shall be drawn from various sectors of the community and should have experience addressing discrimination against one or more minority or marginalized communities. The ~~Mayor and~~ City Council members shall cooperate and coordinate so that nominated members of the Commission reflect the City's diversity and its various minority groups that will benefit from the Human Rights Ordinance's protections, and to ensure representation from communities historically disproportionately impacted by discrimination.

**CHAPTER 32, ARTICLE 2**

**CIVIL AND HUMAN RIGHTS COMMISSION DUTIES AND RESPONSIBILITIES**

**Sec. 22.1210. General.**



(a) The City Council shall designate one member, confirmed by the Mayor, to serve as Chairperson of the Commission.

(b) Commission members shall serve without compensation, but shall be eligible for reimbursement of expenses.

(c) The Commission shall manage and advise upon the City's anti-discrimination efforts and provide remedies to such discrimination, promulgate policies and regulations, and make recommendations to the Mayor and City Council for the adoption of additional and policies City laws pertaining to discrimination in the City.

(d) The Commission shall have the power and duty to enforce the non-discrimination provisions to be adopted in a subsequent ordinance in Chapter IV, Article 16 of the Los Angeles Municipal Code.

(e) The Commission shall receive, investigate and pass upon complaints and may initiate its own investigations and hearings (1) of group tensions, prejudice, intolerance, bigotry and disorder occasioned thereby, and (2) to enforce all provisions of this Article and the provisions in Chapter IV, Article 16 of the Los Angeles Municipal Code by investigating complaints, supervising discovery, undertaking mediation efforts, issuing subpoenas for the attendance and testimony of witnesses or the production of books, accounts, documents and electronic data in any relevant inquiry, investigation, hearing, or proceeding.

(f) The Commission shall form panels of three commissioners to hear and adjudicate complaints alleging violations of Chapter IV, Article 16 of the Los Angeles Municipal Code, not resolved by the Executive Director. Provided, however, that the Commission will not have jurisdiction with respect to discrimination alleged to be committed by city officials or city agencies against City employees, for which an alternative complaint procedure already exists under City law. The Commission shall adjudicate appeals filed by any parties from decisions rendered by three-member panels of the Commission. The Commission may, in its discretion, decide such appeals with or without conducting a new evidentiary hearing in the matter.

(g) The Commission shall enlist the cooperation of various community groups, labor groups, faith-based groups and other stakeholders in programs devoted to eliminating discrimination, intolerance, and hate crimes and shall oversee funding and resources provided by the City to such groups for development of a confidential intake database available to complainants and those assisting them, common outreach materials, community trainings, assessment and investigation of complaints, assistance preparing and filing complaints (using a common database), and advocating for complaining parties seeking relief under Chapter IV, Article 16 of the Los Angeles Municipal Code.

(h) The Commission may require any person or persons who are the subject of an investigation by the Commission to preserve such records as are in the possession of such person or persons and to continue to make and keep the type of records that have been made and kept by such person or persons in the ordinary course of business within the previous year, which records are relevant to the determination whether such person or persons have committed unlawful discriminatory practices with respect to activities in the city.

(i) Any person who commits, or proposes or threatens to commit an act in violation of this Article may be enjoined therefrom by the Commission or a court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity that will fairly and adequately represent the interests of the protected class.

(j) Non-Exclusive. Nothing in this article shall preclude any aggrieved person from seeking any other remedy provided by law.

(k) The commission shall not have jurisdiction to entertain a complaint if:

(1) The complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice or an act of discriminatory harassment or violence as defined by Chapter IV, Article 16 of the Los Angeles Municipal Code with respect to the same grievance which is the subject of the complaint under this chapter, unless such civil action has been dismissed without prejudice or withdrawn without prejudice; or

(2) The complainant has previously filed and has an action or proceeding before any administrative agency under any other law of the state alleging an unlawful discriminatory practice or an act of discriminatory harassment or violence as defined by Chapter IV, Article 16 of the Los Angeles Municipal Code with respect to the same grievance which is the subject of the complaint under this chapter, unless such action has been dismissed without prejudice or withdrawn without prejudice

(l) Any party aggrieved by the failure of the Executive Director to timely act on a complaint filed under Chapter IV, Article 16, or by the Executive Director's decision on such a complaint, may within 60 days of the passage of time within which the Executive Director was required to but failed act, or within 60 days of a decision by the Executive Director on a complaint filed under Chapter IV, Article 16, request in writing that the complaint be heard by a three-member panel of the Commission. Three-member panels of the Commission will conduct hearings and adjudicate claims of violations of Chapter IV, Article 16, within sixty (60) days of receiving a written request from any party for a hearing on a complaint filed under Chapter IV, Article 16.

(m) \_\_\_Any party aggrieved by the failure of a three-member panel of the Commission to timely act on a complaint filed under Chapter IV, Article 16, or by the three-member panel's decision on such a complaint, may within 60 days of the passage of time within which the three-member panel was required to but failed act, or within 60 days of a decision by the three-member panel on a complaint filed under Chapter IV, Article 16, request in writing that the complaint be heard by the full Commission with at least a quorum present. Appeals to the Commission from final decisions rendered by three-member panels of the Commission shall be adjudicated within sixty (60) days of the Commission receiving a written request from any party for review of a decision rendered by a three-member panel of the Commission or the three-member panel's failure to timely adjudicate a complaint. If a three-member panel of the Commission has issued a timely decision resolving a complaint and being appealed, the Commission may decide such appeals based on the record without conducting a further evidentiary hearing.

(n) \_\_\_\_ The Commission may by two-thirds vote of all current Commissioners make, issue, adopt, promulgate, amend, and rescind such rules and procedures as they deem necessary to effectuate and which are not in conflict with, the provisions of this chapter.

(o) As long as the City Council has an appointed Advocate for Immigrant Affairs, Civil Rights, and Equity, the Advocate, regardless of his or her residence, shall serve as an ex officio member of the Commission. The Advocate's presence shall not be included when determining the number of members needed for a quorum or counted when determining if a quorum is present. The Advocate shall not participate in votes of the Commission or panels of the Commission adjudicating individual complaints. The Commission and the Commission's Executive Director shall regularly consult with the Advocate in the execution of their duties set forth in this Chapter. The Advocate will support and advise the Commission and the Executive Director.

(p) The Commission may furnish cooperation, information, guidance and technical assistance to other public agencies and private persons, organizations and institutions engaged in activities and programs intended to eliminate prejudice and discrimination.

## CHAPTER 32, ARTICLE 3

### CIVIL AND HUMAN RIGHTS COMMISSION EXECUTIVE DIRECTOR

#### Sec. 22.1220. Executive Director.

The Commission shall be supported and advised by an Executive Director. The Executive Director shall be appointed and removed in accordance with Charter Section 508 and shall be a civil service exempt position. In addition to the powers conferred in Charter Section 509, the Executive Director shall have the power and duty to:

(a) Investigate complaints of violations of Chapter IV, Article 16 of the Los Angeles Municipal Code, or initiate investigations of violations of Chapter IV, Article 16 of the Los Angeles Municipal Code on ~~his or her~~ its own authority, and to oversee or engage in mediation efforts of such complaints.

(b) Administer oaths and affirmations on behalf of the Commission and to delegate ~~his or her~~ its investigative and enforcement authority to subordinate officers; and

(c) Exercise further powers in the administration of the Civil and Human Rights Commission conferred upon the Executive Director by the Commission.

(d) Report on a quarterly basis to the City Council, the Mayor and the City Attorney as to the progress with regard to the enforcement of this Chapter and Chapter IV, Article 16 of the Los Angeles Municipal Code, and any other activity related to the field of human rights deemed valuable to the Council and the Mayor in the pursuit of its responsibilities. The Director of the Commission shall submit annual reports to State entities to centralize regional and state data on discrimination. The Director's reports shall include:

(1) The information regarding inquiries received by the Commission from the public shall include, but not be limited to: (i) the total number of inquiries; (ii) the number of inquiries made by limited English proficient persons disaggregated by language; (iii) the subject matter of inquiries disaggregated by the alleged category of unlawful discriminatory practice and the protected class of persons, and (iv) the number of inquiries resolved by pre-complaint intervention.

(2) The information regarding complaints filed with the Commission shall include, but not be limited to, the number of complaints filed with the Commission and shall be disaggregated by: (i) the category of unlawful discriminatory practice; (ii) the basis of the alleged discriminatory practice based on protected class of the complainant; (iii) whether the complaint was resolved by mediation and conciliation; a determination of no probable cause; or a hearing; (iv) the number of days the complaint was outstanding at the time such resolution occurred; and (v) whether a fine, penalty, or cash award was imposed and, if so, the dollar amount of such fine, penalty or cash award.

## **CHAPTER 32, ARTICLE 4**

### **COOPERATION AND COORDINATION**

#### **Sec. 22.1230. Cooperation of Other City Departments.**

All Boards, Offices, Departments, Agencies and Bureaus of the City shall cooperate with the Civil and Human Rights Commission to the fullest extent practicable and in a manner that would not conflict with the lawful and necessary conduct of their duties as provided by law. The Commission shall have the authority to collaborate with Boards, Offices, Departments, Agencies and Bureaus of the City, including the Bureau of Contract Administration, in the investigation or adjudication of discrimination complaints filed with the Commission.

#### **Sec. 22.1231. Coordination with Other Agencies.**

The Civil and Human Rights Commission shall, whenever practical, coordinate its programs with any other similar enforcement agency, so as to avoid duplication of effort and assure an effective working relationship between the City and other public agencies charged with investigating discrimination.

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## ATTACHMENT 2

*Advocate's Recommendation: The Committee on Immigrant Affairs, Civil Rights, and Equity requests that the Los Angeles City Attorney's Office prepare a human rights ordinance consistent with the following proposal prepared by the LA City Advocate for Immigrant Affairs, Civil Rights, and Equity, and to present the draft ordinance to the Committee on Immigrant Affairs, Civil Rights, and Equity on or before its meeting scheduled for November 1, 2018. The Committee requests that the City Attorney's Office confer with the Office of the Chief Legislative Analyst and the LA City Advocate for Immigrant Affairs, Civil Rights, and Equity in the process of preparing its draft ordinance.*

An ordinance adding a new Article 16 entitled "Civil and Human Rights Law"

**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:**

**Sec. 2. 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 all too are 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 in Los Angeles and enforce against violations. By investigating complaints and holding businesses and individuals accountable for discriminatory behavior, the City will make clear that discrimination will not be tolerated in Los Angeles. Holding businesses and individuals accountable under this ordinance will also serve as a deterrent to future violations of the City's anti-discrimination laws.

The importance of discouraging discrimination that denies equal treatment to any individual in private employment, housing, education or commerce because of that individual'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 or income status 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:

- (a) "Appellant" shall mean a persons who exercises ~~his or her~~ their right to an administrative appeal under this article.
- (b) "Appellee" shall mean a person against whom an administrative appeal is filed under this article.
- (c) "City" shall mean the City of Los Angeles.
- (d) "Commission" shall mean the Civil and Human Rights Commission.
- (e) "Complainant" shall mean a person who files a complaint with the Director that ~~his or her~~ their right, granted or protected by this article, has been violated by another person.
- (f) "Director" shall mean the Executive Director of the Civil and Human Rights Commission.
- (g) "Respondent" shall mean a person against whom a complaint is filed under this article.
- (h) "Business Establishment" shall mean any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements: (a) consist only of payment of fees; (b) consist of requirements under which a substantial portion of the residents of this City could qualify.
- (i)(1) "Disability" shall mean, with respect to an individual: (1) A physical or mental impairment that substantially limits one or more major life activities of such individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment (as described in paragraph (3)).
- (2) Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life

activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that ~~he or she has~~ they have been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity but shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of “disability” in paragraph (I) shall be construed in accordance with the following:

(a) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(b) The term “substantially limits” shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(c) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(d) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(e) (i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(A) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(B) use of assistive technology;

(C) reasonable accommodations or auxiliary aids or services; or

(D) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(A) the term “ordinary eyeglasses or contact lenses” means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(B) the term “low-vision devices” means devices that magnify, enhance, or otherwise augment a visual image.

(j) Reasonable accommodation: Shall in the employment context include, but is not limited to, the changing job duties, providing leave for medical care, changing work schedules, relocating the work area, and providing mechanical or electrical aids. Reasonable accommodation in the housing context includes, but is not limited to, waiving a no-pets policy to allow tenants to have a service animals, waiving a guest fee for a live-in home health aide for a tenant with a disability, immediately assigning a parking space in the property’s parking garage without having to be put on the waiting list, failure to repair potholes in a driveway that makes it difficult for a wheelchair user to access the

property, refusal to allow a tenant with a disability to transfer from an upper-level apartment to a lower level apartment, and refusal to waive a no-cosigners rule for an applicant with a disability who is unable to work and therefore unable to meet the housing provider's minimum income requirement.

(k) Educational institution: Shall mean any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.

(l) Employer: Shall mean any person who employs an individual for compensation, except for the employer's parent, spouse, or children engaged in work in and about the employer's household; any person acting in the interest of such employer, directly or indirectly; any, person undertaking or attempting to identify or locate employees for an employer or to procure for employees, including an agent of such a person.

(m) Family member: Shall mean, with respect to an individual and genetic information, the spouse of the individual, dependent child (whether born or placed for adoption with the individual), and all other individuals related by blood to the individual, spouse, or child.

(n) Family responsibilities: Shall mean the being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, regardless of their number, including being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

(o) Federal Immigration Status: Shall mean an individual's right, real or perceived, under the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq., to be or remain in the United States.

(p) Genetic information: Shall mean information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

(q) Genetic test: Shall mean an analysis of human chromosomes, genes, gene products, or genetic information that is used to identify the presence of absence of inherited or congenital alterations in genetic material that are associated with disease or illness. A genetic test shall not include a test for the presence of illegal drugs, routine physical measurements, or chemical, blood or urine analysis, unless conducted purposefully to obtain genetic information.

(r) Health benefit plan: Shall mean any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term "health care benefit plan" does not mean accident only, credit or disability insurance; coverage of Medicare services or federal employee benefit plans, pursuant to contracts with the United States government; Medicare supplemental or long-

term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage.

(s) Hearing tribunal: Shall mean three members panels of the Commission, ~~or one (1) or more hearing examiners~~, appointed by the Commission to conduct a hearing.

(t) Housing Services: Shall mean services connected with the use or occupancy of a rental unit including but not limited to, utilities (including light, heat, water and telephone), ordinary repairs or replacement, and maintenance, including painting. This term shall also include the provision of elevator service, laundry facilities and privileges, common recreational facilities, janitor service, resident manager, refuse removal, furnishings, food service, parking and any other benefits, privileges or facilities.

(u) Labor organization: Shall mean any organization, agency, employee representation committee, group, association, or plan in which employees participate directly or indirectly; and which exists for the purpose, in whole or in part, of dealing with employers, or any agents thereof, concerning grievances, labor disputes, wages, rates of pay, hours, or other terms, policies or practices or conditions, of employment; and any conference, general committee, joint or system board, or joint council, which is subordinate to a national or international organization.

(v) Make public: Shall mean disclosure to the public or to the news media of any data obtained during the course of an investigation of a complaint filed under the provisions of this chapter, but not to include the publication of reports as required by the Equal Employment Opportunity Commission, or any other data in the course of any proceeding under Title VII of the Civil Rights Act of 1964 involving such information; nor shall it include access to such data by staff of the Office of Human Rights, members of the Commission on Human Rights, or parties to a proceeding, nor shall it include publication of aggregated data from individual reports.

(w) Marital status: Shall mean the state of being married, in a domestic partnership, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

(x) National origin: Shall mean an individual's, or ~~his or her~~ their ancestor's, place of origin or an individual's physical, cultural or linguistic characteristics of a national origin group.

(y) Owner: Shall mean any of the following:

(i) Any person(s) who is vested all or any part of the legal or equitable ownership, dominion, or title to any real property;

(ii) The committee, conservator, or any other legal guardian of a person who for any reason is non sui juris, in whom is vested the legal or equitable ownership, dominion or title to any real property; or

(iii) A trustee, elected or appointed or required by law to execute a trust, other than a trustee under a deed of trust to secure the payment of money; or one who, as agent of, or fiduciary, or officer appointed by the court for the estate of the person defined in sub-subparagraph (i) of this subparagraph shall have charge, care or control of any real property; or

(iv) A lessee, sublessee, assignee, managing agent, or other person having the right of ownership or possession of, or the right to sell, rent or lease, any real property.

(v) A licensed real estate broker acting for or on behalf of an owner.

(z) Person: Shall mean any natural person, firm, corporation, partnership, labor union, government agency, association, organization, unincorporated organization, or other organization, association or group of persons however organized.

(aa) Personal appearance: Shall mean the outward appearance of any person, including but not limited to manner or style of dress, personal grooming, hair style and beards. It shall not relate to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when personal appearance may present a danger to the health or safety of any individual.

(bb) Place of public accommodation: Shall mean:

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation

(cc) Political affiliation: Shall mean the state of belonging to or endorsing any political party.

(dd) Pregnancy: Shall mean pregnancy, childbirth, or related medical conditions.

(ee) Protected Status: Shall mean the characteristics of age, ancestry, color, citizenship, genetic information, family status, family responsibilities, federal immigration status, marital status, medical condition, mental or physical disability, national origin, personal appearance, political opinion, political affiliation, pregnancy, race, religion, sex, sexual



orientation, language, ethnic or social origin, source of income, status as a victim of an intra-family offense, veteran status, or any immutable characteristic.

(ff) Rent: Shall mean the consideration, including any bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a rental unit, including but not limited to monies demanded or paid for the following: meals where required by the landlord as a condition of the tenancy; parking; furnishings; other housing services of any kind; subletting; or security deposits.

(gg) Rental Units: Shall mean all dwelling units, efficiency dwelling units, guest rooms, and suites in the City of Los Angeles, as defined in Section 12.03 of this Code, rented or offered for rent for living or dwelling purposes, the land and buildings appurtenant thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

(hh) Sexual orientation: Shall mean ~~male or female~~ actual or perceived gender identity, homosexuality, heterosexuality, bisexuality, or asexuality by preference or practice.

(ii) Source of income: Shall mean source of income to a person in a stated period of time, including, but not limited to money and property secured from any occupation, profession or activity, any contract, agreement or settlement, government payments, court-ordered payments, payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury. Source of income shall not include gains or income from illegal activities.

(ji) Transaction in real property: Shall mean the exhibiting, listing, advertising, negotiating, ~~a34~~ being agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest in real property or improvements thereon, including, but not limited to, leaseholds and other real chattels.

#### **SEC. 51.03. GENERAL EXCEPTIONS.**

(a) Nothing in this chapter shall be construed to bar any religious or political organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious or political organization, from limiting employment, or admission to or giving preference to persons of the same religion or political persuasion as is calculated by the organization to promote the religious or political principles for which it is established or maintained.

(b) Nothing in this chapter shall be construed to supersede or make unavailable any federal or state rule, regulation or act.

(c) Nothing in this chapter shall prohibit any religious organization, association, or society or non-profit organization which is controlled by or in conjunction with a religious organization, association or society from limiting the sales, rental or occupancy of housing accommodations which it owns or operates for other than a commercial purpose to members of the same religion or organization, or from giving preference to these persons, unless the entity

restricts its membership on the basis of a Protected Status other than those relating to religion.

(d) No part of this Article shall be interpreted or applied so as to create any requirement, power or duty in conflict with state or federal law.

(e) This chapter does not prohibit a private club, not open to the public, which incident to its primary purpose, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of these lodgings to its members or from giving preference to its members.

#### **SEC. 51.04. DISCRIMINATION PROHIBITED.**

A. It shall be unlawful for any person or employer to discriminate against another person in private employment, in any transaction in real property, in any business establishment, in places of public accommodation, in rental units, in housing services, in educational institutions, or in commerce, ~~because on the basis (in whole or in part) of that person's Protected Status, actual or perceived age, citizenship or federal immigration status, color, creed, disability, employment status, ethnicity, gender, gender identity or expression, genetic information, income status, marital status, medical condition, national origin, partnership status, personal appearance, political affiliation, pregnancy, protected status, religion, race, or sexual orientation.~~

B. It shall be an unlawful employment practice for any employer or labor organization to discriminate or attempt to discriminate or conspire to discriminate against any person with respect to compensation, terms, conditions or privileges of employment on the basis (in whole or in part) of the person's Protected Status.

C. It shall be unlawful for any owner or person engaged in a transaction in real property or providing public accommodation, or providing rental units for rent or lease, or property for sale, to do or attempt to do any of the following:

1. Refuse to rent, lease or sell any property, or refuse to negotiate for the rental, lease or sale of a property, or evict from a rental unit, or otherwise deny to or withhold a rental unit from any person on the basis (in whole or in part) of the person's Protected Status.
2. Rent or lease a rental unit on less favorable terms, conditions or privileges, or discriminate in the provision of housing services to any person on the basis (in whole or in part) of the person's Protected Status.
3. Represent to any person that a rental unit is not available for inspection, rental or lease when such rental unit is, in fact, available, on the basis (in whole or in part) of the person's Protected Status.
4. Make, print, publish, or cause to be made, printed, or published any notice, statement, sign, advertisement, application, or contract with regard to a rental unit that indicates any preference, limitation, or discrimination on the basis of the person's Protected Status.

D. It shall be an unlawful business practice for any person to deny any individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment including, but not limited to, medical, dental, health care and convalescent services of any kind whatsoever on the basis (in whole or in part) of the person's Protected Status.

E. It shall be an unlawful practice for any person to deny any person the full and equal enjoyment of, or to impose different terms and conditions on the availability of, any of the following:

1. Use of any City facility or City service on the basis (in whole or in part) of a person's Protected Status.

2. Any service, program or facility wholly or partially funded or otherwise supported by the City of Los Angeles, on the basis (in whole or in part) of a person's Protected Status.

F. It shall be an unlawful educational practice for any person or educational institution to do any of the following:

1. To deny admission, or to impose different terms or conditions on admission, on the basis (in whole or in part) of a person's Protected Status.

2. To deny any individual the full and equal enjoyment of, or to impose different terms or conditions upon the availability of, any facility owned or operated by or any service or program offered by an educational institution on the basis (in whole or in part) of the person's Protected Status.

G. It shall be unlawful for any person to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any of the acts mentioned in this article, which indicates an intent to engage in any unlawful practice as set forth in this article.

H. 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.

I. Exceptions.

- (1) It shall not be an unlawful discriminatory practice for a religious or denominational institution to limit admission, or give other preference to applicants of the same religion.

- (2) 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.

- (3) 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.

(4) 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 at the workplace;
- iii. ; or
- iii. Conducting employee drug testing, when such testing is otherwise lawful.

(5) 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.

#### J. 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. 51.05. REFERRAL TO LICENSING AGENCIES.**

(a) Whenever it appears that the holder of a permit, license, franchise, benefit, or advantage issued by any agency or authority of the government of the City of Los Angeles is a person against whom the Human Rights Commission has made a finding of probable cause pursuant to § \_\_\_\_\_, the Commission, notwithstanding any other action it may take or may have taken under the authority of the provisions of this chapter, may refer to the proper agency or authority the facts and identities of all persons involved in the complaint for such action as such agency or authority, in its judgment, considers appropriate, based upon the facts thus disclosed to it.

(b) The Commission, upon a determination of a violation of any of the provisions of this chapter by a holder of, or applicant for any permit, license, franchise, benefit, exemption, or advantage issued by or on behalf of the government of the City of Los Angeles, and upon failure of the respondent to correct the unlawful discriminatory practice and comply with its order, in accordance with § \_\_\_\_\_, shall refer this determination to the appropriate agency or authority. Such determination shall constitute prima facie evidence that the respondent, with respect to the particular business in which the violation was found, is not operating in the public interest. Such agency or authority shall, upon notification, issue to said holder or applicant an order to show cause why such privileges related to that business should not be revoked, suspended, denied or

otherwise restricted.

#### **SEC. 51.06. RETALIATION PROHIBITED.**

It shall be unlawful for any person to discriminate in any manner or take adverse action against any other person in retaliation 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 or her potential rights under this article and to assist him or her 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. Protections of this section shall apply to 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. 51.07. ENFORCEMENT**

##### **A. Complaints.**

(1) Any aggrieved person may enforce the provisions of this article by means of a complaint to the Commission under the rules of procedure established by the Commission or to a court of competent jurisdiction. The complainant must sign the complaint under oath, using the following oath or one that is substantially equivalent: "I swear or affirm that I have read this complaint and that it is true and correct to the best of my knowledge, information, and belief." Notarization is not required. A complaint may be submitted in digital format.

(2) Complaints under this article must be filed within one year of the alleged discriminatory acts or from the date on which the alleged discriminatory act was discovered or reasonably should have been discovered.

B Defects in complaints. A complaint addressed to the Commission shall not be rejected as insufficient because of failure to include all required information so long as, in the judgment of the Director, it substantially satisfies the requirements necessary for processing. A complaint to the Commission lacking in any technical requirement shall not be considered defective, provided the requirement is later met.

C. The Director shall acknowledge the filing of the complaint and advise the complainant of any time limits that apply to the complainant's case.

D. Any complaint filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the Commission by filing such amended complaint with the Commission and serving a copy thereof upon all parties to the proceeding.

E. All complaints shall be reviewed to determine whether they disclose a prima facie violation of this Article. Complaints that disclose a prima facie violation of this Article shall be deemed admissible complaints by the Director. The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by the Commission. The Director, sua sponte, may investigate individual instances and patterns of conduct prohibited by the provisions of this Article and may initiate complaints in connection therewith.

F. Complaints filed with the Commission may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the Commission's investigation



and findings, except that the circumstances accompanying said withdrawal may be fully investigated by the Commission.

G. The Director shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent of his or her procedural rights and obligations as set forth herein and in any rules adopted by the Commission.

H Answer to Complaint-- Within thirty days after a copy of the complaint is served upon the respondent by the Director, the respondent shall file a written, verified answer thereto with the commission, and the commission shall cause a copy of such answer to be served upon the complainant and any necessary party.

a. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial.

b. Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the Director and the Commission unless good cause to the contrary is shown.

c. All affirmative defenses shall be stated separately in the answer.

d. Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended in accordance with the rules of the Commission.

e. Any necessary party may file with the Commission a written, verified answer to the complaint, and the Director shall cause a copy of such answer to be served upon the complainant, respondent and any other necessary party.

f. Any answer filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the Commission by filing such amended answer with the Commission and serving a copy thereof upon the complainant and any necessary party to the proceeding.

I. A mediation program shall be established by the Director and all admissible complaints shall be mediated before the Commission commences a full investigation. During the mediation the parties shall discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. The Commission shall grant the parties up to 45 days within which to mediate a complaint. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint. If an agreement is not reached, the Commission shall proceed with an investigation of the complaint.

J. Dismissal of complaints. (I) The Director may, in his or her discretion, dismiss a complaint for ~~administrative convenience~~ good cause at any time prior to the taking of testimony at a hearing. ~~Administrative convenience~~ Good cause shall include, but not be limited to, the following circumstances:

(a) commission personnel have been unable to locate the complainant after diligent efforts to do so;

(b) the complainant has repeatedly failed to appear at mutually agreed upon appointments with commission personnel or is unwilling to meet with commission personnel, provide requested documentation, or to attend a hearing;

(c) the complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the commission;

(d) the complainant is unwilling to accept a reasonable proposed conciliation agreement;

(e) prosecution of the complaint will not serve the public interest; and

(f) the complainant requests such dismissal, one hundred eighty days have elapsed since the filing of the complaint with the commission finds (a) that the complaint has not been actively investigated, and (b) that the respondent will not be unduly prejudiced thereby.

II. The Director shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent, if the complainant requests such dismissal, unless the Director has conducted an investigation of the complaint or has engaged the parties in conciliation after the filing of the complaint.

III. In accordance with the rules of the Commission, the Director shall dismiss a complaint if the complaint is not within the jurisdiction of the Commission.

IV. A complainant may appeal the Director's dismissal of a complaint to the Commission.

K. If after investigation the Director determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter six of this title, the Director shall dismiss the complaint as to such respondent. The Director shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.

L. The Director shall encourage reporting pursuant to this article by keeping confidential, to the maximum extent permitted by applicable laws, 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.

M. 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. The Director may request the Commission to issue a subpoena for books, papers, records, or other items relevant to the enforcement of this article. Respondents shall provide the Director with their legal name, address, and telephone number in writing.

N. 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.

O. Determination. Whenever the Director finds that a violation [of Section 51.03 or Section 51.04] has or has not occurred, the Director shall publicly issue a notice of violation if one has occurred, which shall, in addition to describing the violation, impose administrative penalties and corrective actions, if any, consistent with Section 51.07. The Director shall serve the notice of decision, by First Class mail, on the respective Complainant and Respondent. The date of service shall be the date of the postmark on the mailing.

P. The complainant or respondent may, within thirty days of such service, and in accordance with the rules of the commission, apply to the Commission for review of any decision by the Director affirming, sustaining, dismissing or denying a complaint or issuing any remedy pursuant to this section.

K. A hearing tribunal consisting of 3 members of the Commission, sitting as the Commission, shall be appointed to make a determination upon such review.

L. The hearing shall be conducted in accordance with procedures promulgated by the Commission.

(A) The case in support of the complaint shall be presented by the complainant, an agent, an advocate or an attorney.

(B) Any Commissioner who has participated in the investigation, conciliation or processing of a complaint, or has participated in any decision related to the merits of a complaint, may not sit with a hearing tribunal appointed to make a determination upon such complaint.

(C) Efforts at conciliation by the Commission, or the parties, shall not be received in evidence.

(D) If the respondent failed to answer the complaint or to participate in the hearing, the hearing tribunal may enter the default and the hearing shall proceed on the basis of the evidence in support of the complaint. Such default may be set aside only for good cause shown, and upon equitable terms and conditions.

(E) The Commission panel may, in its discretion, permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.

(F) The commission shall not be bound by the strict rules of evidence prevailing in courts of the state of California. The testimony taken at the hearing shall be under oath and shall be transcribed.

(G) The Commission panel hearing a case may, either sua sponte or on motion of any party or witness, issue such protective orders as justice and fairness may require to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression. Among other things, a protective order may deny, limit, condition, or regulate discovery.

(H) The hearing ~~shall be open to the public and~~ shall be audio recorded.

(I) Any party to the hearing may, at ~~his or her~~ their own expense, cause the hearing to be video recorded or transcribed by a certified court reporter.

#### **SEC. 51.08. ADMINISTRATIVE HEARING.**

A. Deadline for Hearing. A Respondent may file with the Commission a request for hearing before an Administrative Law Judge (ALJ) within 15 calendar days from the date of service of a decision issued by a three member panel of the Commission.. In order to be considered timely, the request for an ALJ hearing must be postmarked on or actually 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 Commission's 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 an administrative law judge from the State of California's Office of Administrative Hearings to hear and decide on the notice of violation. The administrative law judge 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. If administrative penalties payable to the City are the subject of a hearing under this section, then accrual of such penalties shall be stayed until the determination of such hearing is final.

E. Failure to Request Hearing. Failure of a Respondent to file a request for hearing in accordance with the provisions of this section or to appear at the hearing shall constitute a failure to exhaust administrative remedies. In such instance, 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 administrative law judge, with simultaneous service by First Class mail one another, written information, including, but not limited to, the following: the statement of issues to be determined by the administrative law judge and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

G. Conduct of Hearing. The administrative law judge shall conduct all hearings under this section. The Director shall have the burden of proof by a preponderance of the evidence in each hearing. The administrative law judge 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 shall be prima facie evidence of the violation(s) specified therein; and
2. The administrative law judge may accept evidence and 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 ~~his or her~~ their own expense, cause the hearing to be video recorded or transcribed by a certified court reporter. The administrative law judge may continue the hearing and order the production of additional information from the Director or Respondent prior to issuing a written decision. The Commission shall have the authority to develop written regulations for the conduct of hearings under this article, including, but not limited to, the use of witnesses and evidence.

H. Administrative Law Judge's Findings and Determinations. Within 30 calendar days after the conclusion of the hearing, the administrative law judge shall make findings based on the record of the hearing. The findings shall be made in the form of an administrative ruling. The administrative law judge may uphold or reject the violation(s) referenced in the Director's notice of violation in whole or in part. The administrative law judge also may uphold the notice of violation but increase, reduce, waive or conditionally reduce or waive the administrative penalties stated therein if aggravating or mitigating circumstances are shown and the administrative law judge finds specific grounds for increase, reduction or waiver in the evidence presented at the hearing. The administrative law judge may impose penalties for any additional violations occurring during the pendency of the hearing. The administrative law judge may impose, reduce, waive or conditionally reduce or waive conditions imposed by the Director and may alter deadlines for the correction of violations or the payment of outstanding administrative penalties. The administrative law judge shall serve the administrative ruling, by First Class mail, on the respective Director and Respondent. The date of service shall be the date of the postmark on the mailing.

I. Payment of Penalties. Whenever the administrative law judge finds in favor of the Director and orders administrative penalties to be paid pursuant to article, those penalties shall be set, due and payable in accordance with Section 51.09

#### **SEC. 51.09. INDIVIDUAL REMEDIES FOR VIOLATIONS.**

A. Civil Enforcement. Any Complainant may bring a civil action in a court of competent jurisdiction against any person violating this article. The Complainant, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of any damages and restitution, injunctive relief, and reasonable attorneys' fees and costs. Nothing in this section shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent action by the City, or a separate or concurrent prosecution under the Municipal Code or state law by the City Attorney. 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. 51.10. PENALTIES AND CORRECTIVE ACTIONS FOR VIOLATIONS.**

A. Administrative 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 or a three-member panel of the Commission or an ALJ determines that a Respondent has violated Section 51.03 or Section 51.04, the Director or a panel of the Commission or an ALJ shall impose an administrative penalty. The penalty imposed shall be not more than \$100,000. Where the Director or a three-member panel of the Commission or an ALJ finds that a violation was the result of a Respondent's harassing or violent act, the administrative penalty shall be not more than \$200,000. The Director or three-member panel of the Commission or an ALJ may also order the Respondent to undertake corrective actions to remedy the violation or prevent future violations. Such administrative penalties and corrective actions shall be set forth in the notice of violation.

B. Payments to City; Due Date; Late Payment Penalty. Administrative penalties shall be payable by the Respondent to the City and due within 30 calendar days from the date of the Director's notice of violation. The failure of any Respondent to pay an administrative penalty within 30 calendar days will result in the assessment of a late fee. The amount of the late fee shall be assessed daily at a rate of 7% per annum of the total amount of the administrative penalty. The City may use any civil legal remedy available to collect any unpaid administrative penalty, including, but not limited to, civil action, injunctive relief, specific performance and the recordation of a lien against real property pursuant to the procedures set forth in this Code and in accordance with applicable law.

C. Damages awarded to the Complainant. In addition to any administrative penalties set forth in this article or any other law, where the Director or a three-member panel of the Commission or an ALJ determines that a Respondent has violated Section 51.03 or Section 51.04, the Director or a panel of the Commission or an ALJ may award compensatory or punitive damages to the Complainant. The combined damages imposed shall be not more than \$250,000. Where the Director or a three-member panel of the Commission or an ALJ finds that a violation was the result of a Respondent's harassing or violent act, the combined damages shall be not more than \$400,000.



D. Severity of Penalties and damages. Administrative penalties and damages for violations of this article will be set 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) the history of past violations; 5) any action taken to mitigate the violation; and 6) the financial burden to the person.

E. Criminal Penalties. In addition to any remedies and penalties set forth in this article or any other law, any person who shall willfully resist, obstruct or interfere with the Director or three-member panel of the Commission or an ALJ 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. Pursuing an administrative hearing or administrative appeal shall not be willful resistance, obstruction or interference.

#### **SEC. 51.11. 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, which may be pursued to address violations of this article. A ruling by the administrative law judge 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. 51.12. 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 any state law ~~the Fair Employment and Housing Act (FEHA), Cal. Gov. Code, § 12900 et seq.,~~ has occupied the field of regulation of discrimination in employment ~~and or~~ housing encompassed by the provisions of that act, this article shall provide no separate regulation except to the extent the Protected Status protected by this article are not encompassed by the provisions of state law. ~~Notwithstanding the foregoing, this article is intended to regulate those discriminatory actions in housing and employment and provide remedies to those protected classes that are not encompassed by the provisions of FEHA.~~

#### **SEC. 51.13. 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. 3. SEVERABILITY. If any section, subsection, subdivision, clause, sentence, phrase or portion of this ordinance is held unconstitutional or invalid or unenforceable by any court or tribunal of competent jurisdiction, whether under state or federal law, the remaining sections, subsections, subdivisions, clauses, sentences, phrases or portions of this measure shall remain in full force and effect, and to this end the provisions of this article are severable.

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