LOH
09/05/13
Item #4

AN ORDINANCE 2013-09-05-0577

**ADOPTING A CONSOLIDATED NON-DISCRIMINATION POLICY WITH EXPANDED PROTECTIONS; ESTABLISHING AND AMENDING CERTAIN SECTIONS OF THE CITY CODE; ADOPTING A NON-DISCRIMINATION STATEMENT AS REQUIRED UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND RELATED STATUTES; AND PROVIDING FOR PENALTIES AND DIRECTING PUBLICATION.**

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**WHEREAS,** the City of San Antonio has adopted separate non-discrimination policies and practices over the years; and

**WHEREAS,** the city now desires to provide for and adopt a comprehensive and expanded non-discrimination policy with revisions to outdated terminology; and

**WHEREAS,** Part II of the City Code, Chapter 2, *Administration,* Article IX, Section 2-529 prohibits discrimination by the city when appointing members to boards and commissions and also prohibits discrimination by these appointed officials in their public positions; and

**WHEREAS,** for city employees, City Code, Chapter 2, *Administration,* Article IV, Divisions 1 through 3, among other things, prohibit discrimination by the city in the hiring and promotion of city employees, and provide a means for complaint, investigation and redress; and

**WHEREAS,** City Code, Chapter 9, *Community Relations,* Article II, Section 9-19 prohibits discrimination by private parties with regard to places of public accommodation; and

**WHEREAS,** City Code, Chapter 9, *Community Relations,* Article III, *Discriminatory Housing Practices* and Ordinance No. 2009-05-14-0385 prohibit discrimination in housing; and

**WHEREAS,** the city desires to consolidate the existing Code sections and adopted Ordinance sections that govern discriminatory housing practices so that the public may more easily locate them; and

**WHEREAS,** the city has administratively issued a *Title VI and Related Statutes Non-discrimination Statement* to the TxDOT Civil Rights Division, which the City Council now desires to adopt, and also includes associated non-discrimination language within city contracts; and

**WHEREAS,** City Code, Chapter 2, *Administration,* Article I, Section 2-8(a), adopted in 1989, prohibited discrimination in the award of subcontracts, but was superseded by a *Commercial Non-discrimination Policy* on June 17, 2010 with language that also must be included in all contracts to which SBEDA Ordinance No. 2010-06-17-0531 applies; and

**WHEREAS,** the city desires that contracts contain language that requires compliance with the protections afforded by a comprehensive, expanded non-discrimination policy; and

**WHEREAS,** the request for consideration of this issue by the full City Council was brought forward by a City Council Request memorandum, signed by five members of the Council, and has been considered at open City Council Governance Committee and "B" Session meetings; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** City Council adopts a consolidated Non-Discrimination Policy, which expands protections and revises outdated terminology, to be included in Chapter 2, *Administration*, and establishes **Article X** which shall be entitled ***Non-Discrimination Policies*** as follows:

**CHAPTER 2 – ADMINISTRATION.**

**ARTICLE X. - Non-Discrimination Policies.**

**DIVISION 1 – Generally.**

**Sec. 2-543-549. – Reserved.**

**Sec. 2-550. – Non-Discrimination Policy.**

(a) It shall be the general policy of the City of San Antonio to prohibit discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, as set forth in the Divisions following, unless exempted by state or federal law or as otherwise indicated.

(b) A religious corporation, association, society or educational institution or an educational organization operated, supervised or controlled in whole or in substantial part by a religious corporation, association or society does not violate the non-discrimination policy by limiting employment or giving a preference in employment to members of the same religion, as determined solely by the religious corporation, association, or institution.

(c) Nothing in this Ordinance shall be construed as supporting or advocating any particular lifestyle or religious view. To the contrary, it is the intention of this Ordinance that all persons be treated fairly and equally and it is the express intent of this Ordinance to guarantee to all of our citizens fair and equal treatment under the law.

(d) Nothing herein shall be construed as requiring any person or organization to support or advocate any particular lifestyle or religious view, or advance any particular message or idea.

**Sec. 2-551. – Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning in Divisions below:

*Age* means an individual at least 40 years of age.

*Disability* means a mental or physical impairment that substantially limits at least one major life activity, a record of the impairment, or being regarded as having the impairment. This term does not include the current, illegal use of or addiction to a controlled substance as defined under state and federal law.

*Gender identity* means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.

*Religion* means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that the employer is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

*Sex* includes both sex, the biological differences between men and women, and gender; and encompasses sexual orientation and gender identity.

*Sexual orientation* means an individual's real orientation or orientation perceived by another as heterosexual, homosexual, bisexual or asexual.

*Veteran status* means a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable, as specified in 38 U.S.C. 101(2). "Active service" includes full-time Federal service in the National Guard or a Reserve component.

**Sec. 2-552. – Appointed Officials, Boards and Commissions.**

(a) **Appointments to Boards and Commissions.**
When making appointments to boards and commissions, the city shall not discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, veteran status, age or disability.

(b) **Discrimination by Appointed Officials – Malfeasance.**

(1) No appointed official or member of a board or commission shall engage in discrimination against any person, group of persons, or organization on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, while acting in their official capacity while in such public position.

(2) Violation of this standard shall be considered malfeasance in office, and the City Council shall be authorized to take action as provided by law to remove the offending person from office.

**Sec. 2-553. – Reserved.**

**DIVISION 2 – CITY OF SAN ANTONIO EQUAL EMPLOYMENT OPPORTUNITY.**

**Sec. 2-554. - Policy.**

(a) The city will maintain a policy of equal employment opportunity. No city employee or applicant for employment with the city will be denied employment or promotion because of race, color, religion, disability, sex, sexual orientation, gender identity, veteran status, age or national origin. Fair and impartial treatment will be extended to all city employees and applicants for employment with the city.

**Sec. 2-555. - Establishment of program.**

There is hereby established a city equal employment opportunity program.

**Sec. 2-556. - Division of equal employment opportunity, created, duties.**

(a) There is hereby created a division of equal employment opportunity which shall be directly responsible to the city manager or designee.

(b) The division will administer and monitor the established equal employment opportunity program in accordance with existing federal, state, and city laws.

(c) The division will initiate investigations into any alleged discriminatory practices within the city.

**Sec. 2-557. - Duties of division generally.**

(a) The equal employment opportunity division will be responsible for the implementation of this program.

(b) The equal employment opportunity division will work closely with all city departments to provide city employees and applicants for employment with the city with an opportunity to express complaints of discrimination based on race, color, religion, disability, sex, sexual orientation, gender identity, veteran status, age or national origin.

(c) The equal employment opportunity division will also work with the city training officer to orientate city employees to the functions of the program. Counseling will be provided to all city employees and applicants for employment with the city.

**Sec. 2-558. - Complaints, procedure.**

(a) City employees may register complaints of discrimination with the city equal employment division, and complaints will be given prompt consideration. An investigation to determine the cause for the complaint will be conducted and findings will be acted upon without undue delay.

(b) All complaints will be investigated by the equal employment opportunity division and findings submitted to the city manager or designee without undue delay. Findings also will be relayed to the complainant and other persons officially involved. If it is determined that a violation has been committed, the situation will be corrected without undue delay.

(c) Discrimination complaints will be submitted in writing to the equal employment opportunity division. The equal employment opportunity division will be available to assist in aiding city employees who may lack the skill to submit the written report.

(d) An interview with the equal employment opportunity division will be scheduled to verify the following:

When the alleged violation occurred.
Against whom the alleged discrimination was registered.
Location of the alleged offense.
Person allegedly discriminated against.
Nature of the alleged offense.
Names of all persons and witnesses involved.
Remedy sought by the complainant.

**Sec. 2-559. - Unwarranted complaints; procedure.**

If the complaint is found to be unwarranted, the complainant will be notified of such. The city manager or designee may conduct further investigation, confirm or deny the original decision. If there are legal questions involved, the complaint will be sent to the city legal department for review.

**Secs. 2-560—2-570. - Reserved.**

**DIVISION 3. – OFFICE OF EMPLOYEE RELATIONS, EQUAL EMPLOYMENT OPPORTUNITY DIVISION.**

**Sec. 2-571. - Policy.**

The city will maintain a policy of equal employment opportunity. No city employee or applicant for employment with the city will be denied employment or promotion because of race, color, religion, disability, sex, sexual orientation, gender identity, veteran status,

age or national origin. Fair and impartial treatment will be extended to all city employees and applicants for employment with the city.

**Sec. 2-572. - Functions.**

The office of employee relations, under the direction of the city manager or designee will be responsible for the following functions:

(1) Equal employment opportunity division:

a. Implements and monitors an equal employment opportunity program in accordance with the guidelines established by federal legislation;

b. Works closely with city departments to ensure that city employees and applicants for employment with the city have an opportunity to express complaints of discrimination based on race, color, religion, disability, sex, sexual orientation, gender identity, veteran status, age or national origin. A complaint filed with the equal employment opportunity office will prompt immediate investigations with findings reported to the city manager's designee. Findings also will be relayed to the complainant and other persons officially involved. When it is determined that a violation has occurred, the corrective action will be taken without undue delay and will be monitored to ensure compliance;

c. Provides counseling as to fair employment practice provisions of law to city employees, applicants for employment with the city, and supervisors of all levels of management. Assists the city training officer, as required, to acquaint city employees with the equal employment opportunity program;

d. Insures that assistance is available to aid city employees who may lack the skill to submit a written complaint;

e. Is responsible to establish an interview technique and checklist to assure a thorough and complete investigation of all written complaints.

**Sec. 2-573. - Applicability of equal employment opportunity program.**

The following provisions of this division are also applicable to the equal employment opportunity program:

(1) The director of the department in which the complaint arose will cooperate and require all city employees of the department to cooperate with the equal employment opportunity officer investigating the complaint. All city employees having any knowledge of the complaint shall furnish statements of testimony under oath without a pledge of confidence.

(2) If the complaint is found to be unwarranted, the complainant will be notified of such. The city manager's designee may conduct further investigation, and confirm or deny the original decision. If there are legal questions involved, the complaint will be sent to the city's legal department for review.

(3) Equal employment opportunity division employees, complainants, equal employment opportunity counselors, individuals providing information regarding complaints, shall not be harassed, intimidated, reprised, or retaliated against in any way preceding, during or upon completion of any equal employment opportunity investigation.

(4) Nothing in this division will be construed to lessen a supervisor's obligation to supervise those under him/her nor will it be construed to permit an employee of the city to act in a disrespectful manner prejudicial to good order.

**Secs. 2-574—2-590. - Reserved.**

**DIVISION 4. – AFFIRMATIVE ACTION.**

**Sec. 2-591. - Plan adopted.**

A copy of the most recently adopted affirmative action plan is available in the Office of the City Clerk and is incorporated by reference as if set forth at length herein. This affirmative action plan supersedes all previous plans and modifications to such plans.

**DIVISION 5 – PLACES OF PUBLIC ACCOMMODATION.**

**Sec. 2-592. - Discrimination prohibited; policy.**

It shall be unlawful for any person, or any employee or agent thereof within the city, to discriminate against, withhold from or deny any person, because of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, any of the advantages, facilities or services offered to the general public by a place of public accommodation.

**Sec. 2-593. - Definitions.**

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Hotel and motel* shall include every establishment offering lodging to transient guests for compensation, but such terms shall not apply to any such establishment if the majority of occupants therein are permanent residents.

*Place of public accommodation* shall include every business within the city, whether wholesale or retail, which is open to the general public and offers, for compensation, any product, service or facility. The term place of public accommodation shall include, but not be

limited to, all taverns, hotels, motels, apartment hotels, apartment houses with four (4) or more tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof.

*Restaurant* shall include every cafe, cafeteria, coffee shop, sandwich shop, snack bar, supper club, soda fountain, soft drink or ice cream parlor, luncheonette, or other similar establishment, which offers food or beverages for purchase and consumption on the premises, but shall not include places at which intoxicating beverages are sold otherwise than as an accompaniment to meals.

*Theater* shall include every place, whether indoors or out-of-doors, at which any theatrical performance, moving picture show, musical concert or recital, dramatic reading or monologue, circus, carnival, or other like entertainment or amusement is offered for compensation.

**Sec. 2-594. - Exemptions.**

This Division shall not, however, apply to any hotel, motel, restaurant or theater operated by a bona fide private club not conducted for the purpose of evading this Division when the accommodations, advantages, facilities and services are restricted to the members of such club and their guests; nor to any bona fide social, fraternal, educational, civic, political or religious organization, when the profits of such accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit or mission of such organization.

Nothing in Division 5 will be construed as allowing any person to enter any sex-segregated space for any unlawful purpose.

**Sec. 2-595. - Effect on civil remedies now available.**

This Division shall neither add to nor detract from any civil remedies now available to persons subject to unlawful discrimination.

**Secs. 2-596 —2-620. - Reserved.**

## DIVISION 6. – DISCRIMINATORY HOUSING PRACTICES.

### Subdivision I – Declaration of Policy, Purpose and Authority.

**Sec. 2-621. –Policy.**

It is the policy of the city, through fair, orderly and lawful procedures, to promote the opportunity for each person to obtain housing without regard to race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age. This policy is grounded upon a recognition of the right of every person to have access to adequate housing of the person's own choice, and that the denial of this right because of

race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age is detrimental to the health, safety, and welfare of the inhabitants of the City and constitutes an unjust deprivation of rights, which is within the power and proper responsibility of government to prevent.

**Sec. 2-622. - Purpose.**

The purposes of this Division are:

(a) To provide for fair housing practices in the City,

(b) To create a procedure for investigating and settling complaints of discriminatory housing practices, and

(c) To provide rights and remedies substantially equivalent to those granted under state and federal law.

**Sec. 2-623. - Authority.**

This Division is enacted pursuant to authority explicitly granted municipalities by the Texas Constitution Art. XI., Section 5; Texas Local Government Code Chapter 51 - Subchapter E, Chapter 54 and Sec. 214.903; and Texas Property Code Chapter 301.

**Subdivision II – Definitions.**

**Sec. 2-624. - Definitions.**

The following definitions apply to words used in this Division.

(a) *Accessible* means that area of a housing accommodation that can be approached, entered and used by a person with a physical disability.

(b) *Accessible route* means a continuous unobstructed path connecting accessible elements and spaces in a housing accommodation that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by a person with other disabilities.

(c) *Aggrieved Person* includes any person who:

(1) Claims to have been injured by a discriminatory housing practice, or

(2) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

(d) *Complainant* means a person who lodges or files a written complaint with the Fair Housing Office

(e) *Conciliation* means the attempted resolution of issues raised by a complainant or by the investigation of the complaint, through informal negotiations involving the aggrieved person, the respondent, and the Fair Housing Office.

(f) *Conciliation agreement* means a written agreement setting forth the resolution of the issues in conciliation.

(g) *Disability* means:

(1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment.

This term does not include the current, illegal use of or addiction to a controlled substance as defined under state and federal law.

(h) *Discriminatory housing practice* means an act prohibited by this Division.

(i) *Dwelling* means:

(1) any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; and,

(2) any vacant land that is offered for sale or lease for the construction or location of a building, structure or part of a building or structure described in paragraph (a) of this definition.

(j) *Fair Housing Office* means the city office designated by the city manager to take complaints in violation of this Division and to assist in conciliation.

(k) *Familial status* means the status of a person resulting from being:

(1) pregnant;

(2) domiciled with an individual younger than 18 years of age in regard to whom the person:

(A) is the parent or legal guardian; or,

(B) has the written permission of the parent or legal guardian for domicile with the individual; or,

(3) in the process of securing legal custody of an individual who is younger than 18 years of age.

(l) *Family* includes a single individual.

(m) *Major life activities* means functions such as, but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(n) *Person* means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(o) *Residence* does not include a hotel, motel, or similar public accommodation where occupancy is available exclusively on a temporary, day-to-day basis.

(p) *Respondent* means:

(1) The person accused of a violation of this Division in a complaint of a discriminatory housing practice; and

(2) Any person identified as an additional or substitute respondent.

(q) *To rent* includes to lease, sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.

**Subdivision III - Prohibitions against Discrimination**

**Sec. 2-625. - Sale or rental.**

(a) A person may not refuse to sell or rent a dwelling to a person who has made a bona fide offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with the sale or rental, because of race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

**Sec. 2-626. – False Representation; Inspection.**

A person may not represent to any person because of race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age that a dwelling is not available for inspection, sale, or rental when the dwelling is in fact so available.

**Sec. 2-627. - Entry into neighborhood.**

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

**Sec. 2-628. - Disability.**

(a) A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of:

(1) That buyer or renter;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) Any person associated with that buyer or renter.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

(1) That person;

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(3) Any person associated with that person.

(c) For purposes of this Section only, discrimination includes:

(1) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling, including public and common use areas.

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

(A) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;

(B) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons in wheelchairs; and

(C) All premises within such dwellings contain the following features of adaptive design:

(i) An accessible route into and through the dwelling;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars; and,

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) Compliance with the appropriate requirements of the American National Standard Institute for buildings and facilities providing accessibility and usability for persons with physical disabilities, commonly cited as "ANSI A 117.1," suffices to satisfy the requirements of Subsection (c)(3)(C) of this Section.

(e) As used in this Subsection, the term "covered multi-family dwellings" means:

(1) Buildings consisting of four (4) or more units if the buildings have one or more elevators; and

(2) Ground floor units in other buildings consisting of four (4) or more units.

(f) Nothing in this Subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**Sec. 2-629. - Publication.**

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, or familial status, national origin or age, or an intention to make such a preference, limitation, or discrimination.

**Sec. 2-630. - Residential real estate related transaction.**

(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

(b) In this Section, "residential real estate related transaction" means:

(1) Making or purchasing loans or providing other financial assistance,

(A) To purchase, construct, improve, repair, or maintain a dwelling; or

(B) Secured by residential real estate; or

(2) Selling, brokering, or appraising residential real property.

**Sec. 2-631. - Brokerage services.**

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

**Sec. 2-632. - Interference with exercise of rights unlawful.**

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his/her having exercised or enjoyed, or on account of his/her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this Division, including the giving of testimony or provision of information in aid of investigation or discovery under this Division.

**Sec. 2-633. – Consideration of non-discriminatory factors.**

Nothing in this Division prohibits:

(a) Consideration of a person's conviction under federal law or the law of any state for the illegal manufacture or distribution of a controlled substance.

(b) A person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

**Subdivision IV - Exemptions.**

**Sec. 2-634. - Sales and Rentals Exempted.**

(a) Subject to Subsection (b) of this Section, Sections 2-625 through 2-628 of this Division do not apply to:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(A) The owner does not:

(i) Own more than three (3) single-family houses at any one time; and

(ii) Own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three (3) single-family houses at any one time; and

(B) The house is, or was sold or rented without:

(i) The use of the sales or rental facilities or services of a real estate broker, agent, or salesman licensed under applicable state law or of an employee or agent of a licensed broker, agent, or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; and

(ii) The publication, posting, or mailing of a notice, statement or advertisement prohibited by Section 2-629 of this Division; or

(2) The sale or rental of rooms or units in a dwelling containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other if the owner maintains and occupies one of the living quarters as the owner's residence.

(b) The exemption set forth in (a)(1) of this Section applies only to one sale or rental within a 24-month period if the owner did not reside in the house at the time of sale or rental or was not the most recent resident of the house prior to the sale or rental.

**Sec. 2-635. - Religious Organizations and Private Clubs Exempted.**

(a) This Division does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from:

(1) Limiting the sale, rental, or occupy dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or

(2) Giving preference for such dwellings to persons of the same religion, unless membership in the religion is restricted because of race, color or national origin.

(b) This Division does not prohibit a private club not in fact open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members.

**Sec. 2-636. - Housing for Elderly Exempted**

(a) The provisions of this Division relating to familial status do not apply to housing for older persons.

(b) In this Section "housing for older persons" means housing:

(1) That the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons under a federal or state program;

(2) Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or

(3) Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit as determined by the Secretary of the United States Department of Housing and Urban Development. To the extent that such a determination falls within the jurisdiction of the United States Department of Housing and Urban Development, the following factors at minimum must be present for the dwelling(s) to qualify for the exemption:

(A) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is

necessary to provide important housing opportunities for older persons; and,

(B) That at least eighty (80) percent of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit; and,

(C) The publication of, and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

**Sec. 2-637. - Appraisal Exemption.**

This Division does not prohibit a person engaged in the business of furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, sexual orientation, gender identity, veteran status, disability, familial status, national origin or age.

**Sec. 2-638. - Effect on other law.**

This Section and Division do not affect a requirement of nondiscrimination in any other local, state or federal law.

**Subdivision V – Enforcement**

**Sec. 2-639. - Complaints.**

The Fair Housing Office shall upon receipt of a written complaint under oath, made by an aggrieved person charging a violation of any provision of the prohibitive sections of this Division, make a prompt and full investigation of the complaint. If after such investigation, the Fair Housing Office determines that a violation has occurred it shall attempt to eliminate the discriminatory housing practices by conciliation and persuasion. If the Fair Housing Office fails in the conciliation proceedings, it shall forward all papers, including the written complaint, investigation, record of conciliation proceedings, factual findings and its recommendation to the city attorney and/or the U.S. Department of Housing and Urban Development for further prosecution. The complaint, investigation and conciliation proceedings shall be confidential records and proceedings of the Fair Housing Office shall not be made public except upon the authority of the city council. The city attorney shall review the proceedings and shall take appropriate legal action if it is deemed appropriate.

(a) In any proceeding brought pursuant to this Section, the burden of proof shall be on the complainant;

(b) A complaint provided for in this Division shall be filed within thirty (30) days after the alleged discriminatory housing practice occurred. Complaints shall state the

facts upon which the allegations of a discriminatory housing practice are based. Complaints may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and with the leave of the Fair Housing Office, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaints and answers shall be signed.

**DIVISION 7. TITLE VI COMPLIANCE.**

**Sec. 2-640. – Policy.**

It is the policy of the City of San Antonio, Texas as a recipient of Federal financial assistance and under Title VI of the Civil Rights Act of 1964, and related statutes, to ensure that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. Section 2000d-3), color, national origin, sex, sexual orientation, gender identity, veteran status, age, or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination or retaliation under any federally or non-federally funded city programs or activities administered by the city or its contractors.

**Sec. 2-641. – Complaint Procedures.**

The complaint procedures for Title VI transportation related programs, projects or activities known as *Methods of Administration* (MOA) can be found on the City of San Antonio's website.

**SECTION 2.** Chapter 2, *Administration*, Article IV. *Equal Opportunity and Employee Relations*, Division 1. *Generally,* Division 2. *Office of Employee Relations*, and Division 3. *Affirmative Action*, of the City Code of San Antonio, Texas, are hereby amended as provided in SECTION 1 of this Ordinance, and codified as Divisions 2 through 4 in Article X. *Non-Discrimination Policies* of Chapter 2.

The balance of the text in Chapter 2, *Administration*, Article IV. *Equal Opportunity and Employee Relations*, Division 2. *Office of Employee Relations,* of the City Code of San Antonio, Texas, shall remain and be reformatted and renumbered to conform to the existing Code, except for the following language which shall be amended by adding language that is underlined (added) and deleting language that is stricken (~~deleted~~), to read as follows:

**DIVISION 3. OFFICE OF EMPLOYEE RELATIONS, LABOR RELATIONS DIVISION**

**Sec. 2-124 -Functions.**

The office of employee relations, under the direction of the director of employee relations, will be established within the office of the city manager and will be responsible for the following functions ~~as specified by division~~:

**SECTION 3.** Sections 9-36 through 9-53 of Ordinance No. 2009-05-14-0385 and Section 9-46 of Chapter 9, *Community Relations,* Article III, *Discriminatory Housing Practices* of the City Code are consolidated and adopted in their amended form as set forth in SECTION 1 of this Ordinance.

**SECTION 4.** All sections of Chapter 9, *Community Relations,* Article II, *Places of Public Accommodation,* of the City Code are hereby amended and codified as provided in Section 1 of this Ordinance which shall, with the actions adopted in SECTION 3 of this Ordinance, reserve all of Chapter 9 for future legislation.

**SECTION 5.** Chapter 2, Article I, Section 2-9 is hereby amended and codified as Chapter 2, *Administration,* Article X, *Non-Discrimination Policies,* Section 2-552 as indicated in SECTION 1 of this Ordinance.

**SECTION 6.** City Council also amends Chapter 2, Article IX, *Boards and Commissions Rules,* Sec. 2-529(c) of the City Code to conform to the general policy established by this Ordinance as follows:

**Sec. 2-529. - Membership.**

(c) When making appointments to boards and commissions, the city shall not discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, veteran status, age or disability

**SECTION 7.** All City of San Antonio contracts, exclusive of (i) the contracts exempted from the scope and application of SBEDA Ordinance No. 2010-06-17-0531; (ii) contracts for the city's sale of real property, and documents incidental thereto; and (iii) agreements with governmental entities, shall contain the following:

> **Non-Discrimination. As a party to this contract, [Contractor or Vendor] understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.**

The above contract clause shall be in addition to the *Commercial Non-Discrimination Policy* language that is added to all contracts governed by the SBEDA Ordinance No. 2010-06-17-0531, if applicable

**SECTION 8.** This Ordinance shall control over any prior ordinance provisions or policies in conflict herewith Ordinance No 80613 is repealed.

**SECTION 9.** If any section, paragraph, sentence, clause, phrase or word of this Ordinance or Chapter 2, *Administration,* Article X., *Non-Discrimination Policies*, or the application thereof, to any person or circumstance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, invalid or void, such holding shall not affect the remainder of this Article or the application of any other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, all the provisions of this Ordinance are hereby declared to be severable.

**SECTION 10.** Discriminatory practices in the provision of public accommodations and housing shall be a Class C misdemeanor and, upon conviction, shall be punishable in accordance with Chapter 1, Section 1-5 of the City Code. The penalties contained herein are non-exclusive and the city shall have any and all remedies to which it may be entitled in law or in equity. The exercise of any penalty or remedy by the city shall not be deemed as a waiver of any other remedy to which the city may be entitled.

Prior to filing a case for discriminatory practices in the provision of public accommodations and housing, the city may attempt to eliminate the discriminatory practice by pretrial diversion or conciliation.

**SECTION 11.** The Office of the City Clerk is directed to publish notice of the penalties prescribed by this Ordinance in a publication of general circulation and to update the City Code in accordance with this Ordinance.

**SECTION 12.** This Ordinance shall be effective immediately upon receipt of eight affirmative votes or otherwise ten days after passage by City Council.

**SECTION 13.** The penalties provided for in Chapter 2, *Administration,* Article X, *Non-Discrimination Policies* shall be effective five days after publication by the Office of the City Clerk.

PASSED AND APPROVED this 5th day of September, 2013.

**M A Y O R**
Julián Castro

**ATTEST:**

Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

Michael D. Bernard, City Attorney

| | |
|---|---|
| **Agenda Item:** | 4 |
| **Date:** | 09/05/2013 |
| **Time:** | 02 44 39 PM |
| **Vote Type:** | Other Approve w Saldana Amendment |
| **Description:** | An Ordinance adopting a consolidated non-discrimination policy with expanded protection including sexual orientation, gender identity and veteran status and providing for penalties [Michael D Bernard, City Attorney] |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | x | |
| Ivy R Taylor | District 2 | | | x | | | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | x |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Elisa Chan | District 9 | | | x | | | |
| Carlton Soules | District 10 | | | x | | | |

| | |
|---|---|
| **Agenda Item:** | 4 |
| **Date:** | 09/05/2013 |
| **Time:** | 02 43 49 PM |
| **Vote Type:** | Other Vote on Veterans Status |
| **Description:** | An Ordinance adopting a consolidated non-discrimination policy with expanded protection including sexual orientation, gender identity and veteran status and providing for penalties [Michael D Bernard, City Attorney] |
| **Result:** | Passed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | | x |
| Ivy R Taylor | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| Shirley Gonzales | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | x | |
| Cris Medina | District 7 | | x | | | | |
| Ron Nirenberg | District 8 | | x | | | | |
| Elisa Chan | District 9 | | | x | | | |
| Carlton Soules | District 10 | | | x | | | |

| | |
|---|---|
| **Agenda Item:** | 4 |
| **Date:** | 09/05/2013 |
| **Time:** | 02 43 00 PM |
| **Vote Type:** | Motion to Table |
| **Description:** | An Ordinance adopting a consolidated non-discrimination policy with expanded protection including sexual orientation, gender identity and veteran status and providing for penalties [Michael D Bernard, City Attorney] |
| **Result:** | Failed |

| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
|---|---|---|---|---|---|---|---|
| Julián Castro | Mayor | | | x | | | |
| Diego Bernal | District 1 | | | x | | | |
| Ivy R Taylor | District 2 | | x | | | | |
| Rebecca Viagran | District 3 | | | x | | | |
| Rey Saldaña | District 4 | | | x | | | |
| Shirley Gonzales | District 5 | | | x | | | |
| Ray Lopez | District 6 | | | x | | | |
| Cris Medina | District 7 | | | x | | | |
| Ron Nirenberg | District 8 | | | x | | | |
| Elisa Chan | District 9 | | x | | | x | |
| Carlton Soules | District 10 | | x | | | | x |