



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		December 8, 2014		
Department:		City Manager		
Department Head		Bruce Glasscock		
Agenda Coordinator (include phone #): Cindy Pierce, ext. 5161				
CAPTION				
Public Hearing and consideration of an Ordinance of the City of Plano, Texas amending Section 2-11, to be renamed Equal Rights Policy, of the City of Plano Code of Ordinances, adopting an expanded policy based on protected characteristics; and prohibiting discrimination in places of public accommodation, employment practices, housing transactions and city contracting practices; providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2014-15	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Amending Section 2-11 of the City of Plano Code of Ordinances to be renamed Equal Rights Policy which prohibits discrimination relates to the City's Goal of Partnering for Community Benefit.				
SUMMARY OF ITEM				
The City Council desires to rename and expand the City of Plano's Non-Discrimination policy to afford equal human rights to individuals regardless of U.S. military/veteran status, genetic information, sexual orientation and gender identity in addition to the other protected characteristics set out above; to revise the outdated term "handicapped status" to "disability status"; and to prohibit discrimination in places of public accommodation, employment practices, housing transactions and city contracting practices.				
List of Supporting Documents: Equal Rights Policy Ordinance			Other Departments, Boards, Commissions or Agencies	

An Ordinance of the City of Plano, Texas amending Section 2-11, to be renamed Equal Rights Policy, of the City of Plano Code of Ordinances, adopting an expanded policy based on protected characteristics; and prohibiting discrimination in places of public accommodation, employment practices, housing transactions and city contracting practices; providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause and an effective date.

WHEREAS, the City of Plano established a Non-Discrimination Policy on February 13 and March 15, 1989 pursuant to Resolutions 89-2-15(R) and 89-3-12(R) and subsequently codified as Section 2-11, Non-Discrimination Policy, in the City of Plano Code of Ordinances; and

WHEREAS, pursuant to the aforementioned resolutions, the City Council in 1989 implemented a policy to afford equal opportunities of life, liberty and the pursuit of happiness to all individuals regardless of race, color, religion, sex, age, national origin and handicapped status; and

WHEREAS, the City Council desires to rename and expand the City's policy to afford equal human rights to individuals regardless of U.S. military/veteran status, genetic information, sexual orientation and gender identity in addition to the other protected characteristics set out above; to revise the outdated term "handicapped status" to "disability status"; and to prohibit discrimination in places of public accommodation, employment practices, housing transactions and city contracting practices; and

WHEREAS, the City of Plano's vision to be the "City of Excellence" cannot be fully achieved without expanding the City's non-discrimination policy to extend equality to individuals regardless of U.S. military/veteran status, genetic information, sexual orientation and gender identity and to prohibit discrimination in Plano employment, housing, city contracting practices, and in places of public accommodation; and

WHEREAS, the City Council finds it is in the best interest of the City to amend Section 2-11 of the City of Plano City Code of Ordinances as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The City Council hereby adopts the findings set forth above.

Section II. Section 2-11 of the City of Plano Code of Ordinances is hereby renamed as the Equal Rights Policy and amended in its entirety as follows:

"Sec. 2-11.

A. Equal Rights Policy.

- (1) *Public Policy Declaration.* It is hereby declared to be the public policy of the City of Plano, Texas that all persons subject to its jurisdiction should enjoy equal human

rights and that discrimination based on race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status, familial status or United States military/veteran status, is detrimental to the peace, progress and welfare of the city.

- (2) *City Policy*. The City of Plano, as an employer, shall maintain an inclusive policy as to equal employment, affirmative action, and a harassment free workplace. No city employee or applicant for employment with the City of Plano will be denied employment or promotion because of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status, or United States military/veteran status. Fair and impartial treatment will be extended to all city employees and applicants for employment with the City of Plano. This policy shall also be adhered to by those contracting with the City of Plano.

B. Definitions.

- (1) *Age* shall mean a person 40 or more years of age.
- (2) *Complainant* shall mean a person who files a complaint pursuant to the herein Section 2-11.
- (3) *Conciliation* shall mean the attempted resolution of issues raised by a complaint or by the investigation of a complaint, through informal negotiations or mediation.
- (4) *Conciliation Agreement* shall mean a written agreement setting forth the resolution of issues pursuant to conciliation.
- (5) *Contractor* shall mean any person who through a contract or other arrangement has received, is to receive or is receiving public funds or in-kind compensation from the City.
- (6) *Disability* shall mean a physical or mental impairment that substantially limits one or more major life activities of an individual, a record of such an impairment or being regarded as having such an impairment; it is to be construed to be in accordance with the Americans with Disabilities Act and the ADA Amendments Act of 2008.
- (7) *Discrimination* shall mean any direct or indirect disparate, prejudicial or unjust treatment, distinction, segregation, limitation, refusal, denial or other differentiation of a person or persons, based on a particular characteristic or by classifying or categorizing a person based on perceived or actual participation in a certain group of people with a particular characteristic.

- (8) *Dwelling* shall mean:
- (a) a building, structure or part of a building or structure, that is occupied as, or designed or intended for occupancy as, a residence for one or more persons;
 - (b) 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 subsection (a).
- (9) *Educational Institution* shall mean:
- (a) any prekindergarten, kindergarten, primary, secondary or postsecondary educational institution, supported in whole or in part by state tax funds;
 - (b) a “private school” as defined by Texas Education Code §5.001(6-a);
 - (c) an “open-enrollment charter school” as defined by Texas Education Code §5.001(6);
 - (d) an “institution of higher education” as defined by Texas Education Code §61.003(8); or
 - (e) a “private or independent institution of higher education” as defined by Texas Education Code §61.003(15).
- (10) *Employee* shall mean any individual employed by an employer but does not include elected officials.
- (11) *Employer* shall mean any person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and includes any agent of such person. The term does not include any person excluded from this section pursuant to Section 2-11(C) below. For any complaint filed based upon a claim of age discrimination, the definition of employer shall be the definition codified in the Age Discrimination in Employment Act of 1967 as amended and not pursuant to the herein definition.
- (12) *Employment Agency* shall mean any person, and any agent of a person, who regularly undertakes, with or without compensation, to procure:
- (a) employees for an employer; or
 - (b) opportunities for a person to work for an employer.
- (13) *Gender Identity* shall mean a person's innate, deeply felt sense of gender, which may or may not correspond to the person's physical anatomy and also includes a person's gender expression through external characteristics and behaviors including, but not limited to, dress, grooming, mannerisms, speech patterns and social interactions, that are identified with a particular gender or sexual orientation.

- (14) *Genetic Information* shall mean information about an individual's genetic tests, the genetic tests of an individual's family members and the manifestation of a disease or disorder in an individual's family members. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" shall not include information about the sex or age of any individual.
- (15) *Joint Labor-Management Committee* shall mean an entity that controls apprenticeship or other training or retraining programs, including on-the-job training programs.
- (16) *Labor Organization* shall mean a labor organization and any of its agents, and includes:
- (a) Any organization, agency or employee representation committee, group, association or plan in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment; and
 - (b) any conference, general committee, joint or system board or joint council so engaged, that is subordinate to a national or international labor organization.
- (17) *Non-Profit Organization* shall mean an organization exempt from taxation as provided in Internal Revenue Code, 26 U.S.C. §501(c).
- (18) *Place of Public Accommodation* shall mean every business within the city, including a public conveyance, whether wholesale or retail, which is open to the general public and offers for compensation any goods, products, services or facilities.
- (19) *Political Organization* shall have the same meaning as set out in Internal Revenue Code, 26 U.S.C. §527(e).
- (20) *Public Conveyance* shall mean any vehicle or any other means of transport operated on land, water or in the air, which in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from the general public. "Public conveyance" includes any person who is the owner, lessee, operator, proprietor, manager, superintendent, agent or employee or any public conveyance

- (21) *Protected Employment Characteristic* shall mean race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status.
- (22) *Protected Housing Characteristic* shall mean an individual's race, color, sex, religion, national origin, sexual orientation, gender identity, disability status, familial status or United States military/veteran status.
- (23) *Religion* shall mean all aspects of religious observance and practice, as well as belief.
- (24) *Religious Organization* shall mean a bona fide religious corporation, association or society.
- (25) *Respondent* shall mean a person, organization or entity against whom a complainant has filed a complaint pursuant to the herein Section 2-11.
- (26) *Sex* shall mean gender and the biological differences between men and women.
- (27) *Sexual Orientation* shall mean the actual or perceived status of a person with respect to his or her sexuality.
- (28) *United States Military/Veteran status* shall mean a person who is serving or has served in the uniformed service of the United States, and who, if discharged, was discharged or released under conditions other than dishonorable. Uniformed service as used herein has the same definition as uniformed services as defined in 20 C.F.R. § 1002.5(o) at that time of adoption of the herein ordinance.

C. Exclusions. Except as required by state or federal law, this section shall not apply to the following:

- (1) Religious organizations;
- (2) Political organizations;
- (3) Non-profit organizations, except as provided by Section 2-11(G)(1) herein;
- (4) Educational Institutions;
- (5) the United States government or any of its departments or agencies;
- (6) the State of Texas, or any of its departments, agencies or political subdivisions; or
- (7) Private clubs that are restricted to members of the club and guests and are not open to the general public.

D. Public Accommodations.

- (1) *Unlawful practice.* It shall be unlawful for any person with care, custody or control over the premises of a place of public accommodation or for any owner,

employee or agent, of a place of public accommodation to discriminate against any person on the basis of race, color, sex, religion, national origin, sexual orientation, gender identity, disability status or United States military/veteran status, directly or indirectly, by excluding, segregating, limiting, refusing or denying to a person any of the accommodations, advantages, facilities, benefits, services or goods, offered to the general public at a place of public accommodation.

- (2) *Defenses.* It is a defense to prosecution under this subsection on the basis of disability that the discrimination resulted from a condition or structural feature that is in conformance with the law.
- (3) *Exclusions.* It shall not be unlawful to deny the opposite sex access to facilities inside a public accommodation segregated on the basis of sex for privacy such as restrooms, shower facilities, locker rooms, dressing rooms or any similar facility.

E. Housing.

- (1) *Unlawful Practice.* It shall be unlawful for any person to discriminate against any person on the basis of race, color, sex, religion, national origin, sexual orientation, gender identity, disability status, familial status or United States military/veteran status by engaging in the following housing practices:
 - (a) to refuse to negotiate with a person for the sale or rental of a dwelling or to otherwise deny or make unavailable a dwelling to a person;
 - (b) to refuse to sell or rent a dwelling to a person who has made a bona fide offer for the dwelling;
 - (c) to discriminate against a person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities therewith;
 - (d) to represent to a person that a dwelling is not available for inspection, sale or rental, when the dwelling is in fact so available;
 - (e) to deny a person access to, membership in, or participation in any multiple listing service, real estate brokers organization, or other service organization or facility, relating to the business of selling or renting dwellings;
 - (f) to engage in disparate treatment of a person in the terms or conditions of access to, membership in, or participation in any multiple listing services, real estate broker's organization or facility, relating to the business of selling or renting dwellings;
 - (g) to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, relating to the sale or rental of a dwelling that indicates a preference, limitation or discrimination, for a protected housing characteristic or an intention to make any preference, limitation or discrimination, based on a protected housing characteristic;
or

- (h) for profit, to induce or attempt to induce a person to sell or rent, or to not sell or rent, a dwelling by representations that a person with a protected housing characteristic may live in or may enter into a neighborhood.

(2) *Exclusions.*

- (a) This subsection does not apply to the following:
 - (i) to the sale or rental of a single-family house if the owner does not own more than three (3) single-family houses at any one (1) time. Any such sale of a single-family house shall be limited to one such sale within any twenty-four month period if the owner is not the most recent resident of the house prior to the sale or does not live there at the time of the sale, and the owner did not use the services or facilities of a real estate broker, agent, or salesman, or their agents and employees, for the sale or to advertise the sale in violation of this subsection; or
 - (ii) to a rental of a dwelling containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies part of the dwelling as his residence.
- (b) Nothing in this subsection limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.
- (c) Nothing in this subsection regarding discrimination based on familial status applies with respect to housing for older persons as set out and defined in the Fair Housing Act.

F. Employment.

- (1) *Unlawful practice.* It shall be unlawful for an employer to discriminate against any person on the basis of race, color, sex, religion, age, national origin, genetic information, sexual orientation, gender identity, disability status or United States military/veteran status by the following actions or inactions:
 - (a) for an employer to fail or refuse to hire, or to discharge, any person;
 - (b) for an employer to discriminate against any person with respect to compensation, terms, conditions or privileges, of employment;
 - (c) for an employer to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee;
 - (d) for an employment agency to fail or refuse to refer for employment, or to otherwise discriminate against, any person because of a protected employment characteristic;
 - (e) for an employment agency to classify or refer for employment any person, on the basis of a protected employment characteristic;

- (f) for a labor organization to exclude or expel from its membership, or to otherwise discriminate against, any person because of a protected employment characteristic;
- (g) for a labor organization to fail or refuse to refer for employment any person because of a protected employment characteristic;
- (h) for a labor organization to limit, segregate or classify its members or applicants for membership, in any way that would deprive or tend to deprive a person of employment or employment opportunities, or that would otherwise adversely affect a person's status as an employee or as an applicant for employment; or
- (i) for a labor organization to cause or attempt to cause an employer to discriminate against a person in violation of this subsection;
- (j) for an employer, a labor organization or a joint labor-management committee, to discriminate against any person because of a protected employment characteristic in the admission to, or employment in, any program established to provide apprenticeship or other training;
- (k) for an employer to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic;
- (l) for an employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to membership in or any classification or referral for employment by the employment agency that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic; or
- (m) for a joint labor-management committee to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification or discrimination, based on a protected employment characteristic.

(2) *Exclusions.*

- (a) Nothing in this subsection prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination, based on a protected characteristic when a protected characteristic is a bona fide occupational qualification for employment.
- (b) This section does not apply to, and does not require, the provision of employee benefits to a person for the benefit of the person's domestic partner.

G. City Contracting.

- (1) All contracts entered into by the city involving the expenditure of city funds must incorporate an equal employment opportunity clause agreeing to comply with Section 2-11(F) of the City Code of Ordinances. Failure by a contractor to comply with Section 2-11(F) shall render the contract voidable by the City.

(2) The exclusion in Section 2-11(C)(3) for non-profit organizations shall not apply to the requirement in this Section 2-11(G)(1).

(3) Application may be made to the City Manager or his designee for a waiver from the requirement in this subsection based on a conflict with federal or state law.

H. Unlawful Intimidation, Retaliation and Coercion. It shall be unlawful for any person to discriminate against, harass, threaten, harm, damage or otherwise penalize or retaliate against another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting or participating in any manner in an investigation, proceeding or hearing, pursuant to this section.

I. Effect on Legal Remedies. This section shall not affect the right of any person to pursue any legal remedy for discriminatory practices available under federal or state law by filing a claim with the appropriate public agency or by filing a private civil action.

J. Administration. The City Manager or his designee shall be responsible for implementing and administering this section.

K. Penalty. Any violation of the provisions or terms of this section by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

L. Complaint Process.

(1) A person who claims to have been discriminated against in violation of this section may file a complaint with the City Manager or his designee. A complaint must be filed within ninety (90) calendar days after an alleged unlawful practice has occurred.

(2) A complaint shall be in writing on a form provided by the City Manager or his designee, shall be verified, and shall contain the following information:

- (a) Name and address of the respondent.
- (b) Name, address and signature of the complainant.
- (c) Date of occurrence of the alleged unlawful practice.
- (d) Statement of the facts upon which the allegation of an unlawful practice are based.

(3) Within ten business days after the filing of a complaint, the City Manager or his designee shall review the complaint and notify the Complainant in writing as to whether the City will:

- (a) refer the Complainant to another public agency pursuant to Section 2-11(L)(4) below;
- (b) deny the Complaint due to incomplete information;

- (c) deny the Complaint because it is legally deficient or untimely.
 - (d) accept the Complaint for investigation;
- (4) If the claim for discrimination is within the jurisdiction of a federal or state agency, the complainant shall be referred by the City to the appropriate public agency. The complainant shall be responsible for filing the discrimination complaint within timeframes set out in federal and state law and the City shall take no further action with regards to the complaint.
- (5) If, and only if, a federal or state agency to which a claim for discrimination is referred pursuant to Section (4) of this subpart refuses to materially investigate the claim based upon a lack of jurisdiction, the complainant shall have thirty (30) calendar days, running from the date the complainant receives notice from the federal or state agency, to resubmit their complaint pursuant to Section (2) of this subpart. If a complainant is resubmitting a complaint in accordance herewith, the complaint shall contain a copy of the correspondence or other documentation from the federal or state agency indicating its refusal to investigate or denial of the complaint based on jurisdictional grounds, in addition to the documentation required by Section (2) of this subpart.

M. Investigation and Conciliation.

- (1) Upon acceptance of the Complaint, the City Manager or his designee shall commence an investigation and notify the respondent in writing of the complaint.
- (2) If after the investigation, the City Manager or his designee determines there is no reasonable cause to believe discrimination occurred, the City Manager or his designee shall notify the complainant in writing and no further action shall be taken by the City.
- (3) If after the investigation, the City Manager or his designee determines that there is reasonable cause to believe discrimination occurred, the City shall attempt to conciliate the complaint.
- (4) A conciliation agreement executed under this section must be in writing in a form acceptable to the City and must be signed and verified by the respondent and the complainant. A conciliation agreement is executed upon signature and verification by all parties to the agreement.
- (5) A party to an executed conciliation agreement shall not be prosecuted in municipal court for the unlawful practice identified in the agreement unless the complaint notifies the City Manager or his designee within one (1) year of a violation of the agreement for the same discriminatory practice addressed by the agreement and the City Attorney determines that the agreement has been violated.
- (6) If a conciliation agreement cannot be reached by the City Manager or his designee, the claim may be reviewed for criminal enforcement pursuant to Section 2-11(K) above.

N. Defenses.

- (1) Any applicable federal or state law defense may be asserted by a person alleged to be in violation of this section.

(2) It is a defense that a person alleged to be in violation of Section 2-11 was acting pursuant to a court order.”

Section III. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section IV. All provisions of the Code of Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section V. Any person, firm or corporation, found to be violating any term or provision of this Ordinance shall be subject to a fine in accordance with Section 1-4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 8th day of December, 2014.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY