

## ARTICLE V. DISCRIMINATION AGAINST AN INDIVIDUAL WITH A DISABILITY

### Sec. 24-90. Policy.

(a) It is the policy of the city that no individual with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity operated or contracted for by the city, provided that such participation does not fundamentally alter the program or activity. The city will make every effort to make a reasonable accommodation to individuals with a disability, consistent with the requirements of the applicable federal and state laws, and implementing regulations, including the Americans with Disabilities Act.

(b) It is the policy of the city that all persons and entities receiving financial assistance from the city comply with all applicable civil rights laws and rules, including all of the rules and regulations found in this chapter.

(c) The city endorses the fundamental purpose behind the Americans with Disabilities Act, which includes the removal of physical and non-physical barriers when readily achievable, where applicable.

(d) The city further endorses a public policy that businesses within the city's jurisdiction must also comply with the Americans with Disabilities Act, including the removal of physical barriers whenever removal is readily achievable.

(Ord. No. 25650, § 8, 2-10-2004)

### Sec. 24-91. Definitions.

As used in this article, the following words and phrases have the following meanings:

*Auxiliary aid* includes services or devices such as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, texts on tape, materials in Braille, and large print materials. This list is not exclusive and functional equivalents may be substituted for any auxiliary aid.

*Financial assistance* means the receipt, from the city, of any specific grant, loan, lease, contract (other than contracts for goods, insurance or guaranty, or services upon payment of full and fair compensation or upon obtaining a lease, license, or use privilege agreement upon payment of fair market value or the payment of fees required by city ordinance), or the use of city personnel or property without the payment of fair market value or full and fair compensation.

*Qualified person with a disability* means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

*Readily achievable* means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is, by necessity, a case-by-case judgment. Factors to consider include:

- a. The nature and cost of the action.
- b. The overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site.
- c. The geographic separateness and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity.
- d. If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities.
- e. If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

*Reasonable accommodation* means any change or adjustment to the service, activity or program for the known physical or cognitive limitations of an otherwise qualified person with a disability unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the program. Any particular change or adjustment would not be required if, under circumstances involved, it would result in an undue hardship.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-92. Effect on other governmental entities.**

Nothing in this article is intended to apply to any facility or program owned or operated by the federal or state governments or political subdivision of the state.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-93. General prohibitions against discrimination.**

The department of justice's "General prohibitions against discrimination," 28 CFR 35.130, are adopted by the city and read as follows:

"(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability--

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entities program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entities program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same state.

(4) A public entity may not, in determining the site or location of a facility, make selections--

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public

entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association."

(Ord. No. 25650, § 8, 2-10-2004)

#### **Sec. 24-94. Requirements to ensure city facilities, programs, and services are accessible to qualified persons with disabilities.**

(a) No qualified individual with a disability will, because of inaccessibility to or unusability of the city facilities, be denied the benefits of, be denied participation in, or otherwise be subjected to discrimination under any program or service.

(b) The city will operate its programs and services so that the programs and services, when viewed in their entirety, are readily accessible to qualified individuals with disabilities.

(c) Each facility or part of a facility designed and constructed by or for the use of the city or persons and entities receiving financial assistance must be designed and constructed in a manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities in compliance with ADA and regulatory standards, including Texas Accessibility Standards of the Architectural Barriers Act.

(d) Each facility or part of a facility that is altered by, on behalf of, or for the use of the city or persons and entities receiving financial assistance must be altered in a manner that ensures that the facility or part of the facility is readily accessible to and usable by persons with disabilities.

(e) The city will not provide financial assistance to any entity or program that does not comply with this chapter.

(f) This subsection does not require that every existing facility or every part of a facility be made accessible to and usable by persons with disabilities.

(Ord. No. 25650, § 8, 2-10-2004)

#### **Sec. 24-95. Personal devices and services.**

(a) Nothing required in this article includes, or may be construed to include, a requirement that the city provide to individuals with disabilities personal devices, such as wheelchairs, individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use of study; or services of a personal nature including assistance in eating toileting or dressing.

(b) Nothing in this article requires the city to fundamentally alter its programs or services.

(Ord. No. 25650, § 8, 2-10-2004)

#### **Sec. 24-96. Communications.**

(a) The city shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(1) The city shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the city.

(2) In determining what type of auxiliary aid and service is necessary the city shall give primary consideration to the requests of the individuals with disabilities.

(b) The city, and those receiving financial assistance from the city, must provide auxiliary aids and services as reasonable accommodations when they are necessary to ensure effective communication with individuals with hearing, vision, or speech impairments.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-97. Certificate of compliance for applicants for financial assistance.**

All applications for financial assistance from the city must certify on a form provided by the director that the applicant will operate its programs and services in compliance with this article.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-98. Annual evaluation by city.**

(a) The city will annually:

(1) Evaluate, with the assistance of interested persons, including people with disabilities or organizations representing persons with disabilities, the city's current policies and practices.

(2) Modify, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, any policies that do not meet the requirements of this article.

(3) Take, after consultation with interested persons, including persons with disabilities or organizations representing persons with disabilities, appropriate steps to eliminate the effects of any discrimination that results from the failure to adhere to this article.

(b) The city will maintain on file and make available for public inspection:

(1) A list of the interested persons consulted.

(2) A description of areas examined and any problems identified.

(3) A description of any modifications made and of any remedial actions taken.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-99. Adoption by the city of designated coordinator and grievance procedure.**

(a) The city will designate at least one (1) person to coordinate its efforts to comply with this article.

(b) The city will adopt grievance procedures that incorporates appropriate due process standards and provides for the prompt and equitable resolution of complaints alleging any action prohibited by this article.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-100. Nondiscrimination notice regarding individuals with disabilities.**

(a) The city will take appropriate and continuing steps to notify participants, beneficiaries, employees, or applicants, including those with impaired vision or hearing, and unions or professional organizations officially recognized by the city that the city does not discriminate on the basis of disability.

(b) The notification will include the identification of the individual and department responsible for investigating complaints of discrimination.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-101. Administration.**

(a) The director will serve as the city's focal point for coordinating the implementation of this article.

(b) The director will coordinate the implementation of any relevant new and existing laws and ordinances relating to the discrimination against persons with disabilities.

(c) The director is responsible for:

(1) Coordinating the investigation and/or conciliation procedure outlined in section 24-102, and assisting in resolving grievances to assure prompt solutions.

(2) Preparing and disseminating information regarding disability rights to the public, city departments, and community agencies.

(3) Researching administrative policies and procedures to identify for city management modifications required for accessibility to individuals with disabilities.

(4) Monitoring city activities related to individuals with disabilities and conducting periodic compliance reviews to assure that all city departments are providing services that are accessible to individuals with disabilities.

(5) Recommending training programs to city departments to assure that city services are available to the disability community.

(6) Providing technical assistance and consultation to city departments in areas related to accessibility as defined by law.

(7) Assisting in the development of long-range planning activities to accomplish compliance with applicable laws and regulations.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-102. General enforcement guidelines.**

(a) Any individual who has been discriminated against because of disability may file with the director a request to have the director investigate the complaint of discrimination.

(b) If the director receives a complaint against an agency of the federal or state governments, or a political subdivision of the state, the director will refer the complainant to the appropriate authority.

(c) Nothing in this article creates a civil cause of action for damages against the city or precludes any aggrieved person from seeking any other remedy provided by law. Nothing in this article authorizes criminal enforcement of this article against the city, its officers, employees, or agents.

(d) Filing a complaint with the director is not a prerequisite and does not bar the filing of some other legal complaint or the pursuit of any other remedy provided by law.

(e) The pendency of a complaint before the director does not bar any aggrieved party from seeking civil action, but a final judgment in any civil action bars any further investigation of a pending complaint on the same alleged act of discrimination.

(f) In connection with any investigation of a charge filed under this article, the director, or an investigator designated by the director, shall have access to, for the purposes of examination, and the right to copy relevant evidence from any person or entity being investigated. This access to evidence is to be limited by applicable laws governing the investigation of civil rights claims.

(g) No person may knowingly, intentionally, or recklessly obstruct, or prevent compliance with this article or hinder or interfere with the performance of the proper exercise of a duty, obligation, right, or power of the director, the director's representatives, or other officials with duties, obligations, rights, and powers established by this article.

(h) Where appropriate, and when not in violation of conflicts of interest or other ethical rules of the State Bar of Texas, the city attorney may assign counsel to assist the director.

(i) The city manager may make administrative arrangements as are normal and necessary for the functioning of the human relations department.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-103. Filing and investigating complaints of discrimination against the city.**

(a) Any individual with a complaint that the city has violated this article may file a complaint with the director. The complaint must be filed on a form provided by the director, and must identify the entity or person(s) alleged to have committed the discriminatory practice. In situations where the complainant's disability requires assistance to submit a complaint, the director will make reasonable effort to assist the person in filing a complaint. The director must provide complaint forms and furnish them without charge to any person, upon request.

(b) All complaints must be filed within one hundred eighty (180) days following the occurrence of an alleged discriminatory practice.

(c) As soon as practicable, but in no more than fifteen (15) calendar days, the director must meet with the complainant to discuss the complaint and possible resolutions. After investigation and within fifteen (15) calendar days after meeting with the complainant, the director must respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audiotape. The response must explain the position of the city and offer options for substantive resolution of the complaint, if appropriate.

(d) If the response by the director does not satisfactorily resolve the issue, the complainant may appeal the director's decision to the city manager. The appeal must be filed within fifteen (15) calendar days after receipt of the director's response.

(e) Within fifteen (15) calendar days of the appeal, the city manager or the city manager's designee must meet with the complainant to discuss the complaint and possible resolutions. Within fifteen (15) calendar days after the meeting, the city manager or city manager's designee must respond in writing, and where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

(f) All formal complaints received by the director, the responses to the complaints and the record of appeals to the city manager must be retained by the director for at least three (3) years.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-104. Retaliation and coercion.**

(a) The city and any person or entity receiving financial assistance from the city may not discriminate against any individual because that individual has opposed any act or practice prohibited by this article, or

because that individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this article or any applicable law, including the Americans with Disabilities Act of 1990.

(b) The city and any person or entity receiving financial assistance from the city may not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this article or the Americans with Disabilities Act of 1990.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-105. Remedial or voluntary action.**

(a) If the outcome of an investigation finds that the city has violated this article by discriminating against a qualified person with a disability, the city manager, or designee, will take any remedial or voluntary actions appropriate and necessary to rectify the problem.

(b) All appeals of a grievance must follow the city's established grievance appeal procedures.

(c) If the outcome of an investigation finds that a person or entity hired by the city to operate a city program or a person or entity receiving financial assistance from the city has participated in the discrimination, the city manager, or designee, may require the person or entity receiving financial assistance from the city to take appropriate action to rectify the problem.

(Ord. No. 25650, § 8, 2-10-2004)

**Sec. 24-106. City council status reports.**

The director shall submit an annual status report to the city council that appraises the council on the implementation of this article.

(Ord. No. 25650, § 8, 2-10-2004)