



## Legislation Details (With Text)

<b>File #:</b>	14-1425	<b>Version:</b>	1	<b>Name:</b>	10/06/14 Ord Repealing Chapter 112 and Adding New Chapter 112 of City Code
<b>Type:</b>	Ordinance	<b>Status:</b>	Passed		
<b>File created:</b>	10/6/2014	<b>In control:</b>	City Council		
<b>On agenda:</b>	10/20/2014	<b>Final action:</b>	10/20/2014		
<b>Enactment date:</b>	10/6/2014	<b>Enactment #:</b>	ORD-14-25		
<b>Title:</b>	An Ordinance to Amend the Code of the City of Ann Arbor by Repeal of Chapter 112, Non-Discrimination, of Title IX of said Code in its Entirety and Adding a New Chapter 112, Non-Discrimination, of Title IX of said Code (Ordinance No. ORD-14-25)				
<b>Sponsors:</b>	Human Rights Commission, Margie Teall, Sumi Kailasapathy, Jack Eaton, Christopher Taylor, Chuck Warpehoski, Sabra Briere, Jane Lumm, Mike Anglin, Sally Petersen, John Hieftje				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	1. 14-25 Briefed and Approved.pdf, 2. 14-25 Chapter 112 Non-Discrimination Ordinance Briefed and Approved.pdf, 3. Chapter 112 City Code 093014.pdf, 4. HRC Resolution in Support of the Proposed NDO Restatement 9 24 14.pdf, 5. 14-25 Approval Notice.pdf				

Date	Ver.	Action By	Action	Result
10/20/2014	1	City Council	Held and Closed	
10/20/2014	1	City Council	Adopted on Second Reading	Pass
10/6/2014	1	City Council	Approved on First Reading	Pass

An Ordinance to Amend the Code of the City of Ann Arbor by Repeal of Chapter 112, Non-Discrimination, of Title IX of said Code in its Entirety and Adding a New Chapter 112, Non-Discrimination, of Title IX of said Code (Ordinance No. ORD-14-25)

Attached is the proposed ordinance revision of Chapter 112 of the City Code which is the City's Non-Discrimination Ordinance. It reflects changes required by state law related to affirmative action, changes necessitated by City reorganization, and changes which the City's Human Rights Commission included to update the Ordinance and provide protection to a number of classes of individuals which had not previously received protection under the Ordinance.

The Non-Discrimination Ordinance was originally enacted in 1978. At that time, it was the first of its kind in this state, and was the first to add sexual orientation to its list of protections, and a few years later, became one of the first in the country to protect gender identity. However, the current Ordinance does not comply with state law which generally eliminated affirmative action in public contracting by passage of Proposal 2 in 2006. In addition, it relies on a monitoring and enforcement process that is no longer viable.

The proposed restatement of the Ordinance:

- clarifies language throughout;
- aligns many provisions more closely with prevailing state and federal non-discrimination legislation and guidelines;
- modifies the requirements placed on public contractors in order to comply with current state law;

revises the complaint and enforcement process; and  
adds protection against discrimination on the basis of the following categories: gender expression, veteran status, victims of domestic violence and/or stalking, political beliefs, genetic information, arrest record, and familial status.

The Ordinance has undergone a major restructuring as well as specific legal and administrative revisions. For that reason, it is recommended that Council adopt the overall restatement as a structural change rather than as a series of section amendments. Within the restatement, Council should review the individual substantive changes.

Reviewed by: Nancy Niemela, Senior Assistant City Attorney

Sponsored by: Council Members Kailasapathy, Teall, Eaton, Taylor, Warpehoski and the Human Rights Commission

## ORDINANCE NO. ORD-14-25

First Reading: October 6, 2014  
Public Hearing: October 20, 2014

Approved: October 20, 2014  
Published: October 23, 2014  
Effective: November 2, 2014

### NON-DISCRIMINATION

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ANN ARBOR BY REPEAL OF CHAPTER 112, NON-DISCRIMINATION, OF TITLE IX OF SAID CODE IN ITS ENTIRETY AND ADDING A NEW CHAPTER 112, NON-DISCRIMINATION, OF TITLE IX OF SAID CODE.

The City of Ann Arbor Ordains:

Section 1: That Chapter 112, Non-Discrimination, of Title IX of the Code of the City of Ann Arbor be repealed in its entirety and a new Chapter 112, Non-Discrimination, be added to Title IX of said Code to read as follows:

#### **9:150. Intent.**

It is the intent of the city [City](#) that no person~~individual~~ be denied to equal protection of the laws; nor shall any person~~individual~~ be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived [age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs](#), race, color, religion, national origin, sex, [sexual orientation](#), age, height, weight, condition of pregnancy, marital status, physical or mental limitation, source of income, family responsibilities, educational association, [veteran status, victim of domestic violence or stalking, or weight](#).sexual orientation, gender identity or HIV status. As used herein, "perceived" refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.

Nothing herein contained shall be construed to prohibit any affirmative action laws passed by any level of government.

#### **9:151. Definitions.**

As used in this chapter[Chapter](#), the following words and phrases have the following meanings:

(1) *Age.* Chronological age.

(2) *Arrest record.* Information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor, or other offense by any law enforcement or military authority.

(3) *Bona fide occupational qualification.* An otherwise protected characteristic which is reasonably necessary to the normal performance of the particular position in a particular business or enterprise.

(24) *Contractor.* As defined in Title I, Section 1:312(5) of this Code. A person who by contract furnishes services, materials or supplies. "Contractor" does not include persons who are merely creditors or debtors of the city, such as those holding the city's notes or bonds or persons whose notes, bonds or stock is held by the city.

(3) *Director.* The director of the department of human rights.

(45) *Disability:* A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:

- (a) for purposes of employment, substantially limits 1 or more of the major life activities of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or substantially limits 1 or more major life activities of that individual and is unrelated to the individual's qualifications for employment or promotion;
- (b) for purposes of public accommodations, is unrelated to the individual's ability to utilize and benefit from a place of public accommodation or public service;
- (c) for purposes of housing, substantially limits 1 or more of that individual's major life activities and is unrelated to the individual's ability to acquire, rent or maintain property.

Discrimination based on actual or perceived disability includes discrimination because of the use by an individual of adaptive devices or aids.

Disability does not include a determinable physical or mental characteristic caused by the current illegal use of a controlled substance by that individual. It also does not include a determinable physical or mental characteristic caused by the current use of alcoholic liquor by that individual, if that physical or mental characteristic negatively impacts that individual's ability to perform the duties of his or her job.

(6) *Discriminate.* To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on an individual's theor his/her relatives' or associates' actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight.

Discrimination includes the use of facially neutral practices that have an adverse impact on members of a protected class (See 9:156 of this Chapter).

Discrimination also includes harassment based upon any protected class, including, but not limited to sexual harassment. race, color, religion, national origin, sex, age, height, weight, condition of pregnancy, marital status, physical or mental limitation, source of income, family responsibilities, educational association, sexual orientation, gender identity or HIV status of another person or that person's relatives or associates.

Discrimination based on sex includes sexual harassment, which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

- (i) Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or housing.
- (ii) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or housing.
- (iii) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, or housing environment.

Discrimination based on actual or perceived physical or mental limitation includes discrimination because of the use by an individual of adaptive devices or aids.

As used herein, "perceived" refers to the perception of the person who acts and not to the perception of the person for or against whom the action is taken.

(57) *Educational association.* The fact of being enrolled or not enrolled at any educational institution.

(68) *Employer.* A person or agent of that person, who, for compensation, employs employing 5 3 or more persons individuals..

(79) *Familial status.* 1 or more children under the age of 18 residing with a parent or other individual having, or in the process of securing, legal custody of the child or children; or 1 or more children under the age of 18 residing with the designee of the parent or other individual having or securing custody, with the written permission of the parent or other individual.

(10) *Family responsibilities.* The state of being or the potential to become a contributor to the support of a person or persons in a dependent relationship. Being a provider of care and/or support, or being perceived to be a provider of care and/or

support for a family member.

(11) *Gender expression.* A gender-based appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.

(812) *Gender identity.* A person's actual or perceived gender, including a person's gender identity, self-image, appearance, expression, or behavior, whether or not that gender identity, self-image, appearance, expression, or behavior is different from that traditionally associated with the person's sex at birth as being either female or male An individual's internal sense of their own sex and a defining component of sex.

(13) *Genetic information.* Information about an individual's genetic tests and the genetic tests of an individual's family members (e.g., family medical history), and the manifestation of a disease or disorder in family members of such individual. A genetic test is an analysis of DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations or chromosomal changes.

(14) *Harassment.* A form of discrimination in which conduct is based upon an individual's membership in a protected class which:

- (a) unreasonably interferes with that individual's work, or ability to utilize and benefit from a place of public accommodation or public service, or ability to obtain or maintain housing; and/or
- (b) creates a hostile environment at work, at a place of public accommodation or public service, or where that individual lives.

(915) *HIV status.* The state of blood sero-positivity or sero-negativity with respect to the human immunodeficiency virus (HIV), including, but not limited to, diagnoses of acquired immunodeficiency syndrome (AIDS). A person who has, or has been diagnosed as having been infected with, the human immunodeficiency virus, whether or not that person has or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome related complex.

(1016) *Housing facility.* Any dwelling unit or facility in which it is intended used for a person individuals to regularly regularly will sleep and keep personal belongings including, but not limited to, a house, apartment, rooming house, housing cooperative, homeless shelter, hotel, motel, tourist home, retirement home or nursing home.

(17) *Individual.* A human being, as distinguished from a person, as defined under this Code.

(1118) *Marital status.* The state of being married, unmarried, divorced or widowed.

(12) *Mental limitation.* A limitation of mental capabilities unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; a limitation of mental capabilities unrelated to one's ability to acquire, rent and maintain property; or a limitation of mental capabilities unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation. "Mental limitation" includes, but is not limited to,

developmental disabilities, psychological, etc. "Mental limitation" does not include any condition caused by the current illegal use of a controlled substance.

(1319) *Minority*. An personindividual who is Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, Native American, or Alaskan native. , Hispanic or Latino, Asian, Native Hawaiian or other Pacific Islander.

(14) *Physical limitation*. A limitation or physical capabilities unrelated to one's ability to safely perform the work involved in jobs or positions available to such person for hire or promotion; a limitation of physical capabilities unrelated to one's ability to acquire, rent and maintain property; or a limitation of mental capabilities unrelated to one's ability to utilize and benefit from the goods, services, activities, privileges and accommodations of a place of public accommodation. "Physical limitation" includes, but is not limited to, blindness or partial sightedness, deafness or hearing impairment, muteness, partial or total absence of physical member, speech impairment and motor impairment. "Physical limitation" does not include any condition caused by the current illegal use of a controlled substance.

(20) *Perceived*. Refers to the perception of the person who acts and not to the perception of the individual for or against whom the action is taken.

(21) *Person*. As defined in Title I, Section 1.8 of this Code.

(1522) *Place of public accommodation*. An educational, governmental, health, day care, entertainment, cultural, recreational, refreshment, transportation, financial institution, accommodation, business or other facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public, or which receives financial support through the solicitation of the general public or through governmental subsidy of any kind.

(23) *Political beliefs*. One's opinion, whether or not manifested in speech or association, concerning the social, economic, and governmental structure of society and its institutions. This Chapter shall cover all political beliefs, the consideration of which is not preempted by state, federal or local law. With regard to employment, an individual's political beliefs that interfere or threaten to interfere with his or her job performance are specifically excluded from this protection.

(1624) *Sex*. Includes, but is not limited to, an individual's gender, gender identity, gender expression, pregnancy, childbirth, and medical conditions related to pregnancy or childbirth. An individual's sex shall be defined by that individual's gender identity; and use and/or occupancy of, access to and/or participation in sex segregated facilities and /or entities shall be granted on that basis. Such sex-segregated facilities and entities include, but are not limited to, dwellings, housing, public accommodations, lavatories, locker rooms, instructional programs, athletic events and athletic teams.

(25) *Sexual harassment*. A type of sex discrimination. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:

(a) Submission to such conduct or communication is made a term or condition either

explicitly or implicitly to obtain employment, public accommodations or housing.

(b) Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or housing.

(c) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, or housing environment.

(26) *Sexual orientation.* Emotional, romantic, and/or sexual attractions, or the absence thereof, to people. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions. Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice.

(1727) *Source of income.* Any legal source from which a person obtains money.

(28) *Veteran status.* Having served in any unit of the United States Armed Forces or their reserve components, including the National Guard and the Coast Guard.

(29) *Victim of domestic violence or stalking.* An individual who is a victim of domestic violence as defined in MCL§ 400.1501 or a victim of stalking as defined in MCL§ 750.411h and §750.411i.

## **9:152. Discriminatory housing practices.**

(1) No person shall discriminate in leasing, selling or otherwise making available any housing facilities.

(2) No person shall discriminate in the terms, conditions, maintenance or repair in providing any housing facility.

(3) No person shall refuse to lend money for the purchase or repair of any real property or insure any real property solely because of the location in the city of such real property.

(4) No person shall promote real estate transactions by representing that changes are occurring or will occur in an area with respect to any protected classification.to race, religion or national origin.

(5) No person shall place a sign or other display on any real property which indicates that the property is for sale or has been sold when it is not for sale or has not recently been sold.

## **9:153. Discriminatory public accommodation practices.**

No person shall discriminate in making available full and equal access to all goods, services, activities, privileges and accommodations of any place of public accommodation. No person shall prohibit a breastfeeding mother from or segregate a breastfeeding mother within any public accommodation where she and the child would otherwise be authorized to be.

### **9:154. Discriminatory employment practices.**

- (1) No person shall discriminate in the [hire](#), employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any person [individual](#).
- (2) No person shall discriminate in limiting membership, conditions of membership or termination of membership in any labor union or apprenticeship program.

### **9:155. Other prohibited practices.**

- (1) No person shall adopt, enforce or employ any policy or requirement, publish, post or broadcast any advertisement, sign or notice which discriminates or indicates discrimination in providing housing, employment or public accommodations.
- (2) No person shall discriminate in the publication or distribution of advertising material, information or solicitation regarding housing, employment or public accommodations.
- (3) No agent, broker, labor union, employment agency or any other intermediary shall discriminate in making referrals, listings or providing information with regard to housing, employment or public accommodations. A report of the conviction of any such person for a violation of this Chapter shall be made to the applicable licensing or regulatory agency for such person or business.
- (4) No person shall coerce, threaten or retaliate against [an person individual](#) for making a complaint or assisting in the investigation regarding a violation or alleged violation of this chapter [Chapter](#), nor require, request, conspire with, assist or coerce another person to retaliate against [an person individual](#) for making a complaint or assisting in an investigation.
- (5) No person shall conspire with, assist [or](#), coerce or request another person to discriminate in any manner prohibited by this chapter [Chapter](#).

### **9:156. Discriminatory effects.**

[No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight for an individual to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a necessity does not arise due to a mere inconvenience or because of suspected objection to such a person by neighbors, customers or other persons.](#)

### **9:157. Exceptions.**

[Notwithstanding anything contained in this Chapter, the following practices shall not be violations of this Chapter.](#)

- [\(1\) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to](#)

individuals of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to individuals of that denomination.

(2) For the owner of an owner-occupied one-family or two-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use on the basis of sex.

(3) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to individuals who are of low income, over 55 years of age or disabled, in circumstances in which such limitations are appropriately designated.

(4) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for groups, including, but not limited to, minorities and women, where allowed or required by law.

(5) To discriminate based on an individual's age when such discrimination is required by state, federal or local law.

(6) To refuse to enter a contract with an unemancipated minor.

(7) To refuse to admit to a place of public accommodation serving alcoholic beverages an individual under the legal age for purchasing alcoholic beverages.

(8) To refuse to admit individuals under 18 years of age to a business providing entertainment or selling literature which the operator of said business deems unsuitable for minors.

(9) For an educational institution to limit the use of its facilities to those affiliated with such institution.

(10) To provide discounts on products or service to students, minors and senior citizens.

(11) To discriminate in any arrangement for the sharing of a dwelling unit by an individual who is sharing the unit.

(12) To restrict use of lavatories and locker room facilities on the basis of sex.

(13) For a governmental institution to restrict any of its facilities or to restrict employment opportunities based on duly adopted institutional policies that conform to federal and state laws and regulations.

(14) To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age.

(15) To restrict employment on the basis on a bona fide occupational qualification.

(16) Nothing herein contained shall be construed to prohibit any affirmative action laws passed by any level of government. Preferential treatment of, or benefits conferred on any of the classes protected from discrimination under this Chapter are permissible to the extent allowed by law.

#### **9:156. Information and investigation.**

(1) No person shall provide false information to any authorized employee investigating a complaint regarding a violation of this chapter.

(2) For an investigation, the director may request a person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this chapter. If said person does not comply with such request, the city attorney may apply to Washtenaw County Circuit Court for an order requiring production of said materials.

#### **9:157. Conciliation agreements.**

In cases involving alleged violations of this chapter, the director may enter into agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. Such agreements may be reviewed by the human rights commission. Violations of such agreements shall be violations of this chapter.

#### **9:158. Injunctions.**

The city attorney may commence a civil action to obtain injunctive relief prevent discrimination prohibited by this chapter, to reverse the effects of such discrimination or to enforce a conciliation agreement.

#### **9:159. Discriminatory effects.**

No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived race, color, religion, national origin, sex, age, height, weight, condition of pregnancy, source of income, family responsibilities, educational association, sexual orientation, marital status, physical or mental limitation, gender identity or HIV status for a person to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a necessity does not arise due to a mere inconvenience or because of suspected or actual objection to such a person by neighbors, customers, or other persons. As used herein "perceived" refers to the perception of the person who acts, and not to the perception of the person for or against whom the action is taken.

#### **9:160. Exceptions.**

Notwithstanding anything contained in this chapter, the following practices shall not be violations of this chapter.

(1) For a religious organization or institution to restrict any of its facilities of housing or accommodations which are operated as a direct part of religious activities to persons of the denomination involved or to restrict employment opportunities for officers, religious instructors and clergy to persons of that denomination.

- (2) For the owner of an owner-occupied 1-family or 2-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of 1 sex, to restrict occupancy and use on the basis of sex.
- (3) To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, over 55 years of age or who are handicapped.
- (4) To engage in a bona fide effort to establish an affirmative action program to improve opportunities in employment for minorities and women.
- (5) To discriminate based on a person's age when such discrimination is required by state, federal or local law.
- (6) To refuse to enter a contract with an unemancipated minor.
- (7) To refuse to admit to a place of public accommodation serving alcoholic beverages a person under the legal age for purchasing alcoholic beverages.
- (8) To refuse to admit to a place persons under eighteen (18) years of age to a business providing entertainment or selling literature which the operator of said business deems unsuitable for minors.
- (9) For an educational institution to limit the use of its facilities to those affiliated with such institution.
- (10) To provide discounts on products or service to students, minors and senior citizens.
- (11) To discriminate in any arrangement for the sharing of a dwelling unit.
- (12) To restrict use of lavatories and locker room facilities on the basis of sex.
- (13) For a governmental institution to restrict any of its facilities or to restrict employment opportunities based on duly adopted institutional policies that conform to federal and state laws and regulations.
- (14) To restrict participation in an instructional program, athletic event or on an athletic team on the basis of age or sex.

#### **9:161158. Nondiscrimination by city contractors.**

- (1) All contractors proposing to do business with the City of Ann Arbor shall satisfy the nondiscrimination administrative policy [contract compliance administrative policy](#) adopted by the city [City](#) administrator [Administrator](#) in accordance with the guidelines of this section. All contractors shall receive approval from the director prior to entering into a contract with the city, unless specifically exempted by administrative policy. All city [City](#) contractors shall take [ensure](#) affirmative

action to insure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon any classification protected by this Chapter.race, national origin or sex.All contractors shall agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of any applicable protected classification.

(2) All contractors shall be required to post a copy of Ann Arbor's Non-Discrimination Ordinance at all work locations where its employees provide services under a contract with the City.

(23) Upon request, eEach prospective contractor shall submit to the city City data showing current total employment by occupational category, sex and minority group and shall respond to information requests documenting its equal employment opportunity policies and procedures.

(4) If the contract which is being awarded includes federal requirements for affirmative action, each prospective contractor shall submit to the City data showing current total employment by occupational category, sex and minority group. If, after verifying this data, the director City Administrator's designee concludes that it indicates total minority and female employment commensurate with their availability within the contractor's labor recruitment area, i.e., the area from which the contractor can reasonably be expected to recruit, said contractor shall be accepted by the directorCity Administrator's designee as having fulfilled affirmative action requirements for thea period of 1 yearthe contract at which time the director City Administrator's designee shall conduct another review. Other contractorsIf the data demonstrates an under-representation the contractor shall develop an affirmative action program for review by the City Administrator's designee. in conjunction with the director. Said program shall include specific goals and timetables for the hiring and promotion of minorities and females. Said goals shall reflect the availability of minorities and females within the contractor's labor recruitment area. In the case of construction contractors, the director City Administrator's designee shall use for employment verification the labor recruitment area of the Ann Arbor-Ypsilanti standard metropolitan statistical area. Construction contractors determined to be in compliance shall be accepted by the director City Administrator's designee as having fulfilled affirmative action requirements for a period of 6 months1 year at which time the director City Administrator's designee shall conduct another review.

(35) In hiring for construction projects, contractors shall make good faith efforts to employ local persons, so as to enhance the local economy.

(46) All contracts shall include provisions through which the contractor agrees, in to follow all applicable federal and state laws.addition to any other applicable federal or state labor laws:

- (a) To set goals, in conference with the director, for each job category or division of the work force used in the completion of the city work;
- (b) To provide periodic reports concerning the progress the contractor has made in meeting the affirmative action goals it has agreed to;
- (c) To permit the director access to all books, records and accounts pertaining to its employment practices for the purpose of determining compliance with the affirmative action requirements.

(57) The director [City Administrator's designee](#) shall monitor the compliance of each contractor with the nondiscrimination provisions of each contract. The director [City Administrator's designee, together with the Human Rights Commission](#), shall develop procedures and regulations consistent with the administrative policy adopted by the city [City](#) administrator [Administrator](#) for notice and enforcement of non-compliance. Such procedures and regulations shall include a provision for the posting of contractors not in compliance.

(8) The [City Administrator's designee](#) will provide the City's Human Rights Commission with an annual summary report of contracts awarded; affirmative action requirements reviewed, where applicable; any complaints received alleging violation of the contractor's non-discrimination requirements, and actions taken. The Human Rights Commission will be provided, at its request, with additional information related to the report. The Human Rights Commission and the [City Administrator's designee](#) will report annually to the City Council on compliance of City contractors with this Chapter.

(6)9) All city [City](#) contracts shall provide further that breach of the obligation not to discriminate shall be a material breach of the contract for which the city [City](#) shall be entitled, at its option, to do any or all of the following:

(a) To [c](#)Cancel, terminate, or suspend the contract in whole or part and/or refuse to make any required periodic payments under the contract;

(b) Declare the contractor ineligible for the award of any future contracts with the city [City](#) for a specified length of time;

(c) To [r](#)Recover liquidated damages of a specified sum, said sum to be that percentage of the labor expenditure for the time period involved which would have accrued to minority group [protected class](#) members had the affirmative action [discrimination provisions](#) not been breached;

(d) Impose for each day of non-compliance, liquidated damages of a specified sum, based upon the following schedule:

Contract Amount	Assessed Damages Per Day of Non-Compliance
\$10,000--24,999	\$25.00
25,000--99,999	50.00
100,000--199,999	100.00
200,000--499,999	150.00
500,000--1,499,999	200.00
1,500,000--2,999,999	250.00

3,000,000-- 4,999,999	300.00
5,000,000 and above	500.00

(e) In addition the contractor shall be liable for any costs or expenses incurred by the City of Ann Arbor in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered to the city [City](#) under this contract.

### 9:159. Complaint Procedure

(1) If any individual has a grievance alleging a violation of this Chapter, he/she has 180 calendar days from the date of the individual's knowledge of the allegedly discriminatory action or 180 calendar days from the date when the individual should have known of the alleged discriminatory action to file a complaint with the City's Human Rights Commission. If an individual fails to file a complaint alleging a violation of this Chapter within the specified time frame, the complaint will not be considered by the Human Rights Commission.

(2) The complaint should be made in writing to the Human Rights Commission. The complaint may be filed in person, by e-mail, or by mail. The complaint must contain information about the alleged discrimination, such as name, address, phone number of the complainant and location, date and description of the alleged violation of this Chapter

(3) Upon receipt, the Human Rights Commission will review the complaint, provide a copy of the complaint to the City Attorney's Office, communicate with the complainant, and take appropriate action with respect to the matter, including, but not limited to:

- a. Referring the complainant to other local, state or federal entities for investigation and remedy;
- b. Informally mediating the matter between the involved parties;
- c. Referring the complaint to the City Attorney for further investigation and action pursuant to this Chapter;
- d. Dismissing the complaint, after review with the City Attorney, if the allegations do not constitute a violation of this Chapter.

(4). With respect to complaints filed by current City employees, the Human Rights Commission will refer such employees to any applicable processes contained in collective bargaining agreements and/or the City Human Resources Policies and Procedures. If a current employee has exhausted any such processes, he/she may file a complaint with the Human Rights Commission in accordance with subparagraphs (1) through (3) of this section.

(5) The Human Rights Commission will take action on the complaint within 90 days of receipt of the complaint. If additional time is necessary, the Human Rights Commission will notify the complainant of the need for additional time. All communications with the complainant regarding actions taken or additional time necessary will be in writing, with a copy to the City Attorney.

(6) The City Attorney will notify the Human Rights Commission in writing of actions taken

by the City Attorney's Office on complaints referred to that office by the Human Rights Commission.

(7) All complaints received by the Human Rights Commission and responses from the Human Rights Commission will be retained by the City of Ann Arbor for at least 3 years.

(8) The Human Rights Commission will provide an annual report to City Council regarding the complaints received and actions taken.

(9) No individual shall provide false information to any authorized individual investigating a complaint regarding a violation of this chapter.

(10) For an investigation, the City Attorney may request a person to produce books, papers, records or other documents which may be relevant to a violation or alleged violation of this Chapter. If said person does not comply with such request, the City Attorney may apply to Washtenaw County Circuit Court for an order requiring production of said materials.

#### **9:160. Conciliation agreements.**

In cases involving alleged violations of this chapter, the City Attorney may enter into agreements whereby persons agree to methods of terminating discrimination or to reverse the effects of past discrimination. Such agreements may be reviewed by the Human Rights Commission. Violations of such agreements shall be violations of this Chapter.

#### **9:161. Injunctions.**

The City Attorney may commence a civil action to obtain injunctive relief to prevent discrimination prohibited by this Chapter, to reverse the effects of such discrimination or to enforce a conciliation agreement.

#### **9:162. Prosecution.**

Prosecution for violation of this chapter Chapter may be initiated by the City Attorney on behalf of complaint of the affected personindividual on the or by the director on the basis of an investigation initiated by the directora complaint to the Human Rights Commission.

#### **9:163. Penalties.**

(1) A violation of any provision of this chapter Chapter is a civil infraction punishable by a fine of not more than \$500.00, for each day upon which a violation occurs, plus all costs of the action. The court may issue and enforce any judgment, writ, or order necessary to enforce this chapter. This may include reinstatement, payment of lost wages, hiring and promotion, sale, exchange, lease or sublease of real property, admission to a place of public accommodation, and other relief deemed appropriate.

(2) Each day upon which a violation occurs shall constitute a separate violation.

(32) A violation proved to exist on a particular day shall be presumed to exist on each subsequent day unless it is proved that the violation no longer exists.

(43) Nothing contained in this chapter [Chapter](#) shall be construed to limit in any way the remedies, legal or equitable, which are available to the city [City](#) or any other person for the prevention or correction of discrimination.

**9:164. Private actions for damages or injunctive relief.**

(1) [To the extent allowed by law, a](#)An individual who is the victim of discriminatory action in violation of this chapter [Chapter](#) may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this chapter[Chapter](#).

(2) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this chapter[Chapter](#), including reasonable attorney fees.

(3) Private actions and remedies under this section shall be in addition to any actions for violations which the city [City](#) may take.

Section 2: In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 3: This Ordinance shall take effect on the tenth day following legal publication.

**CERTIFICATION**

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of October 20, 2014.

Jacqueline Beaudry, City Clerk

John Hieftje, Mayor

I hereby certify that the foregoing ordinance received legal publication on the City Clerk's Webpage on October 23, 2014.

Jacqueline Beaudry, City Clerk