

Chapter 17 HUMAN RELATIONS*

* **Editors Note:** Ord. No. 4169, §§ 1, and 2, adopted Apr. 15, 1974, amended this Code by repealing former ch. 17, §§ 17-1--17-6, 17-11--17-16 and 17-20--17-23, and enacting in lieu thereof new ch. 17, §§ 17-0--17-4, 17-11-- 17-14 and 17-20--17-23, pertaining to the same subject matter. Former ch. 17 was derived from 1953 Code, ch. 31, §§ 1--6 and the following ordinances:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
2107	1	11-7-60	3099	1	3-25-68
2121	2	12-19-60	3100	1	3-25-68
2303B	1, 2	5-28-62	3300	1	7-21-69
2630	1	6-26-64	3304	1	8-4-69
2867	1	4-25-66	3305	1	8-4-69
2872	1	5-16-66	3553	1	11-16-70
2993	1	4-10-67	3728	1--6	10-26-71
3086	1, 2	2-13-68	3975	1	1-15-73
3087	1	2-13-68			

Sec. 4 of Ord. No. 4169 provided that said ordinance shall neither add to nor detract from civil remedies now available to persons subjected to discrimination and stated that said ordinance shall not be construed to mean the city sanctions discrimination in any manner or in any place not mentioned specifically or excluded by the ordinance.

Cross References: Community services, ch. 10B.

Art. I. Short Title, § 17-0

Art. II. Declaration of Policy, §§ 17-1--17-10

Art. III. Civil Rights, §§ 17-11--17-19

Art. IV. Discrimination Unlawful in City Employment and City Contracts, §§ 17-20--17-29

Art. V. Affirmative Action by City Contractors and Subcontractors, §§ 17-30--17-39

Art. VI. Affirmative Action by City Suppliers and Consultants, §§ 17-40--17-49

Art. VII. Fair Housing, §§ 17-50--17-66

Art. VIII. Reporting Wrongful Conduct, §§ 17-67--17-69

Art. IX. Registered Domestic Partnerships, §§ 17-70--17-77

Article I. Short Title

Sec. 17-0. Title.

Article II. Declaration of Policy

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Secs. 17-20--17-29. Reserved.

Article V. Affirmative Action by City Contractors and Subcontractors

Secs. 17-30--17-39. Reserved.

Article VI. Affirmative Action by City Suppliers and Consultants

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Art. VIII. Reporting Wrongful Conduct

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Secs. 17-68, 17-69. Reserved.

Article IX. Registered Domestic Partnerships

Sec. 17-70. Title.

Sec. 17-71. Registered domestic partnership defined.

Sec. 17-72. Criteria for domestic partnership.

Sec. 17-73. Statement of domestic partnership.

- Sec. 17-74. Termination of domestic partnership.
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- Sec. 17-76. Rights of registered domestic partners.
- Sec. 17-77. Limitation of liabilities.

ARTICLE I. SHORT TITLE

Sec. 17-0. Title.

This chapter may be cited and shall be known as the human relations chapter.

(Ord. No. 4169, § 2, 4-15-74; Ord. No. 4616, § 1, 2-7-77)

ARTICLE II. DECLARATION OF POLICY

Sec. 17-1. Policy declaration.

It is the policy of the city to eliminate prejudice and discrimination due to race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status, in places of public accommodation, in employment, and in housing.

(Ord. No. 4169, § 2, 4-15-74; Ord. No. 4616, § 2, 2-7-77; Ord. No. 8307, § 1, 6-13-94; Ord. No. 9199, § 2, 2-1-99)

Secs. 17-2--17-10. Reserved.

ARTICLE III. CIVIL RIGHTS*

* **Editors Note:** Ord. No. 4616, § 3, adopted Feb. 7, 1977, specifically amended the Code by repealing former art. III, § 7-2--7-4. The article, which had pertained to the human relations commission, had been derived from Ord. No. 4169, § 2, adopted April 15, 1974.

Section 5 of Ord. No. 4616 redesignated former art. IV as art. III, as herein set out.

Sec. 17-11. Definitions.

In this chapter, unless the context otherwise requires:

- (a) *Age* means at least eighteen years of age except:
 - (1) Where state law provides for a greater minimum or maximum legal age
 - (2) In section 17-12(b) which shall be deemed to protect any person who is at least forty (40) years of age.
- (b) *Discriminate or discrimination* means to make, directly or indirectly, any distinction with respect to any person or persons based on race, color, religion, ancestry, sex, age, disability, national origin, sexual

orientation, gender identity, familial status or marital status.

(c) *Disability*, with respect to an individual, means:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual, and specifically includes but is not limited to an individual who has HIV/AIDS;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment; but disability does not include the current illegal use of or addiction to a controlled substance (as defined in the controlled substances act, 21 U.S.C. § 801 et seq.) or the current use of alcohol that prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to the property or the safety of others.

Discrimination on the basis of disability shall be interpreted in a manner consistent with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the federal regulations promulgated thereunder, and judicial decisions construing them.

(d) *Educational institution* means any private educational institution located or operating in the City of Tucson which provides educational services including an academy, college, university, elementary or secondary school, kindergarten, extension course, nursery school system, and a business nursing, professional, secretarial, technical or vocational school.

(e) *Employer*, except as otherwise provided, means a person who has one (1) or more employees, not to exceed one hundred (100) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such a person; but such term does not include an Indian tribe, the City of Tucson, or a bona fide private membership club (other than a labor organization) which is exempt from federal taxation under section 501(c) of title 26, United States Code. The jurisdictional maximum limit of one hundred (100) employees shall not apply to protected classes who do not have remedies available under either A.R.S. § 41-1401 et seq., or 42 U.S.C. § 2000e et seq.

(f) *Employment agency* means and includes both public and private employment agencies and any person having an office regularly undertaking, with or without compensation, to procure, recruit, refer or place employees.

(g) *Familial status* means the state of one or more minor children under the age of eighteen (18) being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals;
- (2) The designee of such parent or other person having custody, with the written permission of such parent or other person; or
- (3) A foster parent or other person with whom a minor child under the age of eighteen (18) is placed by court order.

The protections afforded against discrimination on the basis of family status also apply to any person who is in the process of securing legal custody of a minor child.

(h) *Gender identity* means an individual's various attributes as they are understood to be masculine and/or feminine and shall be broadly interpreted to include pre- and post-operative transsexuals, as well as other persons who are, or are perceived to be, transgendered.

(i) *Labor organization* means and includes any organization or labor union, craft union, or such organization, conducting a hiring hall which engages in the hiring of employees, or any voluntary unincorporated association designed to further the cause of the rights of union labor, which is constituted for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or apprenticeships or applications for apprenticeships, or for other mutual aid or protection in connection with employment, including apprentice jobs or application for apprenticeship.

(j) *Marital status* means the state of being married, separated, or unmarried as defined by state law. The term "unmarried" includes persons who are single, engaged, divorced, or widowed.

(k) *Person* means and includes one or more individuals, partnerships, associations or corporations, legal representatives, trustees, receivers, or other organized groups of persons.

(l) *Reserved.*

(m) *Place of public accommodation* means facilities, establishments, accommodations, services, commodities or use offered to or enjoyed by the general public, including but not limited to:

(1) Hotels, motels, trailer courts and boardinghouses, which shall include any establishments offering lodging to transient guests for compensation.

(2) Restaurants, which shall include lunch counters, coffee shops, lunchrooms, luncheonettes, cafes, cafeterias, tearooms, snack bars or stands, mobile food service facilities, grills, sandwich shops, supper clubs, soft drink fountains, ice cream parlors or stands, and other places which offer food, ice cream or soft drink beverages for purchase and consumption on or off the premises.

(3) Taverns, which shall include bars, barrooms, saloons, roadhouses and like establishments, wherein spirituous or malt liquors or wines are offered for sale for consumption on or off the premises.

(4) Theaters, which shall include places, whether indoors or out-of-doors, at which any theatrical performance, moving picture show, musical concert or recital, dramatic reading or monologue, circus, carnival or other like entertainment or amusement is offered.

(5) Retail establishments, which shall include retail stores, garages, automobile and gasoline service stations, and other like establishments serving the public.

(6) Places of public amusement and recreation, which shall include bowling alleys, billiard halls and poolrooms, dance halls, race courses, shooting galleries, sports arenas or fields, gymnasiums, exhibitions, skating rinks and other like establishments.

(7) Educational facilities, which shall include institutions defined in paragraph (d) of this section.

(8) Public conveyances, which shall include all transportation facilities operated on land, air or water as well as the stations and terminals thereof.

(9) Funeral parlors and places of burial, including any cemetery, mausoleum, crypt, or any establishment for the embalming, processing or interment of corpses.

(n) *Protected class* means each classification for which discrimination is prohibited in this chapter: race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status and marital status.

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

(p) *Religious organization* means a religious corporation, association or society: or a school, college, university, or other educational institution or institution of learning if the institution is in whole or substantial part controlled, managed, owned, or supported by a religious corporation, association or society; or the curriculum of the institution is directed toward the propagation of a religion.

(q) *Sex* shall include, but is not limited to, discrimination because of or on the basis of pregnancy, childbirth or related medical conditions; and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

(r) *Sexual orientation* means an individual's heterosexuality, homosexuality, or bisexuality, whether the orientation is real or perceived.

(Ord. No. 4169, § 2, 4-15-74; Ord. No. 4616, § 5, 2-7-77; Ord. No. 6461, § 1, 7-7-86; Ord. No. 6947, § 2, 5-16-88; Ord. No. 8307, § 2, 6-13-94; Ord. No. 9199, § 3, 2-1-99; Ord. No. 10375, § 1, 2-21-07)

Sec. 17-12. Prohibited acts.

It is a violation of this article:

(a) For any owner, operator, lessee, manager, agent or employee of any place of public accommodation to discriminate against any person, or directly or indirectly display, circulate, publicize or mail any advertisement, notice or communication which states or implies that any facility or service shall be refused or restricted because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status, or that any person, because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status, would be unwelcome, objectionable, unacceptable, undesirable or not solicited.

(b) For an employer, because of the race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status to refuse to hire or employ any person or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(c) For a labor organization, because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status to exclude, expel, limit or restrict from its membership such person, or to provide only second class or segregated membership, or to discriminate in any manner against any of its members or against any employer or any person employed by an employer.

(d) For any employer or employment agency to print or circulate, or cause to be printed or circulated, any publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status or expresses any intent to make any such limitation, specification or discrimination.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he/she has opposed in a lawful manner any practices forbidden under this chapter, or because he/she has filed a complaint, testified or assisted in any proceeding under this chapter.

(f) For any person to cause or attempt to cause an employer to discriminate against an individual in violation of this chapter.

(g) For any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so.

(h) For any person to discriminate in places of public accommodation, employment or housing against any person, because that person has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this chapter.

(i) For any person subject to this article to fail to post notices, to maintain records, or to supply documents and information requested by the Office of Equal Opportunity Programs in connection with a matter under investigation.

(Ord. No. 4169, § 2, 4-15-74; Ord. No. 4616, § 5, 2-7-77; Ord. No. 6947, § 2, 5-16-88; Ord. No. 9199, § 3, 2-1-99; Ord. No. 10375, § 2, 2-21-07)

Sec. 17-13. Exclusion.

(a) This article shall not be applicable to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which preferential treatment is given to any individual because he/she is a Native American living on or near a reservation.

(b) This article shall not be applicable to any establishment operated by a bona fide private club not conducted for the purpose of evading this article, when the accommodations, advantages, facilities and

services are restricted to members of such club and their guests; nor to any bona fide social, fraternal, public educational, civic or religious organization or such private club when the profits of the accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit of such organization or club; nor, in the area of housing, (1) to the rental of housing accommodations for not more than two (2) families living independently of each other, if the lessor or a member of his/her family resides in one of the housing accommodations, or (2) to the lease or rental of sleeping facilities in any single-family housing unit if the lessor or a member of his/her family resides therein.

(c) Any person under the influence of alcohol or other drugs, or who is guilty of boisterous conduct, or who violates any regulation of any place of public accommodation that applies to all persons, regardless of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status may be excluded without penalty under this article from any such place of public accommodation; and nothing in this article shall be considered to limit the right of such exclusion.

(d) Except as provided in subsection (e) below, this article shall not be applicable to a religious organization.

(e) This article shall apply to employment or an employment opportunity with a religious organization, wherein the duties of the position pertain solely to activities of the organization that generate unrelated business taxable income subject to taxation under section 511(a) of the internal revenue code of 1986.

(f) Notwithstanding section 17-12, it shall not be a violation of this article:

(1) For an employer, labor organization, or employment agency to prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) For an employer, labor organization, or employment agency to require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) For an employer, labor organization, or employment agency to require that employees behave in conformance with the requirements established under the drug-free workplace act of 1988 (41 U.S.C. § 701 et seq.) or under the drug testing provisions of state law (A.R.S. § 23-493 et seq);

(4) For an employer, labor organization, or employment agency to hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee;

(5) For a place of public accommodation to afford beneficial pricing or policies to senior citizens, students, or individuals with disabilities.

(6) For a place of public accommodation to operate solely as a male-only or a female- only fitness center/gymnasium, as long as the fitness center/gymnasium does not include any of the facilities other than gymnasium listed in section 17-11(m), and does not discriminate against any other protected group identified in section 17-1.

(Ord. No. 4169, § 2, 4-15-74; Ord. No. 4616, § 5, 2-7-77; Ord. No. 5472, § 1, 12-14-81; Ord. No. 9199, § 3, 2-1-99; Ord. No. 10375, § 3, 2-21-07)

Sec. 17-14. Violation a civil infraction; procedure; penalties.

(a) It is a civil infraction for any person to violate any of the provisions of this article; however, complaints of violations of this article shall proceed as prescribed in sections 17-15 and 17-16.

(b) The following penalties shall be imposed by the city court for civil infractions under this article:

(1) A person found responsible for a civil infraction for the first time shall be fined not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) per civil infraction. a person found responsible for the same civil infraction for a second time shall be fined not less than six hundred dollars (\$600.00) nor more than twenty-five hundred dollars (\$2,500.00). A person found responsible for the same civil infraction for a third or subsequent time shall be fined not less than nine hundred dollars (\$900.00) nor more

than twenty-five hundred dollars (\$2,500.00). The imposition of a fine for a civil infraction under this section shall not be suspended.

(2) Failure of a respondent to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day the respondent fails to comply. A respondent's second failure to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than six hundred dollars (\$600.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the first determination of the respondent's failure to comply. A respondent's third and subsequent failure to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than nine hundred dollars (\$900.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the second determination of respondent's failure to comply.

(Ord. No. 6461, §§ 8, 9, 7-7-86; Ord. No. 9199, § 3, 2-1-99)

Editors Note: Ord. No. 4616, §§ 4, 5, adopted Feb. 7, 1977, specifically amended the Code by repealing former § 17-14 and adopting in lieu thereof new § 17-14 as herein set out. Former § 17-14 had pertained to implementation of the chapter's provisions, and had been derived from Ord. No. 4169, § 2, adopted Apr. 15, 1974. Subsequently § 8 of Ord. No. 6461, adopted July 7, 1986, repealed § 17-14; and § 9 enacted a new § 17-14.

Sec. 17-15. Complaint procedures.

(a) Any person claiming to be aggrieved by an alleged violation of this article may file with the Office of Equal Opportunity Programs of the city manager's office (hereinafter referred to as the "OEOP") a verified charge, in writing, within ninety (90) calendar days after the alleged violation occurred, on such forms as may be required by the OEOP. The charge shall set forth the facts upon which it is based and shall identify the person charged (hereinafter the "respondent"). The OEOP shall furnish the respondent with a copy of the charge and shall promptly investigate the allegations of discriminatory practices set forth in the charge.

(b) The respondent may file, not later than twenty (20) days following receipt of the charge, a written verified answer to the charge.

(c) The OEOP shall render written findings as to whether there is reasonable cause to substantiate the charge not later than one hundred twenty (120) calendar days from the filing of the charge. The OEOP shall furnish a report of its findings to the charging party and to the respondent.

(d) The charging party, within thirty (30) calendar days after receiving an OEOP finding of no cause, may file with the Tucson Human Relations Commission (hereinafter referred to as the "commission"), a request for review of the finding. The commission, or such members of the commission as the chair thereof may designate, shall, not later than forty-five (45) calendar days after the request is filed, schedule a meeting to determine whether the finding of no cause issued by the OEOP should be upheld or overturned. If it is determined that the OEOP finding of no cause should be upheld, the commission shall issue an order dismissing the case and shall furnish a copy of its order to the OEOP, the charging party, and the respondent. If it is determined that the OEOP finding of no cause should be reversed, the commission shall issue an order reversing the OEOP no cause finding and remand the case back to the OEOP for appropriate action. The commission shall furnish a copy of its order to the city attorney, the OEOP, the charging party, and the respondent.

(e) If the OEOP or the commission, in the event of a request for review, finds there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the OEOP may attempt to eliminate the alleged discriminatory practice by conference, conciliation and persuasion. The terms of a conciliation agreement may require the respondent to refrain in the future from committing discriminatory practices of the type stated in the agreement and to take such affirmative steps as the OEOP may require to carry out the purposes of this article. If a conciliation agreement is entered into, the OEOP shall issue an order stating its terms and furnish a copy of the order to the charging party and the respondent. Except for the terms of the conciliation agreement, neither the commission or the OEOP, nor any employee thereof, shall make public, without the written consent of the charging party and respondent, information concerning efforts in a particular case to eliminate a discriminatory practice by conference, conciliation or persuasion, whether or not there is a conciliation agreement.

(f) After a finding of reasonable cause by the OEOP, or by the commission in the event of a request for review and subsequent reversal of an OEOP finding of no cause, the OEOP may, in addition to the permissive remedy outlined in subsection (e), request the city attorney to file a complaint against respondent in the city court. Appeal of any judgment rendered by the magistrate shall be by way of special action to the superior court on the record as prescribed by Rule 23 of the Local Rules of Practice and Procedure in City Court Civil Proceedings.

(g) During the review process, the OEOP decision shall remain in effect.

(Ord. No. 5472, § 2, 12-14-81; Ord. No. 6461, § 3, 7-7-86; Ord. No. 7952, § 1, 11-23-92; Ord. No. 9199, § 3, 2-1-99; Ord. No. 10375, § 4, 2-21-07)

Sec. 17-16. Record-keeping; posting requirement; powers.

(a) In connection with an investigation of a charge filed under this article, the commission or the OEOP shall have access at any reasonable time to premises, records and documents relevant to the charge and the right to examine, photograph and copy evidence. The commission or the OEOP may require a respondent against whom a charge has been filed to file a statement or report in writing, under oath, as to all the facts and circumstances concerning the alleged act of discrimination set forth in the charge.

(b) Every person subject to this article shall preserve any regularly kept business records for a period of six (6) months from the date of the making of the record; such records shall include but not be limited to application forms submitted by applicants, sales and rental records, credit and reference reports, personnel records, and any other records pertaining to the status of an individual's enjoyment of the rights and privileges protected or granted under this article.

(c) Every employer, employment agency, and labor organization, subject to this article, shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(d) No member of the commission or employee of the OEOP shall make public with respect to a particular person, without his/her consent, information obtained by them pursuant to their authority under this article, except as required by law or as necessary to the conduct of a proceeding under this article.

(e) To accomplish the objectives and to carry out the duties prescribed in this article, the commission or the OEOP, in addition to other powers conferred upon it by this article, may:

(1) Conduct informal hearings in aid of any investigation or inquiry;

(2) Administer an oath or affirmation to any person;

(3) Issue subpoenas, interrogatories, or other discovery devices, to any person, on its own initiative or upon application of any party to a proceeding, compelling the attendance and testimony of witnesses or requiring the production of documents, provided such evidence relates to a violation of this article and is relevant to the charge which is the subject matter of the investigation.

(f) Any person being investigated by the commission or the OEOP under this article shall have the right to be represented by counsel.

(g) If a person fails to respond to a subpoena, to interrogatories, to permit access, examination, photographing or copying, or fails to make, keep, or preserve records in accordance with this article, the commission or the OEOP may issue an order requiring compliance. Upon a failure to comply with the order of the commission or the OEOP, or to obey a subpoena issued by the commission or the OEOP, the commission or the OEOP may apply to the city attorney's office for assistance. The city attorney is empowered to take all necessary action in the appropriate court, upon request of the commission or the OEOP, to secure the production of all records, documents or other evidence necessary to assist the commission or the OEOP in carrying out the provisions of this article. The city attorney is also empowered to seek fines as described in section 17-14 for civil infractions arising under this article.

(Ord. No. 5472, § 3, 12-14-81; Ord. No. 6461, §§ 4--7, 7-7-86; Ord. No. 9199, § 3, 2-1-99; Ord. No. 10375, § 5, 2-21-07)

Secs. 17-17--17-19. Reserved.

ARTICLE IV. RESERVED*

* **Editors Note:** Ord. No. 4616, § 6, adopted Feb. 7, 1977, specifically amended the Code by renumbering art. V, as art. IV, pertaining to discrimination in city employment and contracts. Ord. No. 7973, § 3, adopted Jan. 25, 1993, repealed this article in its entirety. Reference to discrimination in city employment and contracts can be found in chapter 28, Tucson Procurement Code.

Secs. 17-20--17-29. Reserved.

ARTICLE V. RESERVED*

* **Editors Note:** Article V, pertaining to affirmative action by city contractors and subcontractors, derived from Ord. No. 5472, § 4, adopted Dec. 14, 1981, and was amended by Ord. No. 6108, § 1, adopted Oct. 22, 1984. Ord. No. 7973, § 3, adopted Jan. 25, 1993, repealed this article in its entirety. Reference to affirmative action by city contractors and subcontractors can be found in chapter 28, Tucson Procurement Code.

Secs. 17-30--17-39. Reserved.

ARTICLE VI. RESERVED*

* **Editors Note:** Article VI, pertaining to affirmative action by city suppliers and consultants, derived from Ord. No. 5472, § 5, adopted Dec. 14, 1981, and was amended by Ord. No. 6108, §§ 5--9, adopted Oct. 22, 1984. Ord. No. 7973, § 3, adopted Jan. 25, 1993, repealed this article in its entirety. Reference to affirmative action by city suppliers and consultants can be found in chapter 28, Tucson Procurement Code.

Secs. 17-40--17-49. Reserved.

ARTICLE VII. FAIR HOUSING

Sec. 17-50. Definitions.

As used in this article:

(a) *Discriminatory housing practice* means an act that is unlawful under section 17-52 of this article.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Family* includes a single individual.

(d) *Housing for older persons* means housing:

(1) Provided under any state or federal program that the U.S. secretary of housing and urban development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program; or

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

(3) Intended and operated for at least one person fifty-five (55) years of age or older per unit as determined by the secretary of U.S. housing and urban development.

In determining whether housing qualifies as housing for older persons under this article, the EOO shall follow the standards set forth in the Fair Housing Act and regulations pertaining to housing for older persons as promulgated by the U.S. secretary of housing and urban development.

(e) *Person* includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

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

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Sec. 17-51. Application.

(a) Subject to the provisions of subsection (b) of this section and section 17-53 of this article, the prohibitions against discrimination in the sale or rental of housing set forth in section 17-52 of this article shall apply to all dwellings situated within the legal jurisdiction of the city.

(b) Nothing in this article (other than minor section (c) of section 17-52) shall apply to:

(1) Any single-family dwelling sold or rented by a private individual owner. Provided, that such private individual owner does not own more than three (3) such single-family dwellings at any one (1) time. Provided further, that in the case of the sale of any such single-family dwelling by a private individual owner not residing in such dwelling at the time of such sale or who was not the most recent resident of such dwelling prior to such sale, the exemption granted by this subsection shall apply only with respect to one (1) such sale within any twenty-four-month period. Provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his/her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three (3) such single-family dwellings at any one (1) time. Provided further, that the sale or rental of any such single-family dwelling shall be excepted from the application of this subchapter only if such dwelling is sold or rented (1) without the use in any manner of the sale or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesperson and (2) without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of section 17-52 of this article; but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title;

(2) Rooms or units in dwellings 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 one of such living quarters as his/her residence; or

(3) Housing for older persons.

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He/she has, within the preceding twelve (12) months, participated as principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He/she has, within the preceding twelve (12) months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He/she is the owner of any dwelling designed or intended for occupancy by, or occupied by, five (5) or more families.

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Sec. 17-52. Discrimination in sale or rental of housing.

As made applicable by section 17-51 of this article and except as exempted by sections 17-51(b) and 17-53 of this article, it shall be a violation of this article:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status.

(d) To represent to any person because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status that any dwelling is not available for inspection, sale, or rental when such dwelling is, in fact, so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status.

(f) For any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial or residential real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status of such person or of any person associated with such person in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the housing in relation to which such loan or other financial assistance is to be made or given. Provided, that nothing contained in this section shall impair the scope or effectiveness of the exceptions contained in section 17-51(b) hereof.

(g) To deny any person access to or membership 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 housing, or to discriminate against such person in the terms or conditions of such access, membership, or participation, on account of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status.

(h) To coerce, intimidate, threaten, or interfere with any person in the exercise and enjoyment of, or on account of his/her having exercised and enjoyed, or on account of his/her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected under this article.

(i) To fail to post notices, to maintain records, or to supply documents and information requested by the EOO in connection with a matter under investigation.

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Sec. 17-53. Religious organization or private club exemption.

Nothing in this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Sec. 17-54. Enforcement.

(a) Any person who claims to have been injured by a discriminatory housing practice or who believes that he/she shall be irrevocably injured by a violation of this article that is about to occur (hereinafter "charging party") may file with the Equal Opportunity Office of the city manager's office (hereinafter referred to as the "EOO") a verified charge, in writing, within one hundred eighty (180) days after the alleged violation occurred, on such forms as may be required by the EOO. The charge shall set forth the facts upon which it is based and shall identify the person charged (hereinafter the "respondent"). The EOO shall furnish the respondent with a copy of the charge and shall promptly investigate the allegations of discriminatory practices set forth therein. The respondent may file, not later than twenty (20) days following receipt of the charge, a written verified answer to the charge. Whenever it would be reasonable and fair to do so, the EOO shall grant leave to the charging party and respondent to file amended charges and answers thereto.

(b) The EOO shall, as promptly as possible and as far as practicable not later than sixty days (60) from the filing of the charge, render written findings as to whether there is reasonable cause to substantiate the charge. The EOO shall furnish a copy of its findings to the charging party and to the respondent.

(c) If, within sixty (60) days after a charge is filed with the EOO, the EOO has issued findings that there is no reasonable cause to believe that the respondent has engaged in a discriminatory housing practice, the charging party may, within fifteen (15) days thereafter, file with the Tucson Human Relations Commission (hereinafter the "commission") a request for review of the findings. The commission, or such members of the commission as the chair thereof may designate, shall as promptly as possible and as far as practicable not later than forty-five (45) days after the request is filed, schedule a meeting to determine whether there is reasonable cause to believe that the respondent has engaged in a discriminatory housing practice. If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory housing practice, the commission shall issue an order dismissing the charge and furnish a copy of its order to the EOO, the charging party and the respondent.

(d) If the EOO, or the commission in the event of a request for review, finds there is reasonable cause to believe that the respondent has engaged in a discriminatory housing practice, the EOO shall promptly attempt to eliminate the alleged discriminatory practice by conference, conciliation and persuasion. The terms of a conciliation agreement may require the respondent to refrain in the future from committing discriminatory practices of the type stated in the agreement and to take such affirmative action as the EOO may require to carry out the purposes of this article. If a conciliation agreement is entered into, the EOO shall issue an order stating its terms and furnish a copy of the order to the charging party and the respondent. Except for the terms of the agreement, neither the commission or EOO nor any employee thereof shall make public, without the written consent of the charging party and respondent, information concerning efforts in a particular case to eliminate a discriminatory practice by conference, conciliation or persuasion, whether or not there is a conciliation agreement.

(e) After a finding of reasonable cause by the EOO, or by the commission in the event of a request for review, the EOO may, in addition to the remedy outlined in subsection (d) of this section, request the city attorney to file a complaint against respondent in the city court. Appeal of any judgment rendered by the magistrate shall be by way of special action to the superior court on the record as prescribed by rule 23 of the Local Rules of Practice and Procedure in City Court Civil Proceedings.

(f) At any time in its discretion, but not later than one (1) year from the date of a conciliation agreement, the EOO shall investigate whether the terms of the conciliation agreement are being complied with by the respondent. Upon a finding that the terms of the agreement are not being complied with by the respondent, the EOO shall request the commission to take appropriate action to assure compliance, which may include the issuance of a cease and desist order, or the filing of a complaint in city court.

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Sec. 17-55. Record-keeping; posting requirement; powers of commission or EOO.

(a) In connection with an investigation of a charge filed under this article, the commission or the EOO shall have access at any reasonable time to witnesses, premises, records, documents, individuals and other evidence or possible sources of evidence and may examine, record and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation.

(b) Every person subject to this article shall preserve any regularly kept business records for a period of six (6) months from the date of the making of the record; such records shall include but not be limited to application forms submitted by applicants, sales and rental records, credit and reference reports, and any other records pertaining to the status of an individual's enjoyment of the rights and privileges protected or granted under this article.

(c) Every person subject to this article, shall post in conspicuous places, notices setting forth the provisions of the nondiscrimination clause.

(d) It shall be unlawful for a member of the commission or an employee of the EOO to make public with respect to a particular person without his/her consent information obtained by them pursuant to their authority under this article, except as necessary to the conduct of a proceeding under this article.

(e) To accomplish the objectives and to carry out the duties prescribed in this article, the commission or the EOO, in addition to other powers conferred by this article, may:

(1) Conduct informal hearings in aid of any investigation or inquiry.

(2) Administer an oath or affirmation to any person.

(3) On its own initiative, conduct periodic tests to ascertain whether violations of this article are occurring within the city.

(4) Issue subpoenas, interrogatories or other discovery devices to any person, on its own initiative or upon application of any party to a proceedings, compelling the attendance and testimony of witnesses or requiring the production of documents, provided such evidence relates to a violation of this article and is relevant to the charge which is the subject matter of the investigation.

(f) Any person being investigated by the commission or the EOO under this article shall have the right to be represented by counsel.

(g) If a person fails to respond to a subpoena, interrogatories, to permit access, examination, photographing or copying or fails to make, keep or preserve records in accordance with this article, the commission or EOO may issue an order requiring compliance. Upon a failure to comply with the order of, or upon failure to obey a subpoena issued by the commission or EOO, the commission or EOO may apply to the city attorney's office for assistance. The city attorney is empowered to take all necessary action in the appropriate court, upon request of the commission or EOO, to secure the production of all records, documents or other evidence necessary to assist the commission or the EOO in carrying out the provisions of this article. The city attorney is also empowered to seek fines as described in section 17-56 for civil infractions arising under this article.

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Sec. 17-56. Violation a civil infraction; penalties; procedure.

(a) It is a civil infraction for any person to violate any of the provisions of this article; provided, however, that complaints of violations of this article shall proceed as prescribed in section 17-54 and section 17-55.

(b) The following penalties shall be imposed by city court for civil infractions under this article:

(1) A person found responsible for a civil infraction for the first time shall be fined not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) per civil infraction. A person found responsible for the same civil infraction for a second time shall be fined not less than six hundred dollars (\$600.00) nor more than twenty-five hundred dollars (\$2,500.00). A person found responsible for the same civil infraction for a third or subsequent time shall be fined not less than nine hundred dollars (\$900.00) nor more than twenty-five hundred dollars (\$2,500.00). The imposition of a fine for a civil infraction under this section shall not be suspended.

(2) Failure of a respondent to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than three hundred dollars (\$300.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day the respondent fails to comply. A respondent's second failure to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than six hundred dollars (\$600.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the first determination of the respondent's failure to comply. A respondent's third and subsequent failure to comply with any order contained in a judgment for a civil infraction shall result in an additional fine of not less than nine hundred dollars (\$900.00) nor more than twenty-five hundred dollars (\$2,500.00) for each day after the second determination of respondent's failure to comply.

(Ord. No. 6947, § 1, 5-16-88; Ord. No. 9199, § 4, 2-1-99)

Secs. 17-57--17-66. Reserved.

ARTICLE VIII. REPORTING WRONGFUL CONDUCT

Sec. 17-67. Reporting wrongful conduct.

(a) *Definitions.*

(1) *Employee.* All city employees of any status or classification, except elected officials, persons appointed to an elected official's personal staff, or individuals appointed to a position in city government by a majority of the governing body.

(2) *Supervisory employee.* Any supervisor, superintendent, division director, department director or other employee who has influence over personnel actions, including disciplinary action.

(3) *Designated city official, public official or public agency.* The mayor, councilmembers, city manager, city department head, city clerk, city attorney, county attorney, state attorney general, or a federal, state or local law enforcement agency.

(4) *Wrongful conduct.* Mismanagement, gross waste of monies or an abuse of authority, or violation of any law on the part of any city official(s) or city employee(s) that is reasonably believed to be of public concern.

(5) *Adverse personnel action.* Unsatisfactory overall performance evaluation; disciplinary action, including a written reprimand, suspension without pay, demotion, involuntary transfer or reassignment, disciplinary probation, or termination; withholding of an appropriate salary adjustment or other significant change in duties or responsibilities which is inconsistent with the employee's salary or classification.

(6) *Layoff.* Elimination of an employee's position by reason of a shortage of funds or work or material changes in duties or organization.

(7) *Retaliation.* Any adverse personnel action, layoff and/or change in the conditions of employment in response to an employee's allegation of wrongful conduct to a designated city official, public official or public agency.

(b) Method of reporting wrongful conduct by an employee to a designated city official shall be as provided by city administrative directive. Reports of wrongful conduct made to other public official(s) or public agency(s) as the employee may choose shall be in accord with any requirements of those public officials or public agencies.

(c) Any employee who believes that he or she has been retaliated against may make a written complaint as provided by city administrative directive. The city administrative directive shall prescribe methods of reporting, investigating and determining whether retaliation has occurred. Notwithstanding, retaliation shall not be found to have been committed if the adverse personnel action or layoff was justified for legitimate reasons.

(d) A determination under the city procedure that retaliation has occurred shall immediately result in reversal of the action including restoration of lost compensation or other lost benefits which have occurred by reason of such action.

(e) Any supervisory employee who under the city procedure is found to have knowingly retaliated against an employee shall be subject to disciplinary action, which may include dismissal from city employment.

(f) An employee who knowingly makes false accusation that a city official or city employee has engaged in wrongful conduct shall be subject to disciplinary action which may include dismissal from city employment.

(g) This article neither limits nor extends any other civil or criminal liability or remedy of any current or former employee or city official who either alleged the wrongful conduct or was the person against whom the wrongful conduct was alleged.

(Ord. No. 8126, § 1, 9-20-93)

Secs. 17-68, 17-69. Reserved.

ARTICLE IX. REGISTERED DOMESTIC PARTNERSHIPS*

* **Editors Note:** It should be noted that the provisions of Ord. No. 9898 became effective on December 1, 2003.

Sec. 17-70. Title.

This article shall be known and may be cited as the "Tucson Domestic Partnership Ordinance."

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-71. Registered domestic partnership defined.

As used in this article, the term "registered domestic partnership" exists between two (2) persons if one (1) or more of the following is true:

(1) The persons who meet the criteria for domestic partnership have filed a statement of domestic partnership with the city's finance department on the form provided by the city and paid the required fee.

(2) The persons have a valid certificate of domestic partnership issued by another jurisdiction and meet the criteria for domestic partnership set forth in this article.

(3) The persons are legally recognized as civil union spouses in another jurisdiction and meet the criteria for domestic partnership set forth in this article.

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-72. Criteria for domestic partnership.

For purposes of this article, "domestic partners" are two (2) persons:

- (1) Not related by blood closer than would bar marriage in the State of Arizona;
- (2) Neither of whom is in a marriage expressly recognized by the State of Arizona or in any domestic partnership and/or civil union with another person;
- (3) Both of whom are eighteen (18) years of age or older;
- (4) Both of whom are competent to enter into a contract;
- (5) Both of whom declare that they are each other's sole domestic partner;
- (6) Both of whom currently share a primary residence, are in a relationship of mutual support, and declare that they intend to remain in such for the indefinite future.

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-73. Statement of domestic partnership.

- (a) Domestic partners may make an official record of their domestic partnership by executing a "domestic partnership registration statement" on the form prescribed by the city.
- (b) The statement must include a declaration that the persons are in a relationship of mutual support, caring and commitment and are responsible for each other's welfare. For these purposes, "mutual support" means that they contribute mutually to each other's maintenance and support.
- (c) The statement must include a declaration that both persons agree to file a termination of partnership if there is a change in the status of their relationship such that they cease to meet the criteria for domestic partnership.
- (d) The sworn statement shall include the date on which the domestic partnership was registered, and the mailing address(es) of both partners. The domestic partnership statement shall further state that the domestic partners meet the criteria for domestic partners set forth in section 17-72.

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-74. Termination of domestic partnership.

A domestic partnership shall terminate upon the occurrence of any one (1) of the following:

- (1) The death of one (1) of the partners;
- (2) The filing of a sworn termination statement with the city's finance department on the form prescribed by the city. The domestic partner filing the sworn termination statement shall declare that the domestic partnership is terminated and, if the termination statement has not been signed by both domestic partners, that the other domestic partner has been notified in writing of such termination at the last known address of such domestic partner;
- (3) The marriage, expressly recognized by the State of Arizona, of either one of the partners.

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-75. Fees.

- (a) The fee for filing a domestic partnership statement shall be fifty dollars (\$50.00) which entitles the person filing the statement on behalf of a domestic partnership to two (2) certified copies of the official statement.

- (b) The fee for obtaining additional copies shall be ten dollars (\$10.00) per copy.
- (c) The fee for filing a termination of domestic partnership statement shall be ten dollars (\$10.00).

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-76. Rights of registered domestic partners.

(a) *Health care visitation.* All health care facilities operating within the city shall allow the registered domestic partner of a patient to visit such patient unless no visitors are allowed or the patient expresses a desire that visitation by the domestic partner be restricted. As used in this section, "health care facility" means every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies as defined in A.R.S. § 36-151 and hospice service agencies.

(b) *Use of and access to city facilities.* All facilities owned or operated by the city, including but not limited to recreational facilities shall allow the registered domestic partner of a user to be included in any rights and privileges accorded a spouse for purposes of use of and access to city facilities.

(Ord. No. 9898, § 1, 9-15-03)

Sec. 17-77. Limitation of liabilities.

(a) Nothing in this article shall be interpreted to contravene the general laws of the State of Arizona.

(b) Nothing in this article shall be construed to create additional legal liabilities greater than those already existing under law or to create new private causes of action.

(Ord. No. 9898, § 1, 9-15-03)

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