

**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY MEMORANDUM**

No. AM 164-2021

Meeting Date: March 23, 2021

1 **From: ACTING MAYOR**

2  
3 **Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING**  
4 **ANCHORAGE MUNICIPAL CODE TITLE 5, EQUAL RIGHTS, TO**  
5 **UPDATE DEFINITIONS; ADD FAMILIAL STATUS AS A**  
6 **PROTECTED CLASS UNDER THE HOUSING PROVISION; REPEAL**  
7 **CHAPTER 5.25 FAIR HOUSING ACT; ADD NEW SECTIONS; AND**  
8 **MAKE OTHER PROCEDURAL, STRUCTURAL, AND TECHNICAL**  
9 **UPDATES.**

10  
11 Title 5 of the Anchorage Municipal Code is Anchorage's non-discrimination code  
12 and home to the Anchorage Equal Rights Commission (AERC). Title 5 contains  
13 substantive principles of law about what conduct constitutes unlawful discrimination  
14 in the MOA; it also sets forth the procedural rules and practices that the AERC uses  
15 in investigating and adjudicating claims of unlawful discrimination. Title 5 is in need  
16 of significant revision to update the substantive law, revise and clarify AERC  
17 procedures, and eliminate statutory relics and inconsistencies in the text.

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19 **Background:**

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21 The AERC enforces Anchorage Municipal Code section 5.20.020 – Unlawful  
22 practices in the sale, rental or use of real property, which prohibits housing  
23 discrimination based on race, color, sex, sexual orientation, gender identity,  
24 religion, national origin, marital status, age, or physical or mental disability. When  
25 a Complainant files a housing discrimination complaint with the AERC, this is the  
26 section of code relied upon by the AERC for jurisdiction and to determine unlawful  
27 practices.

28  
29 In 2002, the AERC recommended to the Assembly adoption of Chapter 5.25 – Fair  
30 Housing Act. Adoption of this chapter was required for a workshare agreement  
31 between the AERC and the U.S. Department of Housing and Urban Development  
32 (HUD), similar to AERC's workshare agreement with the Equal Employment  
33 Opportunity Commission (EEOC). In Assembly Memorandum 956-2002, the AERC  
34 explains that Chapter 5.25 provided a new protected class in housing discrimination  
35 cases – familial status – and incorporated the substantive provisions and  
36 protections of Title VIII of the Civil Rights Act of 1968, commonly known as the Fair  
37 Housing Act (42 USC 3601, et seq.). Based on historical information currently  
38 available to the AERC, the aforementioned workshare agreement between the  
39 AERC and HUD never materialized. Nonetheless, Chapter 5.25 remains in Title 5.

40

1 Chapter 5.25 includes nine different categories of exceptions in its “lawful practices”  
2 section and these exceptions are currently incorporated into Section 5.20.020 by  
3 reference. Included in the exceptions is shelters for the homeless. Plaintiffs in  
4 *Downtown Soup Kitchen v. MOA et al.* argued that the homeless shelter exception  
5 in the housing provision of title 5 should apply to the public accommodation  
6 provision as well. In an August 9, 2019 Order granting a preliminary injunction, the  
7 United States District Court for the District of Alaska found that Downtown Soup  
8 Kitchen was likely to prevail in this argument. See *Downtown Soup Kitchen v. MOA*  
9 *et al.*, Case No. 3:18-cv-00190-SLG.

10  
11 The changes proposed below address legal issues raised by the *Downtown Soup*  
12 *Kitchen* litigation, which resulted in a \$100,001 settlement paid by the Municipality.

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14 **Proposal:**

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16 The AERC recommends:

- 17  
18 1. Removing chapter 5.25 from Title 5, as it is not a chapter that is cited or  
19 relied on by the AERC when writing complaints or conducting investigations;  
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21 2. Adding *familial status* to the protected classes under section 5.20.020, since  
22 removing chapter 5.25 will remove that protected class;  
23  
24 3. Updating the *public accommodation* definition to include, in part, an  
25 organization that accepts public funds; and  
26  
27 4. Balancing the powers of the executive director to provide more oversight and  
28 supervision by the nine-member commission, including requiring approval  
29 by a panel of 3 commissioners for director’s charges and general  
30 investigations (complaints initiated by the executive director instead of a  
31 member of the public);  
32

33 The AERC began reviewing title 5 in the summer of 2019 for the above changes,  
34 and in that process discovered several other areas in need of updating. These  
35 include:

- 36  
37 a. Clarifying or modernizing definitions (commission, employer, gender  
38 identity, marital status, national origin, staff, substantial evidence) and  
39 adding definitions for terms used in title 5 but not previously defined  
40 (accusation, complaint);  
41  
42 b. Further detailing conciliation procedures and providing for two-party  
43 conciliations between respondent and the AERC in order to achieve public  
44 policy relief when complainants have either become unavailable or refuse to  
45 conciliate after a reasonable offer (instead of simply dismissing these without  
46 achieving any public policy relief);  
47  
48 c. Detailing hearing procedures and allowing for discretion in whether to

1 proceed to hearing with a given case in light of all the circumstances (for  
2 example, an unavailable complainant, a complainant who prefers a different  
3 forum with a wider array of remedies, legal strategy relating to admissible  
4 evidence and standard of proof differences at the hearing stage, overall best  
5 use of resources); and  
6

7 d. Other minor procedural and technical changes.  
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9 The AERC has worked closely with the Municipality's Legal Department in drafting  
10 these changes and has also consulted with the Disability Law Center for pertinent  
11 sections.  
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13 There are no economic effects to this ordinance and therefore, pursuant to AMC  
14 2.30.053B.1., no Summary of Economic Effects is attached to this ordinance.  
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16 **THE ADMINISTRATION RECOMMENDS APPROVAL.**  
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18 Prepared by: Anchorage Equal Rights Commission  
19 Approved by: Mitzi Bolaños Anderson, Executive Director,  
20 Anchorage Equal Rights Commission  
21 Concur: Kathryn R. Vogel, Municipal Attorney  
22 Concur: Anna C. Henderson, Municipal Manager  
23 Respectfully submitted: Austin Quinn-Davidson, Acting Mayor  
24

25 Attachment A:  
26 Anchorage Municipal Code Chapter 5.25 – Fair Housing Act