



BOARD/COMMISSION RECOMMENDATION

Human Rights Commission

Recommendation Number: 20171023-001a: Women's Equity in Austin Prohibiting Employment Inquiries Regarding Prior Salary

WHEREAS, the Human Rights Commission of the City of Austin ("Commission") advocates on behalf of human rights for all people in the City of Austin ("City"); and

WHEREAS, the Commission's duties include, but are not limited to, advising and consulting with the Austin City Council ("Council") as well as all City departments, advisory boards and regulatory agencies on all matters involving discrimination, including providing legislative recommendations and proposing measures to improve the ability of various departments and agencies, as well as initiating and facilitating discussions and negotiations between individuals and groups to lessen tensions and improve understanding in the community and aiding in the formulation of local community groups in neighborhoods as needed to carry out specific programs; and

WHEREAS, on March 23, 2017 the Council passed Resolution No. 20170323-054 ("Resolution"), calling upon the Commission, in collaboration with the City's Commission for Women ("Women's Commission"), to research the City's previous efforts to address gender disparities in the City as well as research other potential practices that have not been documented or addressed by the City which have an unintended disparate impact on women but are commonly used by common governmental entities comparable to the City, examine whether those practices are being used within the City, and if so, determine their nature and scope, and develop recommendations for modifying City policies or practices to eliminate those disparate impacts; and

WHEREAS, the Resolution further called upon for the Commission and Women's Commission to separate their recommendations into long-term and short-term items; and

WHEREAS, with regard to short-term items, the Resolution called upon the Commission and Women's Commission to offer recommendations concerning steps to review City practices with regard to requesting previous salary data for City job applicants and appropriate measures to eliminate those practices ("Prior Salary Inquiries") and;

WHEREAS, the Commission and Women's Commission is aware of research indicating that, controlling for personal demographics, occupation, college major, hours worked and location, women get paid 6.6 percent less than men in their very first jobs ("Gender Pay Imbalance"), and that an entity's knowledge of a job applicant's self-reported lower salary history (e.g. honest responses to Prior Salary Inquiries) will lead to subsequent job offers at rates that correspond to

the (lower) prior salary, such that the cumulative effect over the course of women's lifetimes amplifies initial and subsequent Gender Pay Imbalances¹; and

WHEREAS, the effects of Gender Pay Imbalances are detrimental to women's wellbeing, specifically impairing their ability to repay student debt, limiting their options for housing, clothing and feeding themselves and, if applicable, their children (especially in the case of single mothers), saving for their children's college education (especially in the case of single mothers) and increasing the likelihood (if married and earning less than their husbands) that, upon reaching parenthood, the woman will be the parent to take time away from the workforce or reduce working hours, which further widens the gap between men's and women's future earnings and, over the long-run, contributes to a poverty rate among elderly women that is twice that of elderly men²; and

WHEREAS, the City, which currently ranks number 9 on Forbes' list of Best U.S. Employers, seeks to serve as a model of pay equity among employers, public and private, nationwide; and

WHEREAS, regarding Prior Salary Inquiries, consultation with City staff revealed that that practice, as relates to outside applicants ("Outside Applicants") for City jobs can be eliminated by:

- (a) removing that question in the hiring application on the City's e-career applicant tracking system which currently asks Outside Applicants to provide their prior salary history ("Salary History")(which, upon information and belief, is the same application used for the all sworn, unsworn and civil service jobs, but not for temporary/seasonal jobs, which may not use written application forms); and
- (b) instructing the City's hiring managers not to inquire about the applicant's Salary History during the interview process; and

WHEREAS, consultation with City staff revealed that, while internal applicants ("Internal Applicants") for City jobs are not necessarily subject to explicit Prior Salary Inquiries, the City's pay policy procedures ("City Pay Policy") mandate that Internal Applicants' Salary History is nonetheless considered in connection with any type of job transfer as Salary History one of the factors that will determine the recommended base salary to be offered in connection with that transfer (see City Pay Policy document entitled Human Services Department Establishing Base Pay attached at Exhibit A); and

¹ Christianne Corbett and Catherine Hill, Graduating to a Pay Gap; the Earnings of Women and Men One Year After College Graduation, American Association of University Women Study (2013), available online at <https://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>. See also Todd Thorsteinson, Initiating Salary Discussions With an Extreme Request: Anchoring Effects on Initial Salary Offers, 1 J. of Applied Psychology, 41(7)(2011). See also Association for Psychological Science article discussing anchoring theory and salary negotiations and Massachusetts law banning the practice of asking for prior salary history, available online at <https://www.psychologicalscience.org/news/minds-business/how-cracking-the-right-joke-benefits-salary-negotiations.html>.

² Corbett and Hill, supra note 1 at p. 5.

WHEREAS, the City Pay Policy mandates a 5% minimum salary increase in the event of promotion and classification to a higher pay grade, a 5% minimum salary decrease in the event of demotion, voluntary reassignment, and classification changes to a lower salary grade; and

WHEREAS, the City Pay Policy contains a prohibition against increasing salary in cases of lateral transfer or reassignment; and

WHEREAS, the City Pay Policy contains permitted exceptions to the above rules concerning recommended base salary; and

WHEREAS, consultation with City staff revealed that, in May of 2017, the City put forward a request for proposals (“RFP”) for Actuarial Services and Employee Benefits Consulting (“Contract”) that would, according to its scope of work (“Scope of Work”), include review of the City Pay Policy, including its current classification and pay grade methodology as part of the update or development of a new Citywide pay plan (“New Pay Plan”)(see Scope of Work at https://assets.austintexas.gov/financeonline/downloads/vc_files/RFP_5800_RWS0503/RFP_5800_RWS0503_0500_v1.pdf); and

WHEREAS, that Scope of Work calls for the selected contractor to undertake an equity study of the City’s compensation structure to determine whether employee pay is affected by gender as opposed to other performance, experience or expertise, factors; and

WHEREAS, that Scope of Work called upon the selected contractor to offer specific recommendations to promote pay equity; and

WHEREAS, consultation with City staff revealed that City personnel believe that development of the New Pay Plan will include of assessment of any Gender Pay Imbalance among City employees and will specifically examine whether the current Pay Policy’s explicit consideration of Salary History serves to amplify Gender Pay Imbalances (as research suggests occurs in the private sector) and, if so, explore alternate pay practices that would not do so which would be incorporated in the New Pay Plan; and

WHEREAS, upon information and belief, the City awarded the Contract to Arthur J. Gallagher & Co. (“Gallagher”) and the work is supposed to start on October 1, 2017 and conclude on or around September 30, 2018.

NOW, THEREFORE, BE IT RESOLVED, that the City Manager and Council immediately halt the practice of soliciting Outside Applicants’ Salary History, which could be accomplished, upon information and belief, by removing that question in the hiring application on the City’s e-career applicant tracking system which currently asks Outside Applicants to provide their Salary History and instructing the City’s hiring managers not to inquire about the applicant’s Salary History during the interview process; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Manager and Council immediately confer with Gallagher to consider any other interim measures the City could implement aimed at preventing and addressing Gender Pay Imbalance among City employees, including, but not limited to, immediately halting the practice of considering Salary History in connection with determining recommended base pay; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Manager and Council immediately confer with Gallagher to verify that development of the New Pay Plan includes assessment of any Gender Pay Imbalance among City employees and that the work to be

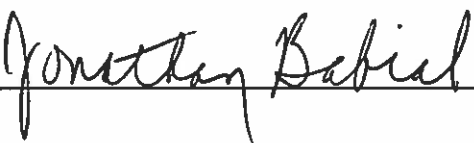
performed under the Contract will specifically examine whether the current Pay Policy's explicit consideration of job applicants' Salary History in connection with the determination of recommended base pay to be offered to a successful job candidate serves to amplify Gender Pay Imbalances (as research suggests occurs in the private sector); and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Manager and Council instruct Gallagher that any New Pay Plan should not include any policies or practices that serve to amplify Gender Pay Imbalances, but rather include policies and practices, including but not limited to a merit-based system of determining compensation adjustments, that serve to remedy such imbalances; and

NOW, THEREFORE, BE IT RESOLVED, that Council may wish to provide the Human Rights Commission and Commission for Women with additional requests relating to Gender Pay Imbalance at some future date when the New Pay Plan has been further developed.

Date of Approval: October 23, 2017

Record of the vote: 7-0. Motion to adopt by Commissioner Avashia, Commissioner Casas second. Voting in favor were Vice Chair Caballero, Commissioner Avashia, Commissioner Bennett, Commissioner Casas, Commissioner McMahon, Commissioner Royall, and Commissioner Yang. Chair Davis, Commissioner Brown, Commissioner Miguez, and Commissioner Normand were absent.

Attest:  _____

Jonathan Babiak

Staff Liaison, Human Rights Commission