

ORDINANCE NO. 1494

AN ORDINANCE AMENDING TITLE 6 OF THE CODE OF ORDINANCES OF THE CITY OF MISSION, KANSAS; RELATING TO CIVIL RIGHTS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS:

WHEREAS, Mission is a community that respects and actively seeks to welcome and protect all those who reside, visit, or do business in our community; and,

WHEREAS, the governing body finds that providing protection against wrongful discrimination contributes to the creation of a diverse, welcoming community that promotes harmony and mutual respect, and otherwise promotes the health, safety, and welfare of the citizens of Mission; and,

WHEREAS, the governing body finds that discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status is wrongful discrimination and inconsistent with the community's goals and values; and,

WHEREAS, state and federal laws provide protection against discrimination against certain classes of persons in employment, housing, and public accommodations, and such laws provide a complaint and enforcement process for parties who allege discrimination in violation of state or federal law; and,

WHEREAS, state and federal laws do not currently provide protection against discrimination on the basis of sexual orientation or gender identity in employment, housing, or public accommodations, and parties who allege such discrimination do not have a complaint or enforcement process to pursue; and,

WHEREAS, due to the gap in legal protection from discrimination on the basis of sexual orientation or gender identity that currently exists under state and federal law, the governing body's intent is to provide uniform legal protection within the City of Mission against discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status, and to provide a complaint and enforcement process to effectuate such protection.

THEREFORE, Title 6 of the Code of the City of Mission is amended, adding Chapter 615 to the existing Chapters, as follows:

CHAPTER 615. PROHIBITED DISCRIMINATION IN EMPLOYMENT, HOUSING, OR PUBLIC ACCOMODATIONS.

SECTION 615.010. DEFINITIONS.

Except to the extent they are in conflict with the definitions below, the definitions contained within the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and the Discrimination Against Military Personnel Act, K.S.A. 44-1125 et seq., and amendments thereto, shall be applicable under this article. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

- (a) **Aggrieved Individual** means any individual who has a good faith belief that he/she has been injured by an unlawful discriminatory practice.
- (b) **City** means the City of Mission, Kansas.
- (c) **Code** means the Code of the City of Mission, Kansas.
- (d) **Employee** means any person authorized to perform services for any business within the City, and includes an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation. Employee does not include any individual employed by such individual's parents, spouse, or child.
- (e) **Employer** means any individual or entity (i.e. corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, or unincorporated organization) employing four or more employees and all departments, boards and agencies of the City. Employer shall include the City and any City Contractor. For purposes of this article, no religious organization or non-profit fraternal or social association/corporation shall be considered an employer.
- (f) **Familial status** means persons 18 years of age or older who are spouses, former spouses, parents or stepparents, and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.
- (g) **Gender identity** means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
- (h) **Hearing officer** means a person appointed by the Mayor, with approval of the City Council, who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties, and/or costs, as provided in this article.
- (i) **Investigator** means one or more persons appointed by the Mayor, with the approval of the City Council, who shall be charged with investigating alleged violations of this article. If the person charged with violating the provisions of this article is the City, the Investigator shall not otherwise be an employee, agent, or contractor of the City.

- (j) **Military status** means a person who is serving or has served in the uniformed services, and who, if discharged or released under conditions other than dishonorable, as specified in 38 U.S.C. 101(2), or amendments thereto. Uniformed services is defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.
- (k) **Nonprofit fraternal or social association/corporation** means an association or corporation that meets all of the following requirements: (1) it is organized in good faith for social or fraternal purposes, (2) membership entails the payment of bona fide initiation fees or regular dues, (3) there exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership, (4) there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates, and (5) it is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.
- (l) **Place of public accommodation** shall include every establishment within the City that is open to the public and offers any product, service, or facility. The term place of public accommodation shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with more than four tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. This shall not, however, apply to any hotel, motel, restaurant or theater 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 the members of such club and their guests; nor to any bona fide social, fraternal, civic, political or religious organization, when the profits of such accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit or mission of such organization.
- (m) **Religious Organization** means a church, mosque, temple, synagogue, or other entity principally devoted to religious practice or religious teaching.
- (n) **Rental housing** means any real property, consisting of more than four dwelling units, which is required to obtain a license or permit pursuant to the provisions of Chapter 635.030 of the Code.
- (o) To **rent** means to lease, to sublease, to let, or otherwise to grant for a consideration the right to occupy premises not owned by the occupant in exchange for payment or other consideration.
- (p) **Respondent** means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the City.
- (q) **Sexual orientation** means an individual's actual orientation or orientation perceived by another as heterosexual, homosexual, bisexual, or asexual.

SECTION 615.020. DECLARATION OF POLICY.

The right of an otherwise qualified individual to be free from discrimination because of that individual's real or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status is hereby recognized. This right shall include, but not be limited to, any of the following:

1. The right to pursue and hold employment and the benefits associated therewith without wrongful discrimination.
2. The right to the full enjoyment of any of the services, advantages, or privileges of any place of public accommodation without wrongful discrimination.
3. The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefor, without wrongful discrimination.
4. The right to exercise any right granted under this ordinance without suffering coercion or retaliation.

SECTION 615.030. UNLAWFUL PRACTICES.

- (a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status of any otherwise qualified individual to refuse to hire or employ such individual, to bar or discharge such individual person from employment, or to otherwise discriminate against such individual in compensation or in terms, conditions, or privileges of employment; to limit, segregate, classify, or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, or segregation without a valid business necessity. This article shall not apply to employment by a religious organization that consists of religious teaching, ministry, or other religious duties or practices.
- (b) **Housing.** It shall be an unlawful discriminatory practice for an individual or entity to discriminate against any individual in the terms, conditions, or privileges of sale or rental of real property or rental housing, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status, or to discriminate against any individual in such individual's use or occupancy of rental housing because of the race, religion, color, sex, disability, marital status, familial status, national origin ancestry, sexual orientation, gender identity, or military status of the people with whom such individual associates.
- (c) **Public Accommodation.** It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent, or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any individual as covered by this article because of race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status. Notwithstanding the above, nothing in this article shall be construed to prevent any business as defined in this article from offering, affording, or providing any additional benefit or additional discount to a person because of such person's military or senior citizen status.
- (d) Nothing in this article shall:
- (1) Be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, to be forced to discharge qualified or competent personnel, or to be forced to

retain personnel when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.

- (2) Nothing in this article shall be construed to prohibit a business from requiring all of its employees, as a requirement of employment, to utilize the business' applicable established internal human resource procedure(s) to report any allegation of discrimination in the workplace. The enforcement by an employer of any such requirement shall not, in itself, be deemed a violation of this article. However, nothing in this article shall be construed to require an employee to utilize the employer's internal human resource procedure(s) as a pre-requisite to filing a complaint for the alleged violation of this article.
- (3) Nothing in this article shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of federal, state, or local law.
- (4) 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 real property which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this article prohibit a nonprofit private club in fact not 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.
- (5) Nothing in this article shall be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.

SECTION 615.040. ENFORCEMENT.

- (a) An aggrieved individual may file a complaint that the person has been, or is being, discriminated against by an alleged unlawful discriminatory practice set forth in this Article on the individual's own behalf or through an attorney; or if a minor, through the individual's parent or legal guardian or attorney; by completing and signing the form provided by the City. The complaint form shall state the names and contact information of the aggrieved person, the person(s) alleged to have committed the unlawful discriminatory practice(s), and the respondent; shall describe the unlawful act or discriminatory practice; and shall include all other information as may be required by the City.
- (b) The complaint form shall be submitted to an investigator, and shall only be considered complete if all information requested has been provided to the extent such requested information is reasonably available to the aggrieved individual.
- (c) The complaint form must be filed within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within 60 days of the last act of discrimination.
- (d) On receipt of a completed complaint, the investigator shall notify the respondent of the complaint, providing sufficient details related to the complaint so that the respondent may respond. The investigator shall give the respondent a specific date by which to file an answer to the complaint and provide any documentation or evidence related to the

complaint. The investigator may, at the respondent's request, extend the answer period to a date certain as the investigator deems appropriate.

- (e) Following the conclusion of the answer period the investigator may initiate further investigation, requesting the complainant and/or respondent to provide additional information, documentation or statements as needed to facilitate the investigation of the complaint. The investigator shall have the power to issue process and compel the production of documents and information. Such process shall be executed by the Chief of Police and shall be enforced as in all cases of City ordinances. This investigation period shall be completed within a reasonable period of time following the submission of additional information, documentation or statements.
- (f) Upon the conclusion of the investigation, the investigator will review all information provided and make a determination whether or not probable exists that the respondent committed an unlawful discriminatory practice. If the investigator finds that probable cause did not exist, then the investigator shall notify the complainant and respondent and no further action shall be taken by the City. If the investigator finds that probable cause exists that an unlawful discriminatory practice was committed by respondent, the investigator will attempt to conciliate and settle the complaint between the parties. If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within 60 days of the date of the finding of probable cause, the matter shall be referred to the hearing officer for a hearing. The investigator shall maintain all evidence received during the investigation for a period of two years after the deadline for appeal or completion of appeal, whichever is later.
- (h) Upon referral to the hearing officer, the hearing officer shall schedule a hearing on the complaint. The hearing officer shall have the power to administer oaths and to issue process and compel the attendance of any party or witness. Such process shall be executed by the Chief of Police and shall be enforced as in all cases of City ordinances. At such hearing, the parties and the investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer, but the rules of evidence used in courts of law need not be strictly enforced. Following the conclusion of the hearing, the hearing officer may announce a determination or may take the matter under advisement for determination at a later date. Any determination of the hearing officer shall be in writing, shall be based upon the preponderance of the evidence, and shall set forth the essential elements of the determination.
- (i) If the hearing officer finds that a violation of this article has occurred, the hearing officer may award to the complainant actual damages, or a civil penalty in the amount of \$1,000.00, whichever is greater, for each violation. In addition, the investigator's fees and the hearing officer's fees shall be assessed to the non-prevailing party unless the hearing officer determines that the circumstances warrant assessing the costs in some other manner.
- (j) Any individual aggrieved by a determination of the hearing officer under this section or any determination of insufficient evidence to warrant a hearing made by the Investigator, may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of the notice of appeal pursuant to K.S.A. 60-2101(d), or within further time allowed by the court or by other

provision of law, the City shall transmit to the court the original or a copy of the written determination of the hearing officer and all documents or evidence considered by the hearing officer in considering the complaint or rendering the written determination. On appeal, the district court may enter such order or judgment as justice shall require, and may award court costs and reasonable attorney fees to the prevailing party.

- (k) The hearing officer shall preserve all evidence presented at the hearing for a period of two years after the deadline for appeal or completion of appeal, whichever is later.
- (i) The filing of a complaint for the alleged violation of this article shall in no way preclude any person from seeking other relief under state or federal law. Further, due to the existence of state and federal legal processes to address allegations of discrimination based on race, religion, color, sex, disability, familial status, national origin, ancestry, or military status, the City will direct those seeking to file a complaint for the alleged violation of this article arising out of discrimination based on race, religion, color, sex, disability, familial status, national origin, ancestry, or military status of the appropriate state or federal agency in which such complaints may be filed.

SECTION 615.050. SEVERABILITY.

Should any section, subsection, sentence, clause, or phrase of this article, or the application thereof to any individual or circumstance, be declared to be unconstitutional or invalid or unenforceable, such determination shall not affect the validity of the remaining portions of this article.

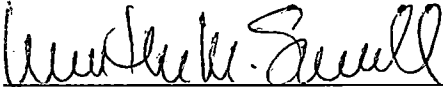
PASSED AND APPROVED by the City Council this 19th day of December 2018.

APPROVED by the Mayor this 19th day of December 2018.



Ronald E. Appletoft, Mayor

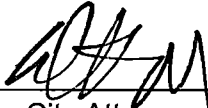
ATTEST:



Martha M. Sumrall, City Clerk

APPROVED BY:

PAYNE & JONES, CHARTERED

A handwritten signature in black ink, appearing to read 'DKM', is written over a horizontal line.

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