

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

Amending Chapter 38, Code of Ordinances, by repealing Sections 38-1 and 38-105, and enacting in lieu thereof new sections of like number and subject matter and adding a new Section 38-104, for the purpose of defining unlawful employment and housing actions based on criminal history and use of criminal records; and establishing an effective date.

WHEREAS, people with criminal records suffer from pervasive discrimination in many areas of life, including employment, housing, education, and eligibility for many forms of social service benefits; and

WHEREAS, the City seeks to assist with the successful reintegration of formerly incarcerated people into the community after their release; and

WHEREAS, lack of employment is a principal factor for recidivism, with people who are employed proving significantly less likely to be re-arrested; and

WHEREAS, removal of obstacles to employment and housing for people with criminal records increases public health and safety by providing economic and social opportunities to large groups of citizens; and

WHEREAS, people with criminal records represent a group of job seekers who are ready to contribute and add to the workforce; and

WHEREAS, there are approximately 9,000 City residents currently on State or Federal Probation or Parole and thousands more who have successfully completed Probation/ Parole Supervision and continue to be stigmatized by old criminal records; and

WHEREAS, the City benefits directly from earnings tax paid by gainfully employed residents; and

WHEREAS, every month the greater Kansas City area becomes home to approximately 350 ex-offenders newly released from state and federal prisons; NOW, THEREFORE;

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 38, Code of Ordinances of the City of Kansas City, Missouri is hereby amended by repealing Sections 38-1 and 38-105 and enacting in lieu thereof new sections of like number and subject matter and enacting a new Section 38-104, to read as follows:

Sec. 38-1. Definitions.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:

- (1) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
- (2) *City* means the City of Kansas City, Missouri.
- (3) *Commission* means the city human rights commission.
- (4) *Complainant* means any person claiming injury by the alleged violation of Chapter 213, RSMo, or of this Chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.
- (5) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of Chapter 213, RSMo, or of this Chapter.
- (6) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (7) *Covered multifamily dwelling* means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.
- (8) *Department* means the department of human relations.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

- (9) *Director* means the director of the human relations department or their delegate.
- (10) *Disability* means with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
- a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (11) *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.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Employer* includes any person employing six or more employees.
- (14) *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (15) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:
- a. A parent or another person having legal custody of such individual or individuals; or
 - b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

- (16) *Family* includes a single individual.
- (17) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.
- (18) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (19) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.
- (20) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.
- (21) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (22) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following:
 - a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
 - b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,
 - c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
 - d. The style, cut or length of a hair style,
 - e. The colors of the garments,

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

- f. In conjunction with a major Kansas City sporting event the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
 - g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.
- (23) *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:
- a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.
 - b. Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.
 - c. Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.
 - d. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.
 - e. Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.
 - f. Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

- g. Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.
- (24) *Redevelopment area* means a tax increment redevelopment area as defined in section 99.805(11); RSMo, a planned industrial expansion project area as defined in section 100.300, et seq., RSMo; an urban renewal project area or land clearance project area as defined in section 99.300, et seq., RSMo; any area under the control of the port authority of Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to chapter 353, RSMo.
- (25) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (26) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of Chapter 213, RSMo, or this Chapter.
- (27) *Sex* shall include sexual harassment.
- (28) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (29) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.
- (30) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.
- (31) *Criminal history* means a record of a conviction, or a plea of guilty or no contest, to a violation of a federal or state criminal statute or municipal ordinance; records of arrests not followed by a valid conviction; convictions which have been, pursuant to law, annulled or expunged; pleas of guilty without conviction; convictions for which a person received a

suspended impositions of sentence; and misdemeanor convictions where no jail sentence can be imposed.

Sec. 38-104. Criminal Records in Employment.

- (a) Except as provided in subsection (b), it should be unlawful:
- (1) For an employer to base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.
 - (2) For an employer to inquire about an applicant's criminal history until after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

(b) The requirements set forth in subsection (a) of this section do not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Sec. 38-105. Housing.

- (a) It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the corporate limits of the city. The following discriminatory housing practices shall be unlawful:
- (1) 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 property offered for sale or rental, or otherwise make unavailable or deny a dwelling to any person, because of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.
 - (2) 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, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.
 - (3) 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 or limitation based on race, color,

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or an intention to make any such preference, limitation or discrimination.

- (4) To represent to any person, because of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- (5) 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 persons of a particular race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.
- (6) For a person in the business of insuring against hazards to refuse to enter into or discriminate in the terms, conditions or privileges of a contract of insurance against hazards to a dwelling because of the race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity of persons owning or residing in or near the dwelling.
- (7) To discriminate in the sale or rental or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:
 - a. That buyer or renter;
 - b. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
 - c. Any person associated with that buyer or renter.
- (8) 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 with such dwelling, because of a disability of:
 - a. That person;
 - b. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
 - c. Any person associated with that person.
- (9) To refuse to negotiate for the rental of a dwelling based on an individual's criminal history, unless the landlord can demonstrate that the rental

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and whether individuals with certain convictions are banned from living in the dwelling due to local, state and federal law or regulation. Individuals negotiating for the rental of a dwelling are encouraged to not automatically ban applicants with a criminal record.

- (b) For purposes of this section, the term "discrimination" includes:
- (1) A refusal to permit at the expense of the disabled person reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - (2) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
 - (3) In connection with the design and construction of covered multifamily dwellings for first occupancy, a failure to design and construct those dwellings in a manner that:
 - a. The public and common use portions of such dwellings are readily accessible to and usable by disabled persons. This shall include at least one building entrance on an accessible route unless it is impracticable to do so because of the terrain or unusual characteristics of the site;
 - b. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - c. All premises within such dwellings contain the following features of adaptive design:
 1. An accessible route into and through the dwelling;
 2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 180034

3. Reinforcements in bathroom walls to allow later installation of grab bars; and
4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled persons, commonly cited as ANSI A117.1, suffices to satisfy that the requirements of subsection (b)(3)a. of this section are met.

- (4) For purposes of subsections (a)(7) and (8) of this section, discrimination includes any act that would be discrimination under 42 USC 3604(f)(3) through (9).

(c) Nothing in this section shall apply to 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 or occupies one of such living quarters as his residence, and if the dwelling contains any rooms, except hallways, which are shared by the families or the owner.

(d) Nothing in this section 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 discriminating in the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose on the basis of religion, sexual orientation or gender identity, or from giving preference to persons on those bases.

Section 2. That this ordinance shall become effective on June 9, 2018.

Approved as to form and legality

Saskia Jacobse
Senior Associate City Attorney