

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 120008, AS FURTHER
AMENDED

Amending Chapter 38, Code of Ordinances, by repealing Sections 38-1 through 38-6, and enacting in lieu thereof new Sections 38-1 through 38-4; and repealing and reenacting Section 38-31, all for the purpose of updating and revising the procedures applicable to affirmative action compliance and unlawful discriminatory practices in City's contracting; and establishing an effective date.

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, Definitions; 38-2, Discrimination prohibited; 38-3, Affirmative action; 38-4, Contract conditions; 38-5, Enforcement of contract conditions, and 38-6, Escalation of dollar limits; and enacting in lieu thereof new Sections 38-1 through 38-4, 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) *Affirmative action program* means a positive program designed to ensure that a good-faith effort will be made to employ applicants and to treat employees equally without regard to their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age. Such program shall apply, where applicable, to the following: recruitment and recruitment advertising, employment, employment upgrading, promotion, demotion or compensation, other terms or conditions of employment and selection for training, including apprenticeship; and shall include goals, methodology and timetables for implementation of the program.
- (2) *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.
- (3) *Certificate of compliance* means a written certificate issued by an agency or body, other than City, charged with the administration of a governmentally recognized affirmative action program and which

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indicates that the person named therein is in compliance with the terms of an affirmative action program.

- (4) *City* means the City of Kansas City, Missouri.
- (5) *Commission* means the city human rights commission.
- (6) *Complainant* means any person claiming injury by the alleged violation of RSMo ch. 213 or of this chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.
- (7) *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 RSMo ch. 213 or of this chapter.
- (8) *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.
- (9) *Contracting officer* means the person designated to execute a contract on behalf of the city or other public body.
- (10) *Contractor* means any individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a contract with the city and who has 50 or more employees exclusive of parents, spouse or children of such contractor.
- (11) *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.
- (12) *Department* means the department of human relations.
- (13) *Director* means the director of the human relations department or their delegate.
- (14) *Disability*. With respect to employment, a person with a disability is 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:

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- 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.
- (15) *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.
- (16) *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.
- (17) *Employer* includes any person employing six or more employees.
- (18) *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.
- (19) *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.
- (20) *Family* includes a single individual.
- (21) *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.

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- (22) *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.
- (23) *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.
- (24) *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.
- (25) *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.
- (26) *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,
 - 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

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undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.

- (27) *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.
 - 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.
- (28) *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

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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.

- (29) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (30) *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 RSMo ch. 213 or this chapter.
- (31) *Sex*. The term "sex," as included in the prohibitions of this chapter, shall include sexual harassment.
- (32) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (33) *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.
- (34) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-132, 38-133, 38-134, 38-135, 38-136 and 38-137.

Sec. 38-2. Affirmative action.

(a) Any contract exceeding \$300,000.00 shall include the following requirements as material terms thereof:

- (1) That contractor execute and submit an affidavit, in a form prescribed by the City, warranting that contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the contract.
- (2) That contractor submit, in print or electronic format, a copy of its current certificate of compliance to the Human Relations Department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the Human Relations Department at any point within the previous two calendar years. If contractor does not

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possess a current certificate of compliance, contractor shall submit, in print or electronic format, a copy of its affirmative action program to the Human Relations Department prior to receiving its first payment under the contract, unless a copy thereof shall have already been submitted to the Human Relations Department at any point within the previous two calendar years.

- (3) That contractor require any subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (4) That contractor obtain from any subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to the Human Relations Department within thirty (30) days from the date the subcontract is executed. If the subcontractor does not possess a current certificate of compliance, the contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to the Human Relations Department within thirty (30) days from the date the subcontract is executed.

Sec. 38-3. Contract conditions.

(a) All contracts hereafter executed by the city shall contain language requiring as a condition thereof that all persons contracting with the city or contracting with any public or private entity that receives 66 percent of its funding from the city or receiving a franchise from the city or subcontractors of such contractors or franchisees agree to refrain from any unlawful discriminatory practice as defined in this chapter, that such persons agree to implement an affirmative action program in connection with such contract or franchise when applicable, and that if a contractor shall fail, refuse or neglect to comply with these contract conditions such failure shall be deemed a total breach of the contract and such contract may be terminated, canceled or suspended, in whole or in part, and such contractor may be declared ineligible for any further city contracts for a period of one year.

(b) All contracts shall contain language to the effect that all contractors and subcontractors agree to permit the director access, at all reasonable times, to all books, papers, records, reports or accounts in possession of or under the control of such person, as may be necessary to ascertain compliance with this chapter, and to furnish such further information as may be required of such person within ten working days of the date it is so requested in writing. The director shall be authorized to conduct on-site audits of any contractor and subcontractor.

Sec. 38-4. Enforcement of contract conditions.

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(a) If the director shall find after investigation that a contractor or subcontractor has violated contract provisions relating to unlawful discriminatory practice or affirmative action, the director shall bring a complaint before the human rights commission. The commission shall hold a hearing in accordance with this chapter. After rendition of the commission's decision, the contracting officer involved shall serve upon the respondent a copy of such order and decision. The respondent shall have 30 days after delivery of the order and decision to demonstrate to the director willingness to comply with the terms and conditions of such order, failing which the contracting officer shall proceed to cancel, terminate or suspend the contract, or declare the contractor ineligible to receive any city contract or franchise for a period of one year, as such order may require. Willingness of the contractor to comply with such order shall be evidenced by his or her written agreement to comply with the terms and conditions set forth in the order.

Secs. 38-5 – 38-30. Reserved.

Section 2. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-31, Powers and duties of director, and enacting in lieu thereof a new Section 38-31, to read as follows:

Sec. 38-31. Powers and duties of director.

(a) The director of human relations is hereby charged with administration and enforcement of all sections of this chapter and is hereby authorized and empowered to do the following:

- (1) *Rules and regulations.* To adopt, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this chapter.
- (2) *Complaint investigation.* To receive, investigate and, upon finding probable cause on any complaint of violation of RSMo ch. 213, to bring such complaint before the human rights commission. If the director finds probable cause to believe that a violation of this chapter has occurred, he may refer the matter to the city counselor's office for prosecution in municipal court. Any staff assigned to assist the commission shall be supervised by the director of human relations. The director shall not have the power to process complaints of discrimination brought against the city and shall defer any such complaints to the state commission on human rights or any appropriate federal agency for processing.
- (3) *Authority regarding discrimination within city administration.* To investigate and recommend to the city manager any policy changes or specific actions that the director determines are necessary to ensure that the city administration is in compliance with the provisions of this chapter or with state and federal discrimination laws.

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- (4) *Initiation of complaints.* Whenever the director has reasonable cause to believe that an unlawful discriminatory practice has occurred, he may initiate a complaint alleging violation of any section of RSMo ch. 213 or of this chapter.

- (5) *Compliance investigation.* To investigate, survey and review any and all affirmative action programs, city contracts and franchises which are subject to this chapter and to take such action with respect thereto as shall ensure compliance with this chapter.

- (6) *Conciliation.* To attempt to eliminate any unlawful discriminatory practice or any other violation of the terms of this chapter by means of conference, conciliation, persuasion and negotiation and to enter into conciliation agreements.

- (7) *Authority to dismiss complaints.* To dismiss any complaint upon finding such complaint to be frivolous or without merit on its face or upon a finding that the allegedly unlawful discriminatory practice has been eliminated through conciliation.

Section 3. That this ordinance shall become effective April 1, 2012.

Approved as to form and legality:

Brian T. Rabineau
Assistant City Attorney