

ORDINANCE NO. 080311

Amending Chapter 38, Code of Ordinances, by repealing Section 38-1, Definitions; subsection (a) of Section 38-2, Discrimination prohibited; Section 38-132, Employment; Section 38-133, Housing; Section 38-134, Discrimination in commercial real estate loans; Section 38-135, Discrimination in the provision of brokerage services; and Section 38-137, Discriminatory accommodation practices, and enacting in lieu thereof new subsections and sections of like designation and subject matter for the purpose of prohibiting discrimination on account of gender identity.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-1, Definitions, and enacting in lieu thereof a new section of like designation and subject matter, to read as follows:

Sec. 38-1. Definitions.

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:

- (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, creed or religion, national origin, sex, disability 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 within two calendar years by the director or a current written certificate issued by an agency or body charged with administration of a governmentally recognized affirmative action program that any person named in such

ORDINANCE NO. 080311

certificate is in compliance with the terms of an affirmative action plan filed by such person with such agency or body or with the director.

- (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 a 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 or lease* means any contract or lease 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 \$117,000.00, except contracts with any supplier or other contractor which does an aggregate annual business with the city in excess of \$117,000.00. Aggregate annual business shall be measured by the amount of business done by the supplier or other contractor with the city during the current city fiscal year excluding purchases made on a city procurement card unless such purchases were made off of a city contract.
- (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 twenty-five (25) 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.

ORDINANCE NO. 080311

- (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:
- (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 except that for the sole purpose of the city's affirmative action program it shall mean any person employing 25 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

ORDINANCE NO. 080311

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 and who has 25 or more employees exclusive of parents, spouse or children of such franchise holder.
- (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) *Parties.* The parties to any proceeding or hearing held pursuant to this chapter shall be the city, the complainant and the respondent.
- (25) *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.
- (26) *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.
- (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

ORDINANCE NO. 080311

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) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (29) *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.
- (30) *Sex*. The term "sex," as included in the prohibitions of this chapter, shall include sexual harassment.
- (31) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

ORDINANCE NO. 080311

- (32) *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 that exceeds \$117,000.00, 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 25 or more employees exclusive of the parents, spouse or children or such subcontractor.

Section 2. That Chapter 38, Code of Ordinances, is hereby amended by repealing subsection (a) of Section 38-2, Discrimination prohibited, and enacting in lieu thereof a new subsection of like designation and subject matter, to read as follows:

Sec. 38-2. Discrimination prohibited.

(a) It shall be unlawful for any person to discriminate in employment, housing, the financing of housing, the provision of brokerage services or the provision of public accommodations, on account of race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation or gender identity.

Section 3. That all other subsections of Section 38-2 not specifically repealed and reenacted above shall remain in effect.

Section 4. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-132, Employment, and enacting in lieu thereof a new section of like designation and subject matter, to read as follows:

Sec. 38-132. Employment.

(a) It shall be unlawful for any employer, employment agency or labor organization to commit any of the following discriminatory employment practices:

- (1) For any employer to fail or refuse to hire or promote, or to discharge, any individual or otherwise to rule or act against any individual with respect to compensation, tenure, conditions or privileges because of such individual's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (2) For any employer to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (3) For any employer, labor organization or employment agency or any joint labor-management committee controlling apprenticeship training programs to deny or withhold from any person the right to be admitted to

ORDINANCE NO. 080311

or participate in a guidance program or an apprenticeship training program because of race, color, sex, religion, national origin or ancestry, disability sexual orientation or gender identity.

- (4) For any employer or employment agency to fail or refuse to refer any individual for an employment interview or to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or preference, because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (5) For any employer to substantially confine or limit recruitment or hiring of employees to any employment agency, employment services, labor organization, training school, training center or any other employee-referring source which excludes persons because of their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (6) For any labor organization to in any way deprive or limit any person in his or her employment opportunities or otherwise adversely affect his status as an applicant for employment or as an employee, with regard to tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment, because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
- (7) For any employer, employment agency or labor organization to discharge, expel, demote, fail to promote or otherwise rule against any person because he or she has filed a complaint, testified or assisted in any manner in any investigation or proceedings under this chapter.
- (8) For any person, whether or not an employer, employment agency or labor organization, to aid, abet, incite, compel, coerce or participate in the doing of any act declared to be a discriminatory practice under this chapter, or to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt to commit any act declared by this chapter to be a discriminatory practice.

(b) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system.

(c) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for a religious organization, association or society, or any

ORDINANCE NO. 080311

nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, to discriminate in its employment decisions on the basis of religion, sexual orientation or gender identity.

Section 5. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-133, Housing, and enacting in lieu thereof a new section of like designation and subject matter, to read as follows:

Sec. 38-133. 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, 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

ORDINANCE NO. 080311

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:
 - i. That buyer or renter;
 - ii. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
 - iii. 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:
 - i. That person;
 - ii. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
 - iii. Any person associated with that person.

(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:

ORDINANCE NO. 080311

- i. 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;
- ii. 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
- iii. All premises within such dwellings contain the following features of adaptive design:
 - a. An accessible route into and through the dwelling;
 - b. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
 - c. Reinforcements in bathroom walls to allow later installation of grab bars; and
 - d. 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)i 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) (Supp. 1992).

(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.

ORDINANCE NO. 080311

Section 6. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-134, Discrimination in commercial real estate loans, and enacting in lieu thereof a new section of like designation and subject matter, to read as follows:

Sec. 38-134. Discrimination in commercial real estate loans.

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance because of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, handicap or familial status to a person applying therefor for the purpose of purchasing, construction, improving, repairing or maintaining a dwelling, or to discriminate against him in fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, handicap or familial status of such person or of any person associated with him in connection with such loan or other financial assistance, or of the present or prospective owners, lessees, tenants or occupants, of the dwellings in relation to which such loan or other financial assistance is to be made or given.

Section 7. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-135, Discrimination in the provision of brokerage services, and enacting in lieu thereof a new section of like designation and subject matter, to read as follows:

Sec. 38-135. Discrimination in the provision of brokerage services.

It shall be unlawful for any person to deny any other person right to membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in terms or conditions of such access, membership or participation, on account of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.

Section 8. That Chapter 38, Code of Ordinances, is hereby amended by repealing Section 38-137, Discriminatory accommodation practices, and enacting in lieu thereof a new section of like designation and subject matter, to read as follows:

Sec. 38-137. Discriminatory accommodation practices.

It shall be a discriminatory accommodation practice for any owner, agent or employee of any place of public accommodation, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person, or directly or indirectly to publish,

ORDINANCE NO. 080311

circulate or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of public accommodation will be refused, withheld from or denied to any person on account of race, religion, color, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or that, for such reasons, the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place.

Approved as to form and legality:

Brian Rabineau
Assistant City Attorney