

**ORDNANCE NO. 030288**

**Amending Article II, Chapter 38, Code of Ordinances, by repealing Sections 38-1, Definitions, 38-81, Affirmative Action, and 38-82, Contract conditions, and enacting in lieu thereof new sections of like numbers and subject matters.**

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Article II, Chapter 38, Code of Ordinances, is hereby amended by repealing Sections 38-1, Definitions, 38-81, Affirmative Action, and 38-82, Contract conditions, and enacting in lieu thereof new sections of like numbers and subject matters, 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:

*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.

*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.

*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 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.

*City* means the City of Kansas City, Missouri.

*Commission* means the city human rights commission.

*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.

*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.

*Contract or lease* means any contract or lease to which the city shall be a contracting party, except the following:

- (1) Personal services contracts.
- (2) Emergency requisitions for goods, supplies or services.
- (3) Impressed accounts in the nature of petty cash funds.
- (4) Contract or lease, the cost of which will not exceed \$50,000.00, except contracts with any supplier or other contractor which does an aggregate annual business with the city in excess of \$50,000.00. 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.

*Contracting officer* means the person designated to execute a contract on behalf of the city or other public body.

*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.

*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.

*Department* means the department of human relations.

*Director* means the director of the human relations department or their delegate.

*Disability.* With respect to employment, a person with a disability is a person who is

**030288**

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:

- (1) Has a physical or mental impairment which substantially limits one or more major life activities;
- (2) Has a record of having such impairment; or
- (3) Is regarded as having such an impairment.

*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.

*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.

*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 twenty-five (25) or more employees.

*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.

*Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) 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.

030288

*Family* includes a single individual.

*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 twenty-five or more employees exclusive of parents, spouse or children of such franchise holder.

*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.

*Parties.* The parties to any proceeding or hearing held pursuant to this chapter shall be the city, the complainant and the respondent.

*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.

*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.

*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:

- (1) 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.
- (2) 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.
- (3) Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.
- (4) Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.

**030288**

- (5) 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.
- (6) 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.
- (7) 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,

**030288**

the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.

*Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

*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.

*Sex.* The term "sex," as included in the prohibitions of this chapter, shall include sexual harassment.

*Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

*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 \$50,000, 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 twenty-five or more employees exclusive of the parents, spouse or children or such subcontractor.

**Sec. 38-81. Affirmative action.**

- (a) Submission of affirmative action program or certificate of compliance.
  - (1) Prior to entering into any contract with or receiving any franchise from the city, the person shall submit in writing to the city a certificate of compliance or an affirmative action program as defined in section 38-1 when requested by the city. In no event shall a Contractor receive its first payment under a City contract prior to providing a certificate of compliance to the City.
  - (2) All contractors on city contracts shall require any subcontractor that receives a subcontract totaling more than \$50,000.00 to have or obtain a certificate of compliance. A subcontractor may adopt a contractor's affirmative action program to comply with the requirements of this section.
  - (3) If a contractor's annual business with the city during the current city fiscal year exceeds \$50,000.00, the contractor shall comply with the program requirements within ten working days of exceeding the \$50,000.00 threshold.

**030288**

- (b) Review of affirmative action programs by the director.
  - (1) Certificates of compliance. In lieu of submitting an affirmative action plan to the Director for approval, a contractor or subcontractor may submit a current certificate of compliance issued by any agency or body charged with administration of a governmentally recognized affirmative action plan program.
  - (2) Affirmative action programs. The director shall receive and review affirmative action programs submitted to him or her, and shall approve or shall specify in writing any modification of the program needed to make it conform to the requirements of this section or of the rules. The Director's review shall include:
    - (a) comparing the actual availability of minorities and women by job groups/occupational titles with the actual utilization of minorities and women by job groups/occupational titles;
    - (b) comparing permanent full-time employment of minorities and women versus non-minorities and men;
    - (c) comparing the pay and benefit structure of minorities and women versus non-minorities and men;
    - (d) ensuring the person has policies and procedures to prevent harassment and an internal mechanism in place to address complaints.

In making rules, the director shall use standards consistent with those set forth by the office of federal contract compliance programs.

- (3) Length of Certificate. All certificates of compliance issued by the director shall be valid for two years from the date of issue as long as the person complies with all human relations reporting requirements.
- (4) Review of revocations by commission. If the director revokes a certificate of compliance, a person may appeal to the human rights commission by filing with the director within ten working days after notice of the director's revocation, a written request for review by the commission, stating the grounds of such appeal with specificity. The director shall forward to the chairperson and members of the commission a copy of any appeal. Failure to file a timely appeal shall constitute a waiver of the right to appeal the director's decision.

**Sec. 38-82. Contract conditions.**

- (a) All contracts hereafter executed by the city shall contain language requiring as a

**030288**

condition thereof that all persons contracting with the city or contracting with any public or private entity that receives 66% 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 discriminatory employment practice as defined in this chapter, that such persons agree to implement the certificate of compliance or affirmative action program submitted in connection with such contract or franchise, 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) Director's access to information. All contracts shall contain language to the effect that all contractors and subcontractors agree to permit the director of human relations 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 division, 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.

(c) On-site Audits. Director shall be authorized to conduct on-site audits of any contractor and subcontractor. If the Director conducts an on-site audit, the Director shall evaluate whether members of minority groups and women enjoy the same level of decision making authority commensurate with their occupation.

---

Approved as to form and legality:

---

Assistant City Attorney