

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 090108

Amending Chapter 38, Code of Ordinances, "Human Relations", by repealing Section 38-1, Definitions; Section 38-62, Powers and duties; and Section 38-137, Discriminatory accommodation practices, and enacting in lieu thereof new sections of like designation and subject matter for the purpose of prohibiting the use of dress codes to deny persons access to businesses and facilities in publicly subsidized redevelopment plans and projects.

WHEREAS, the City has approved many redevelopment plans and projects which have received, or continue to receive, public subsidies or incentives or the benefits of tax abatement or other tax relief and anticipates, in the future, considering and possibly approving other redevelopment plans and projects that would also receive public subsidies or incentives or the benefits of tax abatement or other tax relief; and

WHEREAS, the Council has a compelling interest in furthering the rights of all citizens, regardless of their race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation or gender identity to have access to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations offered by businesses or facilities, particularly those which have received, are receiving or in the future may receive public subsidies or incentives or the benefits of tax abatement or other tax relief; and

WHEREAS, the Council has considered testimony and other information that supports its finding that certain dress codes or certain provisions of dress codes are intentionally created and used by some businesses or facilities to bar access to persons because of their race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation or gender identity or are applied in such a manner as to have the disparate effect of barring access to persons because of their race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation or gender identity; and

WHEREAS, the Council finds that dress codes that prohibit access to a business based upon any of the items enumerated in Section 38-1 (27) are either intentionally created and used by some businesses or facilities to bar access to persons because of their race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation or gender identity or are applied in such a manner as to have the disparate effect of barring access to persons because of their race, religion, color, ancestry, national origin, sex, marital status, handicap, familial status, sexual orientation or gender identity person's items; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

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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 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.

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- (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.
- (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;

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- (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 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.

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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) *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) *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 type of shoes or footwear worn, except that nothing herein shall be construed to prohibit a dress code that require the wearing of shoes,
 - (f) the colors of the garments or clothing worn,

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- (g) the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
 - (h) the wearing of teeshirts, except that nothing herein shall be construed to prohibit a dress code that requires such teeshirts to have sleeves; or
 - (i) the length of an exposed shirttail.
- (28) *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.

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- (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.
- (29) *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.
- (30) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (31) *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.
- (32) *Sex.* The term "sex," as included in the prohibitions of this chapter, shall include sexual harassment.
- (33) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (34) *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 Section 38-62, Powers and duties, of the Human Rights Commission, and enacting in lieu thereof a new subsection of like designation and subject matter, to read as follows:

Sec. 38-62. Powers and duties.

- (a) The commission may adopt rules of procedure consistent with RSMo Chapters 213 and 536 and this chapter.

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(b) The commission shall prepare an annual report to be presented to the mayor and council concerning the conditions of minority groups in the city, with special reference to discrimination, civil rights, human relations, hate group activity, bias crimes and bias practices and attitudes among institutions and individuals in the community. The report may also include other social and economic factors that influence conditions of minority groups, as well as the causes of these conditions and the effects and implications to minority groups and the entire city. In preparation for the report the commission may conduct hearings and conduct whatever other research is necessary. The report shall include appropriate recommendations to the mayor and the council.

(c) The commission shall form task forces as follows:

- (1) The commission shall form task forces including: youth, business, media, education, law enforcement, religion, labor, gay and lesbian issues, metropolitan area cooperation, and others as may be deemed appropriate.
- (2) One member of each task force may be appointed from each councilmanic district, that member to be agreed upon jointly by the councilmembers from that district. Councilmembers may recommend additional members as appropriate.
- (3) Except as provided in subsection (c)(2) of this section, the chairperson of the commission shall appoint the chairs and members of the task forces.
- (4) The task forces shall consist of no more than 15 members except where the commission chairperson specifically approves additional members.
- (5) The task forces will assist the commission in the preparation of the commission's annual report to the mayor and council.

(d) The commission is empowered to investigate hate group activity and incidents of bias crimes and work with law enforcement agencies and others to implement programs and activities to combat hate group activity and bias crimes.

(e) The commission may seek information from any and all persons, agencies and businesses, in both the public and private sectors, to identify and investigate problems of discrimination and bias as they affect the citizens of the city either directly or indirectly.

(f) The commission may cooperate with public and private educational institutions at primary, secondary and post-secondary levels to foster better human relations among the citizens of the city and within the metropolitan Kansas City area.

(g) The commission may work with civil rights organizations, community organizations, law enforcement agencies, school districts and others to collect and review

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data relating to patterns of discrimination, bias crimes, hate group activity, and general issues of civil and human rights.

(h) The commission may conduct studies, assemble pertinent data, implement educational programs and organize training materials for use by the commission to assist civil and human rights agencies, neighborhood organizations, educational institutions, law enforcement agencies, labor unions and businesses and others to prevent discrimination.

(i) The commission may serve as an advocate to prevent discrimination and bias crimes.

(j) The commission chairperson may appoint such committees from its membership or other citizens to fully effectuate the purpose of this chapter.

(k) The commission is empowered to hold hearings regarding issues of general or specific civil and human rights affecting the citizens of the city, to review decisions of hearing examiners appointed by the city to hear charges of violations of RSMo ch. 213, to administer oaths, and to take the testimony of any person under oath.

(l) Based upon its hearings or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in RSMo ch. 213, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of RSMo ch. 213, including but not limited to the assessment of civil penalties, reinstatement, back pay, making available the dwelling or public accommodation, actual damages, or any other relief that is deemed appropriate and which is consistent with RSMo ch. 213.

(m) Should the respondent also be a city contractor, upon complaint by the human relations department and after hearing duly held, the commission shall make findings of fact and conclusions of law; and when it finds a breach of conditions of any contract or franchise wherein compliance with this chapter is assured, it shall make an order specifying the terms and conditions under which any contract or franchise will be continued in force, or in the alternative shall order the cancellation, termination or suspension of such contract or franchise, or order that such contractor or franchise holder be ineligible to receive any city contract or franchise for a period of one year.

(n) The chairperson may appoint hearing review panels composed of not less three persons to review hearings conducted by a hearing examiner regarding violations of RSMo ch. 213. Panels shall be appointed on a rotating basis to ensure that all commission members have an opportunity to review recommended findings of the hearing examiner. Any member of the commission who has a conflict of interest or the appearance of a

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conflict of interest regarding an issue to be heard by the commission will not participate in the proceedings regarding that issue.

(o) The commission is empowered to hold hearings, upon complaint of an aggrieved party or upon an investigation by the director to determine whether the owner, operator, agent or an employee of a business or facility within a redevelopment area is using a prohibited dress code. Based upon its hearings, or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that the owner, operator or employee of such a business or facility has used, or is using, a prohibited dress code, and, therefore, has engaged in an unlawful discriminatory practice as defined in RSMo Ch. 213, or in Section 38.137, the commission shall issue and cause to be served on the owner, operator, agent or employee an order requiring the owner, operator or employee to cease and desist from the use of the prohibited dress code. The order may also require the owner, operator, agent or employee to take further affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of RSMo Ch. 213, including but not limited to the assessment of civil penalties, making access available to those individuals denied access to the public accommodation because of the use of a prohibited dress code, actual damages, or any other relief that is deemed appropriate and which is consistent with RSMo Ch. 213 and Ch. 38, Code of Ordinances.

(p) The commission shall study, advise and make other recommendations for legislation, policies, procedures and practices of the city, other businesses entities, and other public entities as are consistent with the purposes of this chapter.

Section 3. 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.

(a) 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, 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.

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(b) It shall be a discriminatory accommodation practice for any owner, agent, operator or employee of a business or facility within a redevelopment area to use a prohibited dress code as defined in Section 38-1, 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. Any dress code enforced in a redevelopment area or in any establishment with such area must be posted in accordance with the requirements of Section 10-331(d), and must contain the phone number of the City's Human Relations Department and a phone number of a representative of the establishment who is available to respond to complaints regarding the enforcement of the dress code during all hours when the establishment is open, or such dress code is in violation of this ordinance. Any such dress code shall list all prohibited items of dress. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting:

- (1) Any owner or operator of a business or facility within a redevelopment area from establishing an employee dress code or requiring that an employee abide by the employee dress code while at work.
- (2) Any owner, agent, operator or employee of a business or facility within a redevelopment area from affirmatively requiring the wearing of specified articles of clothing, which may include collared shirts and ties, sports jackets, business suits, business casual or formal clothing, and formal footwear, so long as the requirements are enforced with regard to each and every patron, regardless of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity.

Approved as to form and legality:

Galen Beaufort
City Attorney