

CITY OF MISSION, KANSAS
FINANCE & ADMINISTRATION COMMITTEE

WEDNESDAY, OCTOBER 3, 2018

7:30 P.M.

(or immediately following 6:30 p.m. Community Development Committee)

Mission City Hall

PUBLIC HEARINGS / PUBLIC COMMENTS

PUBLIC PRESENTATIONS / INFORMATIONAL ONLY

ACTION ITEMS

1. Ordinance Authorizing Issuance of IRBs - The Gateway - Laura Smith ([page 3](#))

The Redevelopment Agreement for The Gateway, approved in October 2017, contemplated a request from the developer for the City to issue Industrial Revenue Bonds (IRBs) for the project. The IRBs would allow the developer to secure a sales tax exemption on certain construction materials and supplies. The City Council passed Resolution 1006 on June 20, 2018 establishing the intent and authority to issue the IRBs. This ordinance authorizes the issuance of the taxable Industrial Revenue Bonds for the project in an aggregate principal amount not to exceed \$214,258,589 million. The bonds are not a general obligation of the City, and are not backed by the full faith and credit of the City. The Developer will be responsible for reimbursing all costs incurred by the City in connection with the IRBs.

DISCUSSION ITEMS

2. Non-discrimination Ordinance - Laura Smith ([page 8](#))

Councilmember Flora has requested discussion of a Non-Discrimination Ordinance (“NDO”) for the City of Mission. The intent of the ordinance would be to provide uniform legal protection within the City of Mission prohibiting discrimination in employment, housing, and public accommodations on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. In addition, an ordinance would provide a complaint and enforcement process. A number of supporting documents are included in the packet for information and reference.

OTHER

3. Department Updates - Laura Smith

Nick Schlossmacher, Chairperson
Ken Davis, Vice-Chairperson
Mission City Hall, 6090 Woodson St
913-676-8350

City of Mission	Item Number:	1.
ACTION ITEM SUMMARY	Date:	September 21, 2018
ADMINISTRATION	From:	Laura Smith

Action items require a vote to recommend the item to full City Council for further action.

RE: Ordinance authorizing the issuance of Taxable Industrial Revenue Bonds, Series 2018 for Aryeh Realty, LLC.

RECOMMENDATION: Approve the Ordinance establishing the intent and authority of the City to issue Industrial Revenue Bonds (IRBs) in one or more series in an aggregate principal amount not to exceed \$214,258,589 to finance the costs of acquiring, purchasing, constructing, installing, and equipping commercial facilities including land, buildings, structures, improvements, fixtures, machinery and equipment for the benefit of Aryeh Realty, LLC its successors and assigns in connection with the Mission Gateway project.

DETAILS: The Redevelopment Agreement for The Gateway, approved in October 2017, contemplated a request from the developer for the City to issue Industrial Revenue Bonds (IRBs) for the project. The IRBs would allow the developer to secure a sales tax exemption on certain construction materials and supplies. The City Council passed Resolution 1006 on June 20, 2018 establishing the intent and authority to issue the IRBs. The developer is now ready to move forward to issue the IRBs.

This ordinance authorizes the issuance of the taxable Industrial Revenue Bonds for the redevelopment of the Mission Gateway project, a 16+ acre mixed use redevelopment bounded by Shawnee Mission Parkway, Roe Avenue, Roeland Drive and Johnson Drive. The ordinance authorizes the following:

- 1) Funds to be used for acquiring, purchasing, constructing and equipping the project;
- 2) Funds to pay a portion of the costs associated with issuing the bonds;
- 3) The City to execute any and all documents necessary in connection with issuance of said bonds.

The IRBs and the associated interest shall be special, limited obligations of the City payable solely out of the amounts derived by the City under a Lease Agreement. The bonds are not a general obligation of the City, and are not backed by the full faith and credit of the City. The bonds are not payable in any manner by taxation, but shall be payable solely from the funds provided for in the Indenture. The issuance of the bonds shall not directly, indirectly or contingently, obligate the City, the State or any other political subdivision thereof to levy any form of taxation or to make any appropriation for their payment.

The Developer will be responsible for reimbursing all costs incurred by the City in connection with the IRBs. Fees are estimated at approximately \$78,000.

CFAA CONSIDERATIONS/IMPACTS: NA

Related Statute/City Ordinance:	City Council Policy 112
Line Item Code/Description:	
Available Budget:	All fees reimbursed by developer

ORDINANCE NO. [____]

AN ORDINANCE AUTHORIZING THE CITY OF MISSION, KANSAS, TO ISSUE TAXABLE INDUSTRIAL REVENUE BONDS (ARYEH REALTY LLC PROJECT), SERIES 2018, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$214,258,589, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING AND EQUIPPING COMMERCIAL FACILITIES, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE CITY TO ENTER INTO CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (SALES TAX EXEMPTION ONLY).

WHEREAS, the City of Mission, Kansas (the “Issuer”), is authorized pursuant to the provisions of K.S.A. 12-1740 to 12-1749d, inclusive, as amended (the “Act”), to acquire, purchase, construct, install and equip certain commercial and industrial facilities, and to issue industrial revenue bonds for the purpose of paying the cost of such facilities, and to lease such facilities to private persons, firms or corporations; and

WHEREAS, the governing body of the Issuer has heretofore and does now find and determine that it is desirable in order to promote, stimulate and develop the general economic welfare and prosperity of the Issuer and the State of Kansas that the Issuer issue its Taxable Industrial Revenue Bonds (Aryeh Realty LLC Project), Series 2018 (the “Bonds”), in a principal amount not to exceed \$214,258,589, for the purpose of acquiring, purchasing, constructing, installing furnishing, and equipping commercial facilities for Aryeh Realty LLC, a Delaware limited liability company, or its successors and assigns (the “Company”), including land, buildings, structures, improvements, fixtures, machinery and equipment (the “Project”); and

WHEREAS, the Bonds will be issued under a Bond Trust Indenture dated as of the date set forth therein (the “Indenture”), by and between the Issuer and Security Bank of Kansas City, as Trustee (the “Trustee”); and

WHEREAS, the Company will lease the Project to the Issuer pursuant to the Base Lease Agreement dated as of the date set forth therein (the “Base Lease Agreement”) between the Company and the Issuer; and

WHEREAS, simultaneously with the execution and delivery of the Indenture, the Issuer will enter into a Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), by and between the Issuer, as lessor, and the Company, as lessee, pursuant to which the Project will be acquired, constructed, furnished, and equipped and pursuant to which the Issuer will lease the Project to the Company, and the Company will agree to pay the rental payments due under the Lease Agreement sufficient to pay the principal of and premium, if any, and interest on, the Bonds; and

WHEREAS, the governing body of the Issuer further finds and determines that it is necessary and desirable in connection with the issuance of these bonds that the Issuer enter into certain agreements, and that the Issuer take certain other actions and approve the execution of certain other documents as herein provided;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS, AS FOLLOWS:

Section 1. Authorization for the Acquisition, Purchase, Construction, Installation and Equipping of the Project. The Issuer is hereby authorized to provide for the acquisition, purchase,

construction, installation, furnishing, and equipping of the Project, all in the manner and as more particularly described in the Indenture and the Lease hereinafter authorized.

Section 2. Authorization of and Security for the Bonds. The Issuer is hereby authorized to issue and sell the Bonds in a principal amount not to exceed \$214,258,589 (the “Bonds”), for the purpose of providing funds to pay the cost of acquiring, purchasing, constructing, installing, furnishing, and equipping the Project. The Bonds shall be issued and secured pursuant to the herein authorized Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture. The Bonds shall be payable solely out of the rents, revenues and receipts derived by the Issuer from the Project, and the Project and the net earnings derived by the Issuer from the Project shall be pledged and assigned to the Trustee as security for payment of the Bonds as provided in the Indenture.

Section 3. Authorization of Documents. The Issuer is hereby authorized to enter into the following documents, in substantially the forms presented to and reviewed by the governing body of the Issuer (copies of which documents, upon execution thereof, shall be filed in the office of the Clerk of the Issuer), with such changes therein as shall be approved by the officers of the Issuer executing such documents (the “Bond Documents”), such officers’ signatures thereon being conclusive evidence of their approval thereof:

- (a) Trust Indenture, between the Issuer and the Trustee;
- (b) Base Lease Agreement, between the Company and the Issuer;
- (c) Lease Agreement, between the Issuer and the Company; and
- (d) Bond Purchase Agreement dated the date set forth therein, among the Issuer, the Company and the Company, as Purchaser.

Section 4. Execution of Bond and Documents. The Mayor of the Issuer is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the Issuer in the manner provided in the Indenture. The Mayor (or, in the Mayor’s absence, the acting Mayor) of the Issuer is hereby authorized and directed to execute the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the Issuer. The Clerk of the Issuer is hereby authorized and directed to attest to and affix the seal of the Issuer to the Bonds, the Bond Documents and such other documents, certificates and instruments as may be necessary.

Section 5. Pledge of the Project and Net Lease Rentals. The Issuer hereby pledges the Project and the net rentals generated under the Lease Agreement to the payment of the Bonds in accordance with K.S.A. 12-1744. The lien created by the pledge will be discharged when all of the Bonds are paid or deemed to have been paid under the Indenture

Section 6. Further Authority. The Issuer shall, and the officers, employees and agents of the Issuer and the Issuer’s Bond Counsel, Gilmore & Bell, P.C. are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the Issuer with respect to the Bonds and the Bond Documents.

Section 7. Effective Date. This Ordinance shall take effect and be in force from and after its passage by the governing body, approval by the Mayor and publication of the Ordinance or a summary thereof in the official Issuer newspaper.

PASSED by the governing body of the City of Mission, Kansas on October 17, 2018 and **APPROVED AND SIGNED** by the Mayor.

Ronald E. Appletoft, Mayor

[SEAL]

ATTEST:

Martha Sumrall, City Clerk

(Published in *The Legal Record* on _____, 2018.)

SUMMARY OF ORDINANCE NO. [____]

On _____, 2018, the governing body of the City of Mission, Kansas passed an ordinance entitled:

AN ORDINANCE AUTHORIZING THE CITY OF MISSION, KANSAS, TO ISSUE TAXABLE INDUSTRIAL REVENUE BONDS (ARYEH REALTY LLC PROJECT), SERIES 2018, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$214,258,589, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COST OF ACQUIRING, PURCHASING, CONSTRUCTING, INSTALLING AND EQUIPPING COMMERCIAL FACILITIES, INCLUDING LAND, BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES, MACHINERY AND EQUIPMENT; AUTHORIZING THE CITY TO ENTER INTO CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF SAID BONDS (SALES TAX EXEMPTION ONLY).

The Bonds approved by the Ordinance are being issued in the maximum principal amount of \$214,258,589, for the purpose of acquiring, constructing, furnishing, and equipping commercial facilities for Aryeh Realty LLC, a Delaware limited liability company, and constitute limited obligations of the City payable solely from the sources and in the manner as provided in the Indenture, and shall be secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate (as defined in the Indenture) to the Trustee and in favor of the owners of the Series 2018 Bonds, as provided in the Indenture. A complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, 6090 Woodson. A reproduction of the Ordinance is available for not less than 7 days following the publication date of this Summary at www.missionks.org.

This Summary is hereby certified to be legally accurate and sufficient pursuant to the laws of the State of Kansas.

DATED: _____, 2018.

City Attorney

City of Mission	Item Number:	2.
DISCUSSION ITEM SUMMARY	Date:	September 25, 2018
ADMINISTRATION	From:	Laura Smith

Discussion items allow the committee the opportunity to freely discuss the issue at hand.

RE: Consideration of a Non-Discrimination Ordinance

DETAILS: Councilmember Flora requested that discussion of a Non-Discrimination Ordinance (“NDO”) for the City of Mission be placed on the October Finance & Administration Committee meeting agenda. The intent of the ordinance would be to provide uniform legal protection within the City of Mission prohibiting discrimination in employment, housing and public accommodations on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. In addition, the ordinance would provide for and outline a complaint and enforcement process.

In Johnson County, the City of Roeland Park has had a NDO in place since 2014. In May 2018, the Unified Government of Wyandotte County/Kansas City, Kansas passed an NDO. The City of Prairie Village is scheduled to discuss an NDO sometime in October.

Included in the packet for review and discussion purposes are the following:

1. Memo from Councilmember Flora
2. Draft - Mission Non-Discrimination Ordinance
3. Citizen Letters of Support
4. Mission Nondiscrimination Letter (business owners and leaders)
5. NEJC Chamber letter of support for local non-discrimination ordinances
6. Mainstream Coalition letter of support for local non-discrimination ordinances
7. City of Roeland Park, KS Non-Discrimination Ordinance
8. City of Manhattan, KS Non-Discrimination Ordinance
9. NDO Enforcement Models

Staff will be looking for Council guidance and direction on whether there is interest in pursuing this proposal and bringing back an action item on a future Committee agenda. If that is the preferred path, staff would engage various stakeholder groups for input and feedback and work with the City Attorney to prepare an ordinance for consideration.

Related Statute/City Ordinance:	
Line Item Code/Description:	
Available Budget:	

MEMO

To: Governing Body

From: Sollie Flora, Mission City Council, Ward 4

Date: September 28, 2018

Introduction

All people living and working in Mission deserve to be recognized as valued members of our community, worthy of our respect and fair treatment. The proposed Mission Ordinance Against Discrimination (“non-discrimination ordinance” or “NDO”), brought forward now for your consideration, will provide uniform legal protection within the City of Mission prohibiting discrimination in employment, housing, and public accommodations on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. As addressed below, such municipal-level protection is needed due to an existing gap in federal and state law. I am bringing forward this proposal at this time because multiple residents approached me regarding the possibility of passing an NDO after Gov. Colyer signed the “Adoption Protection Act,” also known as the “adoption discrimination bill,” into law and the Unified Government of Wyandotte County/Kansas City, Kansas passed its own NDO, both in May 2018. It is my hope that the Council will move forward with this proposed ordinance by voting to move the proposal for final consideration at an upcoming council meeting in the near future.

Federal and State Laws Fail to Protect Mission’s LGBT Citizens

Through the Kansas Act Against Discrimination (“Act”),¹ the State of Kansas protects certain groups of Kansas citizens against discrimination. This Act explicitly recognizes the harm caused to our society by discrimination: “[D]iscrimination threatens not only the rights and privileges of the inhabitants of the state of Kansas, but menaces the institutions and foundations of a free democratic state.”² Declaring it to be the “policy of the state of Kansas to eliminate and prevent discrimination,” the Act prohibits discrimination on the basis of race, religion, color, sex, disability, national origin or ancestry in employment, housing, and public accommodations.³ However, the Act leaves LGBT Kansans, who are frequent targets for discrimination, entirely unprotected.⁴

¹ Kan. Stat. Ann. § 44-1001, *et seq.* (available at <http://www.khrc.net/pdf/kaadtext.pdf>).

² *Id.*

³ *Id.* Similarly, Title VII of the Civil Rights Act protects against employment discrimination on the basis of “sex,” but federal circuit courts are split on the question of whether “sex” includes sexual orientation and/or gender identity. The Tenth Circuit (covering Kansas) has not yet ruled on the issue.

⁴ Numerous studies continue to show widespread discrimination and harassment against LGBT persons in the workplace and in housing. *See, e.g.*, <https://williamsinstitute.law.ucla.edu/press/press-releases/report-shows-continuing-high-levels-of-workplace-discrimination-impacts-productivity-and-health/>; <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-20111.pdf>.

LGBT Discrimination Hurts Everyone

In addition to the direct harm to LGBT persons,⁵ the more widespread economic consequences of endorsing LGBT discrimination are well known.⁶ Accordingly, state legislatures across the country have begun to realize that condoning LGBT discrimination is not the right path. As a result, Kansas and Oklahoma were alone in signing discriminatory measures into law this year, and faced national negative publicity for their actions.⁷ In fact, nearly all Fortune 500 companies now affirmatively recognize the importance of providing protections for their employees on the basis of sexual orientation and gender identity. 91% of Fortune 500 companies include sexual orientation in their non-discrimination policies, and 83% include gender identity.⁸

Mission's Major Businesses and City Government Recognize the Importance of Measures to Protect LGBT Persons in Mission, but Protections Remain Incomplete

Many major businesses operating in Mission have achieved a Corporate Equality Index Score of 100 from the Human Rights Campaign, including without limitation: AT&T, FedEx, Target, CVS, and T-Mobile.⁹ In fact, several of Mission's largest employers provide employment protections to their LGBT employees, including without limitation: AT&T, U.S. Post Office, Entercom, and Cox Automotive.¹⁰ In addition, four Mission businesses are members of the Mid America Gay & Lesbian Chamber of Commerce: Agenda: USA, Inc. (5509 Foxridge Dr.), Entercom Kansas City (7000 Squibb Rd.), Executive Pride (6950 W. 56th St.), and Towner Communications, LLC (6950 Squibb Rd.).¹¹

Moreover, the City of Mission itself already recognizes the importance of taking measures to protect against LGBT discrimination, as established by the policy set forth in its Personnel Policy and Guidelines.¹² Specifically, Art. A-1(d) of the City's Personnel Policy and Guidelines provides: "The following policies, guidelines and other provisions for personnel

⁵ LGBT discrimination results in, among other things, "disparate poverty rates" (<https://www.cssp.org/media-center/blog/the-impact-of-poverty-on-lgbt-families-and-individuals>). It also has a significant impact on LGBT youth, as demonstrated by higher rates of homelessness (<https://www.hrc.org/resources/lgbt-youth-homelessness>) and suicide (<https://www.thetrevorproject.org/resources/preventing-suicide/facts-about-suicide/#sm.00001gku2cxtvjdy9zbc8uwewzci7>; <https://www.psychologytoday.com/us/blog/the-truth-about-exercise-addiction/201710/why-are-suicide-rates-higher-among-lgbtq-youth>; <http://pediatrics.aappublications.org/content/early/2018/09/07/peds.2017-4218>).

⁶ See, e.g., United Nations "The Price of Exclusion" available at <https://www.unfe.org/the-price-of-exclusion/>.

⁷ See <https://www.washingtonpost.com/news/the-fix/wp/2018/04/06/lgbt-advocates-are-on-the-verge-of-a-major-milestone/>; <http://www2.ljworld.com/news/2018/may/03/controversial-adoption-bill-moving-forward/>.

⁸ See https://assets2.hrc.org/files/assets/resources/CEI-2018-FullReport.pdf?_ga=2.228059935.34248481.1527518974-267254304.1527518974.

⁹ In addition, Cox, the parent company to Vin Solutions, has achieved a score of 90.

¹⁰ See http://about.att.com/content/dam/csr/FAQpdfs/Human_Rights_Communications_Policy.pdf; https://about.usps.com/postal-bulletin/2017/pb22462/html/updt_003.htm; <http://entercom.com/equal-employment-opportunity-policy/>; <https://jobs.coxautoinc.com>.

¹¹ See http://business.maglcc.org/list?_ga=2.18781049.1952759409.1527521893-1210663123.1527521893.

¹² See <http://www.missionks.org/files/documents/CityofMission2018PersonnelPolicyandGuidelines1573024731010218PM.pdf> (last updated Jan. 1, 2018; incorporated by reference at Ch. 120, Art. VI, § 120.230).

administration in the City of Mission are established to... “[e]stablish and promote high morale among City employees by providing good working relations, uniform personnel policies, and an opportunity for advancement without discrimination on the basis of race, color, religion, sex, national origin, age, disability, genetic information, citizenship, military status, ancestry, sexual orientation, marital status, or any other status protected by applicable law.”

While valuable, these piecemeal measures do not apply in all workplaces in Mission and do not provide for any protections in housing or public accommodations.

Additional Local Stakeholders Are in Favor of an NDO

Included in your packet are several letters in support on an NDO that I have received from members of the Mission community. These include, without limitation, a letter of support from all five Officers of the Mission Business Partnership in their individual capacities Kevin Fullerton (Springboard Creative); Cathy Casey (Casey’s Auto Repair); Sandi Russell (Retired, Twisted Sisters Coffee Shop); Kellie Overocker (Indigo Rose Salon); and Kathy Gilbert (Taylored Hair).

Moreover, recently the Northeast Johnson County Chamber of Commerce released a statement in support of NDOs across Northeast Johnson County, stating: “they help to attract top talent, boost morale and employee loyalty, and increase performance and productivity.” In particular, the NEJC Chamber noted that “[i]nclusion and diversity are the backbone of doing good business and are proven to stimulate economy, create positive impressions, and position businesses and communities for greater attraction, expansion and retention of jobs and investment.” In contrast, “[d]iscrimination at any level is detrimental to businesses, large and small, by negatively impacting their ability to attract and retain top talent.” Of note, chamber and business support for NDOs is not unique to Northeast Johnson County. Rather, businesses across the country are advocating for increasing LGBT protections.¹³

In addition, the MainStream Coalition has also recently indicated its support for LGBT Kansans. In its statement of support, MainStream noted: “Just as Kansans would never accept discrimination based on the color of an individual’s skin, the religion they profess, their age, or their gender, so too do we reject discrimination based on how an individual expresses their gender identity, or on who they love.” NDOs, they argue, will “protect the equality, dignity, and respect of all Kansans.”

Other Kansas Cities Have Already Taken Action to Protect their LGBT Citizens

Twenty states, plus D.C., now have employment and housing non-discrimination laws covering sexual orientation and gender identity.¹⁴ However, as addressed above, Kansas does not

¹³ See, e.g., recent support for state-wide measures in Ohio (<http://ohiobusinesscompetes.org/economiccase/>) and Florida (<https://www.flcompetes.org/business-case/>).

¹⁴ See http://www.lgbtmap.org/equality-maps/non_discrimination_laws. Nineteen states, plus D.C., provide protections in public accommodations. *Id.* Of note, a GAO study shows that employment discrimination protections have not resulted in a flood of litigation. See <https://www.gao.gov/assets/660/656443.pdf> (“With respect to complaint data, consistent with what we reported in 2009, the administrative complaint data reported to us by states

provide these protections on a state-wide level. Accordingly, Mission should join Roeland Park, the Unified Government of Wyandotte County/Kansas City, Kansas, Lawrence, and Manhattan in providing comprehensive protections for its LGBT citizens.¹⁵ In addition to being the right thing to do, passing the NDO to protect against LGBT discrimination will signal to the business community that Mission is a welcoming, forward-thinking community.

Mission's NDO

The proposed Mission NDO would apply to the city and to private entities that employ more than 4 employees, with the exception of religious organizations. The ordinance provides protections for LGBT residents and employees in employment, housing, and public accommodations.

- Employment: The proposed NDO would make it unlawful for the city or private employers who employ 4 or more people to discriminate based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.
- Housing: The proposed NDO would make it unlawful for the city or private landlord who leases 4 or more rental units to discriminate based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.
- Public Accommodations: The proposed NDO would make it unlawful for the city or a business open to the public to discriminate based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. This means a business cannot refuse to provide a person access to goods, services, and facilities that the business otherwise makes available to the public on any of these grounds.

Conclusion

Mission has the opportunity to enhance its position as a leader in Northeast Johnson County by joining Roeland Park in protecting our LGBT citizens. As addressed above, this is both the right thing to do for our LGBT citizens and the economically-wise course of action. I hope that you will join me in supporting the NDO.

for 2007 through 2012 show relatively few employment discrimination complaints based on sexual orientation and gender identity.”).

¹⁵ On the Missouri side of the metro, Kansas City has had an NDO in place for more than twenty-five years and St. Joseph recently passed its own NDO.

[PROPOSED] MISSION ORDINANCE AGAINST DISCRIMINATION

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER OF THE CODE OF ORDINANCES OF THE CITY OF MISSION, KANSAS; RELATING TO CIVIL RIGHTS.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MISSION, KANSAS:

WHEREAS, Mission is a community that respects and actively seeks to welcome and protect all those who reside, visit, or do business in our community; and,

WHEREAS, the governing body finds that providing protection against wrongful discrimination contributes to the creation of a diverse, welcoming community that promotes harmony and mutual respect, and otherwise promotes the health, safety, and welfare of the citizens of Mission; and,

WHEREAS, the governing body finds that discrimination based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status is wrongful discrimination and inconsistent with the community's goals and values; and,

WHEREAS, state and federal laws provide protection against discrimination against certain classes of persons in employment, housing, and public accommodations, and provide a complaint and enforcement process for parties who allege discrimination in violation of state or federal law; and,

WHEREAS, state and federal laws do not currently provide protection against discrimination on the basis of sexual orientation or gender identity in employment, housing, or public accommodations, and parties who allege such discrimination do not have a complaint or enforcement process to pursue; and,

WHEREAS, due to the gap in legal protection from discrimination that currently exists under state and federal law, the governing body's intent is to provide uniform legal protection within the City of Mission against discrimination based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status, and to provide a complaint and enforcement process to effectuate such protection.

THEREFORE, Chapter of the Code of the City of Mission is amended, adding Article to the existing Articles of that Chapter, as follows:

ARTICLE 1. PROHIBITED DISCRIMINATION IN EMPLOYMENT, HOUSING, OR PUBLIC ACCOMODATIONS.

1 - 01. DEFINITIONS.

Except to the extent they are in conflict with the definitions below, the definitions contained within the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and the Discrimination Against Military Personnel Act, K.S.A. 44-1125 et seq., and amendments thereto, shall be applicable under this article. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

- (a) **City** means the City of Mission, Kansas.
- (b) **Code** means the Code of the City of Mission, Kansas.
- (c) **Business** means any person or entity employing four or more employees and all departments, boards and agencies of the City. Business shall include the City and any City Contractor. For purposes of this article, no religious organization, private fraternal and benevolent association or society, or non-profit private club shall be considered to be a business.
- (b) **Place of public accommodation** shall include every business within the City that is open to the public and offers, any product, service or facility. The term place of public accommodation shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with more than four tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. This shall not, however, apply to any hotel, motel, restaurant or theater operated by a bona fide private club not conducted for the purpose of evading this article when the accommodations, advantages, facilities and services are restricted to the members of such club and their guests; nor to any bona fide social, fraternal, civic, political or religious organization, when the profits of such accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit or mission of such organization.
- (c) **Rental housing** means any real property, consisting of more than four dwelling units, which is required to obtain a license or permit pursuant to the provisions of Chapter 1 of the Code.
- (d) To **rent** means to lease, to sublease, to let, or otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- (e) **Employee** means any person authorized to perform services for any business within the City, and includes an officer, employee, or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation. Employee does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.
- (f) **Person** means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver, and fiduciary.

- (g) **Familial status** means persons 18 years of age or older who are spouses, former spouses, parents or stepparents, and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.
- (h) **Sexual orientation** means an individual's real orientation or orientation perceived by another as heterosexual, homosexual, bisexual, or asexual.
- (i) **Gender identity** means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
- (j) **Military status** means a person who is serving or has served in the uniformed services, and who, if discharged or released under conditions other than dishonorable, as specified in 38 U.S.C. 101(2), or amendments thereto. Uniformed services is defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.
- (k) **Investigator** means one or more persons appointed by the Mayor, with the approval of the City Council, who shall be charged with investigating alleged violations of this article.
- (l) **Hearing officer** means a person appointed by the Mayor, with approval of the City Council, who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties, and/or costs, as provided in this article.

5 – 02. DECLARATION OF POLICY.

- (a) The right of an otherwise qualified person to be free from discrimination because of that person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status is hereby recognized. This right shall include, but not be limited to, any of the following:
 - 1. The right to pursue and hold employment and the benefits associated therewith without wrongful discrimination.
 - 2. The right to the full enjoyment of any of the accommodations, advantages, or privileges of any place of public resort, accommodation, assemblage, or amusement without wrongful discrimination.
 - 3. The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without wrongful discrimination.
 - 4. The right to exercise any right granted under this ordinance without suffering coercion or retaliation

5 – 03. UNLAWFUL PRACTICES.

- (a) **Employment.** It shall be an unlawful discriminatory practice for a business, because of the race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions, or privileges of employment; to limit, segregate, classify, or make any distinction in regards to employees;

or to follow any employment procedure or practice which, in fact, results in discrimination, or segregation without a valid business necessity.

- (b) **Housing.** It shall be an unlawful discriminatory practice for a business to discriminate against any person in the terms, conditions, or privileges of sale or rental of real property or rental housing, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status, or to discriminate against any person in such person's use or occupancy of rental housing because of the race, religion, color, sex, disability, marital status, familial status, national origin ancestry, sexual orientation, gender identity, or military status of the people with whom such person associates.
- (c) **Public Accommodation.** It shall be an unlawful discriminatory practice for any business, as defined herein being the owner, operator, lessee, manager, agent, or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this article because of race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status. Notwithstanding the above, nothing in this article shall be construed to prevent any business as defined in this article from offering, affording or providing any additional benefit or additional discount to a person because of such person's military status.
- (d) Nothing in this article shall be construed to mean that a business shall be forced to hire unqualified or incompetent personnel or discharge qualified or competent personnel.
- (e) Nothing in this article shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law.
- (f) Nothing in this article 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 limiting the sale, rental, or occupancy of real property which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this article prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (g) Nothing in this article shall be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law. Any construction after enactment of this article shall ensure individual privacy in all restrooms, public shower spaces, and dressing rooms.

5 – 04. ENFORCEMENT.

- (a) Any person aggrieved by an alleged violation of this article may file a complaint with the City Clerk on a form to be provided by the City. Any such complaint must be filed within 60 days after the alleged act of discrimination. The complaint shall be referred to a mediator for non-binding mediation. Participation in mediation shall be voluntary on the part of the person charged with violating this article. The mediator shall either be a person agreed upon by the complainant and the person accused of the violation or, if no such agreement can be reached within a reasonable time following the filing of the complaint, a person

selected by the City to serve as the mediator. Any fees charged by the mediator shall be split equally between the parties, unless at the conclusion of the mediation, the mediator assesses the costs of mediation in some other manner.

- (b) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (c) If, within 15 days of the conclusion of the mediation, either party notifies the City Clerk in writing that such person is dissatisfied with the results of the mediation, or if the person charged with violating the provisions of this article elects not to participate in mediation, the complaint shall be referred to the Investigator for investigation.
- (d) After initial investigation by the Investigator or such person as may be assigned to investigate the complaint by the Investigator, the Investigator shall make a determination whether there is sufficient evidence of discrimination to conduct a hearing on the complaint. If the Investigator determines that there is not sufficient evidence of discrimination to conduct a hearing on the complaint, the complaint shall be dismissed and the fees of the Investigator for investigation of the complaint shall be assessed against the complainant. Upon a finding of sufficient evidence to warrant a hearing and upon reasonable notice to the complainant and the person charged with violating the provisions of this article, the Investigator shall refer the matter to the Hearing Officer who shall conduct a hearing on the complaint. At such hearing, the parties and the Investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the Hearing Officer, but the rules of evidence used in courts of law need not be strictly enforced. Following the conclusion of the hearing, the Hearing Officer may announce a determination or may take the matter under advisement for determination at a later date. Any determination of the Hearing Officer shall be in writing, shall be based upon the preponderance of the evidence, and shall set forth the essential elements of the determination. If the Hearing Officer finds that a violation of this article has occurred, the Hearing Officer may award to the complainant actual damages, or a civil penalty in the amount of \$500.00, whichever is greater, for each violation. In addition, the Investigator's fees and the Hearing Officer's fees shall be assessed to the non-prevailing party unless the Hearing Officer determines that the circumstances warrant assessing the costs in some other manner.
- (e) Any person aggrieved by a determination of the Hearing Officer under this section or any determination of insufficient evidence to warrant a hearing made by the Investigator, may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. On appeal, the district court may enter such order or judgment as justice shall require, and may award court costs and reasonable attorney fees to the prevailing party.
- (f) The filing of a complaint for the alleged violation of this article shall in no way preclude any person from seeking other relief under state or federal law.

5 – 04. SEVERABILITY.

Should any section, subsection, sentence, clause, or phrase of this article, or the application thereof to any person or circumstance, be declared to be unconstitutional or invalid or unenforceable, such determination shall not affect the validity of the remaining portions of this article.

(Ord. No. _____, _____, _____-2018)

Andy Hyland

Mission City Council
6090 Woodson Road
Mission, KS 66202

Friends,

I've thought a lot about why I think Mission needs a non-discrimination ordinance that expands our protection of neighbors in the LGBTQ community and other protected ordinances.

It is not difficult to identify good reasons to pass this ordinance: it is good for business and the local economy, current state law leaves some of our citizens unprotected, and our neighbors in Roeland Park have a similar ordinance on the books and report few negative consequences.

But really, to me, it comes down to a basic reason why I choose to live in our community.

I work in Lawrence, and my desk is a little more than 40 miles from my front door. When people hear this fact about me for the first time, I get some pretty quizzical looks. They haven't been to Mission, I tell them. No matter if your family has lived here for generations or if you've just moved in, Mission is a truly welcoming place. A lot of cities say this. Our city means it. If you don't believe it, I tell people, come to our Mission Market, or really any community event or local business and see for yourself.

I can't imagine Mission being the kind of place that would look the other way if this kind of discrimination were occurring in our community. And without mechanisms in place, those who may be experiencing this kind of discrimination would not be as willing to bring it forward. Without these additional protections in place, I'm not sure we can get the full scope of what kind of discrimination may be occurring.

I also believe that there is value to taking this public stand, reinforcing what I already see each day: we are a city that is truly welcoming to all.

One final note: though I have other professional and volunteer advisory roles inside and outside our city, I speak for myself alone as a member of this community. Mission is a great place to be, and I think this proposed ordinance would only enhance that effort.

Thank you, as always, for your consideration and your diligent work on behalf of us all. You all rock.

Yours,
Andy Hyland
5638 Woodson Road
Mission, KS 66202
ahyland@gmail.com

Mike and Ellen Parker

Mission Governing Body:

We strongly support Mission taking this important step to ensure fundamental protections for the LGBTQ community. Everyone should feel safe from discrimination in Mission. We believe that most already do, as the Mission residents we know are extremely accepting, but it is important to formalize protections against discrimination by making them law. Thank you all for considering the ordinance.

Sincerely,

Mike and Ellen Parker
5608 Barkley

Kim Naramore

Dear Friends, neighbors, and Mission City Council,

I moved to Mission right after graduating from The University of Kansas. What I thought was going to be a short stay in an apartment, has turned into me buying a home with my husband and welcoming two children and deciding to raise our family here in Mission. There are so many wonderful aspects of Mission and the one that tops it all is the sense of community. Neighbors know each other and help each other. When I walk down Johnson Drive for Sunflower Fest, I run into people I know. It is a community feel in the middle of a larger metropolitan area, and I love it. I feel accepted and I don't worry about being discriminated for who I have married and love.

As part of the Mission community, I am very disheartened to hear that all my neighbors and friends are not given the same basic rights I am given because of who they love. They don't get to know the law stands by their side if they are discriminated against, as I do.

Mission owes it to all their residence to pass an anti-discrimination ordinance just like our neighbor Roeland Park has, so we can continue to be a loving, caring community for all because that's the type of community I want to raise my kids in and the values I want them to have.

Please instate the anti-discrimination ordinance.

I am happy to discuss this topic more and please let me know if you have any questions.

Thank you,

Kim Naramore
Mission, KS
Ward III

Alex Welch

As a resident of Mission, it is important to me that my city be a safe and happy place for my LGBTQ+ friends and colleagues to live and work. Though it is easy to pay lip service to values like diversity and inclusion, we must walk the walk and codify those values in our city's laws and ordinances. To adopt a non-discrimination ordinance at this time would put us on the right side of history; to neglect to do so would shamefully drive away an entire group of citizens with boundless talent, energy, and potential.

Alex Welch
5100 Foxridge Drive
Apt. 1925
Mission, KS 66202

Andy Sandler

Dear Council Member Flora:

The City of Mission has for years been a place I am proud to call home. From the time we moved into town two decades ago, every neighbor we've encountered has been welcoming and accepting of all those around us. Milhaven is not the most diverse neighborhood in town, but our own little patch of it belies that. It has been an impressive amalgam of ethnic, sexual and religious harmony, and I believe it serves as a guidepost to even greater acceptance and human kindness in our city at large.

An ordinance that puts those values of acceptance and protection of a diverse populace into law would be an outstanding example, and a strong message to those who for no good reason oppose kindness and tolerance of all well-meaning people. Creating a non-discrimination ordinance would put Mission in an honored and enviable place in the Kansas landscape, and certainly in the nation's, as a place that truly looks ahead and brings all of its people along on the journey forward. We would be joining a proud, progressive and growing number of communities eager to put into public policy the values of decency toward our neighbors, a policy that will attract and retain good people who simply wish to pursue the happiness that has been enshrined as our unalienable right.

I humbly urge you and your fellow council members to craft a non-discrimination clause that puts on notice for all that hatred has no home in our city, either among our neighbors or in government. Those who already share our values should find nothing objectionable about this, and those who do not share these values must know that this community cares far too much to allow their intolerance to stand.

Most sincerely yours,

Andy Sandler
6339 Beverly Drive

To: The Mission City Council

As Mission business owners and leaders, we support nondiscrimination policies in employment, housing and public accommodations throughout Mission. We also believe these policies should be expanded to include protection on the basis of sexual orientation and gender identity.

More than 40 percent of gay employees reported facing harassment and discrimination at work, according to a recent survey by the Gay and Lesbian Task Force. Meanwhile, 90 percent of transgender individuals said they faced the same kind of discrimination at the office.

Discrimination is detrimental to businesses and to the city overall. Inclusion and diversity are critical in developing a strong business community. When deciding where to locate a business, owners pay close attention to things like the reputation of a community because of its effect on recruitment and turnover. If an employee believes there is no future (or protection) for him within the organization, he will be less invested in the job. Discrimination (real or perceived) has a strong negative effect on a business community's ability to grow and sustain itself.

We ask that the City of Mission join our neighboring city of Roeland Park (and others) in expanding nondiscrimination protection to cover sexual orientation and gender identity. These protections are in the best interest of the business community and the City.

Kevin Fullerton
Springboard Creative

Sandi Russell
Twisted Sisters Coffee Shop
(retired)

Kathy Gilbert
Taylored Hair

Cathy Casey
Casey's Auto Repair

Kellie Overocker
Indigo Rose Salon



nejcchamber

connect. build. grow.

The Northeast Johnson County Chamber of Commerce (NEJC Chamber) supports nondiscrimination policies because they help to attract top talent, boost morale and employee loyalty, and increase performance and productivity. Inclusion and diversity are the backbone of doing good business and are proven to stimulate economy, create positive impressions, and position businesses and communities for greater attraction, expansion and retention of jobs and investment.

As part of our 2018 Legislative Platform, the NEJC Chamber adopted the following Guiding Principle:

The Chamber supports positive employment nondiscrimination reform by encouraging the amendment of the Kansas Act Against Discrimination to include protections for sexual orientation and gender identity/expression.

Considering this principle, and until such time that the State of Kansas takes action to provide equal legal protections for all individuals, the NEJC Chamber **supports** protections for sexual orientation and gender identity/expression in employment, housing, and public accommodation throughout Northeast Johnson County.

Discrimination at any level is detrimental to businesses, large and small, by negatively impacting their ability to attract and retain top talent. Northeast Johnson County should be positioned as a destination for economic activity, tourism, and new business development; not as a region that allows discrimination of employees, customers and residents. Basic protections and inclusive policies for all individuals are in the best interest of Northeast Johnson County, and the State of Kansas.

Deb Settle
President/CEO





MainStream Coalition
5960 Dearborn, #213
Mission, KS 66202-9905
(913) 649-3326
mainstreamcoalition.org

August 23, 2018

The MainStream Coalition asserts, unequivocally, that legal protections against discrimination must include protection for sexual orientation, gender identity, and gender expression. Statewide protections, enacted by former Governor Kathleen Sebelius, were rescinded by former Governor Sam Brownback as one of his first acts in office. MainStream supports efforts to permanently secure these rights in state law.

Until then, we strongly support proposed non-discrimination ordinances by cities, counties, and other municipalities across Kansas. Kansans share the values of respect for the rights, beliefs, and freedoms of all individuals, and will not accept the narrow morality of discrimination. Just as Kansans would never accept discrimination based on the color of an individual's skin, the religion they profess, their age, or their gender, so too do we reject discrimination based on how an individual expresses their gender identity, or on who they love.

There is no place for discrimination in Kansas. We urge every Kansan, every municipality, and every state official to join the effort to protect the equality, dignity, and respect of all Kansans. MainStream will support your efforts.

Board of Directors

Executive Committee

Carol Marinovich
President

Ed Peterson
Vice-President

Holly Weatherford
Secretary

David Morantz
Treasurer

Sheryl Spalding
Past President

Larry Meeker
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Rev. Rick Behrens
Mary Estrada
Joelsette Hernandez-Jones
Sally Levitt
Liz Meitl
Norman Scott
David Smith
Jim Terrones
Lisa Veglahn
John Vratil

Rev. Bob Meneilly
Chairman Emeritus

Brandi Fisher
Executive Director

About MainStream

Founded in 1993, the MainStream Coalition is an advocacy group for moderate political views regardless of party. Our members do more than vote.

City of Roeland Park, KS
Non-Discrimination Ordinance/Code

Sec. 5-1201. - Definitions.

Except to the extent they are in conflict with the definitions below, the definitions contained within the Kansas Acts Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto, shall be applicable under this article. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

- (a) *Business* means any person or entity, with four or more employees, conducting business within the City which is required to obtain a license or permit pursuant to the provisions of Article 1, Article 3, Article 5, Article 6, Article 8, or Article 9 of Chapter 5 of the Code, and all departments, boards and agencies of the City of Roeland Park. For purposes of this article, no religious organization, private fraternal and benevolent association or society, non-profit private club, agency or department of Johnson County, or school district, as defined in K.S.A. 72-8201 et seq., and amendments thereto, shall be considered to be a business (notwithstanding licensure by the City).
- (b) *Place of public accommodation* shall include every business within the City, whether wholesale or retail, which is open to the general public and offers, for compensation, any product, service or facility. The term place of public accommodation shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with more than four tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. This shall not, however, apply to any hotel, motel, restaurant or theater operated by a bona fide private club not conducted for the purpose of evading this article when the accommodations, advantages, facilities and services are restricted to the members of such club and their guests; nor to any bona fide social, fraternal, educational, civic, political or religious organization, when the profits of such accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit or mission of such organization.
- (c) *Rental housing* means any real property, consisting of more than four dwelling units, which is required to obtain a license or permit pursuant to the provisions of Article 7 of Chapter 5 of the Code.
- (d) *To rent* means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- (e) *Employee* means any person authorized to perform services for any business within the City of Roeland Park, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation. Employee does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.
- (f) *Person* means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.
- (g) *Familial status* means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.
- (h) *Sexual orientation* means an individual's real orientation or orientation perceived by another as heterosexual, homosexual, bisexual or asexual.
- (i) *Gender identity* means consistently having and/or expressing a self-image or identity not traditionally associated with their biological sex.
- (j) *Military status* means a person who is serving or has served in the uniformed services, and who, if discharged or released under conditions other than dishonorable, as specified in 38

U.S.C. 101(2), or amendments thereto. Uniformed services is defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.

- (k) *Investigator* means one or more persons appointed by the Mayor, with the approval of the City Council, who shall be charged with investigating alleged violations of this article.
- (l) *Hearing officer* means a person appointed by the Mayor, with approval of the City Council, who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties and/or costs as provided in this article.

(Ord. No. 894, § 2, 8-4-2014)

Sec. 5-1202. - Unlawful Practices.

- (a) It shall be an unlawful discriminatory practice for a business, because of the race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity or military status of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.
- (b) It shall be an unlawful discriminatory practice for a business to discriminate against any person in the terms, conditions or privileges of sale or rental of real property or rental housing, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin, ancestry, sexual orientation, gender identity or military status, or to discriminate against any person in such person's use or occupancy of rental housing because of the race, religion, color, sex, disability, familial status, national origin ancestry, sexual orientation, gender identity, or military status of the people with whom such person associates.
- (c) It shall be an unlawful discriminatory practice for any business, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this article because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or military status. Notwithstanding the above, nothing in this article shall be construed to prevent any business as defined in this article from offering, affording or providing any additional benefit or additional discount to a person because of such person's military status.
- (d) Nothing in this article shall be construed to mean that a business shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.
- (e) Nothing in this article shall prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law.
- (f) Nothing in this article 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 limiting the sale, rental or occupancy of real property which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin or ancestry. Nor shall anything in this article prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (g) Nothing in this article shall be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law. Any

construction after enactment of this article shall ensure individual privacy in all restrooms, public shower spaces and dressing rooms.

(Ord. No. 894, § 3, 8-4-2014; Ord. No. 901, § 1, 11-17-2014)

Sec. 5-1203. - Enforcement.

- (a) Any person aggrieved by an alleged violation of this article may file a complaint with the City Clerk on a form to be provided by the City. Any such complaint must be filed within 60 days after the alleged act of discrimination. The complaint shall be referred to a mediator for non-binding mediation. Participation in mediation shall be voluntary on the part of the person charged with violating this article. The mediator shall either be a person agreed upon by the complainant and the person accused of the violation or, if no such agreement can be reached within a reasonable time following the filing of the complaint, a person selected by the City to serve as the mediator. Any fees charged by the mediator shall be split equally between the parties, unless at the conclusion of the mediation, the mediator assesses the costs of mediation in some other manner.
- (b) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (c) If, within 15 days of the conclusion of the mediation, either party notifies the City Clerk in writing that such person is dissatisfied with the results of the mediation, or if the person charged with violating the provisions of this article elects not to participate in mediation, the complaint shall be referred to the Investigator for investigation.
- (d) After initial investigation by the Investigator or such person as may be assigned to investigate the complaint by the Investigator, the Investigator shall make a determination whether there is sufficient evidence of discrimination to conduct a hearing on the complaint. If the Investigator determines that there is not sufficient evidence of discrimination to conduct a hearing on the complaint, the complaint shall be dismissed and the fees of the Investigator for investigation of the complaint shall be assessed against the complainant. Upon a finding of sufficient evidence to warrant a hearing and upon reasonable notice to the complainant and the person charged with violating the provisions of this article, the Investigator shall refer the matter to the Hearing Officer who shall conduct a hearing on the complaint. At such hearing, the parties and the Investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the Hearing Officer, but the rules of evidence used in courts of law need not be strictly enforced. Following the conclusion of the hearing, the Hearing Officer may announce a determination or may take the matter under advisement for determination at a later date. Any determination of the Hearing Officer shall be in writing, shall be based upon the preponderance of the evidence and shall set forth the essential elements of the determination. If the Hearing Officer finds that a violation of this article has occurred, the Hearing Officer may award to the complainant actual damages, or a civil penalty in the amount of \$500.00, whichever is greater, for each violation. In addition, the Investigator's fees and the Hearing Officer's fees shall be assessed to the non-prevailing party unless the Hearing Officer determines that the circumstances warrant assessing the costs in some other manner.
- (e) Any person aggrieved by a determination of the Hearing Officer under this section or any determination of insufficient evidence to warrant a hearing made by the Investigator, may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. On appeal, the district court may enter such order or judgment as justice shall require, and may award court costs and reasonable attorney fees to the prevailing party.
- (f) The filing of a complaint for the alleged violation of this article shall in no way preclude any person from seeking other relief under state or federal law.

(Ord. No. 894, § 4, 8-4-2014; Ord. No. 901, § 2, 11-17-2014)

Sec. 5-1204. - Severability.

Should any section, subsection, sentence, clause or phrase of this article, or the application thereof to any person or circumstance, be declared to be unconstitutional or invalid or unenforceable, such determination shall not affect the validity of the remaining portions of this article.

(Ord. No. 894, § 5, 8-4-2014)

City of Manhattan, KS
Non-Discrimination Ordinance/Code

CERTIFICATION OF CLERK

I, Brenda K. Wolf, the duly appointed, qualified, and Assistant City Clerk of Manhattan, Kansas, do hereby certify that the foregoing Ordinance was duly adopted at a meeting of the City of Manhattan, Kansas, held on the 16th day of August, 2016, and that said Ordinance has been compared by me with the original thereof on file and of record in my office, is a true copy of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Manhattan, Kansas, 17th day of August, 2016.



Brenda K. Wolf

Brenda K. Wolf, CMC, Assistant City Clerk

ORDINANCE NO. 7235

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, KANSAS; RELATING TO CIVIL RIGHTS.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS:

WHEREAS, state and federal laws provide protection against discrimination against certain classes of persons in employment, housing and public accommodations, and provide a complaint, investigation and enforcement process for parties who allege discrimination in violation of state or federal law; and,

WHEREAS, state and federal laws do not provide protection against discrimination on the basis of sexual orientation or gender identity in employment, housing or public accommodations, and parties who allege such discrimination do not have a complaint, investigation or enforcement process to pursue; and,

WHEREAS, Chapter 10 of the City Code relates to civil rights, establishing a policy against discrimination against certain classes of persons in employment, housing and public accommodations; and,

WHEREAS, the governing body desires to extend the policy against discrimination to include sexual orientation and gender identity discrimination; and,

WHEREAS, the governing body finds that providing individuals with protection from discrimination due to sexual orientation and gender identity promotes the health, safety and welfare of the citizens of Manhattan, and is in the public interest; and,

WHEREAS, the governing body finds that providing protection against discrimination contributes to the creation of a diverse, welcoming community that promotes harmony and mutual respect; and,

WHEREAS, the governing body's intent is to extend its policy against discrimination in housing, employment and public accommodation to prohibit discrimination on the basis of sexual orientation or gender identity; and,

WHEREAS, because no process currently exists at the state or federal level, the governing body's further intent is to create a complaint, investigation and enforcement process for sexual orientation or gender identity discrimination that arises within the City of Manhattan.

Section 1. That the existing provisions of Article I of Chapter 10, of the Code of Ordinances of the City of Manhattan, Kansas are hereby repealed and replaced with the following provisions, amended to read as follows:

Sec. 10-1. Declaration of policy.

- (a) The practice or policy of discrimination against individuals by reason of race, sex, familial status, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry is a matter of concern to the city since such discrimination threatens not only the rights and privileges of the inhabitants of the city but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the city's policy, as implemented in this chapter, to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation or separation in all areas of public accommodations, and to eliminate and prevent discrimination, segregation or separation in housing.
- (b) It is also declared to be the policy of the city, as implemented in this chapter, to assure equal opportunities and encouragement to every citizen regardless of race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry, in securing and holding, without discrimination, employment in any field of work or labor for which a person is properly qualified, to assure equal opportunity to all persons within the city to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations, and the opportunity for full and equal housing are civil rights of every citizen.
- (c) To protect these rights, it is hereby declared to be the purpose of this chapter to establish a city human rights and services advisory board to identify, discuss and prevent segregation and discrimination contrary to this chapter.
- (d) To further protect these rights, it is hereby declared to be the purpose of this chapter to provide a local process for the acceptance, investigation and resolution of complaints of discrimination relating to sexual orientation and/or gender identity arising hereunder.

Sec. 10-2. Definitions.

The definitions in the Kansas Acts Against Discrimination, K.S.A. 44-1001 to 44-1044; the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 to 44-1121; and the Discrimination Against Military Personnel Act, K.S.A. 44-1125 to 44-1128; all as may be amended from time to time, shall apply to this chapter unless specifically defined herein. In addition, the following words and phrases shall have these meanings when used in this Chapter:

Aggrieved person means any person who claims to be the person injured by an unlawfully discriminatory practice.

Employee means any person employed by an employer, but does not include any individual employed by such individual's parents, spouse or child, or in the domestic service of any person.

Employer means any person in this city employing four (4) or more employees; and, any person acting directly or indirectly for an employer, labor organizations, nonsectarian organizations, organizations engaged in social service work, but shall not include a religious organization or a nonprofit fraternal or social association.

Gender identity means one's perceived or actual self-identification as a male or a female, regardless to one's anatomical sex at birth. It can be described as cisgender or transgender.

Hearing Officer means the Municipal Judge.

Investigator means the City Attorney, or his/her designee.

Nonprofit fraternal or social association/corporation means an association or corporation that meets all the following requirements: (1) it is organized in good faith for social or fraternal purposes; (2) membership entails the payment of bona fide initiation fees or regular dues; (3) there exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership; (4) there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and (5) it is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

Public Accommodation means any person who caters or offers goods, services, facilities or accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by K.S.A. 36-501 and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodation shall not include a religious organization or a nonprofit fraternal or social association/corporation, and it shall not include a jail.

Religious organization includes but is not limited to churches, mosques, synagogues, temples, nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

Rental housing means any real property, consisting of more than four dwelling units, but shall not include any real property owned or operated by a religious organization or a nonprofit fraternal or social association.

Respondent means the person against whom a complaint alleging discrimination has been filed with the investigator.

Sexual orientation means one's perceived or actual emotional, romantic, or sexual attraction to other people. It can be described as heterosexual, homosexual, or bisexual.

Sec. 10-3. Construction.

- (a) The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof.
- (b) Nothing in this chapter shall be construed to mean that an employer shall be forced to hire or retain unqualified or incompetent personnel, or to discharge qualified or competent personnel.

Sec. 10-4. Invalidity of part.

If any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid such judgment shall not affect, impair or invalidate the remainder of this chapter and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and the persons or circumstances involved. It is hereby declared to be the legislative intent that this chapter would have been adopted had such provisions not been included.

Sec. 10-5. Reserved.

Section 2. That Sec. 10-7 of the Code of Ordinances of the City of Manhattan, Kansas is hereby repealed and replaced with the following provision, amended to read as follows:

Sec. 10-7. Composition, appointment .

- (a) The Human Rights and Services Board shall consist of seven (7) members. All board members shall be residents of the city and shall be appointed by the mayor with the advice and consent of the governing body.
- (b) The membership of the Human Rights and Services Board shall be maintained on a basis that will give representation to a broad segment of the citizenry, reflecting citizens of various economic standings, employment, races, religions, colors, disabilities, familial statuses, military statuses, sexual orientations, gender identities, national origins or ancestries, sexes and age.

Section 3. That Sec. 10-14 of the Code of Ordinances of the City of Manhattan, Kansas is hereby repealed and replaced with the following provision, amended to read as follows:

Sec. 10-14. Powers and duties.

The Human Rights and Services Board is an advisory board that shall have the following functions, powers and duties;

- (a) Recommend to the governing body, non-discrimination, equal opportunity and

civil rights policies, procedures and programs which will protect against discrimination, promote the health, safety, and welfare of the citizens of the city, and/or which will create a welcoming, diverse community.

- (b) Receive and consider questions or proposals which in and of themselves do not constitute formal complaints of unlawful discrimination but are related issues.
- (c) Provide education and outreach on the policies, procedures and purposes of this chapter.
- (d) Accept contributions from any person to assist in the implementation of this chapter and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this chapter.
- (e) Regularly inform the members of the governing body, through distribution of its agendas, minutes, memoranda, reports, and other pertinent documents, of the items of business before the board, the ongoing status of such items, and the disposition of such items.
- (f) Cooperate with the federal and state agencies and other organizations or agencies whose purposes are not inconsistent with those of this chapter.
- (g) After obtaining governing body approval, the board shall be authorized to make application to any person, organization, city, county, state or federal governmental unit or agency for funds to implement or further the purposes of this chapter.

Section 4. That Sec. 10-15 and Sec. 10-16 of the Code of Ordinances of the City of Manhattan, Kansas are hereby repealed and replaced with the following provisions, amended to read as follows:

Sec. 10-15—Sec.10-16. Reserved.

Section 5. That Sec. 10-17 the Code of Ordinances of the City of Manhattan, Kansas is hereby repealed and replaced with the following provision, amended to read as follows:

Sec. 10-17. Unlawful Discriminatory Practices Related to Sexual Orientation and Gender Identity.

- (a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of any person, to refuse to hire or employ such person, to bar or discharge such person from employment, or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.
- (b) **Housing.** It shall be an unlawful discriminatory practice for any person to discriminate against any person in the terms, conditions or privileges of the sale of real property or lease of rental housing, or in the provision of services or facilities in connection therewith, because of sexual orientation or gender identity, or to discriminate against any person in such person's use or occupancy of rental housing because of the sexual orientation or gender identity of the people with

whom such person associates. This provision shall not apply to the sale or rental of real property or rental housing owned by a religious organization, nor shall it apply to a jail.

- (c) **Public Accommodation.** It shall be an unlawful discriminatory practice for any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this chapter because of sexual orientation or gender identity.
- (d) Nothing in this Chapter shall be construed to make it lawful to discriminate against individuals by reason of race, sex, familial status, military status, disability, religion, age, color, or national origin or ancestry. Such discrimination is not addressed in Articles III and IV of this Chapter because federal and state law address unlawful discriminatory practices related to those protected classes, as well as provide a complaint, investigation and enforcement process for those protected classes.

Section 6. That Article IV of Chapter 10 of the Code of Ordinances of the City of Manhattan, Kansas is hereby repealed and replaced with the following new title and provisions, amended to read as follows:

Article IV. ENFORCEMENT

Sec. 10-18. Initiation of complaint.

- (a) An aggrieved person may file a complaint that he or she has been, or is being, discriminated against by an alleged unlawful discriminatory practice set forth in this Chapter on his or her own behalf or through an attorney; or if a minor, through his or her parent or legal guardian or attorney; by completing and signing the form provided by the city. The complaint form shall state the names and contact information of the aggrieved person, the person(s) alleged to have committed the unlawful discriminatory practice(s), and the respondent; shall describe the unlawful act or discriminatory practice; and shall include all other information as may be required by the city.
- (b) The complaint form shall be submitted to the investigator, and shall only be considered complete if all information requested has been provided.
- (c) The complaint form must be filed within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within 60 days of the last act of discrimination.

Sec. 10-19. Notification to respondent; respondent's answer.

Upon receipt of a completed complaint, the investigator shall notify the respondent of the complaint, providing sufficient details related to the complaint so the respondent may respond. The investigator shall give the respondent thirty (30) days to file a written answer to the complaint, and to provide any documentation or evidence related to the complaint. The investigator may, at the respondent's request, extend the answer period an additional thirty (30) days.

Sec. 10-20. Investigation; determination of probable cause.

- (a) Following the conclusion of the answer period, the investigator may initiate an investigation period, requesting that the complainant and/or respondent provide additional information, documentation or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within 60 days of the investigator's last request for information.
- (b) Within thirty (30) days of the conclusion of the investigation period, the investigator will review all information provided to the investigator and make a determination of whether probable cause exists that the respondent committed an unlawful discriminatory practice. If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and the respondent, and no further action shall be taken by the city. If the investigator finds that probable cause exists that an unlawful discriminatory practice was committed by respondent, the investigator shall notify the complainant and respondent and request conciliation and settlement.

Sec. 10-21. Finding of probable cause; conciliation and settlement.

If the investigator finds that probable cause exists that the respondent committed an unlawful discriminatory act against the complainant, the investigator will attempt to conciliate and settle the complaint between the parties. If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within 60 days of the date of the finding of probable cause, the matter shall be referred to the hearing officer for a hearing, pursuant to Section 10-22.

Sec. 10-22. Hearing.

If the investigator has determined that probable cause exists that the respondent committed an unlawful discriminatory practice against the complainant, and the complaint could not be conciliated and settled within 60 days of the date of such determination, the complaint shall be set for a hearing before the hearing officer. At such hearing, the parties and the investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer, but the rules of evidence used in courts of law need not be strictly enforced. The hearing officer shall issue a written determination within 10 days of the date of the hearing. The determination shall indicate whether the preponderance of the evidence proves that respondent committed the unlawful discriminatory practice against the complainant. If so, the hearing officer's

determination may order any remedy set forth in Section 10-23. Either party may appeal the hearing officer's order pursuant to K.S.A. 60-2101, as amended.

Sec. 10-23. Civil penalty.

The investigator's settlement agreement, or the hearing officer's order, may impose a civil penalty of up to \$500, if discrimination is found.

Sec. 10-24. Exemptions.

Because of the existence of other state and federal law protections and processes, the city will not enforce violations of Section 10-17 against the following:

- (a) Educational institutions, including but not limited to a school district, a school, or a university;
- (b) A department, agency, or political subdivision of the United States of America;
- (c) A department, agency or instrumentality of the State of Kansas;
- (d) Riley County or Pottawatomie County.
- (e) Riley County Law Enforcement Agency, including the Riley County Police Department and other departments thereof.

Section 7. That this ordinance shall be published in the official city newspaper and shall be effective on November 1, 2016.

PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS, ON THIS 16TH DAY OF AUGUST, 2016.



ATTEST:



Gary S. Fees, MMC, City Clerk



Usha Reddi, Mayor


(PUBLISHED IN *THE MANHATTAN MERCURY* ON AUGUST 21, 2016)

ORDINANCE NO. 7235 SUMMARY

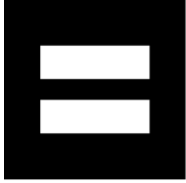
On August 16, 2016, the governing body of the City of Manhattan, Kansas passed an ordinance entitled:

AN ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES OF THE CITY OF MANHATTAN, KANSAS; RELATING TO CIVIL RIGHTS.

The Ordinance extends the current policy of discrimination against certain classes of persons in employment, housing and public accommodations to include sexual orientation and gender identity discrimination. It also creates a complaint, investigation and enforcement process for sexual orientation or gender identity discrimination. The complete text of the Ordinance may be obtained or viewed free of charge at the office of the City Clerk, City Hall, 1101 Poyntz Ave., Manhattan, Kansas, 66502, Monday – Friday, 8 a.m. – 5 p.m., and is available for at least one week following the publication date of this summary at www.cityofmhk.com. This Summary certified to be legally accurate and sufficient by City Attorney Katharine Jackson.



City Attorney
Date certified: 8/16/16



HUMAN
RIGHTS
CAMPAIGN®

1640 Rhode Island Avenue
Washington, D.C. 20036
web: www.hrc.org
phone: 202/628-4160
fax: 202/347-5323

OPTIONS IN ENFORCING A MUNICIPAL NON-DISCRIMINATION ORDINANCE

Enforcement of a municipal non-discrimination ordinance may take one of a variety of forms. These include creating a Human Rights Commission; creating a private right of action; vesting a city executive with enforcement (often the city manager or city attorney); distributing enforcement authority to topical commissions (i.e. a housing commission); or some combination of these various forms.

The nationwide best practice in enforcing these ordinances is to create a Human Rights Commission that oversees the receipt and investigation of the claim and any settlement proceedings, ultimately issuing a right-to-sue letter if cause is found and the parties are unable to come to a settlement. Of the ten most populous cities in the country with non-discrimination ordinances, most follow a variation on this model: New York, Chicago, Philadelphia, Phoenix, and San Diego.

Some cities simply create a private right of action. This is simple, elegant, and less expensive for the city to administer, but it comes with different challenges. Politically this can be among the most challenging paths forward because public debates about discrimination are often met by (unfounded) concerns about opening the floodgates to frivolous claims. Philadelphia and San Antonio both offer a private right of action as an initial enforcement option, and several of the other cities offer complainants the ability to bring a civil claim following unsuccessful settlement proceedings.

An alternative that combines a more robust investigatory and settlement role for the city with less cost than staffing a Human Relations Commission is vesting the City Attorney's office (or the City Manager's office, or other executive office in the city) with the authority to investigate, conciliate, and even prosecute respondents who are not cooperative. This is the approach adopted by Dallas, and it is a particularly good choice for smaller cities where cost of enforcement is a particularly important factor.

Finally, enforcement duties may be assigned to various committees dealing with the areas in which discrimination is being prohibited – for example, a Housing Commission may be vested with the power to prohibit discrimination in housing. This is the approach adopted by Los Angeles, and it has the benefit of combining topical expertise with enforcement. To be successful the committees in question must be adequately staffed; this is a tempting option for smaller cities looking to avoid incurring enforcement costs, but volunteer commissions will likely not be able to manage these claims effectively. However, this can be an effective option for larger cities that have or will create appropriate committees and staff them sufficiently.

Cities looking to enact a non-discrimination ordinance must consider the enforcement options for that ordinance carefully to assess which option will be most successfully political and practically in that city. Many cities combine elements of each of these types of enforcement to create a unique enforcement structure that suits the needs and resources of the city.

<u>Enforcement Model</u>	<u>Description</u>	<u>Cities Following Model</u>	<u>Pros</u>	<u>Cons</u>
Human Rights Commission (also called a Civil Rights Commission, Human Relations Commission, etc.)	The nationwide best practice in enforcing non-discrimination ordinances is a Human Rights Commission that oversees the receipt and investigation of the claim and any settlement proceedings. If the parties aren't able to settle, a commission is usually given either the ability to issue a right-to-sue letter if it perceives a complaint to have merit, or it has its final determination of the matter enforced by a city attorney or prosecutor in court.	Most of the largest cities follow a variation on this model: New York, Chicago, Philadelphia, Phoenix, and San Diego.	This method offers ample options for settlement; investigation of a claim by a professional, impartial party; strong resolution enforced by the court if necessary; and case law is developed that can inform subsequent cases.	Cost and logistics – a commission requires significant set up and resources in order to perform effectively.
Private right of action	This option gives a person who has been discriminated against the right to sue the person who has done the discriminating.	Philadelphia and San Antonio both offer a private right of action as an initial enforcement option, and several other cities offer complainants the ability to bring a civil claim following unsuccessful settlement proceedings.	Simple, elegant, and the city bears little of the enforcement costs.	Politically this can be among the most challenging paths forward because public debates about discrimination are often met by (unfounded) concerns about opening the floodgates to frivolous claims. Investigation and settlement functions are deemphasized.
City Staff (Office of the City Attorney, City Manager, Mayor)	An alternative that combines a more robust investigatory and settlement role for the city with less cost than staffing a Human Relations Commission is vesting the City Attorney's office (or the City Manager's office, or other executive office in the city) with the authority to investigate, conciliate, and even prosecute respondents who are not cooperative.	Of the ten largest cities in the country, Dallas is the only one to follow this model.	Cost of enforcement is generally lower, given that it is utilizing an existing office. This tends to be a strong option for small cities where there will be an extraordinarily small number of claims.	A large city may not experience cost savings. Investigation and settlement functions are deemphasized. Person handling the cases will not have as much experience if cases are rare.
Topical Commissions	Enforcement duties may be assigned to various committees dealing with the areas in which discrimination is being prohibited – for example, a Housing Commission may be vested with the power to prohibit discrimination in housing.	Of the ten largest cities in the country, Los Angeles is the only one to follow this model.	Benefit of combining topical expertise with enforcement. This can be an effective option for larger cities that have or will create appropriate committees and staff them sufficiently.	To be successful the committees in question must be adequately staffed; this is a tempting option for smaller cities looking to avoid incurring enforcement costs, but volunteer commissions will likely not be able to manage these claims effectively.