

ORDINANCE NO. _____

AN ORDINANCE CONCERNING DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS; AMENDING CHAPTER 35 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING HUMAN RESOURCES AND SOCIAL SERVICES BY ADDING ARTICLE III – DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS PROHIBITED AND SECTIONS 35-50, 35-51, 35-52, AND 35-53.

WHEREAS, The City of Merriam 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 Merriam; and

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

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

WHEREAS, in some instances, current state and federal employment, housing, and public accommodation laws have been interpreted to exclude protection against discrimination and retaliation on the basis of sexual orientation and gender identity, thereby precluding the use of the complaint and enforcement process outlined therein; and

WHEREAS, The City of Merriam desires to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity, giving these characteristics the same protection state and federal law already consistently provide with respect to age, race, religion, color, sex, national origin or ancestry, disability, military status, genetic information, marital status, and familial status, and to provide a complaint and enforcement process to effectuate such protection.

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

SECTION 1. That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding Chapter 35, Article III to be named, “Discrimination in Employment, Housing, and Public Accommodations Prohibited.”

SECTION 2. That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-50, which the section reads as follows:

Sec. 35-50. – 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) **Days** means calendar days. If a deadline falls on a day city hall is not open (*i.e.* a weekend, a holiday recognized by the city, emergency closure) the deadline will be extended to the day city hall is open.
- (b) **Employee** means any individual 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 individual. Employee also does not include an independent contractor.
- (c) **Employer** means any individual or entity (*i.e.* corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, unincorporated organization) employing four or more employees, the city (including all departments, boards, agencies), and any city contractor. For purposes of this article, no religious organization or non-profit fraternal or social association/corporation shall be considered to be an employer.
- (d) **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.
- (e) **Hearing officer** means an individual appointed by the mayor, with the consent 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.
- (f) **Investigator** means an individual(s) appointed by the mayor, with the consent of the city council, who shall be charged with investigating alleged violations of this article.
- (g) **Nonprofit fraternal or social association/corporation** means an association or corporation that meets all of 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; (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.

- (h) **Place of public accommodation** shall include every establishment 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. The term “place of public accommodation” shall not, however, include: (1) a religious organization; (2) any hotel, motel, restaurant or theater operated by a nonprofit fraternal or social association/corporation that restricts its facilities and services to the members of such association/corporation and their guests; or (3) any nonprofit fraternal or social association/corporation, or bona fide civic, political, or religious organization, when the profits of such association/corporation or organization, above reasonable and necessary expenses, are solely for its benefit or mission.
- (i) **Religious organization** means a church, mosque, synagogue, temple, nondenominational ministry, interdenominational and ecumenical organization, mission organization, faith-based social agency, or other entity principally devoted to the study, practice, or advancement of religion.
- (j) **Rent** means to lease, to sublease, to let, or otherwise to grant for a consideration the right to occupy a premises not owned by the occupant.
- (k) **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 14 of the Merriam Code.
- (l) **Respondent** means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the city.
- (m) **Sexual orientation** means an individual's perceived or actual emotional, romantic, or sexual attraction to other people. It can be described as, but not limited to, heterosexual, homosexual, bisexual, or asexual.

SECTION 3. That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-51, which the section reads as follows:

Sec. 35-51. – Declaration of Policy.

- (a) The right of an otherwise qualified individual to be free from discrimination because of that individual's age, race, religion, color, sex, sexual orientation, national origin or

ancestry, gender identity, disability, military status, genetic information, marital status, or familial 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 services, advantages, or privileges of any place of public accommodation without wrongful discrimination.
 3. The right to engage in property transactions, including obtaining housing for rent or sale and credit therefor, without wrongful discrimination.
 4. The right to exercise any right granted under this ordinance without retaliation.
- (b) To protect these rights, it is hereby declared to be the purpose of this article to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity and to provide a local process for the acceptance, investigation, and resolution of complaints of discrimination and retaliation relating to sexual orientation and/or gender identity arising hereunder.

SECTION 4. That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-52, which the section reads as follows:

Sec. 35-52. – Unlawful Practices.

(a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of any individual to refuse to hire or employ such individual, to bar or discharge such individual 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, or segregation without a valid business necessity.

(b) **Housing.** It shall be an unlawful discriminatory practice for an individual or entity to discriminate against any individual in the terms, conditions, or privileges of sale or lease 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 individual in such individual's use or occupancy of rental housing because of the sexual orientation or gender identity with whom such individual associates.

(c) **Public Accommodation.** It shall be an unlawful discriminatory practice for 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, privileges, advantages, and accommodations to any individual because of sexual orientation or gender identity.

(d) Nothing in this article shall:

- (1) 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.

(2) prohibit a religious organization 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 fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings that 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.

(3) be construed to prohibit an employer from requiring all of its employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace. The fact that an employer requires an employee to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this article. However, an employee may simultaneously file a complaint with the city as provided in this ordinance; completion of the employer's procedures is not a pre-requisite to filing a complaint with the city.

(4) 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.

(5) be construed to make it lawful to discriminate or retaliate against individuals on the basis of age, race, religion, color, sex, national origin or ancestry, disability, military status, genetic information, marital status, or familial status. Such discrimination and retaliation are not addressed in this article because federal and state law consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide a complaint, investigation, and enforcement process for such discrimination and retaliation.

SECTION 5. That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-53, which the section reads as follows:

Sec. 35-53. – Enforcement.

(a) An aggrieved individual may file a written complaint with the city clerk that the individual has been, or is being, subject to an alleged unlawful discriminatory practice set forth in this article personally or through an attorney (or if a minor, through the minor's parent, 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 individual, the individual(s) and/or entity/entities alleged to have committed the unlawful discriminatory practice(s), a description of the alleged unlawful conduct and all other information as may be required by the form provided the city. The city will provide the complaint form without charge.

(b) The complaint form shall be submitted to the investigator and shall be considered complete if all information required by the city's form has been provided to the extent such requested information is reasonably available to the aggrieved individual.

(c) A completed 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.

(d) Upon receipt of a completed complaint, the investigator shall notify the respondent(s) of the complaint, providing sufficient details related to the complaint so that the respondent(s) may respond. The investigator shall give the respondent(s) 30 days to file a written answer to the complaint and provide any documentation or evidence related to the complaint. The investigator may, at the request of the respondent(s), extend the answer period for an additional 30 days. If the respondent(s) charged with violating the provisions of this article is the city, the city will engage an independent investigator who shall not otherwise be an employee, agent, or contractor of the city and shall not have any association with the complainant or the respondent(s).

(e) Following the conclusion of the answer period, the investigator may initiate an investigation period, requesting that the complainant and/or respondent(s) provide additional information, documentation, or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be completed within a reasonable period of time following the submission of additional information, documentation, or testimony.

(f) Upon the conclusion of the investigation period, the investigator will review all evidence received during the investigation and make a determination whether probable cause exists that the respondent(s) committed an unlawful discriminatory practice.

(g) If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and respondent(s) and no further action shall be taken by the city. The complainant may appeal the investigator's determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of notice of the appeal pursuant to K.S.A. 60-2101(d), or within further time allowed by the court or by other provision of law, the city shall transmit to the court a certified copy of the investigator's written determination and a certified copy of all evidence received by the investigator during the investigation.

(h) If the investigator finds that probable cause exists that an unlawful discriminatory practice was committed by respondent(s), the investigator shall notify the complainant and respondent(s) and request conciliation and settlement. 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. The investigator may extend the time for signing a settlement agreement for good cause and with written notice to the parties. Any fees charged by the investigator for investigating alleged violations of this article shall be split equally between the parties, unless the investigator determines that the circumstances warrant assessing the costs in some other manner.

(i) Upon referral to the hearing officer, the hearing officer shall schedule a hearing on the complaint. The parties shall be given at least ten days' written notice via certified mail of the date, time, and place of the hearing. 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.

(j) 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. Each party is to bear their own attorneys' fees, if any. The investigator's fees for participating in the hearing and the hearing officer's fees, if any, shall be assessed to the non-prevailing party unless the hearing officer determines that the circumstances warrant assessing the costs in some other manner.

(k) Any person aggrieved by a determination of the hearing officer under this section may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of the notice of appeal pursuant to K.S.A. 60-2101(d), or within further time allowed by the court or by other provision of law, the city shall transmit to the court a certified copy of the written determination of the hearing officer and a certified copy of all the evidence presented at the hearing. On appeal, the district court may enter such order or judgment as justice shall require, and may award court costs and reasonable attorney fees incurred to prosecute or defend the appeal to the prevailing party.

(l) The filing of a complaint for an alleged violation of this article shall in no way preclude any individual from seeking other relief under state or federal law.

SECTION 6. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the Governing Body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

SECTION 7. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED by the City Council this ____ day of _____, 2019.

APPROVED by the Mayor this ____ day of _____, 2019.

Ken Sissom, Mayor

ATTEST:

Juliana Pinnick, City Clerk

APPROVED BY:

Nicole Proulx Aiken, City Attorney

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