

CHAPTER XI. PUBLIC OFFENSES

ARTICLE 11. NON-DISCRIMINATION

SECTIONS

11-1101	DEFINITIONS
11-1102	DECLARATION OF POLICY
11-1103	UNLAWFUL PRACTICES
11-1104	ENFORCEMENT
11-1105	SEVERABILITY

- 11-1101. DEFINITIONS.** For The definitions contained within the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., shall apply to this article unless a term is specifically defined herein. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise:
- (a) **Aggrieved individual** means any individual who has a good faith belief that such individual has been injured by an unlawful discriminatory practice as set forth herein.
 - (b) **City** means the City of Leawood, Kansas.
 - (c) **Code** means the Code of the City of Leawood, Kansas, 2000 as amended.
 - (d) **Days** means calendar days. If a deadline falls on a day city hall is not open (e.g. a weekend, a holiday recognized by the city, emergency closure) the deadline will be extended to the next day city hall is open.
 - (e) **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. The term employee does not include an independent contractor.
 - (f) **Employer** means any individual or entity (e.g. 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 non-profit fraternal or social association/corporation shall be considered to be an employer.
 - (g) **Gender identity** means an individual's actual or perceived (by the individual or another) gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics regardless of the individual's designated sex at birth.
 - (h) **Investigator** means the City of Leawood Chief of Police or his/her designee.

- (i) **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 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.
- (j) **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 one or more 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 which 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.
- (k) **Religious organization** means a church, mosque, temple, synagogue, or other entity principally devoted to religious practice or religious teaching.
- (l) **Rent** means to lease, to sublease, to let or otherwise to grant the right to occupy premises not owned by the occupant in exchange for payment or other consideration.
- (m) **Rental housing** means any real property, consisting of one or more dwelling units, which is required to obtain a license or permit or is otherwise addressed in Chapter 8 of this Code.
- (n) **Respondent** means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the city.
- (o) **Sexual orientation** means an individual's actual or perceived (by the individual or another) emotional, romantic, or sexual attraction to other people, such as heterosexual, homosexual, bisexual, pansexual or asexual.

(Ord. 2955C; 08-12-19)

11-1102. **DECLARATION OF POLICY.**

- (a) Rights Recognized. The right of an individual to be free from discrimination because of that individual's race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military 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 unlawful discrimination.
 2. The right to the full enjoyment of any of the services, advantages or privileges of any place of public accommodation without unlawful discrimination.
 3. The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefore, without unlawful discrimination.
 4. The right to exercise any right granted under this ordinance without retaliation.
- (b) Protection. To protect these rights, it is hereby declared to be the purpose of this article 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.

(Ord. 2955C; 08-12-19)

11-1103 UNLAWFUL PRACTICES.

- (a) Employment. It shall be an unlawful discriminatory practice for an employer to refuse to hire or employ, or to discharge from employment or to otherwise discriminate against an otherwise qualified person because of the person's sexual orientation or gender identity; or to otherwise discriminate against such individual in compensation or in terms, conditions or privileges of employment. This article shall not apply to employment by a religious organization that consists of religious teaching, ministry, or other religious duties or practices.
- (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 the sale or lease of real property including rental housing, or in the provision of services or facilities in connection therewith, because of an individual's 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 of individuals with whom such individual associates. Nothing in this article shall prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, from limiting the sale, rental or occupancy of real property or rental housing which it owns or operates for other than a commercial purpose to individuals of the same religion, or from giving preference to such individuals.
- (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 or accommodations to any individual because of their sexual orientation or gender identity.
- (d) Defenses. It shall be a defense to any allegation of an unlawful discriminatory practice brought hereunder:
1. that the individual or entity did not know or have reason to know of the aggrieved individual's sexual orientation or gender identity;
 2. that the individual or entity acted in good faith and had reasonable grounds for believing that an act or omission was not a violation of this ordinance;
- or

3. that any adverse action taken against the aggrieved individual would have been taken regardless of the individual's sexual orientation or gender identity (i.e. the aggrieved individual violated the law, a workplace rule, a lease provision or policy applicable to all similarly situated individuals, such as employees, lessees, customers, etc.).

(e) Exceptions. Nothing in this article shall:

1. prohibit a fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.
2. 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.
3. require an employer to hire unqualified individuals or to retain employees when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.
4. 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.
5. be construed to require any person or entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.
6. be construed to prohibit an employer or place of public accommodation to post signs for restrooms and dressing rooms based on gender.
7. be construed to prohibit or require an action in violation of a person's rights protected by K.S.A. 60-5301 et seq.
8. be construed to make it lawful to discriminate or retaliate against individuals on the basis of race, color, religion, national origin, sex, age, disability, marital status, familial status, or military status. Such discrimination and retaliation is not addressed in this article because federal and state laws consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide appropriate procedures for addressing complaints for such discrimination and retaliation.

(Ord. 2955C; 08-12-19)

11-1104**ENFORCEMENT.**

- (a) An aggrieved individual may file a written, verified complaint that the individual has been, or is being, subject to an alleged unlawful discriminatory practice as prohibited by this article. The complaint may be filed personally or through an attorney (or if a minor, through the minor's parent, legal guardian or attorney) and shall be completed on a 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 by the city.
- (b) The complaint form shall be submitted to the investigator via hand-delivery, certified mail, or by email, and shall only be considered complete if all information required by the city's form has been provided to the extent such information is reasonably available to the aggrieved individual.
- (c) The complaint form must be filed within sixty (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 sixty (60) days of the last act of discrimination.
- (d) Upon receipt of a complete complaint, the investigator shall notify the respondent(s) of the complaint, providing sufficient details related to the complaint so the respondent(s) may respond. The investigator shall give the respondent(s) 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 request of respondent(s), extend the answer period an additional thirty (30) days. If the respondent(s) accused of 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.
- (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, statements or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within sixty (60) days of the investigator's last request for information, unless the investigator notifies the complainant and the respondent(s) in writing of the need for additional time and reason(s) therefore.
- (f) Within thirty (30) days of 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 the respondent(s), and this notification shall be considered a final order and no further action shall be taken by the city.

- (h) If the investigator finds probable cause 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 sixty (60) days of the date of the finding of probable cause, the matter shall be referred to the city prosecutor for review and filing of ordinance violation charges in the Municipal Court. The investigator may extend the time for signing a settlement agreement for good cause and with the agreement of all parties.
- (i) If the prosecutor determines that ordinance violation charges should be brought, then the matter will be scheduled for arraignment and notice given to the parties in accordance with law. If the Municipal Court Judge finds that a violation of this article has occurred, the Municipal Court Judge may order restitution and/or a civil penalty in the amount of up to \$1,000.00 for each violation. Each party is to bear their own attorneys' fees, if any.
- (j) The filing of a complaint for the alleged violation of this article or a response thereto shall in no way preclude any party from seeking other relief under state or federal law.

(Ord. 2955C; 08-12-19)

11-1105 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. 2955C; 08-12-19)