

CITY COMMISSION AGENDA MEMO
November 29, 2010

FROM: Jason Hilgers, Assistant City Manager

MEETING: December 7, 2010

SUBJECT: First Reading of Discrimination Ordinance

PRESENTER: Katie Jackson, Assistant City Manager

BACKGROUND

At the May 18, 2010, briefing session, the City Commission indicated a desire that the Human Rights and Services Board (HRSB) explore whether or not discrimination based on sexual orientation existed in Manhattan; and, if so, whether or not the City should amend its existing ordinance to address the issue. In order to begin this process, the City Commission provided direction to City Administration to develop a specific charge that the City Commission could consider issuing to HRSB regarding these issues.

In attempting to develop the charge requested by the City Commission, City Administration determined that it was necessary for the Commission to be more specific as to exactly how the issues were to be presented to HRSB. As a result, on July 6, 2010, the City Commission provided further direction for City Administration to develop a proposed ordinance adding sexual orientation and gender identity to the protected class list in the existing discrimination ordinance, along with the appropriate mechanisms for the enforcement of violations of the ordinance. The City Commission also indicated they would like to review the draft ordinance before sending it to HRSB for feedback.

On August 24, 2010, the City Commission reviewed a draft Discrimination Ordinance with the addition of sexual orientation and gender identity to the protected class list. The Commission gave direction to City Administration to schedule this topic for discussion with HRSB and return a recommendation.

On September 16, 2010, HRSB met to discuss the direction given to them by the City Commission as it pertains to the Discrimination Ordinance. HRSB set the dates of October 14 and 28, 2010, to discuss this topic.

HRSB held meetings on October 14th and 28th to discuss the addition of sexual orientation and gender identity to the Discrimination Ordinance. Approximately four hours of questions and public comment took place on October 14th with adjournment taking place near 11 p.m. after a 7 p.m. start. On October 28th, HRSB passed a motion on a vote of 5-1 recommending the City Commission include “sexual orientation” and “gender identity” in the Discrimination Ordinance. The motion was read as follows:

“The motion is to approve the draft ordinance, as it’s been presented, to include sexual orientation and gender identity, for recommendation back to the City Commission for consideration”.

DISCUSSION

City Administration has prepared a draft ordinance which complies with the direction of the City Commission and takes into account feedback received from the discussion at HRSB meetings. The draft ordinance (attached) is in a form which shows the original draft of the City and also shows the additions and changes necessary to accomplish the direction given by the City Commission and feedback received since the August 24, 2010, review of the ordinance.

Several of the changes and modifications stem from a review and insertion of language consistent with Kansas laws relating to discrimination. There are several different state laws that collectively form the state’s approach to preventing discrimination:

- Employment and public accommodations discrimination on the basis of the race, religion, color, sex, disability, national origin or ancestry of any person is prohibited per the Kansas Act Against Discrimination (“KAAD”), at K.S.A. 44-1009.
- Housing discrimination on the basis of the race, religion, color, sex, disability, national origin or ancestry, or familial status of any person is prohibited per the KAAD, at K.S.A. 44-1015-44-1024. Housing is treated differently than discrimination in employment and public accommodations because the state housing laws are modeled after federal fair housing laws (which do not apply to employment and public accommodations).
- Employment discrimination on the basis of age is prohibited per the Kansas Age Discrimination in Employment Act (“KADEA”), at K.S.A. 44-1111 *et seq.*
- Discrimination in all contexts, on the basis of military status, is prohibited under K.S.A. 44-1125 to 44-1128.

The Kansas Human Rights Commission (“KHRC”) is the state agency that enforces complaints on the basis of discrimination in housing, employment, and public accommodations, except that the KHRC does not enforce any discrimination on the basis of military status. The state law requires a person aggrieved by such discrimination to file a civil action in district court.

It is important to note that the state laws do not treat discrimination in all protected classes the same. As noted above, familial status is a protected class only in housing, and age is a protected class only in employment. Housing discrimination complaints have more procedural steps, and involve more specific penalties.

The draft ordinance attempts to combine these separate areas of state law into one ordinance and to further prohibit discrimination in employment, housing, and public accommodations on the basis of sexual orientation and gender identity. The prior draft ordinance, which was provided as an example for discussion purposes, was modeled after the City of Lawrence's ordinance. The attached draft developed for first reading updates the Lawrence ordinance to make the first reading ordinance more consistent with the current version of state laws.

Similarly, Article II of the draft ordinance has changed significantly from the last draft. The Commission was previously advised that Article II contained the City's *current* provisions relating to the Human Rights and Services Board, to give the Commission background on HRSB's current status and powers. However, Article II must be changed in order to convert HRSB from its current status to a "local human rights commission" as allowed by state law. Article II now reflects the appropriate powers and duties of a "local human rights commission"; Article II is nearly identical to the state law and very similar to Lawrence and Salina's ordinances.

Further changes to Article II involve removing specific references to board bylaws and staff responsibilities. As is typical of other city boards and committees, these details will be developed and adopted in a revision to HRSB's bylaws rather than spelled out in the ordinance. This practice allows the boards and the City Commission more flexibility to develop the details of the operation of the board without routinely amending ordinances. If HRSB converts from its current status into a "local human rights commission", the board's bylaws must be amended. Any changes to the bylaws will be recommended by City Administration and HRSB, and must be approved by the City Commission.

The ordinance has other notable changes. In Sec. 10-16, under Unlawful Employment Practices, the exemption for religious organizations was rewritten to make it more clear that religious organizations were not liable for employment discrimination on the basis of gender identity and sexual orientation unless the religious organization is engaged in commercial activities NOT related to its religious purpose.

In Section 10-17, under Unlawful Public Accommodation Practices, there is a new exception permitting public accommodations to distinguish on the basis of biological sex in accommodations where such distinction is necessary because of the intrinsic nature of the accommodation. This exception exists in the state law. To provide illustration, the City added text to the state law exception stating that a distinction on the basis of biological sex was permitted in public accommodations such as restrooms, locker rooms, dressing rooms, medical facilities, jails and sports and recreational activities.

In each of the sections defining unlawful discriminatory practices, Sections 10-16 through 10-18, the ordinance adds military status as a protected class. While state law prohibits discrimination on the basis of military status, KHRC does not investigate such discrimination. The aggrieved person must file a civil lawsuit in district court. Adding military status to each of these sections creates a local investigative process not available at the state level.

Also in Section 10-18, language has been changed to reflect when an owner could discriminate in housing if the owner maintains and occupies one of no more than four family units independent of each other as part of a living quarters. This was changed from the prior version where the ordinance allowed an owner to discriminate if the owner occupied part of a duplex. The state law now allows an owner to discriminate if the owner occupies part of a fourplex.

City Administration has inserted an effective date of September 1, 2011, to allow time for the City to develop bylaws and staff procedures before the City accepts and investigates complaints.

FINANCING

The addition of staff will depend on the number and complexity of complaints received. If there are few complaints, the City could probably handle them with existing staff. The more complaints the City has the more staff/help that will be needed. At this point in time, it is City Administration's intent to approach this with an option to address staffing in the 2012 budget, which will be considered in summer 2011. As the bylaws are developed and the training regime is pieced together, City staff may have a better feel for impact and time constraints of the new functions. We will then be able to provide feedback on the number of employees necessary or if we can absorb these duties with existing staff levels.

ALTERNATIVES

It appears the Commission has the following alternatives concerning the issue at hand. The Commission may:

1. Approve first reading of the modified Discrimination Ordinance.
2. Do not approve the measure.
3. Modify or develop alternatives if other concerns or factors arise.
4. Table the request.

RECOMMENDATION

City Administration recommends the City Commission provide feedback on how to proceed with the modifications proposed within the Discrimination Ordinance. The Commission should give direction as to whether or not they wish to recognize both sexual orientation and gender identity and whether or not they wish to have HRSB have purview over all protected classes or just those being added. If the Commission creates a local Board, the City Commission should also indicate how they want to handle military status, as it pertains to housing complaints.

POSSIBLE MOTION

Approve first reading of an ordinance modifying the Discrimination Ordinance to include sexual orientation and gender identity to the protected class list in Manhattan, Kansas.

JH/WF
10151

Enclosure:

1. Draft Ordinance

ORDINANCE NO. _____

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:

Section 1. That Article I of Chapter 10, of the Code of Ordinances of the City of Manhattan, Kansas is hereby 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 policy of the City, in exercise of its police power for the protection of the public safety, public health and general welfare, for the maintenance of business and good government, and for the promotion of the city's trade and commerce, to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation or separation in all areas of public accommodations covered by this chapter, and to eliminate and prevent discrimination, segregation or separation in housing.
- (b) It is also declared to be the policy of the city 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 of 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 as covered by this chapter, and the opportunity for full and equal housing are civil rights of every citizen. To protect these rights, it is hereby declared to be the purpose of this chapter to establish and to provide a city human rights and services board.

Sec. 10-2. Definitions.

As used in this Chapter, the following words and phrases shall have the following meanings:

Age means ~~the chronological age of a person who is at least 40 years of age, but less than 70 years of age. an age of 40 or more years.~~

Aggrieved person means any person who claims ~~they are~~ he or she is being, or ~~have~~ has been injured, by an unlawfully discriminatory act or practice; and/or believes ~~they~~ he or she will be injured by an unlawfully discriminatory act or practice that is about to occur.

Comment [kj1]: The ordinance has been reformatted throughout to make the headings and sections comply with the City's style. The formatting changes are not highlighted, but text changes are highlighted throughout.

Comment [kj2]: This section is modeled after KSA 44-1001, with the addition of the following protected classes: age and military status (both are protected in separate state laws, but we combined all state-protected classes into one ordinance), as well as gender identity and sexual orientation.

Comment [kj3]: Current version of KSA 44-1112

Comment [kj4]: Definition modeled after "person aggrieved" definition in KSA 44-1015, which also contains the "about to occur" language. KSA 44-1015 contained within housing discrimination act; this definition applies to all contexts (housing, employment & public accommodations).

Board means the Human Rights and Services Board as established by this Chapter.

Complainant means an aggrieved person who has filed a written verified complaint alleging unlawful discrimination, or on whose behalf another person has filed such a complaint, in accordance with [Section _____](#) of this Chapter.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the Director or the Director's designee.

Conciliation agreement means a written agreement setting forth the resolution of the issues in conciliation.

Director means the director of human resources.

Disability means, with respect to ~~an person~~ individual:

(a) a physical or mental impairment which substantially limits one or more of the major life activities of such individual; ~~such person's major life activities;~~

(b) a record of having such an impairment; or

(c) being regarded as having such an impairment by the person or entity alleged to have committed the unlawful discriminatory practice complained of. Disability does not include current, illegal use of, ~~or addiction to,~~ a controlled substance, as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802), in housing discrimination. In employment and public accommodation discriminations, the term "disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the Controlled Substances Act (21 U.S.C. 812), when the covered entity acts on the basis of such use.

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

Employer means any person in this city employing ~~four (4)~~ two (2) or more employees; ~~and,~~ any person acting directly or indirectly for any employer, ~~and~~ labor organizations, nonsectarian organizations, organizations engaged in social service work and the state of Kansas and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation; and all political subdivisions of the city, state and federal governments; except when such term is used in connection with either sexual orientation or gender identity, it shall mean any person in this city employing fifteen (15) or more persons or more employees.

Employment agency includes any person or government agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

Comment [kj5]: Changed from "person" to "individual" because person is defined more broadly below and includes entities, etc.

Comment [kj6]: Addiction is removed because addiction is now regarded as a disability, meaning there is protection for "persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully."

Illegal use of drugs is not a disability, and is not protected by the KAAD, the ADA, or this ordinance.

Comment [kj7]: Changed to current version of KSA 44-1002. KAAD treats siblings as employees who could file a claim against a fellow sibling, but the ordinance did not allow such a claim until this change was made.

Comment [kj8]: Changed to current version of KSA 44-1002. The change removes application of the ordinance to the federal government. The state Kansas Human Rights Commission does not investigate federal government claims, either.

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

- (a) a parent or another person who has legal custody of such individual or individuals; or
- (b) the designee of such parent or other person who has such custody, with the written permission of such parent or other person. ~~The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not, or individuals who have not, attained the age of 18 years.~~

Comment [kj9]: Changed to current version of KSA 44-1015.

Family includes a single individual; ~~IMMEDIATE FAMILY means and includes parent, child, grandparent, grandchild, sibling and spouse.~~

Comment [kj10]: Definition of "immediate family" no longer needed, as phrase no longer in ordinance.

Fraternal or social organization means and includes organizations founded and operated primarily for social purposes and shall neither mean nor include organizations founded or maintained primarily for trade or professional purposes.

Gender identity means ~~the gender-related identity, appearance, or mannerisms or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.~~

Governing body means the City Commission of the City of Manhattan, Kansas.

Housing/Real Property means and includes:

Comment [kj11]: Changed to current version of KSA 44-1015.

- (a) All vacant or unimproved land; ~~and, which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof which is occupied or designed or intended for occupancy as a residence by one or more families;~~
- (b) Any ~~building or structure which is residential or commercial building or structure having all or a portion thereof which is occupied or designed or intended for occupancy, or any building or structure having a portion thereof which is occupied or designed or intended for occupancy, as a residence by one or more families.~~

Comment [kj12]: The current City ordinance includes military status as a protected class, but the ordinance defined "military status" by incorporating the state law (KSA 44-1125(a)). In this new ordinance, we are not incorporating state law by reference, but rather reproducing it within the ordinance, so we needed to define the term.

Labor organization includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers on behalf of employees concerning grievances, terms or conditions of employment or other mutual aid or protection in relation to employment.

Member of the military means ~~a member of the United States armed forces or national guard on active duty, or a member of an active reserve unit in the United States armed forces or national guard.~~

State law makes it unlawful to discriminate on the basis of military status (KSA 44-1126), but the KHRC does **not** investigate these violations. The aggrieved person may file a civil action in district court to enforce the state law. If military status is included in this ordinance, it creates a process that does not currently exist for such persons.

Person means and includes ~~one or more individuals, partnerships, associations, organizations, corporations, legal representatives, mutual companies, joint-stock companies, trusts,~~

Comment [kj13]: Changed to current version of KSA 44-1002.

~~unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries, labor organizations, corporations, municipal corporations, quasimunicipal corporations, governmental agencies, public bodies, legal representatives, trust, trustees, trustees in bankruptcy, receivers, fiduciaries, mutual companies, joint stock companies, liability companies, or unincorporated organizations.~~

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, ~~and all governmental departments or agencies which serve the public.~~ Public accommodations do not include ~~a religious or nonprofit fraternal or social association or corporation, those owned and operated by a Religious Organization or by a nonprofit fraternal or social organization, to the extent such accommodations are only used by members of such organizations and not open to the public in general, or corporation.~~

Comment [kj14]: Changed to current version of KSA 44-1002. The prior language made a religious organization a public accommodation in certain circumstances (when open to the public). The KAAD, and this draft, exempts the listed organizations from liability for public accommodation discrimination in all activities.

Reasonable accommodation means (1) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

Comment [kj15]: Changed to current version of KSA 44-1002. (Reflects current ADA law)

~~places of employment, public accommodations, and housing/real property readily accessible to and usable by persons with disabilities, including in rules, policies, practices, procedures, and services, in accordance with applicable local, state and federal laws and regulations.~~

Regarded as having such an impairment means the absence of a physical or mental impairment, but regarding or treating an individual as though such an impairment exists.

Comment [kj16]: Changed to current version of KSA 44-1002. (Reflects current ADA law)

Religious organization means a corporation, association, educational institution, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Acts of 1964 pursuant to section 702(a) or 703(e)(2) of such Act.

Respondent means the person, as defined herein, against whom a written verified complaint alleging discrimination has been filed with the ~~Director~~director.

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

Sexual orientation means heterosexuality, homosexuality or bisexuality. It is the direction of one's sexual interest toward members of the same, opposite, or both sexes. Sexual orientation is a pattern of emotional, romantic, and/or sexual attractions to men, women, both genders, neither gender, or another gender. Sexual Orientation shall not mean conduct which is prohibited by law.

Unlawful act or practice means any unlawful employment practice, any unlawful public accommodations practice, or any unlawful housing practice ~~as defined herein.~~

~~276. **UNLAWFUL EMPLOYMENT PRACTICE**
means and includes those practices and acts specified as unlawful in Section _____ of this Chapter.~~

Comment [kj17]: Removed because duplicative (these provisions are defined within Article II)

~~287. **UNLAWFUL HOUSING PRACTICE**
means and includes any act or practice specified as unlawful in Section _____ of this Chapter.~~

~~298. **UNLAWFUL PUBLIC ACCOMMODATIONS PRACTICE**
means and includes any act or practice specified as unlawful in Section _____ of this Chapter.~~

Written verified complaint means a complaint, in writing, alleging unlawful discrimination, filed in accordance with Section _____ of this Chapter, which has been witnessed and signed by a notary public.

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 unqualified or incompetent personnel, or discharge qualified or competent personnel.

Comment [kj18]: This provision is also found in the state law, at KSA 44-1006.

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 Article II of Chapter 10, of the Code of Ordinances of the City of Manhattan, Kansas is hereby amended to read as follows:

ARTICLE II. Human Rights and Services Board

Sec. 10-56. Created.

Comment [kj19]: Other City boards do not include the details of the administration of the board in the ordinance; rather, such details are contained within the board's bylaws. This draft removes some of the board administrative details, with the understanding that if the ordinance is adopted, the Commission will also have to amend the bylaws for this board.

There is hereby created a board to be known as the Human Rights and Services Board to serve the citizens of the City in the administration and furtherance of ~~the policy established herein this chapter~~. The Human Rights and Services Board shall be deemed to be a “local human relations commission”.

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 as broadly as possible, citizens of all economic standing, employment, race, religion, color, disability, familial status, military status, sexual orientation, gender identity, national origin or ancestry, sex and age.

Comment [kj20]: The ordinance should specify the number of board members. The current HRSB contains 7 members, the Commission may modify the number of members. If a hearing panel contains three members, the Commission may want to consider nine (9) board members to potentially have three panels of three members. (Please note the bylaws, adopted by the Commission, will address how a hearing panel is formed and which members shall serve on the panel).

Sec. 10-8. ~~Section 10-7. Terms of members.~~

~~Initial appointments to the Human Rights and Services Board shall be for one (1), two (2), and three (3) year terms, and thereafter a~~All appointments shall be for a term of three (3) years and until a successor is qualified, provided; however, no person shall serve for more than six (6) consecutive years. ~~The term of office of each chairperson and vice chairperson shall be for one (1) year, and no person shall serve for more than two (2) consecutive terms in the same office, unless such election to the immediately subsequent term is made by members of the board by unanimous vote.~~

Comment [kj21]: Because this is an existing board, the initial appointments have already occurred.

Sec. 10-9. ~~Section 10-8. Compensation.~~

The members of the Human Rights and Services Board shall serve without compensation.

Sec. 10-10. ~~Section 10-9. Organization; bBy-laws.~~

~~The Human Rights and Services Board shall elect one of its members as chairperson, who shall preside at all meetings of the board and perform all the normal duties and functions of the chairperson. The mayor shall convene the first meeting of the board and conduct the election of the chairperson. The board shall elect, in the same manner, one of its members a vice chairperson who shall act as chairperson during the absence or incapacity of the chairperson and, when so acting, the member so designated shall have and perform all the duties and functions of the chairperson of the board. The chairperson or vice chairperson may resign from office without resigning from the board. In such event, the board shall elect another member as a replacement for the unexpired term. The term of office of each chairperson and vice chairperson shall be for one year, and no person shall serve more than two consecutive terms in the same office, unless such election to the immediately subsequent term is made by members of the board by unanimous vote.~~ The board shall adopt by-laws as necessary for the conduct of the board, subject to approval by the governing body.

Comment [kj22]: The election of officers can be addressed in the board bylaws. The first meeting has already occurred.

Sec. 10-11. ~~Section 10-10. Meetings.~~

The board shall meet at least once each quarter, and at such other times as necessary to carry out its

duties and responsibilities. The board shall designate the time and locations of such meetings.

Sec. 10-12, Section 10-11. Quorum.

A majority of the members of the Human Rights and Services Board shall constitute a quorum for the purpose of conducting its business.

Sec. 10-13, Section 10-12. Removal of member.

Any member of the board may be removed by the mayor with the consent of the governing body; no such removal shall be effective until the member proposed to be removed has been furnished a written statement of the reason(s) and an opportunity to be heard thereon by the governing body.

Sec. 10-14, Section 10-13. Powers and duties.

The board shall have the following functions, powers and duties;

Comment [kj23]: The prior version of the ordinance had the powers and duties for the existing HRSB. The powers and duties needed to be modified to make the board a local human rights commission. Section consistent with KSA 44-1004.

- ~~(a) To endeavor to eliminate prejudice among the various racial, ethnic and other groups in the city and to further goodwill among all people of Manhattan.~~
- (a) To receive, initiate, investigate and pass upon complaints alleging discrimination in employment, public accommodations and housing because of race, color, sex, military status, disability, religion, sexual orientation, gender identity, and national origin or ancestry, complaints alleging discrimination in employment because of age, and complaints alleging discrimination in housing because of familial status. In an advisory capacity, receive and consider questions or proposals which in and of themselves do not constitute formal complaints of unlawful discrimination but are related issues. The board may provide a resolution of such question, or comment on such proposal, to the affected parties, including the Governing Body, if necessary. Any such resolution or comment shall be advisory only and not binding on any party, including the Governing Body.
- (b) To subpoena witnesses, compel their appearance and require the production for examination of records, documents and other evidence or possible sources of evidence and to examine, record and copy such materials and take and record the testimony or statements of such persons. The board may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The board shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction provided that the board first complies with the provisions of article 15 of the Kansas bill of rights and the fourth amendment to the United States constitution relating to unreasonable searches and seizures.
- (c) To hold public hearings, to administer oaths and to take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory or search warrant issued hereunder, or to testify to any matter regarding which such person may be lawfully questioned, the board may make application to the district court to compel compliance pursuant to state law.

- (d) To act in concert with other parties in interest in order to eliminate and prevent discrimination and segregation, prohibited by this chapter, by including any term in a conciliation agreement as could be included in a final order under this chapter.
- (e) To apply to the district court for enforcement of any conciliation agreement by seeking specific performance of such agreement.
- (f) To issue such final orders after a public hearing as may remedy any existing situation found to violate this chapter and prevent its recurrence; and, if necessary, to seek enforcement of such final orders pursuant to federal and state law.
- (g) To endeavor to eliminate prejudice among the various groups and people with disabilities in the city and to further good will among such groups.
- (h) To create such advisory committees and conciliation councils, as in its judgment will aid in effectuating the purposes of this chapter; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, sex, disability, age, sexual orientation, gender identity, familial status, military status, and national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the city; and to make recommendations to the board for the development of policies and procedures, and for programs of formal and informal education, which the board may recommend to the governing body-. Such advisory committees and conciliation councils shall be composed of representative citizens serving without pay. The board may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good-will and cooperation among all elements of the population of the city.
- (i) To accept contributions from any person to assist in the effectuation 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.
- (j) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, disability, age, sexual orientation, gender identity, familial status, military status, or national origin or ancestry.
- (k) To render each year to the city manager and to the governing body a full written report of all of its activities and of its recommendations.
- ~~(e) To issue such publications, results of investigation not confidential in nature, and research as, in the judgment of the Board and Director, will tend to promote goodwill and minimize or eliminate discrimination.~~
- (l) To cooperate with the Kansas Human Rights Commission and with other organizations or agencies, both public and private, whose purposes are consistent with this ~~Chapter~~chapter.

(m) To meet regularly at a place and time decided by the ~~Board~~board and to hold special meetings as may be called by the ~~Chair~~chair or by a majority of the members of the ~~Board~~board then serving.

(n) To advise and support the ~~Director~~director and staff of the ~~Human~~human ~~Relations~~Resources ~~Department~~department and receive and accept reports of their activities.

~~To advise the members of the Governing Body, regularly, through distribution of its minutes, memoranda, reports and other pertinent documents, the items of business brought before the Board, and the activities and recommendations of the Board.~~

(d) ~~To receive, investigate, decide, and attempt to conciliate a complaint or complaints alleging discrimination, segregation, or separation in employment, public accommodations, or housing.~~

(e) ~~To hold such public hearings as are provided in Section _____. The Board shall adopt rules and regulations necessary for the conduct of such hearings. Adopt bylaws for the purpose of organization and performing its duties; and further may adopt such rules of procedure and regulations as are necessary and suitable for carrying out the purposes of the board.~~

Sec. 10-15.~~Section 10-14. Staff appointment~~ **Reserved.**

~~A City staff member appointed by and responsible to the Director shall act as staff representative and ex-officio member of the Human Rights and Services Board, without voting powers, and shall assist the board in the performance of its assigned duties. The appointment shall be based on the qualifications, fitness and merit of the applicant for the position. The employment of such additional personnel, full or part time, as may be reasonably necessary to carry out the provisions of this Chapter may be authorized by, and their compensation fixed, by the City Manager.~~

Comment [kj24]: City administration recommends addressing the duties of a staff liaison in the bylaws rather than the ordinance, as is typical of other city boards.

Sec. 10-16.~~Section 10-15. Staff, duties, responsibilities, and authority.~~ **Reserved.**

~~The staff representative shall have, but not be limited to, the following duties, responsibilities, and authority: The administration of this chapter shall be the responsibility of the staff representative and his/her designated staff. The staff representative shall promulgate procedure to implement, expedite, and effectuate the provisions of this chapter. In addition to any powers and responsibilities heretofore conferred, the staff representative shall have the power and responsibility to:-~~

Comment [kj25]: City administration recommends addressing staff duties in the bylaws rather than the ordinance, as is typical of other city boards.

- ~~1. To endeavor to eliminate prejudice among the various racial, ethnic and other groups in the city and to further goodwill among all the people of Manhattan;~~
- ~~2. To administer and enforce the provisions of this Article;~~
- ~~3. To initiate and file a written verified complaint in accordance with the provisions of Section ____ of this Chapter whenever he or she has reason to believe that any person has engaged or is engaging in any act or practice in violation of this Chapter;~~

- 4. ~~To receive, investigate, decide, and attempt to conciliate all complaints alleging unlawful discrimination, segregation, or separation in employment, public accommodations or housing filed in accordance with the provisions of Section _____ of this Chapter;~~
- 5. ~~To act as the administrative staff member of the Board;~~
- 6. ~~To exercise any other powers, duties and responsibilities specified as the Director's in any Section of this Chapter; and~~

Section 3. That Article III of Chapter 10, of the Code of Ordinances of the City of Manhattan, Kansas is hereby amended to read as follows:

ARTICLE III. Unlawful Practices

Sec. 10-16. Unlawful employment practices.

It shall be an unlawful employment ~~practice~~ for:

- (a) For an employer, because of the race, color, sex, military status, disability, religion, age, sexual orientation, gender identity, national origin or ancestry 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. ~~A~~ employer to refuse to hire or employ or to bar or discharge from employment or to otherwise discriminate against any person in compensation or in the terms, conditions or privileges of employment, or to limit, segregate, separate, classify, or make any distinction with regard to employees, or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation on the basis of race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry, without a valid business motive. ~~This subsection shall not apply to any act of a Religious Organization that is based upon sexual orientation or gender identity, unless the act occurs within the commercial activities of the religious organization that are not connected to its religious purpose. ~~with respect to the employment of individuals to perform work connected with the carrying on by such Religious Organization of its activities and related to either sexual orientation or gender identity.~~~~
- (b) For ~~A~~ a labor organization, because of the race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry of any person, to exclude or to expel ~~any such~~ person from its membership, or to discriminate in any way against any of its members or against any employer or any person employed by the employer, ~~on the basis of race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry.~~

Comment [kj26]: Unless otherwise noted, the changes in this section were made conform to the corresponding section of the current version of KSA 44-1009.

Comment [kj27]: This exception was rewritten to make it clearer that a religious organization was not liable for employment discrimination on the basis of gender identity/sexual orientation UNLESS the religious organization engaged in commercial activities NOT related to its religious purpose. The revised exception replaces the former text in the other subsections, below.

~~(f)~~(d) For Any any employer, employment agency, or labor organization ~~or joint labor management committee~~ to print or circulate, or cause to be printed or circulated, any statement, advertisement or publication, or to use any form of application for employment or membership, or make any inquiry in connection with prospective employment or membership, which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry, or any intent to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification. This subsection shall not apply to any act of a religious organization that is based upon sexual orientation or gender identity, unless the act occurs within the commercial activities of the religious organization that are not connected to its religious purpose.~~This section shall not apply to a Religious Organization with respect to the employment of individuals to perform work connected with the carrying on by such Religious Organization of its activities and related to either sexual orientation or gender identity.~~

~~(e)~~(e) Any For any employer, employment agency, labor organization or joint labor-management committee, to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this Chapter, or because such person he or she has promoted the provisions of this Chapter, or because he or she has filed a complaint, testified, or assisted in any proceeding, investigation or hearing authorized by this Chapter or by appropriate state or federal law. This subsection shall not apply to any act of a religious organization that is based upon sexual orientation or gender identity, unless the act occurs within the commercial activities of the religious organization that are not connected to its religious purpose.~~This section shall not apply to a Religious Organization with respect to the employment of individuals to perform work connected with the carrying on by such Religious Organization of its activities and related to either sexual orientation or gender identity.~~

Comment [kj28]: The provision was modified to reflect the current version of KSA 44-1009, which does not include the language regarding the "promotion of the Chapter."

~~(h)~~(f) For An an employment agency to refuse to list or properly classify for employment, or refuse to refer any person for employment or otherwise discriminate against any person because of race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry, or to comply with a request from an employer for a referral of applicants for employment if the request expresses, either directly or indirectly, any limitation, specification or discrimination as to race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry, unless such request represents a bona fide occupational qualification. ~~(Ord. 6658)~~

(f) For an An employer, labor organization, employment agency, or school which provides, coordinates, or controls apprenticeship, ~~on-on-the--job~~, or other training or retraining program, to maintain a practice of discrimination, segregation, or separation because of race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry in admission, hiring, assignments, upgrading, transfers, promotion, layoff, dismissal, apprenticeship, or other training or retraining program, or in any other terms, conditions or privileges of employment, membership, apprenticeship, or training; or to follow any policy or procedure which, in fact, results in such practices

~~without a valid business motive. any aspect of such program, except where directly related to a bona fide occupational qualification. This subsection shall not apply to any act of a religious organization that is based upon sexual orientation or gender identity, unless the act occurs within the commercial activities of the religious organization that are not connected to its religious purpose. This section shall not apply to a Religious Organization with respect to the employment of individuals to perform work connected with the carrying on by such Religious Organization of its activities and related to either sexual orientation or gender identity.~~

(g) ~~Any~~ For any person, whether an employer or an employee, or other to aid, abet, incite, compel, or coerce the doing of any acts forbidden under this Chapter, or to attempt to do so.

(h) For an employer, labor organization, employment agency or joint labor management committee to: (1) Limit, segregate or classify a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee; (2) participate in a contractual or other arrangement or relationship, including a relationship with an employment of referral agency, labor union, an organization providing fringe benefits to an employee or an organization providing training and apprenticeship programs that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this act; (3) utilize standards criteria, or methods of administration that have the effect of discrimination on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control; (4) exclude or otherwise deny jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association; (5) not make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such employer, labor organization, employment agency or joint labor-management committee can demonstrate that the accommodation would impose an undue hardship on the operation of the business thereof; (6) deny employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need to make reasonable accommodation to the physical or mental impairments of the employee or applicant; (7) use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class or individuals with disabilities unless the standard, test or other selection criteria, as used, is shown to be job-related for the position in question and is consistent with business necessity; or (8) fail to select and administer tests concerning employment in that most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(i) For an employer to (A) seek to obtain, to obtain or to use genetic screening or testing information of an employee or a prospective employee to distinguish between or discriminate against or restrict any right or benefit otherwise due or available to an

Comment [kj29]: This was not included in the last draft of the ordinance; this provision is contained in the current version of KSA 44-1009.

Comment [kj30]: This was not included in the last draft of the ordinance; this provision is contained in the current version of KSA 44-1009.

employee or a prospective employee; or (B) subject, directly or indirectly, any employee or prospective employee to any genetic screening or test.

- (j) It shall not be an unlawful employment practice to fill vacancies in such a way as to eliminate or reduce imbalance with respect to race, sex, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry.

Sec. 10-17. 10-17 — UNLAWFUL PUBLIC ACCOMMODATIONS PRACTICES. Unlawful Public Accommodation Practices.

It shall be an unlawful public accommodations practice for any person, who is the owner, operator, lessee, manager, administrator, public servant, agent or employee of any place of public accommodation:

- (a) ~~1-~~ To refuse, deny, ~~segregate, separate, discriminate, or to~~ make a distinction, directly or indirectly, in offering its goods, services, facilities or accommodations to any person because of race, sex, military status, disability, religion, ~~age,~~ color, sexual orientation, gender identity, national origin or ancestry, except where a distinction because of biological sex is necessary because of the intrinsic nature of such accommodation, including but not limited to restrooms, locker rooms, dressing rooms, medical facilities, jails, and sports and recreational activities.-

- (b) To refuse, deny, ~~segregate, separate, discriminate, or~~ make a distinction, directly or indirectly, or discriminate in any way, against any person in the full and equal use and enjoyment of the services, facilities, privileges, ~~or advantages or enforcement powers~~ of any institution, department or agency of the City or any political subdivision thereof, or any other governmental entity within the City limits because of race, sex, military status, disability, religion, ~~age,~~ color, sexual orientation, gender identity, national origin or ancestry, except where a distinction because of biological sex is necessary because of the intrinsic nature of such accommodation, including but not limited to restrooms, locker rooms, dressing rooms, medical facilities, jails, and sports and recreational activities.-

- (c) For any person, whether or not specifically prohibited from discriminating under any provisions of this ~~Chapter~~chapter, to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this ~~Chapter~~chapter, or to attempt to do so.

- (d) ~~For any person to coerce, intimidate, threaten, retaliate against, or otherwise interfere with, any person because such person has opposed any practices or acts forbidden under this chapter, or because such person has filed a complaint, testified, or assisted in any proceeding, investigation or hearing authorized by this chapter or by appropriate state or federal law. To coerce, intimidate, threaten, retaliate against, or otherwise interfere with, any person, or attempt to do so, because he or she has promoted the provisions of this Chapter, or because he or she has filed a complaint, testified, or assisted in any proceeding, investigation or hearing authorized by this Chapter or by appropriate state or federal law.~~

~~5. — Nothing in this Chapter shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or~~

Comment [kj31]: Unless otherwise noted, the changes in this section were made conform to the corresponding section of the current version of KSA 44-1009.

Comment [kj32]: Age is not in state law and should not be included here; many public accommodations rely on age distinctions (senior citizen discounts, kids' sports programs, etc.)

Comment [kj33]: The KAAD contains this exemption in KSA 44-1009(c)(1), allowing public accommodations to make distinctions based on sex because of the "intrinsic nature" of the accommodation. City administration added the phrase beginning "including but not limited to..."

Comment [kj34]: The anti-retaliation provision here is modified to be consistent with the anti-retaliation provision in the employment section.

Comment [kj35]: This provision was removed because it is no longer needed --- the definition of "public accommodation" fully exempts religious or nonprofit fraternal or social association or corporation.

~~in conjunction with a religious organization, association or society, from limiting its offerings of goods, services, facilities and accommodations to persons of the same religion, or from giving preference to such persons, provided that such offerings mentioned above are not, in fact, offered for commercial purposes. Nor shall anything in this Chapter prohibit a religious or nonprofit fraternal or social organization or corporation, not in fact open to the public which, incident to its primary purpose, provides public accommodations as herein defined, for other than commercial purposes, from limiting such accommodations to its members or giving preference to its members.~~

(e) Nothing in this ~~Section~~ section shall require physical changes to make a place of public accommodation accessible to persons with disabilities unless required by other state, federal or municipal laws, statutes, ordinances or regulations, including the federal Americans with Disabilities Act.

(g) Nothing in this ~~Section~~ section shall prohibit the establishment of programs or other public accommodations designed and operated for a particular age group. However, such public accommodations shall not discriminate on the basis of race, sex, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry, except where a distinction because of biological sex is necessary because of the intrinsic nature of such accommodation, including but not limited to restrooms, locker rooms, dressing rooms, medical facilities, jails, and sports and recreational activities.

~~Sec. 10-18. 10-18 UNLAWFUL HOUSING/REAL PROPERTY PRACTICES~~ Unlawful Housing/Real Property Practices.

It shall be an unlawful housing/real property practice for any person:

- (a) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, real property to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry, military status, sexual orientation, or gender identity.
- (b) To discriminate against any person in the terms, conditions of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status, national origin or ancestry, military status, sexual orientation, or gender identity.
- (c) To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application, with respect to the sale or rental of real property that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, disability, familial status, national origin or ancestry, military status, sexual orientation, or gender identity, or an intention to make any such preference, limitation, specification or discrimination.
- (d) To represent to any person because of race, religion, color, sex, disability, familial status, national origin or ancestry, military status, sexual orientation or gender identity, that any

Comment [kj36]: Unless otherwise noted, the changes in this section were made conform to the corresponding section of the current version of KSA 44-1016 – 44-1018.

Comment [kj37]: In the state law, and this ordinance, unlawful housing practices do not prohibit discrimination on the basis of age or military status. That said, KSA 44-1126 makes it unlawful for any person to discriminate against a member of the military because of military status, implying that discrimination in housing cannot occur. Yet, including military status here gives an aggrieved person a process to resolve a complaint (including penalties) not currently available under state law.

real property is not available for inspection, sale or rental when such real property is in fact so available.

- (e) For profit, to induce or attempt to induce any person to sell or rent any real property by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, familial status, national origin or ancestry, military status, sexual orientation, or gender identity.
- (f) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting real property, or to discriminate against such person in the terms or conditions of such access, membership or participation, because of race, religion, color, sex disability, familial status, national origin or ancestry, military status, sexual orientation or gender identity.
- (g) To discriminate against any person in such person's use or occupancy of real property because of the race, religion, color, sex, disability, familial status, national origin or ancestry, military status, sexual orientation or gender identity of the people with whom such person associates.
- (h) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, residential real property to any buyer or renter because of a disability of:
 - (a) That buyer or renter.
 - (b) a person residing in or intending to reside in such real property after it is sold, rented or made available; or
 - (c) any person associated with that buyer or renter.
- (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of residential real property or in the provision of services or facilities in connection with such real property because of a disability of:
 - (a) That person;
 - (b) a person residing in or intending to reside in that real property after it is so sold, rented or made available; or
 - (c) any person associated with that person.
- (3) For purposes of this subsection (gh), discrimination includes:
 - (a) A refusal to permit, at the expense of the person with a disability, reasonable modifications or existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;
 - (b) a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy residential real property; or
 - (c) in connection with the design and construction of covered multifamily residential real property for first occupancy on and after January 1, 1992, a failure to design and construct such residential real property in such a manner that:
 - (i) The public use and common use portions of such residential real property are readily accessible to and usable by persons with disabilities;

(ii) all the doors designed to allow passage into and within all premises within such residential real property are sufficiently wide to allow passage by persons with disabilities who are in wheelchairs; and
(iii) all premises within such residential real property contain the following features of adaptive design: An accessible route into and through the residential real property; light switches, electrical outlets, thermostats and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as “ANSI A 117.1,” suffices to satisfy the requirements of subsection (h)(3)(C)(iii).

(5) As used in this subsection (h), “covered multifamily residential real property” means:

(a) Buildings consisting of four or more units if such buildings have one or more elevators; and

(b) ground floor units in other buildings consisting of four or more units.

(6) Nothing in this chapter shall be construed to invalidate or limit any state law or ordinance that requires residential real property to be designed and constructed in a manner that affords persons with disabilities greater access than is required by this chapter.

(7) Nothing in this subsection (h) requires that residential real property be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

~~1. To refuse to sell, broker, appraise, assign, or rent, or make unavailable sales, brokerage, appraisal, assignment or rental services with regard to any housing/real property available for sale, assignment or rental, or fail to transmit, or otherwise make unavailable, any application for assignment or rental, or fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale, assignment, or rental of such housing/real property, or otherwise make unavailable or deny any housing/real property or services or facilities in connection therewith, because of the race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry of: any buyer, renter or person involved in any such transaction; any person residing in or intending to reside in the housing/real property before or after it is sold, rented, or made available; or any person associated with the buyer, renter, or any other person involved in any transaction or representation related to the sale, assignment or rental of housing/real property or services or facilities in connection therewith.~~

~~2. To make, print, publish, disseminate or use, or cause to be made, printed, published, disseminated or used, any notice, statement, advertisement or application with respect to the sale or rental of housing/real property, that indicates any preference,~~

~~limitation, specification or discrimination based on race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry, or any intention to make any such preference, limitation, specification or discrimination.~~

~~3. To discriminate against any person in the terms, conditions or privileges of the sale, brokerage, appraisal, assignment or rental of housing/real property or in the provision of services or facilities in connection therewith, because of the race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry of: any buyer, renter or person involved in any such transaction; any person residing in or intending to reside in the housing/real property before or after it is sold, rented, or made available; or any other person involved in any transaction or representation related to the sale, assignment or rental of housing/real property or services or facilities in connection therewith.~~

~~4. To represent to any person that any housing/real property is not available, or to make any housing/real property otherwise unavailable, for inspection, sale, assignment or rental, when such housing/real property is, in fact, so available, on the basis of race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry.~~

~~5. To induce, or attempt to induce, any person to sell, assign or rent housing/real property by any representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry.~~

~~6. To deny any person access to, or membership in, or participation in, or otherwise make unavailable, any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting housing/real property, or to discriminate against him or her in the terms or conditions of such access, membership, or participation because of race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry.~~

~~7. To discriminate against any person in, or otherwise make unavailable for, his or her use or occupancy of housing/real property because of the race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry of the person or persons with whom such person associates.~~

~~8. To deny or not make available: a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining housing/real property; or any loan or other financial assistance secured by housing/real property, because of the race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry of:~~

~~(a) Such person; or~~

~~(b) Any person associated with such person in connection with such loan or other financial assistance or associated with him or her in connection with the purposes of such loan or other financial assistance.~~

~~9. To discriminate against any person in the fixing of the amount, interest rate, duration, or other terms or conditions of: such loan or other financial assistance, or such loan or financial assistance secured by housing/real property because of the race, sex, familial status, military status, disability, religion, color, sexual orientation, gender identity, national origin or ancestry of:~~

~~(a) Such person;~~

~~(b) Any person associated with such person in connection with such loan or other financial assistance, or such loan or financial assistance secured by housing/real property, or associated with him or her in connection with the purpose of such loan or other financial assistance, or such loan or financial assistance secured by housing/real property; or~~

~~(c) The present or prospective owners, lessees, tenants, or occupants of the housing/real property in relation to which such loan or other financial assistance, or loan or financial assistance secured by housing/real property, is to be made, given, or secured.~~

~~10. To use a form of application for financial assistance, or to make any inquiry or make or keep any record in connection with such application which indicates, directly or indirectly, an intention to make any preference, limitation, specification, or discrimination because of race, sex, familial status, military status, disability, religion, age, color, sexual orientation, gender identity, national origin or ancestry.~~

~~11. To separate, segregate, or discriminate against, any person who has, is regarded as having, or has a record of having a disability in any manner which is prohibited by local, state or federal laws, regulations or orders. For the purposes of this Subsection, discrimination includes:~~

~~(A) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises;~~

~~(B) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy housing/real property; or~~

~~(C) In connection with the design and construction of covered multifamily housing/real property for first occupancy on and after March 13, 1991, a failure to~~

~~design and construct such residential real property in accordance with the provisions of K.S.A. 44-1016.~~

~~(D) As used in Subsection (C), above, "covered multifamily housing/real property" means:~~

~~(1) buildings consisting of 4 or more units if such buildings have one or more elevators; and~~

~~(2) ground floor units in other buildings consisting of 4 or more units.~~

~~12. To coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by any of the provisions of this Chapter.~~

~~(i) 13-It shall be unlawful for any person or other entity whose business includes engaging in real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of the race, religion, color, sex, disability, familial status, national origin or ancestry, sexual orientation or gender identity of such person or of any person associated with such person in connection with any real estate related transaction.~~

~~(1) As used in this section, "real estate related transaction" means any of the following:~~

~~(a) The making or purchasing of loans or providing other financial assistance:~~

~~(i) For purchasing, constructing, improving, repairing or maintaining a dwelling; or~~

~~(ii) secured by real property.~~

~~(b) The selling, brokering or appraising of real property.~~

~~(2) Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, religion, color, sex, disability, familial status, national origin or ancestry, sexual orientation or gender identity.~~

~~(j) Nothing in this section 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, assignment or occupancy of any housing/real property which it owns or operates, for other than commercial purposes, to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, sex, familial status, military status, disability, religion, color, ~~sexual orientation, gender identity,~~ national origin or ancestry, ~~but whether or not membership in such religion is restricted on account of sexual orientation or gender identity.~~~~

~~(k) Nothing in this section shall prohibit a nonprofit private club, not, in fact, open to the public, which, incident to its primary purpose or purposes, provides lodging which it owns~~

and 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.

(l) Nothing in this section, other than the prohibitions against discriminatory advertising, shall apply to:

(1) The sale or rental of any single family house by an owner, provided the following conditions are met:

(a) The owner does not own or have any interest in more than three single family houses at any one time; and

(b) the house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this subsection applies to only one such sale in any 24-month period; or,

(2) rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as the owner's residence.

(C) — Nor shall anything (other than Subparagraphs 2, 6, 8, 9 and 12 in this Section apply:

(1) To the rental or leasing of housing accommodations for not more than two (2) families living independently of each other, if the owner resides in one (1) such housing unit; or

(2) To the rental or leasing to less than four (4) persons within a single housing accommodation by the occupant or owner of such housing accommodation if the owner resides therein.

14-(m) Nothing in this act limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this act regarding familial status apply with respect to dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, or to housing for older persons. As used in this subsection, "housing for older persons" means housing communities:

(A) Intended for, and at least 80% occupied by, at least one person 55 years of age or older per unit and providing significant facilities and services specifically designed to meet the physical or social needs of such persons; or

(B) intended for and occupied solely by persons 62 years of age or older.

(n) Nothing in this Section prohibits conduct against a person because such person has been convicted two or more times by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Federal Controlled Substances Act (21 U.S.C. 802).

Comment [kj38]: This revised subsection (l) is broader than the prior version of the ordinance. For example, the prior version said that an owner could discriminate in his/her tenants if the owner occupied part of a duplex, but the KAAD allows an owner to discriminate in up to a fourplex, if the owner occupies one of the units.

~~Nothing in this Section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this Section regarding familial status apply with respect to housing/real property provided under any state or federal program, which has been approved by the Secretary of the United States Department of Housing and Urban Development, specifically designed and operated as housing to assist elderly persons, as defined in the state or federal program, and approved by the Secretary of the United States Department of Housing and Urban Development, or to housing for older persons.~~

~~(A) — As used in this Subparagraph, "housing for older persons" means housing communities:~~

~~(1) Provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development has determined is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or~~

~~(2) Intended for, and solely occupied by, persons 62 years of age or older; or~~

~~(3) Intended for, and at least 80% occupied by, at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this Subsection, the regulations developed by the Secretary of the United States Department of Housing and Urban Development shall be followed, which require at least the following factors:~~

~~(a) the existence of significant facilities and services specifically designed to meet the physical or social needs of such persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and~~

~~(b) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and~~

~~(c) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. However, discrimination, segregation or separation in said housing for older persons on the basis of race, sex, religion, color, national origin, ancestry, sexual orientation, or disability is prohibited as defined elsewhere in this Section.~~

Section 4. That Article IV of Chapter 10, of the Code of Ordinances of the City of Manhattan, Kansas is hereby amended to read as follows:

ARTICLE IV. Complaint Procedures

Sec. 10-19. Initiation of Complaint. ~~40-19~~ **INITIATION OF COMPLAINT.**

- (a) Any aggrieved person who claims ~~they~~ he or she has been, have been, are-is being, or are-is about to be, discriminated against by an alleged unlawful act or practice in violation of this ~~Chapter~~ chapter may, personally, or by their parent or other legal guardian, or by an attorney at law, make, sign and file with the ~~Director~~ director a written verified complaint which shall state the names and addresses of the person or persons, hereinafter referred to as respondent, alleged to have committed, be committing, or be about to commit, the unlawful act or practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the ~~Director~~ director.
- (~~B~~b) The ~~Director~~ director may, in like manner, make, sign and file such a complaint. Any employer whose employees, or some of whom, refuse or threaten to refuse to cooperate with the provisions of this ~~Chapter~~ chapter, may file with the ~~Director~~ director a written verified complaint asking for assistance by conciliation or other remedial action.
- (~~C~~c) If a complaint is filed by the ~~Director~~ director that person shall not participate thereafter in the investigation of the complaint or in any public hearing thereon, except as a witness. If a complaint is filed by the ~~Director~~ director, the ~~City-city Manager~~ manager shall designate a staff member to perform the resolution of that complaint.

~~10-20~~ **AMENDMENT OF COMPLAINT. Sec. 10-20. Amendment of Complaint.**

- (~~A~~a) Any complaint may be reasonably and fairly amended at any time before the final closure of the complaint. Notification of any such amendment must be mailed by certified mail, return receipt requested, to all parties to said complaint within five working days of the amendment.
- (~~B~~b) If a person is not named as a respondent in a complaint, but is identified as a respondent in the course of investigation, such person may be joined as an additional or substitute respondent upon written notice, within five working days of such identification, by certified mail, return receipt requested, to such person, the complainant, and the respondent originally named in the complaint. Said notice shall include an explanation of the reason or reasons such person is joined as an additional or substitute respondent and the reason or reasons said person was not named in the complaint originally.

~~10-21~~ **CONFIDENTIALITY. Sec. 10-21. Confidentiality.**

Neither the ~~Board~~ board nor the ~~Director~~ director or staff of the ~~Human-human Relations-resources Department~~ department shall divulge the names or addresses of complainants or respondents, or any other particulars of any complaint, investigation, finding or remedy, except as necessary to implement this or other ~~Sections~~ sections of this ~~Chapter~~ chapter, or until a complaint becomes the subject of a public hearing or court proceeding, unless otherwise provided by law.

~~10-22~~ **COMPLAINT FILING PERIOD. Sec. 10-22. Complaint filing period.**

Complaints filed pursuant to this ~~Chapter~~ chapter must be filed within ninety (90) days after the alleged act of discrimination, unless the act complained of constitutes a continuing pattern or practice of discrimination in which event it will be from the last act of discrimination, except complaints alleging discrimination in housing, which must be filed no later than one year after an

alleged discriminatory housing practice has occurred or terminated. Except in the filing of complaints alleging discrimination in housing, if good cause, in the sole discretion of the ~~Director~~director, is shown for the filing of the complaint after the expiration of the ninety (90) day filing period, the ~~Director~~director may extend the filing period for up to an additional ninety (90) days.

~~10-23~~ **NOTICE TO COMPLAINANT, Sec. 10-23. Notice to complainant.**

Within five (5) working days after the filing of the complaint, the ~~Director~~director shall cause a copy of the complaint, or amended complaint, and written notification acknowledging its filing and advising of the time limits and choice of forums provided by local, state, and federal law to be mailed by certified mail, return receipt requested, to the complainant.

~~10-24~~ **NOTICE OF INVESTIGATION, Sec. 10-24. Notice of investigation.**

Within five (5) working days after the filing of the complaint, the ~~Director~~director shall cause a copy of such complaint and written notification of their procedural rights and obligations under the law to be served by certified mail, return receipt requested, on all persons alleged to have engaged, be engaging, or be about to engage, in an unlawful act or practice. Said notice shall include the provisions of Section 10-26 of this ~~Chapter~~chapter, and the time limits and choice of forums provided under local, state, and federal law.

~~10-25~~ **RIGHT OF RESPONDENT TO FILE ANSWER, Sec. 10-25. Right of respondent to file answer.**

Each respondent may file, not later than ten working days after receipt of notice of the complaint, or any amended complaint, a written verified answer to any such complaint.

~~10-26~~ **PROMPT JUDICIAL ACTION, Sec. 10-26. Prompt judicial action.**

If the ~~Director~~director or ~~Board~~board concludes, at any time following the filing of a complaint alleging an unlawful housing practice, that prompt judicial action is necessary to carry out the purposes of this ~~Chapter~~chapter, the ~~Director~~director or ~~Board~~board may commence a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this ~~Chapter~~chapter. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with appropriate Rules of Civil Procedure. The commencement of a civil action under this ~~Section~~section does not affect the initiation or continuation of administrative proceedings provided under local, state or federal law.

~~10-27~~ **INVESTIGATION AND DETERMINATION OF PROBABLE CAUSE, Sec. 10-27. Investigation and determination of probable cause.**

(Aa) Whenever the ~~Director~~director has received a written verified complaint alleging that any person has engaged, is engaging, or is about to engage, in an unlawful act or practice in violation of this ~~Chapter~~chapter, the ~~Director~~director, or his or her designee, shall investigate that alleged unlawful act or practice.

(Bb) The ~~Director~~director, in the course and furtherance of the investigation of any written verified complaint, may issue a subpoena to compel the testimony of any person or to require the production of books, records, papers or any other material relevant or possibly

relevant to the complaint. In the event that a subpoenaed person fails to appear and testify, or that the subpoenaed books, records, papers, or other materials are not produced, the ~~Director~~director may seek enforcement of such subpoena in the manner provided by law.

(~~C~~) The investigation of a complaint alleging unlawful discrimination in housing shall be commenced before the end of the 30th day after receipt of the complaint, and completed within one hundred (100) days after receipt of the complaint unless it is impracticable to do so, in which event the ~~Director~~director shall cause both the complainant and the respondent to be notified in writing of the reasons for not doing so. Failing completion of investigation within one hundred (100) days, the provisions of the following paragraph shall apply to the investigation of housing complaints.

(~~D~~) The investigation of a complaint alleging unlawful discrimination in employment or public accommodations shall be completed within one hundred fifty (150) days from the date the complaint was filed with the ~~Director~~director, except that for good cause, the ~~Director~~director may extend the time limit for completion of the investigation for an additional sixty (60) days. If it is impracticable to complete the investigation within the maximum time allowed by this ~~Subsection~~subsection, the ~~Director~~director shall notify both the complainant and respondent, in writing, of the reasons for not doing so, and the investigation may continue until its completion.

(~~E~~) Upon completion of the investigation, the investigator shall, within five (5) business days, prepare a final investigative report and present it to the ~~Director~~director for his or her review. The final investigative report shall contain at least:

- (1) the names and dates of contacts with witnesses;
- (2) a summary and the dates of correspondence and other contacts with the complainant and the respondent;
- (3) a summary description of other pertinent records;
- (4) a summary of witness statements; and
- (5) answers to all interrogatories.

(~~F~~) Within ten (10) business days after receipt of the final investigative report, the ~~Director~~director shall determine whether probable cause exists for crediting the allegations of the complaint, and shall cause notice of that determination to be mailed to the complainant and respondent by certified mail, return receipt requested.

(1) If the ~~Director~~director determines there is probable cause to credit the allegations of the complaint, the notice of the determination of probable cause:

(~~a~~) shall consist of a short and plain statement of the facts upon which probable cause has been found;

- (bB) shall be based on the final investigative report;
- (eC) need not be limited to the facts or grounds alleged in the complaint;
- (dD) shall include notification of the commencement of, and provisions regarding, conciliation and persuasion;
- (eE) shall include notification of provision for a public hearing in the event of failure of conciliation and persuasion; and
- (fF) shall include notification of the choice of forums available.

(2) If the ~~Director~~director determines there is no probable cause to credit the allegations of the complaint, the notice of the determination shall also include a statement advising the parties that the complaint has been dismissed.

~~10-28 CONCILIATION AND PERSUASION.~~ Sec. 10-28. Conciliation and persuasion.

(Aa) During the period beginning with the filing of a complaint and ending with the filing of an order by the ~~Board~~board or dismissal by the ~~Director~~director, the ~~Director~~director or his or her designee shall, to the extent feasible, engage in conciliation with respect to such a complaint.

(b) —A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to the approval of the ~~Director~~director.

(c) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(d) —If the ~~Director~~director, after investigation of a complaint, determines that probable cause exists for crediting the allegations of the complaint, the ~~Director~~director, or his or her designee, shall immediately endeavor to eliminate the unlawful act or practice complained of by conference, conciliation, and persuasion.

(Ee) The complainant, respondent and ~~Director~~director shall have forty-five (45) days from the receipt of notification of the determination of probable cause to enter into a conciliation agreement signed by all parties in interest, including the ~~Director~~director, or his or her designee, indicating the agency's approval of the agreement.

(1) Upon agreement by all parties, the time for entering into such agreement may be extended.

(2) The ~~Director~~director may, in any event, for good cause grant an additional thirty (30) days for conciliation and persuasion upon the request of either the complainant or respondent.

(~~Ff~~) Nothing said or done in the course of conciliation under this ~~Chapter~~chapter may be made public or used as evidence in a subsequent proceeding under this ~~Chapter~~chapter without the written consent of the persons concerned.

(~~Gg~~) Notwithstanding paragraph (~~Ff~~), the ~~Director~~director shall make available to the complainant and the respondent, upon request, following completion of the investigation, information derived from an investigation and any final investigative report relating to that investigation.

(~~Hh~~) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the ~~Director~~director determines that disclosure is not required to further the purposes of this ~~Chapter~~chapter.

(~~Ii~~) ~~Any~~—Any of the parties to a conciliation agreement may apply to the district court for specific performance of any such conciliation agreement.

~~10-29 NOTICE OF PUBLIC HEARING, Sec. 10-29. Notice of public hearing.~~

In case of failure to eliminate or remedy such unlawful act or practice by conference, conciliation, and persuasion, or in advance thereof, if in the judgment of the ~~Director~~director circumstances so warrant, the ~~Director~~director shall cause to be issued and served in the name of the ~~Board~~board, a written notice, together with a copy of such complaint, as the same may have been amended, unless such a copy was previously served upon the respondent, requiring the respondent to answer the charges of such complaint at a hearing before at least three (3) members of the ~~Board~~board, hereinafter referred to as ~~Hearing hearing Panel~~panel, at a time not less than thirty (30) days nor more than ninety (90) days after the service of the notice unless the respondent requests in writing and is granted a continuance. The place of such hearing shall be at City Hall, Manhattan, Kansas.

~~10-30 ELECTION OF CIVIL ACTION IN LIEU OF PUBLIC HEARING, Sec. 10-30. Election of civil action in lieu of public hearing.~~

(~~a~~)—In lieu of a public hearing under ~~Subsection~~section 10-29 in the matter of a complaint alleging discrimination in housing, a complainant, a respondent, or an aggrieved person on whose behalf a complaint was filed may elect to have the claims asserted in the complaint decided in a civil action, in accordance with ~~Subsection~~_____ of this Chapter.

(~~Bb~~) The election must be made not later than twenty (20) days after the receipt, by the electing person, of service of the notice of a public hearing in accordance with Section 10-29. The person making the election shall give notice to the ~~Director~~director, and to all complainants and respondents to whom the complaint relates.

~~10-31~~ **SUBPOENAS. Sec. 10-31. Subpoenas.**

(~~Aa~~) The complainant or respondent may apply to the ~~d~~Director for the issuance of a subpoena for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the ~~Director~~ director shall issue such subpoena. The ~~Hearing-hearing Panel-panel~~ may, as a result of ~~their-its~~ own decision that such action is necessary, issue a subpoena to compel the attendance and testimony of any person or to require the production of any books, papers, records, or other materials relevant, or possibly relevant, to the complaint.

(~~Bb~~) In the event that any subpoenaed person fails to attend and testify, or the subpoenaed documents are not produced, the ~~Hearing-hearing Panel-panel~~ may request that the subpoena be enforced in the manner provided by law and continue the hearing until compliance with the subpoena can be so compelled.

~~10-31~~ **PUBLIC HEARING. Sec. 10-32. Public hearing.**

(~~a~~)—The case in support of the complaint shall be presented before the ~~Hearing-hearing Panel~~ panel by the ~~City-city Attorney-attorney~~ or his/her designee.

(~~Bb~~) The complainant may appear in person, with or without counsel, present evidence, cross-examine witnesses, submit testimony, and request the completed complaint file be submitted as evidence.

(~~Cc~~) Any endeavors at conciliation shall not be received in evidence.

(~~Dd~~) The respondent may file a written verified answer to the complaint, as provided above, and appear at such hearing in person or otherwise, with or without counsel, present evidence, cross-examine witnesses, and submit testimony.

(~~Ee~~) The ~~Hearing-hearing Panel-panel~~, or the complainant, shall have the power to amend any complaint reasonably and fairly, and the respondent shall have like power to amend his or her answer.

(~~Ff~~) ———The ~~Hearing-hearing Panel-panel~~ shall be bound by the rules of evidence prevailing in courts of law or equity, and only relevant evidence of reasonable and probative value shall be received.

(~~Gg~~) Reasonable examination and cross-examination shall be permitted.

(~~Hh~~) All parties shall be afforded opportunity to submit briefs prior to adjudication.

(~~Ii~~) ———The testimony taken at the hearing shall be under oath or affirmation and be recorded.

(~~J~~) ———A public hearing may not be commenced regarding any alleged unlawful discriminatory practice after the beginning of the trial of a civil action commenced by the

complainant under this ~~Chapter~~chapter or state or federal law seeking relief with respect to that alleged unlawful discriminatory practice.

~~10-32~~ **ORDER; REMEDIES. Sec. 10-33. Order, remedies.**

(Aa) If, upon all the evidence in the hearing, the ~~Hearing~~hearing ~~Panel~~panel finds by a preponderance of the evidence that the respondent has engaged in, is engaging in, or is about to engage in, any unlawful act or practice as defined in this ~~Article~~chapter, the ~~Hearing~~hearing ~~Panel~~panel shall state the findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful act or practice and to take such affirmative corrective action as, in the judgment of the ~~Hearing~~hearing ~~Panel~~panel, will effectuate the purposes of this ~~Chapter~~chapter, including, but not limited to:

- (1) in employment complaints, the hiring, reinstatement and/or upgrading of employees, with or without back pay, with or without retroactive benefits, and the admission or restoration to membership in any respondent labor organizations; denied in violation of this ~~Article~~chapter, including a requirement for report of the manner of compliance;
- (2) in public accommodations complaints, the admission to and full and equal use and enjoyment of the goods, services, facilities, and accommodations offered by the respondent place of public accommodation denied in violation of this ~~Chapter~~chapter, including a requirement for report of the manner of compliance; or,
- (3) in housing complaints, the selling or renting or assigning of specified housing/real property and the lending of money for the acquisition, construction, rehabilitation, repair or maintenance of housing/real property, or the granting of loans or other financial assistance secured by housing/real property, denied in violation of this ~~Chapter~~chapter, including a requirement for report of the manner of compliance.

(Bb) Pursuant to violation of ~~Section~~section _____, ~~UNLAWFUL HOUSING/REAL PROPERTY PRACTICES~~10-18, and its ~~Subsections~~subsections of this ~~Chapter~~chapter, any such order may also include an award of actual damages, including damages caused by pain, suffering and humiliation. Such order may also, to vindicate the public interest, assess a civil penalty against the respondent:

- (1) in an amount not exceeding \$10,000.00, if the respondent has not been adjudged to have committed any prior unlawful housing practice;
- (2) subject to the provisions of Subsection ~~10-32-33~~(Bb)(4), in an amount not exceeding \$25,000.00, if the respondent has been adjudged to have committed one other unlawful housing practice during the five-year period ending on the date of the filing of the complaint; and
- (3) subject to the provisions of Subsection ~~10-32-33~~(Bb)(4), in an amount not exceeding \$50,000.00, if the respondent has been adjudged to have committed two

Comment [kj39]: The KAAD caps the pain and suffering at \$2,000 for employment and public accommodations discrimination.

or more unlawful housing practices during the seven-year period ending on the date of the filing of the complaint; except that

- (4) if the acts constituting the unlawful housing practice that is the object of the complaint are committed by the same natural person who has previously been adjudged to have committed acts constituting an unlawful housing practice, then the civil penalties provided by Subsections 10-~~32-33~~(Bb)(2) and 10-~~332~~(Bb)(3) may be imposed without regard to the period of time within which any subsequent unlawful housing practice occurred.
- (5) Any such civil penalty shall be paid to the General Fund of the City of Manhattan, Kansas.

~~10-33 ORDER; DISMISSAL.~~ Sec. 10-34. Order, dismissal.

If, upon all the evidence, the ~~Hearing-hearing Panel-panel~~ finds that a respondent has not engaged in, is not engaging in, and is not about to engage in, any such unlawful act or practice, the ~~Hearing hearing Panel-panel~~ shall state ~~their-its~~ findings of fact and shall issue and cause to be served on both the complainant and the respondent an order dismissing the complaint as to such respondent.

~~10-34 SERVICE OF ORDER.~~ Sec. 10-35. Service of order.

A copy of the order shall be delivered by certified mail, return receipt requested, in all cases by the ~~Director-director~~ to the complainant, to the respondent, and to such other public officers as the ~~Director-director~~ may deem proper.

~~10-35 RECONSIDERATION OF ORDER.~~ Sec. 10-36. Reconsideration of order.

In the event any party is dissatisfied with the decision or order of the ~~Hearing-hearing Panel-panel~~, the dissatisfied party, within ten (10) days from the date of receipt of notification of such decision or order, may apply for reconsideration with respect to any matter determined in the public hearing. Any such request for reconsideration shall be made to the ~~Director-director~~. The purpose of an application for reconsideration is to afford the ~~Hearing-hearing Panel-panel~~ an opportunity to correct any errors in their decision and order. To that end, the application for reconsideration shall set forth, specifically, the ground or grounds on which the applicant considers the decision or order of the ~~Hearing-hearing Panel-panel~~ to be in error. The application for reconsideration shall be granted or denied by the ~~Hearing-hearing Panel-panel~~ within fourteen (14) days from the date such application is received. If an application for reconsideration is not granted within fourteen (14) days, it shall be deemed denied. In their order granting reconsideration, the ~~Hearing-hearing Panel-panel~~ shall specify the issue or issues to be reconsidered and the additional evidence, if any, to be allowed. If additional evidence is to be allowed, the ~~Director-director~~ shall schedule a public hearing on the matter no less than ten (10) days nor more than twenty-five (25) days after the application for reconsideration was granted. If reconsideration is granted, the matter shall be determined by the ~~Hearing-hearing Panel-panel~~ within the later of thirty (30) days after the application for reconsideration is granted, or fourteen (14) days after the conclusion of the public hearing, if one is held for the admission of additional evidence. An order made after reconsideration abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision.

~~10-36~~ ~~TIME LIMIT FOR FINAL ADMINISTRATIVE DISPOSITION,~~ Sec. 10-37. Time limit for final administrative disposition.

Final administrative disposition of a complaint should be made within one year following its receipt, unless it is impracticable to do so, in which event the ~~Director-director~~ shall cause the complainant and respondent to be notified, in writing, of the reasons for not doing so.

~~10-37~~ ~~APPEAL TO DISTRICT COURT,~~ Sec. 10-38. Appeal to district court.

The final decision and order of the Hearing Panel shall constitute the decision of the Human Rights and Services Board and may be appealed as such to the District Court of Riley County, Kansas, pursuant to K.S.A. 12-16,106.

~~10-38~~ ~~CIVIL ENFORCEMENT OF ORDER,~~ Sec. 10-39. Civil enforcement of order.

(Aa) The ~~Director-director~~ may secure enforcement of the final decision and order of the ~~Hearing hearing Panel-panel~~ in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions as provided by K.S.A. 12-16,106 through the ~~City-city Attorney attorney~~ or his/her designee.

(Bb) Within forty-five (45) days after an order relating to an unlawful housing practice issued by the ~~Hearing hearing Panel-panel pursuant to Section 10-32~~ has become final, or within thirty (30) days after the ~~Director-director~~ has received written notification of the manner in which a respondent has complied with the ~~Hearing hearing Panels-panels'~~ final order, an aggrieved person may bring a civil action in the district court of the county in which the alleged unlawful housing practice is alleged to have occurred, or in which the respondent resides or transacts business. Such action may be brought to enforce the final order of the ~~Hearing hearing Panel-panel~~, or to enforce any of the rights granted or protected by this ~~Chapter-chapter~~ insofar as such rights relate to the subject of the complaint with respect to which the order was issued. All such actions shall be heard by the court in trial de novo. Upon application of any party to such action, the ~~Director-director~~ shall make available to all parties the records and information gathered during any investigation or hearing conducted pursuant to the authority granted by this ~~Chapter-chapter~~, except that any records or information concerning the ~~Director's-director's~~ efforts to eliminate or correct the alleged unlawful housing practice by informal methods of conference, conciliation and persuasion shall not be admissible as evidence in such action. If the respondent requests a copy of the transcript of the hearing, the respondent shall pay for the cost of its preparation.

(Cc) In a civil action under this ~~Section-section~~, if the court finds that an unlawful housing practice has occurred or is about to occur, the court may, in its discretion, grant as relief any permanent, temporary or mandatory injunction, temporary restraining order or other proper order, but any sale, encumbrance or rental consummated prior to the issuance of any court order issued under the authority of this ~~Chapter-chapter~~, involving a bona fide purchaser, encumbrancer or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of this ~~Chapter-chapter~~ shall not be affected.

~~10-39~~ ~~ELECTION OF CIVIL ACTION,~~ Sec. 10-40. Election of civil action.

(Aa) A complainant may commence a civil action in a district court of the county in which the alleged unlawful housing practice is alleged to have occurred, or in which the respondent resides or transacts business, not later than two (2) years after the occurrence or the termination of an alleged unlawful housing practice, or the breach of a conciliation agreement entered into under this ~~Chapter~~ chapter to resolve an alleged unlawful housing practice, whichever occurs last, to obtain appropriate relief with respect to such alleged unlawful housing practice or breach. Except in the case of an action arising from a breach of a conciliation agreement, the computation of the two-year period shall not include any time during which an administrative proceeding under this ~~Chapter~~ chapter was pending with respect to a complaint under this ~~Chapter~~ chapter based on such an alleged unlawful housing practice.

(Bb) If the United States Department of Housing and Urban Development, the Kansas Human Rights Commission, or the Director has obtained a conciliation agreement with the consent of the complainant, no action may be filed under this Section by such complainant with respect to the alleged unlawful housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(Cc) A complainant may not commence a civil action under this Section with respect to an alleged unlawful housing practice which:

- (1) forms the basis of a determination of probable cause by the Director; and
- (2) on which a public hearing as set out in this Chapter has commenced on the record.

(Dd) In a civil action under this Section, if the court finds that an unlawful housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages and may grant as relief, as the court deems appropriate, any permanent or temporary injunction, temporary restraining order or other order, including an order enjoining the defendant from engaging in such practice or ordering such affirmative action as may be appropriate. The court, in its discretion, may allow the prevailing party reasonable attorney fees and costs. The City of Manhattan shall be liable for such fees and costs to the same extent as a private person.

(Ee) Relief granted under this Section shall not affect any contract, sale, encumbrance or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer or tenant, without actual notice of the filing of a complaint or civil action under this Chapter.

Section 25. That this ordinance shall be ~~in full force and effect from and after its adoption and publication~~ published in the official city newspaper and shall be effective on September 1, 2011.

PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS, ON THIS _____ DAY OF _____, 201020.

Comment [kj40]: The effective date is delayed because the City must adopt board bylaws and staff procedures before the City can accept and investigate complaints.

BRUCE SNEAD, Mayor

| ATTEST:

| GARY GARY S. FEES, MMC, City Clerk

