

**CITY COMMISSION AGENDA MEMO**  
**July 12, 2016**

**FROM:** Jason Hilgers, Deputy City Manager

**MEETING:** July 19, 2016

**SUBJECT:** Anti-Discrimination Ordinance

**PRESENTERS:** Jason Hilgers, Deputy City Manager  
Katharine Jackson, City Attorney

**BACKGROUND**

In early 2016, a majority of the City Commission asked City Administration to explore a change to the discrimination ordinance, potentially adding sexual orientation and/or gender identity. The City Commission also asked the Human Rights and Services Board (HRSB) to provide input. At its March 10, 2016, board meeting, HRSB voted 5-1 in support of an ordinance that would amend the existing version of Chapter 10 to add sexual orientation and gender identity to the list of protected classes. This input included a recommendation that the ordinance create a local human rights commission (or similar mechanism) to enforce complaints of discrimination on any basis in the City of Manhattan.

On April 5, 2016, City Administration provided the City Commission with an overview of options to consider, similar to the HRSB. Feedback was provided by a majority to pursue an option that would have similarities to the Roeland Park ordinance, which would add sexual orientation and gender identity to the list of protected classes, and to explore some level of enforcement and penalties to be administered locally.

On May 31, 2016, the City Commission held a work session, received public input and provided feedback on a draft discrimination ordinance for Manhattan.

**DISCUSSION**

Based on direction received from the City Commission, City Administration has prepared an ordinance that includes adding sexual orientation and gender identity, in Chapter 10, as protected classes in the categories of employment, housing, and public accommodation. City Administration has modified the gender identity and sexual orientation definitions since the May 31, 2016, work session to reflect previous input received from the public.

In this ordinance, religious organizations and nonprofit fraternal or social associations are specifically called out to “not be included” in the definitions of an employer, rental housing, and public accommodations. This in effect “exempts” religious organizations and nonprofit fraternal or social associations/corporations from this ordinance. A jail is also not included in the “public accommodation” definition, and is thereby exempt too.

The ordinance continues to create the Human Rights and Services Board (HRSB), as does the current Chapter 10, and defines their role as an advisory board to the City Commission. They do not have a role, however, in the investigation or enforcement procedures for sexual orientation or gender identity complaints. Their powers and duties, which are very consistent with how they are known and understood today, are defined in Section 10-14. It is necessary to change this section of Chapter 10 with this ordinance due to the reduced role the HRSB will now have in their powers and duties, by eliminating their role to investigate and conciliate discrimination claims.

Section 10-17 of the ordinance defines the actions and behaviors not allowed within the ordinance for employment, housing, and public accommodation. In the category of housing, rental units have been defined as a property containing more than four units. Therefore, a single family home or a duplex that is a rental would not be subject to this ordinance. Religious organizations are also exempt from discrimination in the housing section for the sale or rental of real property or rental housing owned by the religious organization.

Sections 10-18 through 10-23 highlight the enforcement procedures of the ordinance. In summary, the aggrieved party files a complaint with the City. The City investigates the complaint and determines whether or not it has merit or finds probable cause. If probable cause is found, an investigation is conducted. If no settlement is reached, the issue goes before a hearing officer to determine if discrimination has occurred. At any point a settlement may be reached and compliance gained. If there is a discrepancy along the way with a settlement and compliance, the discrepancy can be appealed and handled in district court. This can occur either at the investigative point in the process or during the hearing officer proceedings. The flow chart attached does a good job of outlining all the options. Since the May 31, 2016, work session, City Administration has suggested the investigative duties fall to the City Attorney or his/her designee from the Legal Department within the City, and the hearing officer duties will become those of the municipal judge appointed by the City Manager.

Section 10-23 formerly known as “Remedies” has been changed to “Civil Penalty.” Previous versions included compensation or a financial reimbursement as a result of discrimination in employment, housing and public accommodations. This would have been consistent with State law and likely would have included an extensive undertaking to determine. City Administration has removed these remedies due to the complex nature of determining the value and impact of the discrimination that may have occurred. The modified section now includes a civil penalty of up to \$500 per the investigation and/or hearing.

Section 10-24 identifies the exemptions for this section of the Code. Educational institutions (Unified School District, Manhattan Area Technical College, Manhattan Christian College, Kansas State University, etc.), and a department, agency, or political division of the Federal Government are exempt. The State of Kansas, Riley County and Pottawatomie County are also exempt from this ordinance. In addition, the Riley County Police Department jail facilities and corresponding operations are also proposed to be exempt.

City Administration has proposed that if a majority of the City Commission votes in favor of the ordinance at the first and second readings of the ordinance, it shall become effective on November 1, 2016, to allow approximately 90 days for training and education of city employees, businesses and community members. A proposed timeline for implementation is provided as an attachment.

## **FINANCING**

There will be minimal financial impacts for training and education. City Administration will monitor the legal departments' time and efforts to enforce this ordinance. Future staff considerations may be required.

## **ALTERNATIVES**

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

1. Approve first reading of an ordinance amending the existing discrimination ordinance to include sexual orientation and gender identity.
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 direction regarding the highlighted issues within the "draft" as part of the consideration for first reading of the ordinance, which amends the existing discrimination ordinance to include sexual orientation and gender identity.

## **POSSIBLE MOTION**

Approve first reading of an ordinance amending Chapter 10 of the Code of Ordinances to the existing discrimination ordinance by including sexual orientation and gender identity.

Enclosures:

1. Draft Ordinance with tracked changes and comments
2. Draft Ordinance (clean version)
3. Complaint & Enforcement Process Flow Chart
4. Frequently Asked Questions (FAQ)
5. Proposed Timeline

**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:**

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

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

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

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

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

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

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

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

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

**Sec. 10-1. Declaration of policy.**

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

**Sec. 10-2. Definitions.**

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

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

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

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

**Comment [J1]:** This is the state law definition, adapted for the City. This is the category of businesses that could be held liable for employment discrimination. Roeland Park had a more limited definition for "businesses."

*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 ~~consistently having and/or expressing a self image or identity not traditionally associated with a person's biological sex, one's perceived or actual self-identification as a male or a female, regardless to one's anatomical sex at birth. It can be described as cisgender or transgender.~~

**Comment [J2]:** Roeland Park's definition has been removed; and this definition has been inserted based on previous input.

Hearing Officer means the Municipal Judge appointed by the City Manager.

*Investigator* means the City Attorney, or his/her designee, ~~means the person appointed by the City Manager to receive, investigate and make a determination regarding probable cause or no probable cause for complaints of unlawful discriminatory practices as provided for in this Chapter.~~

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

**Comment [J3]:** This is the state law definition, adapted for the city. Roeland Park adopted a different definition with more examples of public accommodations and excluded those provided by bona fide private clubs.

**Comment [Jw4]:** For Commission discussion: address or exempt locker rooms/changing rooms separately from other public accommodations.

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

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

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

*Sexual orientation* means ~~homosexuality, bisexuality, or heterosexuality, whether such orientation is actual or perceived, and includes association with another individual of a particular sexual orientation, one's perceived or actual emotional, romantic, or sexual attraction to other people. It can be described as heterosexual, homosexual, or bisexual.~~

**Comment [J5]:** The EEOC definition was deleted, and this definition has been inserted based on previous input.

**Sec. 10-3. Construction.**

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

**Sec. 10-4. Invalidity of part.**

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

**Sec. 10-5. Reserved.**

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

**Sec. 10-7. Composition, appointment .**

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

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

**Sec. 10-14. Powers and duties.**

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

- (a) Recommend to the governing body, non-discrimination, equal opportunity and civil rights policies, procedures and programs which will protect against discrimination, promote the health, safety, and welfare of the citizens of the city, and/or which will create a welcoming, diverse community.
- (b) Receive and consider questions or proposals which in and of themselves do not constitute formal complaints of unlawful discrimination but are related issues.
- (c) Provide education and outreach on the policies, procedures and purposes of this chapter.

- (d) Accept contributions from any person to assist in the implementation of this chapter and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this chapter.
- (e) Regularly inform the members of the governing body, through distribution of its agendas, minutes, memoranda, reports, and other pertinent documents, of the items of business before the board, the ongoing status of such items, and the disposition of such items.
- (f) Cooperate with the federal and state agencies and other organizations or agencies whose purposes are not inconsistent with those of this chapter.
- (g) After obtaining governing body approval, the board shall be authorized to make application to any person, organization, city, county, state or federal governmental unit or agency for funds to implement or further the purposes of this chapter

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

**Sec. 10-15—Sec.10-16. Reserved.**

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

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

- (a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of any person, to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity. ~~It shall not be an unlawful employment practice to fill vacancies in such way as to eliminate or reduce imbalance with respect to sexual orientation or gender identity.~~
- (b) **Housing.** It shall be an unlawful discriminatory practice for any person to discriminate against any person in the terms, conditions or privileges of the sale ~~or rental~~ of real property or lease of rental housing, or in the provision of services or facilities in connection therewith, because of sexual orientation or gender identity, or to discriminate against any person in such person's use or occupancy of rental housing because of the sexual orientation or gender identity of the people with whom such person associates. This provision shall not apply to the sale or rental of real property or rental housing owned by a religious organization, nor shall it apply to a jail.
- (c) **Public Accommodation.** It shall be an unlawful discriminatory practice for any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or

**Comment [J6]:** The state law includes several more specific examples of "unlawful practices" (involving, for example, labor unions, etc), but Roeland Park only codified the general discrimination provisions, as is suggested here.

**Comment [J7]:** Rental housing defined as real property with more than 4 units, same as Roeland Park, so this would not apply to 1-4 unit structures

indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this chapter because of sexual orientation or gender identity.

- (d) Nothing in this Chapter shall be construed to make it lawful to discriminate against individuals by reason of race, sex, familial status, military status, disability, religion, age, color, or national origin or ancestry. Such discrimination is not addressed in Articles III and IV of this Chapter because federal and state law address unlawful discriminatory practices related to those protected classes, as well as provide a complaint, investigation and enforcement process for those protected classes.

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

#### **Article IV. ENFORCEMENT**

**Sec. 10-18. Initiation of complaint.**

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

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

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

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

- (a) Following the conclusion of the answer period, the investigator may initiate an investigation period, requesting that the complainant and/or respondent provide additional information, documentation or testimony as needed to facilitate the

investigation of the complaint. This investigation period shall be concluded within 60 days of the investigator's last request for information.

- (b) Within thirty (30) days of the conclusion of the investigation period, the investigator will review all information provided to the investigator and make a determination of whether probable cause exists that the respondent committed an unlawful discriminatory practice. If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and the respondent, and no further action shall be taken by the city. If the investigator finds that probable causes exists that an unlawful discriminatory practice was committed by respondent, the investigator shall notify the complainant and respondent and request conciliation and settlement.

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

If the investigator finds that probable causes exists that the respondent committed an unlawful discriminatory act against the complainant, the investigator will attempt to conciliate and settle the complaint between the parties. ~~If a settlement agreement is executed, it may include any remedy set forth in Section 10-23, or any other remedy agreed upon by the parties not otherwise prohibited by law, and either party may enforce the settlement agreement in district court.~~ If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within 60 days of the date of the finding of probable cause, the matter shall be referred to the hearing officer for a hearing, pursuant to Section 10-22.

**Sec. 10-22. Hearing.**

If the investigator has determined that probable cause exists that the respondent committed an unlawful discriminatory practice against the complainant, and the complaint could not be conciliated and settled within 60 days of the date of such determination, the complaint shall be set for a hearing before a hearing officer ~~appointed by the city manager~~. At such hearing, the parties and the investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer, but the rules of evidence used in courts of law need not be strictly enforced. The hearing officer shall issue a written determination within 10 days of the date of the hearing. The determination shall indicate whether the preponderance of the evidence proves that respondent committed the unlawful discriminatory practice against the complainant. If so, the hearing officer's determination may order any remedy set forth in Section 10-23. Either party appeal the hearing officer's order pursuant to K.S.A. 60-2101, as amended.

**Sec. 10-23. ~~Remedies~~Civil penalty.**

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

- ~~(a) in employment complaints, the hiring, reinstatement and/or upgrading of employees, with or without back pay, with or without retroactive benefits, including a requirement for report of the manner of compliance;~~
- ~~(b) in public accommodations complaints, the admission to and full and equal use and enjoyment of the goods, services, facilities, and accommodations offered by the~~

**Comment [jw8]:** City Administration has removed remedies due to the complex nature of determining the value and impact of the discrimination that may have occurred. The modified section now includes a civil penalty of up to \$500 per the investigation and/or hearing.

~~respondent place of public accommodation denied in violation of this chapter, including a requirement for report of the manner of compliance; or,  
(e) 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, including a requirement for report of the manner of compliance; or,~~

~~Such remedies shall be considered in addition to the payment by respondent to complainant of a civil penalty of up to \$500.~~

**Sec. 10-24. Exemptions.**

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

- (a) Educational institutions, including but not limited to a school district, a school, or a university;
- (b) A department, agency, or political subdivision of the United States of America; the State of Kansas; or Riley County or Pottawatomie counties.

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

**Comment [J9]:** City Administration recommends approximately 90 days for implementation in order to educate and train city employees, businesses and community members.

**PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN,  
KANSAS, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

**ATTEST:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

**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:**

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

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

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

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

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

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

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

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

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

**Sec. 10-1. Declaration of policy.**

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

**Sec. 10-2. Definitions.**

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

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

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

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

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

*Hearing Officer* means the Municipal Judge appointed by the City Manager.

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

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

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

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

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

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

**Sec. 10-3. Construction.**

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

**Sec. 10-4. Invalidity of part.**

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

**Sec. 10-5. Reserved.**

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

**Sec. 10-7. Composition, appointment .**

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

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

**Sec. 10-14. Powers and duties.**

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

- (a) Recommend to the governing body, non-discrimination, equal opportunity and civil rights policies, procedures and programs which will protect against discrimination, promote the health, safety, and welfare of the citizens of the city, and/or which will create a welcoming, diverse community.
- (b) Receive and consider questions or proposals which in and of themselves do not constitute formal complaints of unlawful discrimination but are related issues.
- (c) Provide education and outreach on the policies, procedures and purposes of this chapter.
- (d) Accept contributions from any person to assist in the implementation of this chapter and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this chapter.
- (e) Regularly inform the members of the governing body, through distribution of its agendas, minutes, memoranda, reports, and other pertinent documents, of the items of business before the board, the ongoing status of such items, and the disposition of such items.
- (f) Cooperate with the federal and state agencies and other organizations or agencies whose purposes are not inconsistent with those of this chapter.

- (g) After obtaining governing body approval, the board shall be authorized to make application to any person, organization, city, county, state or federal governmental unit or agency for funds to implement or further the purposes of this chapter.

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

**Sec. 10-15—Sec.10-16. Reserved.**

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

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

- (a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of any person, to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.
- (b) **Housing.** It shall be an unlawful discriminatory practice for any person to discriminate against any person in the terms, conditions or privileges of the sale of real property or lease of rental housing, or in the provision of services or facilities in connection therewith, because of sexual orientation or gender identity, or to discriminate against any person in such person's use or occupancy of rental housing because of the sexual orientation or gender identity of the people with whom such person associates. This provision shall not apply to the sale or rental of real property or rental housing owned by a religious organization, nor shall it apply to a jail.
- (c) **Public Accommodation.** It shall be an unlawful discriminatory practice for any person, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation, to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this chapter because of sexual orientation or gender identity.
- (d) Nothing in this Chapter shall be construed to make it lawful to discriminate against individuals by reason of race, sex, familial status, military status, disability, religion, age, color, or national origin or ancestry. Such discrimination is not addressed in Articles III and IV of this Chapter because federal and state law address unlawful discriminatory practices related to those protected classes, as well as provide a complaint, investigation and enforcement process for those protected classes.

**Section 6.** That Article IV of Chapter 10 of the Code of Ordinances of the City of Manhattan,

Kansas is hereby repealed and replaced with the following new title and provisions, amended to read as follows:

#### **Article IV. ENFORCEMENT**

##### **Sec. 10-18. Initiation of complaint.**

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

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

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

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

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

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

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

**Sec. 10-22. Hearing.**

If the investigator has determined that probable cause exists that the respondent committed an unlawful discriminatory practice against the complainant, and the complaint could not be conciliated and settled within 60 days of the date of such determination, the complaint shall be set for a hearing before a hearing officer. At such hearing, the parties and the investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer, but the rules of evidence used in courts of law need not be strictly enforced. The hearing officer shall issue a written determination within 10 days of the date of the hearing. The determination shall indicate whether the preponderance of the evidence proves that respondent committed the unlawful discriminatory practice against the complainant. If so, the hearing officer's determination may order any remedy set forth in Section 10-23. Either party appeal the hearing officer's order pursuant to K.S.A. 60-2101, as amended.

**Sec. 10-23. Civil penalty.**

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

**Sec. 10-24. Exemptions.**

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

- (a) Educational institutions, including but not limited to a school district, a school, or a university;
- (b) A department, agency, or political subdivision of the United States of America; the State of Kansas; or Riley County or Pottawatomie counties.

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

**PASSED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF MANHATTAN, KANSAS, ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

**ATTEST:**

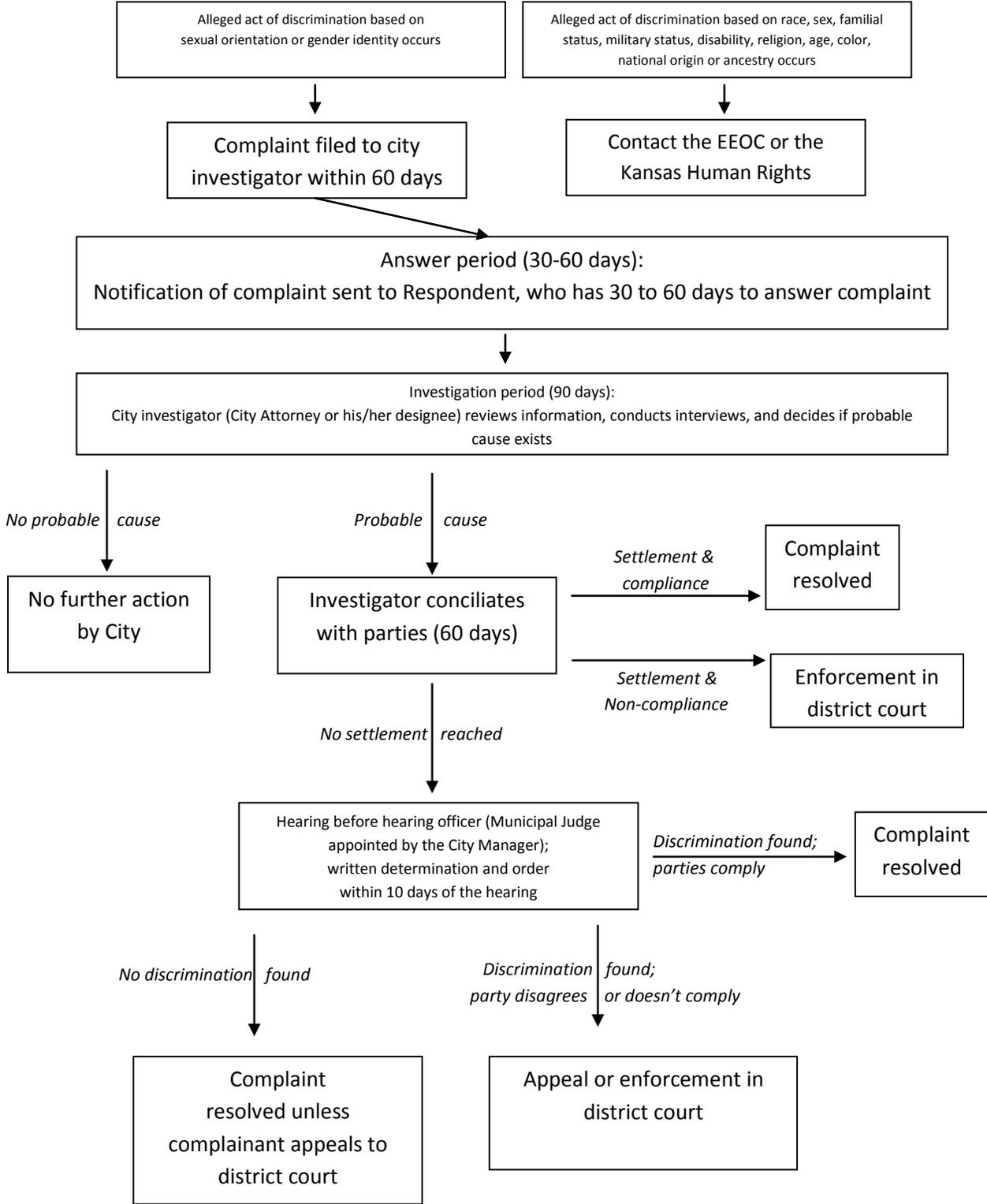
\_\_\_\_\_  
**City Clerk**

\_\_\_\_\_  
**Mayor**

Draft

Proposed Amendment to the  
 City of Manhattan Discrimination Ordinance  
 Chapter 10 of the City Code

**COMPLAINT PROCESS**



Proposed Amendment to the  
City of Manhattan Discrimination Ordinance  
Chapter 10 of the City Code

**FREQUENTLY ASKED QUESTIONS**

**What is the intent of the Proposed Amendment to the Discrimination Ordinance?**

For many years, Chapter 10 of the City Code has prohibited discrimination in employment, housing and public accommodations on the bases of race, sex, familial status, military status, disability, religion, age, color, national origin or ancestry. Chapter 10 also creates the Human Rights and Services Advisory Board, which considers and advises on issues related to discrimination.

The proposed amendment adds two new protected classes (sexual orientation and gender identity) to the discrimination prohibition. It makes it unlawful to discriminate on the basis of sexual orientation or gender identity in employment, housing or public accommodations. It creates a local enforcement process for complaints of discrimination on the basis of sexual orientation or gender identity. Complaints of discrimination involving the other protected classes can be enforced through the EEOC or the Kansas Human Rights Commission.

**Who would the Proposed Amendment protect?**

The Amendment would provide an individual with protection from certain discriminatory acts on the basis of sexual orientation and gender identity. *Sexual orientation* means one's perceived or actual emotional, romantic, or sexual attraction to other people. It can be described as heterosexual, homosexual, or bisexual. *Gender identity* means one's perceived or actual self-identification as a male or a female, regardless to one's anatomical sex at birth. It can be described as cisgender or transgender.

**Who must comply with the Proposed Amendment?**

The City strongly discourages all forms of discrimination against the protected classes. Because the other protected classes are covered by state and federal laws, the Amendment would make it unlawful to discriminate in employment, housing, and public accommodations on the basis of sexual orientation or gender identity.

Any person within the City limits who has four or more employees, who sells real estate or rents housing with more than four units, or who offers goods, services, facilities or accommodations to the public must comply with the amendment.

However, the ordinance does not apply to a religious organization; a nonprofit fraternal or social association or corporation; a school, university or school district; or another governmental entity.

**What are some examples of public accommodations?**

A public accommodation is any person who caters or offers goods, services, facilities or accommodations to the public. For example, any restaurant, bar, salon, grocery store, gas station, photography service, rental venue, retail store, medical or business office open to the public would be considered a public accommodation.

**How does this Amendment affect restrooms and changing facilities?**

A question about an individual's use of a particular restroom or changing facility may arise in employment or public accommodations. It may be an unlawful discriminatory practice for an employer to mandate that an employee use the restroom consistent with his/her biological sex rather than his/her gender identity. Likewise, a public accommodation may offer a restroom or changing facility to be used by patrons or the general public. Again, it may be an unlawful discriminatory practice to mandate that an individual use the restroom consistent with his/her biological sex rather than his/her gender identity.

The Amendment does not require any employer or public accommodation to provide a separate facility for any individual or to otherwise physically alter any existing restroom or changing facility.

The Amendment does not prohibit any employer or public accommodation from addressing issues that may arise from any person's misuse of restrooms and changing facilities that are not based upon discrimination.

**What does the Proposed Amendment allow me to do if I believe I have been discriminated against?**

If you believe that you have been discriminated against on the basis of sexual orientation or gender identity, the Proposed Amendment allows you or your attorney to complete the City's complaint form and submit it to the City's investigator. A parent or legal guardian may file on behalf of a minor.

If you believe that you have been discriminated against on the basis of race, sex, familial status, military status, disability, religion, age, color, national origin or ancestry, you or your attorney can contact the EEOC or the Kansas Human Rights Commission.

**Is the Human Rights and Services Board involved in the complaint process?**

No. The investigating officer is a lawyer from the City Attorney's Office and the hearing officer is a Municipal Judge appointed by the City Manager. The only other involved persons are the complainant, respondent and any potential witnesses.

**Will there be a filing fee for a complaint with the City?**

No.

**What would I do if I have had a City complaint filed against me?**

You or your attorney will have up to 60 days to respond to any complaint.

### **Then what happens?**

The City's investigator will review the information provided by each party and gather more evidence as needed. Then the City's investigator will determine whether probable cause exists that discrimination occurred. If probable cause is found, then the City's investigator will try to resolve the issue with the complaining party and the respondent. If probable cause is not found, then the City's investigator will notify the parties and the complaint will be resolved.

### **What happens if I don't like the investigator's decision or I don't want to settle?**

You may appeal to the City's Hearing Officer. The City's Hearing Officer will review the evidence from the City's investigator and each party and make a determination of whether discrimination occurred. The Hearing Officer's decision can be appealed to the district court.

### **What are the penalties?**

If discrimination is found to have occurred, then the respondent can be assessed a civil penalty of up to \$500.

### **Is this a crime?**

No, a finding that you committed an unlawful act of discrimination is not a crime. A finding that you committed an unlawful act of discrimination is a civil violation that does not impact your criminal record in any way.

### **Can a City complaint be filed against a person who makes an offensive comment or gesture toward someone because of their sexual orientation or gender identity?**

No. Being rude, offensive, or insulting toward an individual based on any characteristic is, on its own, not an act of discrimination under the proposed ordinance. To commit an unlawful discriminatory practice, a person must deny an individual rights or privileges in employment, housing, or public accommodations on the basis of sexual orientation or gender identity. If a person, in conjunction with an unlawful discriminatory practice, is rude, offensive, or insulting toward that individual, it can be used as evidence during the complaint process.

### **If adopted, when will this ordinance be effective?**

The proposed effective date is November 1, 2016. For the ordinance to be effective, a majority of the City Commission must vote in favor of the ordinance at the first and second readings of the ordinance. The City Commission will consider the first reading of the ordinance at 7 p.m. on July 19, 2016, in the City Commission Room at City Hall.

The City cannot accept discrimination complaints on sexual orientation and/or gender identity before the ordinance becomes effective. Further, the City can only accept discrimination complaints for discrimination that occurred after the ordinance's effective date.

Proposed Amendment to the  
City of Manhattan Discrimination Ordinance  
Chapter 10 of the City Code

**Timeline\***

July 15, 2016

- Educational materials pertaining to the proposed amendment will be made available to the public
- Items will include: City Commission Agenda Memo for the July 19<sup>th</sup> meeting, a Frequently Asked Questions (FAQ), and a draft of the ordinance
- All information will be available at [www.cityofmhk.com/discriminationordinance](http://www.cityofmhk.com/discriminationordinance)

July 19, 2016

- City Commission Meeting – 7:00 PM
- Commission Room, City Hall, 1101 Poyntz Ave.
- 1<sup>st</sup> Reading: Amend Discrimination Ordinance

August 2, 2016

- City Commission Meeting – 7:00 PM
- Commission Room, City Hall, 1101 Poyntz Ave.
- 2<sup>nd</sup> Reading: Amend Discrimination Ordinance

Sept. through Oct.  
2016

- If the amendment is passed, City Staff will make available to providers of employment, housing, and public accommodations within the City of Manhattan further educational materials, as well as address any questions or concerns from the public

November 1, 2016\*

- ***Amended Discrimination Ordinance goes into effect***
- Providers of employment, housing, and public accommodations affected by the proposed amendment\* are strongly encouraged to use the delayed implementation to update any necessary workplace policies, as well as educate and train staff

\* This timeline is subject to change based on any actions or input from the City Commission.

\* For the ordinance to be effective, a majority of the City Commission must vote in favor of the ordinance at the first and second readings of the ordinance.

\* Any person within the City limits who has four or more employees, who sells real estate or rents housing with more than four units, or who offers goods, services, facilities or accommodations to the public must comply with the amendment. However, the ordinance does not apply to a religious organization; a nonprofit fraternal or social association or corporation; a school, university or school district; or another governmental entity.