

ORDINANCE NO. 276

AN ORDINANCE AMENDING CHAPTER 6 OF THE CODE OF ORDINANCES OF THE CITY OF WESTWOOD HILLS, KANSAS, BY ADDING A NEW ARTICLE 8; RELATING TO CIVIL RIGHTS.

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

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

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

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

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

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

WHEREAS, due to the gap in legal protection from discrimination on the basis of sexual orientation or gender identity that currently exists under state and federal law, the governing body's intent is to provide uniform legal

protection within the City of Westwood Hills against discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status, and to provide a complaint and enforcement process to effectuate such protection.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD HILLS, KANSAS, as follows:

Section 1. Adopting a New Chapter 6, Article 8. Chapter 6 of the Code of Ordinances of the City of Westwood Hills is amended by adding the following as new Chapter 6, Article 8 to the existing Code of Ordinances.

**CHAPTER 6
ARTICLE 8. PROHIBITED DISCRIMINATION IN EMPLOYMENT,
HOUSING, OR PUBLIC ACCOMODATIONS.**

6-801. DECLARATION OF POLICY.

The right of an otherwise qualified individual to be free from discrimination because of that individual's real or perceived race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status is hereby recognized. This right shall include, but not be limited to, any of the following:

1. The right to pursue and hold employment and the benefits associated therewith without unlawful discrimination.
2. The right to the full enjoyment of any of the services, advantages, or privileges of any place of public accommodation without unlawful discrimination.
3. The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefor, without unlawful discrimination.
4. The right to exercise any right granted under this article without suffering coercion or retaliation.

6-802. DEFINITIONS.

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

- (a) **Aggrieved Individual** means any individual who has a good faith belief that the individual has been injured by an unlawful discriminatory practice.
- (b) **City** means the City of Westwood Hills, Kansas.
- (c) **Code** means the Code of Ordinances of the City of Westwood Hills, Kansas.
- (d) **Day** means a calendar day. If a deadline falls on a day the City is not open for business, the deadline will be extended to the next day the City is open for business.
- (e) **Employee** means any person authorized to perform services within the City for any employer and includes an officer of a corporation. Employee does not include any individual employed by such individual's parents, spouse, or child.
- (f) **Employer** means any individual or entity (including, but not limited to, a corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, or unincorporated organization) employing one or more employees and all boards and agencies of the City. "Employer" shall include the City and any City Contractor with respect to contracts between the City and the Contractor. Employer does not include an officer, employee, or elected official of the United States, a state, a territory, or any political subdivision thereof or any agency or instrumentality thereof. For purposes of this article, no religious organization or non-profit fraternal or social association/corporation shall be considered an Employer.
- (g) **Familial status** means one or more individuals (who have not attained the age of 18 years) being domiciled with
 - (1) a parent or another person having legal custody of such individual or individuals; or

(2) the designee of such parent or other person having 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 attained the age of 18 years.

- (h) **Gender identity** means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics, of an individual, regardless of the individual's designated sex at birth.
- (i) **Hearing officer** means an individual appointed by the Mayor, with the approval of the City Council, who is charged with determining the validity of alleged violations of this article and, upon determining that a violation has occurred, assessing appropriate remedies, damages, penalties, and/or costs, as provided in this article.
- (j) **Investigator** means one or more individuals appointed by the Mayor, with the approval of the City Council, who shall be charged with investigating alleged violations of this article. If the individual charged with violating the provisions of this article is the City, the Investigator shall not otherwise be an employee, agent, or contractor of the City.
- (k) **Military status** means the status of an individual who is serving or has served in the uniformed services and whose discharge or release was under conditions other than dishonorable, as specified in 38 U.S.C. 101(2), or amendments thereto. Uniformed services is defined as set forth in 20 C.F.R. 1002.5(o), or amendments thereto.
- (l) **Nonprofit fraternal or social association/corporation** means an association or corporation that meets all of the following requirements: (1) it is organized in good faith for social or fraternal purposes, (2) membership entails the payment of bona fide initiation fees or regular dues, (3) there exists a regularly established means of self-governance by the members thereof clearly set forth in a constitution or by-laws adopted by the membership, (4) there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates, and (5) it is not operated, directly or indirectly, for purposes of profit for any individual or groups of individuals other than the membership as a whole.

- (m) **Place of public accommodation** shall include every establishment within the City that is open to the public and offers any product, service, or facility. The term “place of public accommodation” shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with one or more tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. This definition shall not, however, apply to any hotel, motel, restaurant or theater operated by a bona fide private club not conducted for the purpose of evading this article when the accommodations, advantages, facilities, and services are restricted to the members of such club and their guests; nor to any bona fide social, fraternal, civic, political or religious organization, when the profits of such accommodations, advantages, facilities and services, above reasonable and necessary expenses, are solely for the benefit of such organization.
- (n) **Religious Organization** means an entity or association such as a church, mosque, temple, synagogue, or other association or group principally devoted to religious practice or religious teaching.
- (o) **Rental housing** means any real property, consisting of one more dwelling units, which is required to obtain a license or permit pursuant to the provisions of Chapter 6, Article 5 of the Code of Ordinances of the City of Westwood Hills, Kansas.
- (p) To **rent** means to lease, to sublease, to let, or otherwise to grant the right to occupy premises not owned by the occupant in exchange for payment or other consideration.
- (q) **Respondent** means the individual or entity against whom or which a complaint alleging discrimination or retaliation has been filed with the City.
- (r) **Sexual orientation** means an individual's actual orientation or orientation perceived by another as heterosexual, homosexual, bisexual, pansexual or asexual.

6-803. UNLAWFUL PRACTICES.

- (a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status of any otherwise qualified individual, to refuse

to hire or employ such individual, to bar or discharge such individual from employment, or to otherwise discriminate against such individual in compensation or in terms, conditions, or privileges of employment; to limit, segregate, classify, or make any distinction in regard to employees; or to follow any employment procedure or practice which, in fact, results in discrimination or segregation without a valid business necessity. This article shall not apply to employment by a religious organization that consists of religious teaching, ministry, or other religious duties or practices.

- (b) **Housing.** It shall be an unlawful discriminatory practice for an individual or entity to discriminate against any individual in the terms, conditions, or privileges of sale or rental of real property or rental housing, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status, or to discriminate against any individual in such individual's use or occupancy of rental housing because of the race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status of the individuals with whom such individual associates.
- (c) **Public Accommodation.** It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent, or employee of any place of public accommodation to refuse, deny, or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any individual because of race, religion, color, sex, disability, marital status, familial status, national origin, ancestry, sexual orientation, gender identity, or military status. Notwithstanding the above, nothing in this article shall be construed to prevent any business as defined in this article from offering, affording, or providing any additional benefit or additional discount to an individual because of such individual's military or senior citizen status.
- (d) Nothing in this article shall:
 - (1) Be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, be forced to discharge qualified or competent personnel, or be forced to retain personnel when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.

- (2) Be construed to prohibit a business from requiring all of its employees, as a requirement of employment, to utilize the business' applicable established internal human resource procedure(s) to report any allegation of discrimination in the workplace. The enforcement by an employer of any such requirement shall not, in itself, be deemed a violation of this article. However, nothing in this article shall be construed to require an employee to utilize the employer's internal human resource procedure(s) as a pre-requisite to filing a complaint for the alleged violation of this article.
- (3) Prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of federal, state, or local law.
- (4) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of real property which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this article prohibit a nonprofit private club in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (5) Nothing in this article shall be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.

6-804 . ENFORCEMENT.

- (a) An aggrieved individual, on the individual's own behalf or through an attorney or, if the individual is a minor, through the individual's parent or legal guardian or attorney, may file a complaint that the individual has been, or is being, discriminated against by virtue of an alleged unlawful discriminatory practice set forth in this Article, by completing and signing the complaint form provided by the City. The complaint form shall state the names and contact information of the aggrieved individual, the individual(s) alleged to have committed the unlawful discriminatory practice(s), and the respondent; shall describe the unlawful act or

discriminatory practice; and shall include all other information as may be required by the City.

- (b) The complaint form shall be submitted to an investigator and shall only be considered complete if all information requested has been provided to the extent such requested information is reasonably available to the aggrieved individual.
- (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 the complaint form must be filed within 60 days of the last act of discrimination.
- (d) Within five (5) days of the receipt of the completed complaint form, the investigator shall notify the respondent of the complaint, providing sufficient details related to the complaint so that the respondent may respond. The investigator shall give the respondent 30 days in which to file an answer to the complaint and provide any documentation or evidence related to the complaint. The investigator may, at the respondent's request, extend the answer period for up to an additional 30 days.
- (e) Following the conclusion of the answer period, the investigator may initiate further investigation, requesting the complainant and/or respondent to provide additional information, documentation or statements as needed to facilitate the investigation of the complaint. The investigator shall have the power to issue process and compel the production of documents and information. Such process may be executed by the Chief of Police and enforced as in all cases of City ordinances. Any process, request, notice, or other document may be served by U.S. Mail, return receipt requested, and after the service of the complaint, service of any document may also be made by regular mail or e-mail, in addition to the other methods approved herein. This investigation period shall be completed within sixty (60) days of the investigator's last request for additional information, documentation or statements unless the investigator notifies the complainant and the respondent(s) in writing of the need for additional time and reason(s) therefor.
- (f) Within 30 days of the conclusion of the investigation period, the investigator will review all information provided and make a determination whether probable cause exists that the respondent committed an unlawful

discriminatory practice. If the investigator finds that probable cause did not exist, then the investigator shall so notify the complainant and 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 may attempt to engage the parties in conciliation and encourage them to 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 or such extended period of time mutually agreed to by the parties, the matter shall be referred to the hearing officer for a hearing. Alternatively, if the investigator finds that probable cause exists, the parties may, by mutual agreement, select and pay for, at their own cost, a mediator or arbitrator to mediate or arbitrate the discrimination complaint.

- (g) The investigator shall maintain all evidence received during the investigation for a period of two years after the deadline for appeal or completion of appeal, whichever is later.
- (h) Upon referral to the hearing officer, the hearing officer shall schedule a hearing on the complaint. The hearing officer shall have the power to administer oaths and to issue process and compel the attendance of any party or witness. Such process may be executed by the Chief of Police and enforced as in all cases of City ordinances. Any process, request, notice, or other document may be served by U.S. Mail, return receipt requested, and may also be made by regular mail or e-mail, in addition to the other methods approved herein. At such hearing, the parties and the investigator shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer, but the rules of evidence used in courts of law need not be strictly enforced. Following the conclusion of the hearing, the hearing officer may announce a determination or may take the matter under advisement for determination at a later date. Any determination of the hearing officer shall be made in writing within 30 days of the conclusion of the hearing, shall be based upon the preponderance of the evidence, and shall set forth the essential elements of the determination.
- (i) If the hearing officer finds that a violation of this article has occurred, the hearing officer may award to the complainant actual damages, or a civil penalty in an amount up to \$1,000.00, whichever is greater, for each violation. In addition, the investigator's fees and the hearing officer's fees

may be assessed to the non-prevailing party or may be assessed to the parties in some other manner as the hearing officer determines after taking into consideration the facts and circumstances and financial resources of the respective parties. In addition, the hearing officer shall have the authority to revoke or suspend any license or licenses issued by the City to a party found to be in violation of this Ordinance, including, but not limited to, any license issued by the City pursuant to Chapter 6 of the Code of Ordinances of the City of Westwood Hills. The hearing officer may condition the reinstatement of any suspended license upon such terms and conditions as the hearing officer finds are fair and appropriate and reasonably calculated to effect compliance with the requirements of this Ordinance. By way of example, and not limitation, such suspension may include, but not be limited to, suspending the rental license of a party found to have violated the acts pertaining to housing set forth in 6-803(b) herein until such time as the respondent has ceased such unlawful practice or practices. Further, the hearing officer shall also communicate the fact of a violation to the Mayor and the City Clerk so that the City may determine if the respondent has any contracts with the City and if the violation found by the hearing officer may result in a termination of such contract or otherwise affect such contract.

- (j) Any individual aggrieved by a determination of the hearing officer under this section or any determination of insufficient evidence to warrant a hearing made by the Investigator may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto by filing a notice of appeal in the District Court of Johnson County, Kansas, within 30 days of the decision of the hearing officer. Within 30 days of service of the notice of appeal pursuant to K.S.A. 60-2101(d), or within further time allowed by the court or by other provision of law, the City shall transmit to the court the original or a copy of the written determination of the hearing officer and all documents or evidence considered by the hearing officer in considering the complaint or rendering the written determination. On appeal, the district court may enter such order or judgment as justice shall require and may award court costs and reasonable attorney fees to the prevailing party.
- (k) The hearing officer shall preserve all evidence presented at the hearing for a period of two years after the deadline for appeal or completion of appeal, whichever is later.

- (i) The filing of a complaint for the alleged violation of this article shall in no way preclude any individual from seeking other relief under state or federal law. Further, to the extent of state and federal legal processes to address allegations of discrimination based on race, religion, color, sex, disability, familial status, national origin, ancestry, or military status, the City may decline to accept the complaint and defer to the appropriate state or federal agency in which such complaints may be filed.
- (m) The City may also condition any contract into which it may enter upon adherence to the requirements of this Ordinance, and a violation of this Ordinance may be a basis for the termination of any such contract.

6-805. SEVERABILITY.

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


Section 2. EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval by the Mayor, and publication once in the official city newspaper.

PASSED by the Governing Body and **APPROVED** by the Mayor this 13th day of May, 2019.



Paula L. Schwach, Mayor

ATTEST:



Beth O'Bryan, City Clerk

APPROVED AS TO FORM BY:



James Orr, City Attorney

