

## **ORDINANCE NO. 19-77**

### **AN ORDINANCE PROHIBITING DISCRIMINATION; ADDING NEW CHAPTER 2.43 TO THE OLATHE MUNICIPAL CODE.**

**WHEREAS**, on March 5, 2019 the City of Olathe, Kansas passed Resolution No. 19-1024 declaring it to be the policy of the City to reject discrimination of any kind and to respect the inherent worth of every person, without regard to age, race, religion, color, sex, disability, national origin, ancestry, marital status, familial status, military status, sexual orientation, and gender identity; and

**WHEREAS**, state and federal laws provide protection against discrimination against certain classes of persons in housing, employment, and public accommodations, and such laws provide a complaint and enforcement process for violations; and

**WHEREAS**, in some instances, current state and federal employment, housing, and public accommodation laws do not include protection from discrimination on the basis of sexual orientation and gender identity, thereby denying protections based upon sexual orientation and gender identity; and

**WHEREAS**, the City desires to prohibit discrimination based upon sexual orientation and gender identity, by giving the protections that state and federal law already provides with respect to age, race, religion, color, sex, disability, national origin, ancestry, marital status, familial status, and military status and to provide a complaint and enforcement process to effectuate protection not available under current state and federal laws; and

**WHEREAS**, the City has a compelling interest in providing protection against discrimination based upon sexual orientation and gender identity because the City values inclusion, diversity, fairness, and harmony among residents; and

**WHEREAS**, the City desires to provide protection against discrimination based upon sexual orientation and gender identity, in the least restrictive manner towards religious exercise. For this reason, religious organizations are exempt from the provisions of this ordinance.

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

#### **Chapter 2.43 UNLAWFUL DISCRIMINATION**

##### **Sections:**

**2.43.010 Declaration of policy.**

**2.43.020 Definitions.**

**2.43.030 Unlawful discriminatory practices.**

- 2.43.040 Enforcement.**
- 2.43.050 Civil penalty.**
- 2.43.060 Construction.**
- 2.43.070 Exemptions.**
- 2.43.080 Invalidity of part.**

**SECTION ONE:** Section 2.43.010 is hereby added to the Olathe Municipal Code to read as follows:

**“2.43.010 Declaration of policy.**

(A) The right of an otherwise qualified person to be free from discrimination because of that person’s age, race, religion, color, sex, disability, national origin, ancestry, marital status, familial status, military status, sexual orientation, or gender identity, 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 associated benefits without wrongful discrimination;

(2) The right to the full enjoyment of any of the services, advantages or privileges of any place of public accommodation without wrongful discrimination;

(3) The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefor, without wrongful discrimination; and

(4) The right to exercise any right granted under this ordinance without retaliation.

(B) To protect these rights, the purpose of this Chapter is to extend the law to prohibit discrimination based upon sexual orientation and gender identity and to provide a local process for the acceptance, investigation and resolution of complaints of discrimination and retaliation relating to sexual orientation or gender identity.”

**SECTION TWO:** Section 2.43.020 is hereby added to the Olathe Municipal Code to read as follows:

**“2.43.020 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, 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 has a good faith belief that they were injured by an unlawfully discriminatory practice.

*Complainant* means any aggrieved person who has filed a complaint alleging that they were injured by an unlawfully discriminatory practice.

*Employee* means any person employed by an employer but does not include any person employed by such person's parents, spouse or child, nor an independent contractor.

*Employer* means any individual or entity in this City employing ten or more employees; and, any person acting directly or indirectly for an employer, labor organizations, nonsectarian organizations, organizations engaged in social service work, but does not include a religious organization, political organization, or a nonprofit fraternal, civic, or social association.

*Gender identity* means one's perceived or actual gender related identity, regardless of one's sex designated at birth. It can be described as cisgender or transgender.

*Hearing officer* means any person designated as a hearing officer by the City Manager or designee.

*Investigator* means the Community Relations Manager or any other person designated as an investigator by the City Manager.

*Nonprofit fraternal, civic, or social association* means an association or fraternal that meets all the following requirements:

- (1) It is organized in good faith for social or fraternal purposes;
- (2) Membership entails the payment of bona fide initiation fees or regular dues;
- (3) There exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership;
- (4) There is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and
- (5) It is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

*Public accommodation* means any establishment that is open to the public and 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, but does not include any establishment owned or operated by a nonprofit fraternal, social, or civic association, or a political or religious organization.

*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 or advancement of religious practice or religious teaching.

*Rental housing* means any real property intended to be offered for lease, sublease, or any other arrangement whereby a person is granted the right to occupy premises not owned by such occupant in exchange for payment or other consideration, but does not include any real property owned or operated by a religious organization, political organization, or a nonprofit fraternal, civic, or social association.

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

*Sexual orientation* means one's perceived or actual emotional, romantic, or sexual attraction to other people.”

**SECTION THREE:** Section 2.43.030 is hereby added to the Olathe Municipal Code to read as follows:

**“2.43.030 Unlawful discriminatory practices.**

(A) *Employment.* It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of an otherwise qualified 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 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 such services or facilities, 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.

(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 person as covered by this Chapter because of sexual orientation or gender identity.

(D) *Defenses.* It shall be a defense to any allegation of an unlawful discriminatory practice:

(1) That the person did not know the aggrieved person's sexual orientation or gender identity;

(2) That the person acted in good faith and had reasonable grounds for believing that an act or omission was not a violation of this ordinance; or

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

(E) *Interpretation.* Nothing in this Chapter shall:

(1) Prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law;

(2) Prohibit an employer from requiring all employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedures to address any allegation of discrimination in the workplace. The fact that an employer requires an employee to utilize the employer's applicable established internal human resource procedures to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this Chapter. Completion of the employer's

procedures is not a pre-requisite to filing a complaint with the City;

(3) Be construed to require any person or entity subject to this Chapter to make changes requiring a building permit to any existing facility, except as otherwise required by law;

(4) Be construed to prohibit an employer or public accommodation from posting signs for restrooms or dressing rooms based on gender or require any person to violate another person's privacy in any restrooms, public shower spaces, or dressing rooms;

(5) Be construed to make it lawful to discriminate against persons on the basis of age, race, religion, color, sex, disability, national origin, ancestry, marital status, familial status, or military status. Such discrimination is not addressed in this Chapter because federal and state law address unlawful discriminatory practices related to those protected classes and provide a complaint, investigation and enforcement process for such discrimination; or

(6) Be construed to be in conflict with the Kansas Preservation of Religious Freedom Act, K.S.A. 60-5301 through 60-5305, and amendments thereto.

**SECTION FOUR:** Section 2.43.040 is hereby added to the Olathe Municipal Code to read as follows:

**“2.43.040 Enforcement.**

(A) An aggrieved person may file a complaint that he or she has been, or is being, injured by an unlawful discriminatory practice set forth in this Chapter on his or her own behalf or through an attorney; or if a minor, through his or her parent or legal guardian or attorney; by completing and signing the form provided by the City. The complaint form shall state the names and contact information of the aggrieved person, the person(s) alleged to have committed the unlawful discriminatory practice(s), and the respondent; shall describe the unlawful discriminatory practice; and shall include all other information as may be required by the City. The complaint form shall be submitted to the investigator and shall only be considered complete if all information requested has been provided.

(B) The complaint form must be filed within sixty (60) days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of

discrimination, in which event it must be filed within sixty (60) days of the last act of discrimination.

(C) 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.

(D) Following the conclusion of the answer period, the investigator may initiate an investigation requesting that the aggrieved person or respondent provide additional information, documentation or testimony as needed to facilitate the investigation of the complaint. This investigation shall be concluded within sixty (60) days of the investigator's last request for information.

(E) Within thirty (30) days of the conclusion of the investigation, the investigator will review all information provided to the investigator and determine 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 the City will take no further action. If the investigator finds that probable cause exists that the respondent committed an unlawful discriminatory practice, the investigator shall notify the complainant and respondent and request mediation and settlement meetings.

(F) If the investigator finds that probable cause exists that the respondent committed an unlawful discriminatory practice against the complainant, the investigator will attempt to mediate and settle the complaint between the parties. If a party refuses to participate in the mediation, or if a settlement agreement is not executed within sixty (60) days of the date of the finding of probable cause, the investigator shall refer the matter to the hearing officer for an administrative hearing, pursuant to Subsection (G).

(G) 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 settled through mediation within sixty (60) days of the date of such determination, the hearing officer shall set the complaint for an administrative hearing before the hearing officer. At such administrative hearing, the parties and the investigator shall be

entitled to call witnesses and to present evidence as appropriate. The administrative 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 ten (10) days of the date of the administrative hearing. The determination shall indicate whether it was proven by a preponderance of the evidence 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 Five. Either party may appeal the hearing officer's determination pursuant to K.S.A. 60-2101, as amended."

**SECTION FIVE:** Section 2.43.050 is hereby added to the Olathe Municipal Code to read as follows:

**"2.43.050 Civil penalty.**

The investigator's settlement agreement, or the hearing officer's determination, may impose a civil penalty of up to Five Hundred Dollars (\$500.00) for each violation, if discrimination is found."

**SECTION SIX:** Section 2.43.060 is hereby added to the Olathe Municipal Code to read as follows:

**"2.43.060 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 employees, or to discharge qualified or competent employees.

(C) The filing of a complaint for the alleged violation of this Chapter shall in no way preclude any person from seeking any other relief under local, state or federal law.

(D) It will be presumed that an employer with an employment policy with protections similar to the protections in this ordinance is in compliance with the employment provisions of this ordinance."

**SECTION SEVEN:** Section 2.43.070 is hereby added to the Olathe Municipal Code to read as follows:

**"2.43.070 Exemptions.**

Because of the existence of other state and federal law protections and processes, the City will not enforce violations of Section 2.43.030 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;

(C) A department, agency or instrumentality of the State of Kansas;

(D) Johnson County, Kansas; or

(E) Any Law Enforcement Agency, including the Olathe Police Department, the Johnson County Sherriff's Department, or any other local law enforcement agency."

**SECTION EIGHT:** Section 2.43.080 is hereby added to the Olathe Municipal Code to read as follows:

**"2.43.080 Invalidity; Superseding Law.**

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. However, if an applicable State or Federal law, including, but not limited to, any statute, regulation, judgement, ruling, or order provides a protection against discrimination on the same or similar basis as the provisions of this Chapter, then any such provisions of this Chapter shall be null and void and have no further force and effect."

**SECTION NINE:** This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

**PASSED** by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.