

ORDINANCE NO. 1412

AN ORDINANCE CONCERNING DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS; AMENDING CHAPTER 8, ARTICLE 6 OF THE CODE OF THE CITY OF BALDWIN CITY; CREATING NEW ARTICLE TITLED “UNLAWFUL DISCRIMINATION”

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BALDWIN CITY, KANSAS, AS FOLLOWS:

SECTION 1. The Municipal Code of Baldwin City, Kansas is hereby amended to create a new Chapter 8, Article 8 entitled “Unlawful Discrimination” to read as follows:

Sec. 8-801. Purpose and Intent. It is the purpose and intent of the City Council of Baldwin City to protect and safeguard the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. The Council’s purpose in enacting this ordinance is to promote the public health and welfare of all persons who live and work in the City of Baldwin City. It is important for the City to ensure that all persons within the City have equal access to employment, housing, and public accommodations.

Sec. 8-802. Definitions. For the purposes of this ordinance, the following terms shall have the following meanings:

- (1) **AGE.** An individual’s status as having obtained forty or more years of age.
- (2) **CITY CONTRACTOR.** Any person, corporation, or entity that has a contract to do business with the City of Baldwin City.
- (3) **DISCRIMINATE, DISCRIMINATION OR DISCRIMINATORY.** Any act, policy or practice that, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person’s real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.
- (4) **EMPLOYEE.** Any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child. Employee does not include an independent contractor.
- (5) **EMPLOYER.** A person or entity who employs one or more employees in the City of Baldwin City, or any agent of such person. Employer shall include the City of Baldwin City and any City Contractor.

- (6) **FAMILIAL STATUS.** Means an individual's past, current or prospective status as parent or legal guardian to a child or children below the age of eighteen (18) who may or may not reside with that individual.
- (7) **GENDER IDENTITY.** 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.
- (8) **MARITAL STATUS.** An individual's past, current, or prospective status as single, married, domestically partnered, divorced, or widowed.
- (9) **NATIONAL ORIGIN.** An individual's or his or her ancestor's place of origin.
- (10) **PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE, OR AMUSEMENT.** Any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods, or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds. The term does not include any private club, bona fide membership organization, or other establishment that is not in fact open to the public.
- (11) **RELIGION.** All aspects of religious belief, observance, and practice.
- (12) **SEXUAL ORIENTATION.** Actual or perceived homosexuality, heterosexuality, or bisexuality.
- (13) **VETERAN STATUS.** An individual's status as one who served in the active military, naval or air service.

Sec. 8-803. Rights Declared. The right of an otherwise qualified person to be free from discrimination because of that person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status is recognized as and declared to be a right. This right shall include, but not be limited to, all of the following:

- (1) The right to obtain and hold employment and the benefits associated therewith without discrimination.
- (2) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement without discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination.
- (4) The right to exercise any right granted under this ordinance without suffering coercion or retaliation.

Sec. 8-804. Unlawful Practices.

(1) Employment. It shall be an unlawful discriminatory practice for an employer, because of a person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status to refuse to hire or employ such individual, to bar or discharge such individual 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, or segregation without a valid business necessity.

(2) 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 lease of real property or lease of rental housing, or in the provision of services or facilities in connection therewith, because of a person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status or to discriminate against any individual in such individual's use or occupancy of rental housing because of a person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status .

(3) Public Accommodation. It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent, or employee of any place of public accommodation to refuse, deny, or make a distinction, directly or indirectly, in offering its goods, services, facilities, privileges, advantages, and accommodations to any individual because of a person's real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.

(4) Nothing in this article shall:

(a) 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.

(b) prohibit a religious organization 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 fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings that 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.

(c) be construed to prohibit an employer from requiring all of its employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace. The fact that an employer requires an employee to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this article. However, an employee may

simultaneously file a complaint with the city as provided in this ordinance; completion of the employer's procedures is not a pre-requisite to filing a complaint with the city.

(d) 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.

(e) be construed to make it lawful to discriminate or retaliate against individuals on the basis of age, race, religion, color, sex, national origin or ancestry, disability, military status, genetic information, marital status, or familial status. Such discrimination and retaliation are not addressed in this article because federal and state law consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide a complaint, investigation, and enforcement process for such discrimination and retaliation.

Sec. 8-805. Exceptions. Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Sec. 1-3 and Sec. 1-4 of this ordinance:

- (1) A religious corporation, association, or society that employs an individual of a particular religion to perform work connected with the performance of religious activities by the corporation, association, or society.
- (2) An employer who observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purposes of this ordinance.

Sec. 8-806. Administration.

- (1) Any person claiming to have been subjected to any discriminatory practice as defined by this article may file a complaint by appearing before the governing body and furnishing such information as the city council may require. Any complaint filed pursuant to this article must be filed with the city within 60 days of the date of the discovery of the alleged incident.
- (2) Every complaint of a violation of this article shall be referred to the governing body of the city. The city shall forthwith notify the person against whom the complaint is made. The identity of the aggrieved person shall be made known to the person against whom the complaint is made at that time. If the city, after its investigation and the investigation, if any, conducted by authorized employees of the city, finds that there is no merit to the complaint, the same shall be dismissed. If the city finds that there is probable cause to the complaint, in their opinion, then and in that event, the city will endeavor to eliminate the alleged discriminatory practice by conference and conciliation.
- (3) If the City finds that probable cause does not exist, then the City shall notify the complainant and respondent(s) and no further action shall be taken by the city. The complainant may appeal the City's determination to the District Court of Douglas County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of notice of the 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 a certified copy of the

City's written determination and a certified copy of all evidence received by the City during the investigation.

- (4) Nothing in this article shall prohibit the mayor of the city from appointing a committee to assist in the review, investigation and determination of any grievances filed hereunder, and the mayor may delegate the necessary authority to the committee to perform any of the duties required of the mayor by this article.
- (5) If the city is unable to eliminate the alleged discriminatory practice by conference and conciliation, then and in that event, the city shall forward the complaint to the city attorney for handling. The final determination of whether or not to prosecute on the complaint shall be left to the city attorney.

Sec. 8-807. Enforcement. If the City determines that a violation has occurred, the City may issue an order to cease and desist from the discriminatory practice and levy a fine of \$500 for a first violation, \$1000 for a second violation, and \$2000 for a third or subsequent violation. These penalties shall be enforceable, if necessary, via an action in municipal court. All proceedings described herein shall be conducted in accordance with Kansas law.

Sec. 8-808. Other Remedies. This ordinance may not be construed to limit any other remedies available under local, state, or federal law.

Sec. 8-809. Severability. The provisions of this article are severable and if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this article or their application to other persons or circumstances. It is hereby declared to be the intent of the governing body that this article would be adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which the article or any part thereof is inapplicable had been specifically exempted therefrom.

SECTION 2. The Municipal Code of Baldwin City, Kansas is amended as follows.

8-601. Fair housing policy.

The governing body of the city hereby declares it to be the public policy of the city to eliminate discrimination and safeguard the right of any person to sell, purchase, lease, rent, or obtain real property without regard to real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.

8-602. Definitions.

For the purpose of this article the following terms, phrases, words and their derivations shall have the meaning given herein unless the context otherwise indicates:

(a) Discriminate - to make distinctions in treatment because of real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of any person.

(b) Person - shall include any individual, firm, partnership or corporation.

8-603. Unlawful discriminatory practices.

It shall be a discriminatory practice and unlawful:

(a) For any person, having the right, responsibility, or authority to sell, rent, lease, assign or sub-lease any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, to refuse to sell, rent, lease, assign, or sub-lease any dwelling unit, commercial unit, real property or part or portion thereof or interest therein, to any person because of the real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of the person.

(b) For any person, having the right, responsibility or authority to sell, rent, lease, assign or sublease any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, to impose upon any person because of the real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of such person unusual, extraordinarily onerous terms, conditions or privileges in the sale, rental, leasing, assignment or subleasing of any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, or to require a higher sale price or rental or otherwise impose terms more burdensome upon any person because of real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status and which would not be required of other persons.

(c) For any person, engaged in lending money, guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair, or maintenance of any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, to discriminate because of real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of any person applying for loans or guarantees or mortgages in lending money, guaranteeing loans, accepting mortgages or otherwise making available funds for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, or to place unusual extraordinary, onerous rates of interest, terms or conditions on the lending of the money, the guaranteeing of the loans, acceptance of the mortgages or the availability of such funds.

(d) For any person to discriminate in furnishing any facilities or services to any dwelling unit, commercial unit, real property or any part or portion thereof or interest therein, because of the real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of any person making application for such facilities or services.

(e) For any person, engaged in the real estate business, whether a dealer, broker or regardless of the capacity in which serving to discriminate in the selling, renting, leasing, assigning or sub-leasing of any dwelling unit, commercial unit, real property or any part or portion thereof or interest therein, against any person because of real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of such person and further, to indicate in any way that any dwelling unit, commercial unit, real property or any part or portion thereof or interest therein, is not available for inspection, sale, rental, lease, assignment or sub-lease, or otherwise to deny or withhold any dwelling unit, commercial unit, real property or any part or portion thereof or interest therein, from any person because of real or perceived race, color, religion, national origin,

sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of such person.

(f) For any person to include in any agreement relating to the sale, rental, lease, assignment or sub-lease of any dwelling unit, commercial unit, or real property or any part or portion thereof or interest therein, as a condition of the transaction, that the purchaser, renter, tenant, occupant or assignee does agree not to sell, rent, lease, assign or sub-lease the dwelling unit, commercial unit, or real property or any part or portion thereof or interest therein, to any person because of real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of such person.

(g) For any person to engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or to cause physical harm or economic loss to any person because such person complies with the provisions of this article or has opposed any practice forbidden under this act, or has filed a complaint, testified or assisted in any proceeding under this article.

(h) For any person to aid, abet, incite, compel, coerce, cooperate or participate in the doing of any act declared to be a discriminatory practice under the provisions of this article, or to obstruct or prevent compliance with the provisions of this article, or to attempt directly or indirectly to commit any act declared by this article to be a discriminatory practice.

(i) For any person to induce or attempt to induce the sale or listing for sale of any dwelling unit, commercial unit or real property or any part or portion thereof interest therein, by representing that a change has occurred or will or may occur with respect to the race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of residents of the block, neighborhood or area in which the property is located, or to induce or attempt to induce such sale by representing that the presence or anticipated presence of persons of any particular race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status in the area will or may result in:

- (1) the lowering of property values;
- (2) a change in the race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status of residents of the block, neighborhood or area in which the property is located;
- (3) an increase in criminal antisocial behavior in the area;
- (4) a decline in the quality of the schools serving the area.

(j) To make any representations to any prospective seller, real estate broker, salesman, agent, owner, or to any financial institution for the purpose of obtaining facts or evidence of a discriminatory practice when such representation is not made for a bona fide purchase, rental or lease of real property; provided, however, this section shall not apply to any person employed by the city or the state whose duty it is to assist in the prosecution of violations of civil rights relating to open housing.

(k) For any person having the right, responsibility or authority to sell, rent, lease, assign or sub-lease any dwelling unit, commercial unit or real property or any part or portion thereof or interest therein, to directly or indirectly advertise, or in any other manner indicate or publicize, that the purchase, rental, lease, sub-lease or assignment, listing, showing or the lending

of funds in connection with any dwelling unit, commercial unit, real property or any part or portion thereof or interest therein, by persons of any particular real or perceived race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status is unwelcome, objectionable, not acceptable, or not solicited.

8-604. Applicability.

The provisions of this article shall not apply to the following:

(a) Any bona fide religious institutions with respect to any qualifications it may impose based upon religion when such qualifications are related to a bona fide religious purpose.

(b) A rental or leasing of a dwelling unit in a building which contains housing accommodations for not more than two families living independently of each other if the owner or members of this family reside in such dwelling unit.

(c) A rental or leasing to less than five persons living in a dwelling unit by the owner if the owner or members of his or her family reside therein.

8-605. Administration.

(a) Any person claiming to have been subjected to any discriminatory practice as defined by this article may file a complaint by appearing before the governing body and furnishing such information as the city council may require. Any complaint filed pursuant to this article must be filed with the city within 60 days of the date of the discovery of the alleged incident.

(b) Every complaint of a violation of this article shall be referred to the governing body of the city. The city shall forthwith notify the person against whom the complaint is made. The identity of the aggrieved person shall be made known to the person against whom the complaint is made at that time. If the city, after its investigation and the investigation, if any, conducted by authorized employees of the city, finds that there is no merit to the complaint, the same shall be dismissed. If the city finds that there is merit to the complaint, in their opinion, then and in that event, the city will endeavor to eliminate the alleged discriminatory practice by conference and conciliation.

(c) Nothing in this article shall prohibit the mayor of the city from appointing a committee to assist in the review, investigation and determination of any grievances filed hereunder, and the mayor may delegate the necessary authority to the committee to perform any of the duties required of the mayor by this article.

(d) If the city is unable to eliminate the alleged discriminatory practice by conference and conciliation, then and in that event, the city shall forward the complaint to the city attorney for handling. The final determination of whether or not to prosecute on the complaint shall be left to the city attorney.

8-606. Enforcement.

(a) Any person convicted of a violation of this article shall be punished by a fine of not more than \$499.00, or by confinement in the county jail for not more than 179 days, or by both such fine and imprisonment.

(b) The city attorney, instead of filing a complaint in municipal court of the city, may, as an alternative remedy, seek to have the alleged discriminatory practices abated by an action for an injunction to be maintained in the appropriate District Court of the State of Kansas.

8-607. Validity

The provisions of this article are severable and if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this article or their application to other persons or circumstances. It is hereby declared to be the intent of the governing body that this article would be adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section, or part had not been included therein, and if the person or circumstances to which the article or any part thereof is inapplicable had been specifically exempted therefrom.

Passed by the City Council this 15th day of October, 2019.



Casey Simoneau, Mayor

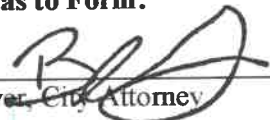
ATTEST:



Laura E. Hartman, CMC
City Clerk



Approved as to Form:



Blake Glover, City Attorney