

ORDINANCE NO. 979

AN ORDINANCE RELATED TO NONDISCRIMINATION, AMENDING AND REPEALING EXISTING CHAPTER V, ARTICLE 12, SECTIONS 5-1201; 5-1202; 5-1203; AND 5-1204 OF THE CODE OF THE CITY OF ROELAND PARK, KANSAS; AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ROELAND PARK, KANSAS:

WHEREAS, Roeland Park 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 Roeland Park; and,

WHEREAS, the governing body finds that discrimination based on race, color, religion, national origin, 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, local, state and federal laws provide protection against discrimination against certain classes of individuals in housing and state and federal laws provide protection against discrimination against certain classes of individuals in 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/or public accommodation laws have been interpreted to exclude protection against discrimination and retaliation on the basis of sexual orientation and gender identity, thereby precluding the use of the complaint and enforcement process outlined therein; and,

WHEREAS, the City of Roeland Park desires to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity, giving these characteristics the same protection state and federal law already consistently provides with respect to race, color, religion, national origin, sex, age, disability, marital status, familial status, and military status and to provide a complaint and enforcement process to effectuate protections not available under current state and federal laws.

SECTION 1. Chapter V, Article 12, Sections 5-1201; 5-1202; 5-1203; and 5-1204 of the City of Roeland Park, Kansas is hereby amended to read as follows:

CHAPTER V. – BUSINESS REGULATIONS

ARTICLE 12. – Prohibited Discrimination in Employment, Housing, and Public Accommodations.

5-1201. Definitions.

The definitions contained within the Kansas Acts 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 apply to this article unless specifically defined herein. 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 such individual has been injured by an unlawful discriminatory practice.

(b) *City* means the City of Roeland Park, Kansas.

(c) *Code* means the Code of the City of Roeland Park, Kansas.

(d) *Days* means calendar days. If a deadline falls on a day city hall is not open (e.g. a weekend, a holiday recognized by the city, emergency closure) the deadline will be extended to the next day city hall is open.

(e) *Employee* means any individual 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 individual. Employee also does not include an independent contractor.

(f) *Employer* means any individual or entity (e.g. corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, unincorporated organization) employing one or more employees, the city (including all departments, boards, agencies), and any city contractor. For purposes of this article, no religious organization or non-profit fraternal or social association/corporation shall be considered to be an employer.

(g) *Familial status* means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(h) *Gender identity* means an individual's actual or perceived (by the individual or another) gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics regardless of the individual's designated sex at birth.

(i) *Hearing officer* means the City of Roeland Park Municipal Judge.

(j) *Investigator* means the City of Roeland Park, Kansas Prosecutor.

(k) *Military status* means a person who is serving or has served in the uniformed services, and who, if discharged or released 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-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.

(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. The term place of public accommodation shall not, however, include: (1) a religious organization; (2) any hotel, motel, restaurant or theater operated by a nonprofit fraternal or social association/corporation which restricts its facilities and services to the members of such association/corporation and their guests; or (3) any nonprofit fraternal or social association/corporation, or bona fide civic, political or religious organization, when the profits of such association/corporation or organization, above reasonable and necessary expenses, are solely for its benefit or mission.

(n) *Religious organization* means a church, mosque, temple, synagogue, or other entity principally devoted to religious practice or religious teaching.

(o) *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.

(p) *Rental housing* means any real property, consisting of one or more dwelling units, which is required to obtain a license or permit pursuant to the provisions of Article 7 of Chapter 5 of the Code.

(q) *Respondent* means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the city.

(r) *Sexual orientation* means an individual's actual or perceived (by the individual or another) emotional, romantic, or sexual attraction to other people, such as heterosexual, homosexual, bisexual, pansexual or asexual.

5-1202. Declaration of Policy.

(a) The right of an otherwise qualified individual to be free from discrimination because of that individual's race, color, religion, national origin, 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 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.

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

(b) To protect these rights, it is hereby declared to be the purpose of this article to extend the law to prohibit discrimination and retaliation 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 and/or gender identity arising hereunder.

(c) To protect these rights, it is hereby declared that any construction after enactment of this article shall ensure individual privacy in all restrooms, public shower spaces and dressing rooms.

5-1203. Unlawful Practices.

(a) It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of an 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 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) It shall be an unlawful discriminatory practice for an individual or entity to discriminate against any individual in the terms, conditions or privileges of the sale or lease of real property or the 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 individual in such individual's use or occupancy of rental housing because of the sexual orientation or gender identity of individuals with whom such individual associates. Nothing in this article shall prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, from limiting the sale, rental or occupancy of real property or rental housing which it owns or operates for other than a commercial purpose to individuals of the same religion, or from giving preference to such individuals.

(c) 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 sexual orientation or gender identity.

(d) It shall be a defense to any allegation of an unlawful discriminatory practice:

(1) that the individual or entity did not know the aggrieved individual's sexual orientation or gender identity.

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

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

(e) Nothing in this article shall:

(1) prohibit a fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(2) 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.

(3) require an employer to hire unqualified individuals or to retain employees when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.

(4) 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 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.

(5) be construed to require any person or entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.

(6) be construed to prohibit an employer or place of public accommodation to post signs for restrooms and dressing rooms based on gender.

(7) be construed to make it lawful to discriminate or retaliate against individuals on the basis of race, color, religion, national origin, sex, age, disability, marital status, familial status, or military status. Such discrimination and retaliation is 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.

5-1204. Enforcement.

(a) Any aggrieved individual by an alleged violation of this article may file a written complaint with the City Clerk that the individual has been, or is being, subject to an alleged unlawful discrimination practice as set forth in this article (or if a minor, through the minor's parent, legal guardian or attorney) by completing and signing the form provided by the city. The complaint shall state the names and contact information of the aggrieved individual, the individual(s) and/or business/businesses alleged to have committed the unlawful discriminatory practice(s), a description of the alleged unlawful conduct and all other information as may be required by the city.

(b) The complaint form shall be submitted to the Investigator via hand-delivery, certified mail, email or fax, and shall only be considered complete if all information required by the city's form has been provided to the extent such 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 it must be filed within 60 days of the last act of discrimination.

(d) Upon receipt of a complete complaint, the investigator shall notify the respondent(s) of the complaint, providing sufficient details related to the complaint so the respondent(s) may respond. The investigator shall give the respondent(s) 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 request of respondent(s), extend the answer period an additional 30 days. If the respondent(s) charged with violating the provisions of this article is the city, the city will engage an independent investigator who shall not otherwise be an employee, agent, or contractor of the city and shall not have any association with the complainant or the respondent(s).

(e) Following the conclusion of the answer period, the investigator may initiate an investigation period, requesting that the complainant and/or respondent(s) provide additional information, documentation or testimony as needed to facilitate the investigation of the complaint. The investigator shall have the power to issue process and compel the production of documents. Such process shall be executed by the chief of police and shall be enforced as in all cases of city ordinances. This investigation period shall be concluded within 60 days of the investigator's last request for information, unless the investigator notifies the complainant and the respondent(s) in writing of the need for additional time and reason(s) therefore.

(f) Within 30 days of the conclusion of the investigation period, the investigator will review all evidence received during the investigation and make a determination whether probable cause exists that the respondent(s) committed an unlawful discriminatory practice. The investigator will 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.

(g) If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and the respondent(s), and no further action shall be taken by the city. The

complainant may appeal the investigator's determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. 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 a certified copy of the investigator's written determination and a certified copy of all evidence received by the investigator during the investigation.

(h) If the investigator finds that probable cause exists that an unlawful discriminatory practice was committed by respondent(s), the investigator shall notify the complainant and respondent(s) and request conciliation and settlement. 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. The investigator may extend the time for signing a settlement agreement for good cause and with written notice to the parties.

(i) Upon referral to the hearing officer, the hearing officer shall schedule a hearing on the complaint. The parties shall be given at least ten days' written notice of the date, time and place of the hearing. At such hearing, the parties 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 have the power to administer oaths and to issue process and compel the attendance of any party or witness. Such process shall be executed by the chief of police and shall be enforced as in all cases of city ordinances.

(j) 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 in writing, shall be based upon preponderance of the evidence, and shall set forth the essential elements of the determination.

(k) 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 the amount of up to \$500.00, whichever is greater, for each violation. Each party is to bear their own attorneys' fees, if any.

(l) 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.

(m) Any party aggrieved by a determination of the hearing officer under this section may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. 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 a certified copy of the written determination of the hearing officer and a certified copy of all evidence presented at the hearing. On appeal, the district court may enter such order or judgment as justice shall require, and may award the prevailing party court costs and reasonable attorney fees incurred to prosecute or defend the appeal.

(n) The filing of a complaint for the alleged violation of this article or a response thereto shall in no way preclude any party from seeking other relief under state or federal law.

(o) Any individual making false, malicious, or unfounded accusations against an entity subject to this ordinance is guilty of a violation and upon conviction thereof shall be punished by a fine of \$100 for each such violation.


SECTION 2. Existing Roeland Park Municipal Code Sections 5-1201; 5-1202; 5-1203; and 5-1204 are hereby repealed.


SECTION 3. This ordinance shall take effect and be in force from and after its publication in the official City newspaper.

PASSED by the City Council the 20 day of May 2019. **APPROVED** by the Mayor.



Mike Kelly, Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steven E. Mauer