

ORDINANCE NO. 894

AN ORDINANCE RELATING TO BUSINESSES; PROHIBITING DISCRIMINATION IN EMPLOYMENT PRACTICES, HOUSING AND PUBLIC ACCOMMODATIONS; ADDING A NEW ARTICLE 12 TO CHAPTER 5, AND NEW SECTIONS 5-1201, 5-1202, 5-1203 AND 5-1204 TO THE CODE OF THE CITY OF ROELAND PARK, KANSAS

WHEREAS, the Kansas Acts Against Discrimination, K.S.A. 44-1001 *et seq.*, provide protection against discrimination against certain classes of persons in employment practices, housing and public accommodations, but those protections do not extend to discrimination on the basis of sexual orientation, gender identity, or military status; and

WHEREAS, the Governing Body hereby finds that it is in the public interest for the citizens of Roeland Park to be afforded protection from discrimination on the basis of sexual orientation, gender identity, and/or military status; and

WHEREAS, the City of Roeland Park recognizes and values that a diverse community of numerous races, ethnicities, faiths, backgrounds, socioeconomic status, lifestyles, ages, stages of life, and family arrangements live, work and do business in Roeland Park; and

WHEREAS, the City of Roeland Park recognizes that when all people are treated fairly with equal opportunity, dignity and respect under the law, the entire community is able to prosper; and

WHEREAS, it is in the best interest of the City of Roeland Park to be responsive to the changing needs of society and the importance of treating all persons with fairness, respect, dignity and equal protection; and

WHEREAS, the City of Roeland Park does not condone discrimination of any kind against any person;

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

SECTION 1. There is hereby added to Chapter 5 of the Code of the City of Roeland Park, Kansas, a new Article 12, to be titled "Discrimination."

SECTION 2. Section 5-1201 is hereby added to the Code of the City of Roeland Park, Kansas, and shall read as follows:

5-1201. DEFINITIONS. Except to the extent they are in conflict with the definitions below, the definitions contained within the Kansas Acts Against Discrimination, K.S.A. 44-1001 *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) "Business" means any person or entity, with four or more employees, conducting business within the city which is required to obtain a license or permit pursuant to the provisions of Article 1, Article 3, Article 5, Article 6, Article 8, or Article 9 of Chapter 5 of the code, and all departments, boards and agencies of the City of Roeland Park. For purposes of this Article, no religious organization, private fraternal and benevolent association or society, non-profit private club, agency or department of Johnson County, or school district, as defined in K.S.A. 72-8201 et seq., and amendments thereto, shall be considered to be a "business" (notwithstanding licensure by the City).
- b) "Place of public accommodation" shall include every business within the City, whether wholesale or retail, which is open to the general public and offers, for compensation, 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 more than four (4) 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 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, educational, 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 or mission of such organization.
- c) "Rental housing" means any real property, consisting of more than four dwelling units, which is required to obtain a license or permit pursuant to the provisions of Article 7 of Chapter 5 of the code.
- d) "To rent" means to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- e) "Employee" means any person authorized to perform services for any business within the City of Roeland Park, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation. "Employee" does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any person.
- f) "Person" means an individual, corporation, partnership, association, labor organization, legal representative, mutual company, joint-stock company, trust, unincorporated organization, trustee, trustee in bankruptcy, receiver and fiduciary.

- 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) "Sexual orientation" means an individual's real orientation or orientation perceived by another as heterosexual, homosexual, bisexual or asexual.
- i) "Gender identity" means consistently having and/or expressing a self-image or identity not traditionally associated with their biological sex.
- j) "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.
- k) "Investigator" means one or more persons appointed by the Mayor, with the approval of the City Council, who shall be charged with investigating alleged violations of this Article.
- l) "Hearing Officer" means a person appointed by the Mayor, with 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 damages, penalties and/or costs as provided in this Article.

SECTION 3. Section 5-1202 is hereby added to the Code of the City of Roeland Park, Kansas, and shall read as follows:

5-1202. UNLAWFUL PRACTICES

- (a) It shall be an unlawful discriminatory practice for a business, because of the race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity or military status of any person to refuse to hire or employ such person to bar or discharge such person from employment or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment; to limit, segregate, separate, classify or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation without a valid business necessity.
- (b) It shall be an unlawful discriminatory practice for a business to discriminate against any person 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, familial status, national origin, ancestry, sexual

orientation, gender identity or military status, or to discriminate against any person in such person's use or occupancy of rental housing because of the race, religion, color, sex, disability, familial status, national origin ancestry, sexual orientation, gender identity, or military status of the people with whom such person associates.

- (c) It shall be an unlawful discriminatory practice for any business, as defined herein being the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, and accommodations to any person as covered by this Article because of race, religion, color, sex, disability, national origin, ancestry, sexual orientation, gender identity, or military status.
- (d) Nothing in this Article shall be construed to mean that a business shall be forced to hire unqualified or incompetent personnel, or discharge qualified or competent personnel.
- (e) Nothing in this Article shall 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.
- (f) Nothing in this Article shall 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, unless membership in such religion is restricted on account of race, color, national origin or ancestry. 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.
- (g) 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. Any construction after enactment of this Article shall ensure individual privacy in all restrooms, public shower spaces and dressing rooms.

SECTION 4. Section 5-1203 is hereby added to the Code of the City of Roeland Park, Kansas, and shall read as follows:

5-1203. ENFORCEMENT.

- (a) Any person aggrieved by an alleged violation of this Article may file a complaint with the City Clerk on a form to be provided by the City. Any such complaint must be filed within 60 days after the alleged act of discrimination. The complaint shall be referred to a mediator for non-binding mediation. Participation in mediation shall be voluntary on

the part of the person charged with violating this Article. The mediator shall either be a person agreed upon by the complainant and the person accused of the violation or, if no such agreement can be reached within a reasonable time following the filing of the complaint, a person selected by the City to serve as the mediator. Any fees charged by the mediator shall be split equally between the parties, unless at the conclusion of the mediation, the mediator assesses the costs of mediation in some other manner.

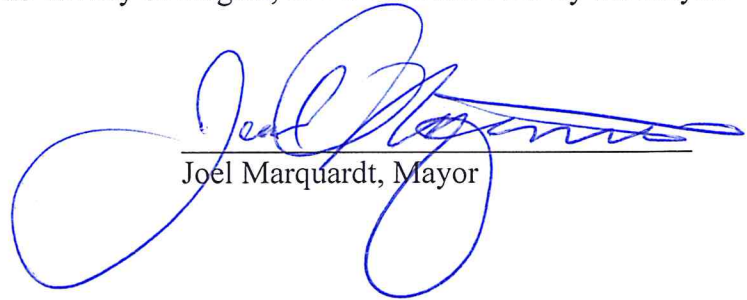
- (b) Any mediation hereunder shall be conducted in accordance with procedures to be established by the mediator.
- (c) If, within 15 days of the conclusion of the mediation, either party notifies the City Clerk in writing that such person is dissatisfied with the results of the mediation, or if the person charged with violating the provisions of this Article elects not to participate in mediation, the complaint shall be referred to the Investigator for investigation and determination.
- (d) After initial investigation by the Investigator or such person as may be assigned to investigate the complaint by the Investigator, the Investigator shall make a determination whether there is sufficient evidence of discrimination to conduct a hearing on the complaint. Upon a finding of sufficient evidence to warrant a hearing and upon reasonable notice to the complainant and the person charged with violating the provisions of this Article, the Investigator shall refer the matter to the Hearing Officer who shall conduct a hearing on the complaint. 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 in writing, shall be based upon the preponderance of the evidence and shall set forth the essential elements of the determination. 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 \$500.00, 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.
- (e) Any person 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. 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.
- (f) The filing of a complaint for the alleged violation of this Article shall in no way preclude any person from seeking other relief under state or federal law.

SECTION 5. Section 5-1204 is hereby added to the Code of the City of Roeland Park, Kansas, and shall read as follows:

5-1204. SEVERABILITY. Should any section, subsection, sentence, clause or phrase of this Article, or the application thereof to any person 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.

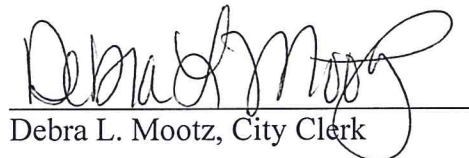
SECTION 6. This ordinance shall take effect and be in force from and after January 1, 2015.

PASSED by the City Council the 4th day of August, 2014. APPROVED by the Mayor.



Joel Marquardt, Mayor

ATTEST:



Debra L. Mootz, City Clerk

APPROVED AS TO FORM:



Neil R. Shortlidge, City Attorney