

(Published in the Topeka Metro News June 21, 2010)

**ORDINANCE NO. 19433**

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending Topeka Municipal Code §§ 2.135.010, 2.135.130, 2.55.010, 2.55.030, 2.55.040 and 9.20.020, concerning the elimination of the Topeka Human Relations Department and specifically repealing said original sections as well as eliminating in their entirety §§ 2.55.020, 9.20.010, 9.20.030, 9.20.050 through 9.20.150 and 9.25.040 through 9.25.240.

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

Section 1. That section 2.135.010, Policy, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Affirmative action Policy.**

It is the policy of the city to take affirmative action to achieve equal treatment in employment for individuals regardless of race, religion, creed, color, sex, ~~physical handicap~~ disability which is unrelated to the ability to perform a particular job or occupation, national origin or ancestry, in all personnel actions and procedures including, but not limited to, recruitment, hiring, training, transfer, promotion, compensation and other benefits.

Section 2. That section 2.135.130, Affirmative action programs, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Affirmative action programs.**

(a) *Submission of program.* All persons seeking to enter into a contract with the city shall submit in writing to the contracts and procurement division either an affirmative action program, a certificate of compliance, or such other certificate as is

30 acceptable to the contracts and procurement division which evidences the adoption of  
31 an affirmative action program. Such affirmative action program, certificate of compliance  
32 or other certificate shall be approved and on file with the contracts and procurement  
33 division, or such plan shall be submitted with the contract bid. If no affirmative action  
34 plan is submitted with the contract bid, the bid will be considered nonresponsive and will  
35 not be accepted. If any person shall fail or refuse to submit an affirmative action  
36 program as required by this division, such person shall be ineligible to enter into any city  
37 contract until the person has so complied.

38 (b) *Review by contracts and procurement division.*

39 (1) *Affirmative action program.* The contracts and procurement division  
40 shall receive and review affirmative action programs submitted to it, and shall  
41 approve any such program or shall specify in writing any modification of the  
42 program needed to make it conform to the requirements of this division; provided,  
43 that prior to final rejection of the program, the contracts and procurement division  
44 shall advise and consult with the person submitting such program for the purpose  
45 of assisting the person to develop an acceptable affirmative action program.

46 (2) *Certificates of compliance.* The contracts and procurement division  
47 shall receive and accept certificates of compliance as conforming with the terms  
48 of this division respecting submission of affirmative action programs.

49 (3) *Program review committee.* A program review committee shall be  
50 established for the purpose of reviewing and evaluating the city's minority  
51 business enterprise, women business enterprise and disadvantaged business  
52 enterprise utilization. The committee members shall be designated by the city

53 manager. There shall be at least three members of the committee and other  
54 members may be added by the city manager. The ~~executive~~ director of the  
55 human ~~relations commission~~ resources department, the director of the public  
56 works department, and the director of the contracts and procurement division  
57 shall all be members of the committee. All recommendations and determinations  
58 of the review committee may be appealed to the city manager, whose decision  
59 shall be final and binding. The committee shall have the following duties and  
60 responsibilities:

61 a. Establish, on an annual basis, percentage goals for the  
62 utilization of minority business enterprise, women business enterprise and  
63 disadvantaged business enterprise participation on city contracts. Goals  
64 shall be established upon consideration of the following factors: The  
65 number and type of contracts to be awarded, the number and type of  
66 minority, women, and socially and economically disadvantaged  
67 contractors available, and past results of the city's minority business  
68 enterprise, women business enterprise and disadvantaged business  
69 enterprise utilization.

70 b. Review and analyze, on a quarterly basis, minority business  
71 enterprise, women business enterprise and disadvantaged business  
72 enterprise requirements, to include evaluating the methods for achieving  
73 utilization goals and the guidelines for ascertaining contractors'  
74 compliance with the city's policies and procedures.

75 c. Report to the city council on a quarterly basis through the  
76 city manager, the findings from the review and analysis of minority  
77 business enterprise, women business enterprise and disadvantaged  
78 business enterprise participation and utilization. The city council shall  
79 consider goals for the city's minority business enterprise, women business  
80 enterprise and disadvantaged business enterprise utilization in conjunction  
81 with the annual setting of budget priorities.

82 Section 3. That section 2.55.010, Topeka human relations commission  
83 created, of The Code of the City of Topeka, Kansas, is hereby amended to read as  
84 follows:

85 **Topeka human relations commission created.**

86 There is hereby created the Topeka human relations commission. The city  
87 manager shall designate staff to assist the commission. ~~The executive director of the~~  
88 ~~commission shall be appointed by the city manager, serve at the will and pleasure of the~~  
89 ~~city manager, and be under the administrative direction of the city manager. The~~  
90 ~~professional, administrative and support staff employed to support the commission shall~~  
91 ~~be identified as the Topeka human relations department, and the executive director of~~  
92 ~~the commission shall be the director of the department.~~

93 Section 4. That section 2.55.020, Topeka human relations commission –  
94 Specific duties and responsibilities, of The Code of the City of Topeka, Kansas, is  
95 hereby repealed.

96 **~~Topeka human relations commission – Specific duties and responsibilities.~~**

97           The commission's executive director shall have the following duties and  
98 responsibilities:

99           ~~(a) To be the administrative head of the Topeka human relations commission;~~

100           ~~(b) To endeavor to eliminate prejudice because of race, religion, creed, color,~~  
101 ~~sex, disability, national origin or ancestry, or age in the city and to further goodwill~~  
102 ~~among all people of the city;~~

103           ~~(c) To administer and enforce the provisions of this chapter and Chapters [2.80](#),~~  
104 ~~[2.135](#) and [9.20](#) TMC;~~

105           ~~(d) To draft regulations as directed by the commission for consideration by the~~  
106 ~~commission;~~

107           ~~(e) To receive, investigate, and attempt to conciliate or refer all complaints filed in~~  
108 ~~accordance with Chapter [9.20](#) TMC;~~

109           ~~(f) To exercise any other duties and responsibilities specified as the director's in~~  
110 ~~any section of this chapter and Chapters [2.80](#), [2.135](#) and [9.20](#) TMC, or any other city~~  
111 ~~ordinance;~~

112           ~~(g) To manage any city of Topeka employees assigned to the Topeka human~~  
113 ~~relations department to delegate duties, functions and responsibilities to any staff~~  
114 ~~personnel employed as authorized;~~

115           ~~(h) To appoint conciliation committees, as needed, from among the commission~~  
116 ~~members;~~

117           ~~(i) To perform additional duties and responsibilities allocated by the city manager,~~  
118 ~~as the need may arise;~~

~~(j) To support the commission to endeavor to eliminate prejudice because of race, religion, creed, color, sex, disability, national origin or ancestry, or age and further goodwill among all people of the city; promote goodwill, cooperation and conciliation; support the commission in seeking additional funding to effectuate the purposes of this chapter; issue such publications, results of investigation not confidential in nature, and research as, in the judgment of the city attorney's office and director, will tend to promote goodwill and minimize or eliminate discrimination; and advise and support the commission and staff and receive and accept reports; and~~

~~(k) By March 1st of each year, to prepare and submit to the city and the city council a plan to address any problems or deficiencies identified by the commission in its annual report required by TMC [2.55.040\(c\)](#).~~

Section 5. That section 2.55.030, Composition – Term of members, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Composition – Term of members.**

(a) *Membership generally.* The Topeka Human Relations Commission shall consist of nine (9) members to be drawn from individuals with disabilities and from diverse gender, racial, ethnic, commercial, and industrial segments of the community, ~~who~~ The commissioners shall reside within the corporate limits of the city. The commissioners shall be appointed by the mayor from council nominations, and such appointments shall be confirmed by the council.

(b) *Terms.* The term of office of each member of the commission shall be for two (2) years. Members shall not serve beyond the end of their appointed terms. Upon expiration of a term the position shall remain vacant until a successor is appointed.

142 (c) *Qualifications of members.* No full or part time benefit eligible employee or  
143 elected official of the city may be appointed to the commission. No immediate family  
144 member of a city councilmember, or any department director ~~or employee of the Topeka~~  
145 ~~Human Relations Commission~~ may be appointed to the commission.

146 (d) *Compensation and removal.* Members shall serve without compensation.  
147 Members may be removed for cause by a majority vote of the council. Removal for  
148 cause shall include but not be limited to the following reasons: failure to attend four (4)  
149 commission meetings in one (1) calendar year or failure to attend three (3) consecutive  
150 commission meetings in one (1) calendar year. In the case of death, incapacity,  
151 resignation or disqualification of any member of the commission, vacancies shall be  
152 filled in accordance with City of Topeka Code section 2.05.010.

153 (e) *Commission organization.* The commission shall select by majority vote  
154 one of the appointees as the chairperson of the commission and one of the appointees  
155 as the vice-chairperson of the commission. The commission shall meet ~~monthly~~ at such  
156 times and such places as it may agree upon. Special meetings may be called by the  
157 chairperson or by a majority of the commission.

158 Section 6. That section 2.55.040, Duties and responsibilities, of The Code of  
159 the City of Topeka, Kansas, is hereby amended to read as follows:

160 **Duties and responsibilities.**

161 The commission will:

162 (1) Support ~~the director to endeavor~~ efforts to eliminate prejudice because of  
163 race, religion, creed, color, sex, disability, national origin or ancestry, or age and further  
164 goodwill among all people of the city; and promote goodwill, cooperation and

165 conciliation within the city; ~~support the director in seeking additional funding to~~  
166 ~~effectuate the purposes of this article; issue such publications, results of investigation~~  
167 ~~not confidential in nature, and research as, in the judgment of the city attorney's office~~  
168 ~~and director, will tend to promote goodwill and minimize or eliminate discrimination; and~~  
169 ~~advise and support the commission director and staff and receive and accept reports.~~

170 (2) ~~Permit the filing and investigation of complaints and hold such public~~  
171 ~~hearings as are further provided for in this chapter.~~Promote and facilitate Town Hall  
172 meetings and public forums on issues of interest and concern to residents of Topeka;

173 (3) Participate in outreach activities and public education;

174 (4) Partner with groups that share similar goals;

175 (5) By February 1 of each year, prepare and submit an annual report to the  
176 city and the city council of the commission's activities, ~~the executive director and staff in~~  
177 ~~investigating complaints, resolving or conciliating complaints, determining allegations,~~  
178 ~~issuing orders,~~ identifying issues and problem areas within the Topeka community and,  
179 after reviewing the performance of the commission, ~~executive director and staff~~ during  
180 the year, ~~shall~~ propose any modifications to this chapter that would improve the  
181 effectiveness of ~~enforcement by the commission~~ and better fulfill the antidiscrimination  
182 policies of the city.

183 (4) ~~Adopt, amend and rescind suitable rules and regulations to carry out the~~  
184 ~~provisions of this act and the policies and practices of the commission in connection~~  
185 ~~therewith.~~

186 (5) ~~Review investigations complaints, and make probable cause~~  
187 ~~determinations.~~



188           Section 7. That section 9.20.010, Definitions, of The Code of the City of  
189 Topeka, Kansas, is hereby repealed.

190           **Definitions.**

191           ~~The following words, terms and phrases, when used in this chapter, shall have~~  
192 ~~the meanings ascribed to them in this section, except where the context clearly~~  
193 ~~indicates a different meaning:~~

194           ~~“Commission” means the Topeka human relations commission.~~

195           ~~“Complainant” means a person who filed a written verified complaint alleging unlawful~~  
196 ~~discrimination.~~

197           ~~“Director” means the administrative head of the Topeka human relations commission.~~

198           ~~“Respondent” means the person against whom a written verified complaint alleging~~  
199 ~~unlawful discrimination has been filed with the commission.~~

200           ~~“Written verified complaint” means a complaint, in writing, alleging unlawful~~  
201 ~~discrimination, filed in accordance with Article II of this chapter, which has been~~  
202 ~~witnessed and signed by a notary public.~~

203           Section 8. That section 9.20.020, Policy, of The Code of the City of Topeka,  
204 Kansas, is hereby amended to read as follows:

205           **Policy.**

206           The practice or policy of discrimination against persons by reason of race,  
207 religion, creed, color, sex, disability, national origin or ancestry or age is a matter of  
208 concern to the city, since such discrimination not only threatens the rights and privileges  
209 of the inhabitants of the city but also menaces the institutions and foundations of a free  
210 democratic state. It is hereby declared to be the policy of the city, in exercise of its

211 police power for the protection of the public safety, health and general welfare, for the  
212 maintenance of business and good government, and for the promotion of the city's trade  
213 and commerce, to eliminate and prevent discrimination or segregation because of race,  
214 religion, creed, color, sex, disability, national origin or ancestry or age. It is further  
215 declared to be the policy of the city to assure equal opportunity and encouragement for  
216 every person, regardless of race, religion, creed, color, sex, disability, national origin or  
217 ancestry or age, to secure and hold, without discrimination, employment in any field of  
218 work or labor for which the person is otherwise properly qualified; to assure equal  
219 opportunity for all persons within this city to full and equal public accommodations and  
220 the full and equal use and enjoyment of the services, facilities, privileges and  
221 advantages of all governmental departments or agencies, and to assure equal  
222 opportunity for all persons within this city in housing, without distinction on account of  
223 race, religion, creed, color, sex, disability, national origin or ancestry.

224 Section 9. That section 9.20.030, Application of state law, of The Code of the  
225 City of Topeka, Kansas, is hereby repealed.

226 **Application of state law.**

227 ~~The provisions of the following statutes and any amendments thereto are hereby~~  
228 ~~incorporated by reference as if the same had been set out in full herein: K.S.A. 44-1001,~~  
229 ~~44-1002, 44-1006, 44-1007, 44-1009, 44-1011, 44-1013, 44-1039, 44-1041, 44-1042,~~  
230 ~~44-1044, 44-1111, 44-1112, 44-1113, 44-1117, 44-1118, 44-1119 and 44-1121 except~~  
231 ~~that wherever reference therein is made to the state, such reference shall be construed~~  
232 ~~as referring to the city, unless the sense thereof would be incongruous. All reference~~  
233 ~~therein to the Kansas Human Rights Commission shall be construed to refer to the~~

234 Topeka's human relations commission; and all reference therein to the attorney general  
235 or county attorney shall be construed to refer to the city attorney. By no means shall the  
236 penalty for K.S.A. 44-1041 and 44-1117 exceed the limits established by TMC [1.10.070](#).

237 Section 10. That section 9.20.050, Filing, of The Code of the City of Topeka,  
238 Kansas, is hereby repealed.

239 **Filing.**

240 ~~(a) Procedure Generally. Any person claiming to be aggrieved by an alleged~~  
241 ~~unlawful act or practice, or an attorney at law representing such a person, may make,~~  
242 ~~sign and file with the commission at the commission's official office a written verified~~  
243 ~~complaint, which shall state the name and address of the person alleged to have~~  
244 ~~committed the unlawful act or practice, shall set forth the particulars thereof, and shall~~  
245 ~~contain such other information as may be required by the commission. An employer~~  
246 ~~whose employees, or some of whom, refuse or threaten to refuse to cooperate with the~~  
247 ~~provisions of this chapter may file with the commission a written verified complaint~~  
248 ~~asking for assistance by conciliation or other remedial action. Notwithstanding the~~  
249 ~~above, neither the commission nor the director shall initiate, accept for investigation, or~~  
250 ~~investigate a complaint alleging an unlawful act or practice by the city, its agents or~~  
251 ~~employees, except a complaint filed by a city employee alleging an unlawful~~  
252 ~~employment discrimination act or practice by the city may be investigated by the~~  
253 ~~commission.~~

254 ~~(b) Open Records. The commission and the director shall use the Kansas Open~~  
255 ~~Records Act (K.S.A. 45-215 et seq.) in determining any requests for public records.~~

~~(c) Complaint Filing Period. The commission shall not accept a written verified complaint filed more than 180 calendar days (six months) after the date of the last unlawful act or practice alleged therein.~~

~~Section 11.~~ That section 9.20.060, Notice to respondent, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Notice to respondent.~~**

~~Within 10 working days of receipt of a written verified complaint from any source, the director shall notify the respondent by certified mail that a complaint has been filed, and a copy of the complaint shall accompany such notification.~~

Section 12 That section 9.20.070, Investigation – Time limit, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Investigation – Time limit.~~**

~~(a) Upon the filing of a complaint alleging that any person has engaged in an unlawful act in violation of this chapter or has engaged in a pattern or practice of discrimination, the chairperson of the commission, in consultation with the director, shall designate a commission member as investigating commissioner. The director, or designated staff, shall investigate that alleged illegal act. The investigating commissioner shall review or direct further investigation and determine probable or no probable cause.~~

~~(b) Complaints filed with the commission may be dismissed by the commission on its own initiative, and shall be dismissed by the commission upon the written request of the complainant, if the commission has not issued a finding of probable cause or no probable cause or taken other administrative action dismissing the complaint within 300~~

279 ~~days of filing the complaint. The commission shall mail written notice to all parties of~~  
280 ~~dismissal of a complaint within five days of dismissal. Dismissal of a complaint in~~  
281 ~~accordance with this section shall not be subject to appeal or judicial review by any~~  
282 ~~court under the provisions of K.S.A. 44-1011 and amendments thereto.~~

283 ~~(c) Upon the filing of a complaint, a complainant shall be advised by human~~  
284 ~~relations commission staff of any additional remedies, rights and obligations potentially~~  
285 ~~available to the complainant under state and federal civil rights law, as may be~~  
286 ~~appropriate. Specifically, human relations commission staff shall advise complainants of~~  
287 ~~the requirement that they file their complaints with the Equal Employment Opportunity~~  
288 ~~Commission (EEOC) and/or the Kansas Human Rights Commission (KHRC) in order to~~  
289 ~~preserve their rights to bring suit under federal anti-discrimination laws. Human relations~~  
290 ~~commission staff will assist the complainant in the filing of such complaints with the~~  
291 ~~EEOC and the KHRC, if requested.~~

292 Section 13 That section 9.20.080, Subpoena power, of The Code of the City of  
293 Topeka, Kansas, is hereby repealed.

294 **Subpoena power.**

295 ~~(a) The director with concurrence of the investigating commissioner, in the~~  
296 ~~course and furtherance of the investigation of any written verified complaint, may issue~~  
297 ~~a subpoena to compel the testimony of any person or to require the production of~~  
298 ~~books, records, papers or any other material relevant or possibly relevant to the~~  
299 ~~complaint. If a subpoenaed person fails to appear and testify, or if the subpoenaed~~  
300 ~~books, records, papers or other materials are not produced, the director may request its~~

301 ~~attorney to apply to a court of appropriate jurisdiction to order compliance with the~~  
302 ~~subpoena.~~

303 ~~(b) Witnesses summoned by subpoena of the commission shall be entitled to the~~  
304 ~~same witness and mileage fees as are allowed witnesses in proceedings in district~~  
305 ~~courts.~~

306 Section 14 That section 9.20.090, No probable cause determination, of The  
307 Code of the City of Topeka, Kansas, is hereby repealed.

308 **~~No probable cause determination.~~**

309 ~~If, after the investigation of a complaint is complete, the investigating~~  
310 ~~commissioner determines that no probable cause exists for crediting the allegations of~~  
311 ~~the complaint, the investigating commissioner shall, within 10 working days from the~~  
312 ~~date of such determination, cause to be mailed to the complainant and respondent, by~~  
313 ~~certified mail, written notice of the determination and a statement that the case has~~  
314 ~~been closed. Commission determinations that no probable cause exists for crediting the~~  
315 ~~allegations of a complaint filed under this chapter are hereby specifically exempted from~~  
316 ~~the Act for Judicial Review and Civil Enforcement of Agency Actions (K.S.A. 77-601~~  
317 ~~through 77-627, and amendments thereto).~~

318 Section 15 That section 9.20.100, Probable cause determination, of The Code  
319 of the City of Topeka, Kansas, is hereby repealed.

320 **~~Probable cause determination.~~**

321 ~~If the investigating commissioner, after investigation of a complaint, determines~~  
322 ~~that probable cause exists for crediting the allegations of the complaint, the investigating~~  
323 ~~commissioner shall, within 10 working days from the date of such determination, cause~~

324 to be mailed to the complainant and the respondent, by certified mail, written notice of  
325 such determination.

326 Section 16 That section 9.20.110, Conciliation, of The Code of the City of  
327 Topeka, Kansas, is hereby repealed.

328 **Conciliation.**

329 ~~If the investigating commissioner shall determine that probable cause exists for~~  
330 ~~crediting the allegations of the complaint, the investigating commissioner and/or the~~  
331 ~~director shall immediately endeavor to eliminate the unlawful act or practice complained~~  
332 ~~of by conference and conciliation. The complainant, respondent and investigating~~  
333 ~~commissioner and/or director shall have 60 days from the mailing of the determination~~  
334 ~~of probable cause to enter into a conciliation agreement signed by all parties in interest.~~  
335 ~~Upon agreement by both parties the time for entering into such agreement may be~~  
336 ~~extended. The director with concurrence of the investigating commissioner may, in any~~  
337 ~~event, for good cause grant an additional 30 days for conciliation and persuasion upon~~  
338 ~~the request of either the complainant or respondent. The members of the commission,~~  
339 ~~the director and the staff shall not disclose what has transpired in the course of such~~  
340 ~~endeavors.~~

341 Section 17 That section 9.20.120, Public hearings, of The Code of the City of  
342 Topeka, Kansas, is hereby repealed.

343 **Public hearings.**

344 ~~(a) The procedure for notice and conduct of commission hearings shall be in~~  
345 ~~accordance with the Kansas Administrative Procedures Act, specifically K.S.A. 77-514~~  
346 ~~through 77-532 and any applicable amendments.~~

~~(b) Order — Remedies. If, upon all the evidence in the hearing, the hearing commissioners find that the respondent has engaged in or is engaging in any unlawful act or practice as defined in this chapter, the hearing commissioners shall state the findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful act or practice and to take such affirmative corrective action, including but not limited to the hiring, reinstatement, or upgrading of employees, with or without back pay, and the admission or restoration to membership in any respondent labor organization, the admission to and full and equal enjoyment of the goods, services, facilities, and accommodations offered by any respondent place of public accommodation denied in violation of this chapter, as in the judgment of the hearing commissioners will effectuate the purposes of this chapter, and including a requirement for report of the manner of compliance.~~

~~(c) Civil Enforcement of Order. The director may secure enforcement of the final decision and order of the hearing commissioners in accordance with the Act of Judicial Review and Civil Enforcement of Agency Actions as provided by K.S.A. 77-606 et seq.~~

Section 18 That section 9.20.130, Dismissal of complaint, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Dismissal of complaint.**

~~If, upon all the evidence, the commission shall find that the respondent has not engaged in any unlawful employment practice or unlawful discriminatory practice, the commission shall state their findings of fact and shall issue and cause to be served on both the complainant and respondent an order dismissing the complaint as to such respondent.~~



Section 19 That section 9.20.140, Mailing of orders, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Mailing of orders.**

~~A copy of the order issued pursuant to this chapter shall be delivered by certified mail, return receipt requested, by the commission to the complainant, the respondent, the city attorney, and to such other public officers as the commission may deem proper.~~

Section 20. That section 9.20.150, Rules and regulations, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Rules and regulations.**

~~The commission shall follow Articles 30, 32, 33, 34, 41, 42, 43, 45 and 80 of the Kansas Administrative Rules and Regulations as adopted by the Kansas Human Rights Commission pursuant to K.S.A. 77-415 et seq. as applicable and insofar as the rules and regulations are not in conflict with Kansas statutes, provisions of the code of the city of Topeka, and other rules and/or regulations adopted by the commission under authority of TMC [2.55.040](#)(d).~~

Section 21. That section 9.25.040, Purpose, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Purpose.**

~~The purpose of this article is to provide fair housing practices in the city. It is hereby declared to be the policy of the city to eliminate discrimination in housing because of race, religion, color, sex, disability, familial status or national origin. It is also the purpose of this article to create a procedure for investigating and settling complaints~~

of discriminatory housing practices and to provide rights and remedies substantially equivalent to those granted under state and federal law.

Section 22. That section 9.25.050, Definitions, of The Code of the City of Topeka, Kansas, is hereby repealed.

**Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Aggrieved person” means any person who claims to have been injured by a discriminatory housing practice or believes that such person will be injured by a discriminatory housing practice that is about to occur.

“Commission” means the Topeka human relations commission.

“Complainant” means a person, including the commission, who files a written verified complaint alleging a complaint under this article.

“Conciliation” means the attempted resolution of issues raised by a complainant or by the investigation of the complaint through informal negotiations, involving the aggrieved person, the respondent and the commission.

“Conciliation agreement” means a written agreement setting forth the resolution of the issues in conciliation.

“Director” means the administrative head of the Topeka human relations commission.

“Disability” means a physical, developmental, mental or emotional impairment which substantially limits one or more major life activities such as learning, communication, mobility, self-care, socialization, employment, housing or recreation. This includes any

individual who is so limited as a result of having a record of such an impairment or being regarded as having such an impairment. Such impairments shall not limit a person's ability to perform essential functions of a particular job for which that person is otherwise qualified, nor limit such person's ability to occupy housing or to use public accommodations or other services or facilities covered by this article; provided, that reasonable accommodation is made for the impairment, if required. Current illegal use or addiction to a controlled substance is excluded from this definition.

"Discriminatory housing practice" means an act prohibited by this chapter.

"Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

"Familial status" means:

(1) The status resulting from one or more persons who are under the age of 18 years being domiciled with an individual who is either (i) the parent of the persons under age 18; (ii) the legal guardian of the persons under age 18; or (iii) the designee (with written authorization) of the parent or legal guardian or custodian of the persons under age 18.

(2) The status resulting from being pregnant.

(3) The status resulting from being in the process of securing legal custody of any person who is under the age of 18.

"Family" includes a single individual.

"Governing body" means the mayor and city council of the city.

~~“Housing for older persons” means housing (1) that the commission determines is specifically designed and operated to assist elderly persons under a state program; (2) intended for, and solely occupied by, persons 62 years of age or older; or (3) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with commission rules.~~

~~“Major life activities” means function such as, but not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.~~

~~“Person” means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title VII of federal law, receivers and fiduciaries.~~

~~“Respondent” means the person against whom a written verified complaint alleging unlawful housing discrimination has been filed with the commission, or any person identified as an additional or substitute respondent or an agent of an additional or substitute respondent under TMC [9.25.160](#).~~

~~“To rent” means to lease, sublease, let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.~~

~~“Written verified complaint” means a complaint, in writing, alleging unlawful discrimination, filed in accordance with TMC [9.25.130](#), which has been witnessed and signed by a notary public.~~

458           Section 23. That section 9.25.060, Authority of the Topeka human relations  
459 commission executive director, of The Code of the City of Topeka, Kansas, is hereby  
460 repealed.

461           ~~**Authority of the Topeka human relations commission executive director.**~~

462           ~~The commission's executive director shall have the following duties and~~  
463 ~~responsibilities in the investigation and settling of discrimination in housing complaints:~~

464           ~~(a) To administer and enforce the provisions of this article;~~

465           ~~(b) To adopt, promulgate, amend and rescind suitable rules and regulations~~  
466 ~~necessary to carry out the provisions of this article and the policies and practices of the~~  
467 ~~commission in connection therewith, as well as impose obligations, rights and remedies~~  
468 ~~which are substantially the same as provided in federal fair housing regulations;~~

469           ~~(c) To receive, investigate, decide, act on and attempt to conciliate or refer all~~  
470 ~~complaints alleging violations of this article;~~

471           ~~(d) To delegate duties, functions and responsibilities to any staff personnel~~  
472 ~~employed as authorized;~~

473           ~~(e) To appoint conciliation committees, as needed, from among the commission~~  
474 ~~members;~~

475           ~~(f) To issue subpoenas and order discovery in aid of investigation and hearings~~  
476 ~~under this article. The subpoenas and discovery may be ordered to the same extent and~~  
477 ~~are subject to the same limitations as subpoenas and discovery in a civil action in a~~  
478 ~~district court; and~~

479           ~~(g) To exercise any other duties and responsibilities specified as the director's in~~  
480 ~~any section of this article.~~

481           Section 24. That section 9.25.070, Duties and responsibilities of the Topeka  
482 human relations commission, of The Code of the City of Topeka, Kansas, is hereby  
483 repealed.

484           ~~**Duties and responsibilities of the Topeka human relations commission.**~~

485           ~~In eliminating discriminatory housing practices, the commission will:~~

486           ~~(a) Support the director to endeavor to eliminate prejudice in housing because of~~  
487 ~~race, religion, color, sex, disability, familial status or national origin; and support the~~  
488 ~~director in seeking additional funding to effectuate the purposes of this article; issue~~  
489 ~~such publications, results of investigation not confidential in nature, and research as, in~~  
490 ~~the judgment of the city attorney's office and director, will tend to promote goodwill and~~  
491 ~~minimize or eliminate discrimination in housing; and advise and support the~~  
492 ~~commission, director, and staff; and receive and accept reports.~~

493           ~~(b) Permit the filing and investigation of complaints and hold such public hearings~~  
494 ~~as are further provided for in this article.~~

495           ~~(c) Prepare and submit an annual report to the city and the city council of the~~  
496 ~~activities of the commission, the executive director, and staff in investigating complaints;~~  
497 ~~resolving or conciliating complaints; determining allegations; issuing orders or charges;~~  
498 ~~identifying issues and problem areas within the Topeka community; and, after reviewing~~  
499 ~~the performance of the commission, executive director and staff during the year, shall~~  
500 ~~propose any modifications to this article that would improve the effectiveness of~~  
501 ~~enforcement by the commission and better fulfill the antidiscrimination policies of the~~  
502 ~~city.~~

~~(d) Conduct studies relating to the nature and extent of discriminatory housing practices in the city.~~

~~(e) Cooperate with and, as appropriate, provide technical and other assistance to federal, state, local and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practice.~~

Section 25. That section 9.25.080, Intimidation, interference, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Intimidation, interference.~~**

~~It shall be unlawful for any person to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected in this article.~~

Section 26. That section 9.25.090, Unlawful housing practices, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Unlawful housing practices.~~**

~~It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the corporate limits of the city. The following housing practices shall be unlawful:~~

~~(a) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, religion, color, sex, disability, familial status or national origin.~~

~~(b) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status or national origin.~~

~~(c) To make, print, publish, disseminate or use or cause to be made, printed, published, disseminated or used any notice, statement, advertisement or application, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, disability, familial status or national origin, or an intention to make any such preference, limitation, specification or discrimination.~~

~~(d) To represent to any person because of race, religion, color, sex, disability, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact available.~~

~~(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, familial status or national origin.~~

~~(f)(1) To discriminate in the sale or rental of or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:~~

~~(i) That buyer or renter;~~

~~(ii) A person residing in or intending to reside in such dwelling after it is sold, rented or made available; or~~

~~(iii) Any person associated with that buyer or renter.~~



~~(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with such dwelling, because of a disability of:~~

~~(i) That person;~~

~~(ii) A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or~~

~~iii) Any person associated with that person.~~

~~(3) For purposes of this subsection, the term "discrimination" includes:~~

~~(i) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modification may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;~~

~~(ii) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or~~

~~(iii) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:~~

570           ~~(A) The dwelling has at least one building entrance on an accessible route,~~  
571 ~~unless it is impractical to do so because of the terrain or unusual characteristics of the~~  
572 ~~site.~~

573           ~~(B) With respect to dwellings with a building entrance on an accessible route:~~

574           ~~1. The public use and common use portions of such dwelling are readily~~  
575 ~~accessible to and usable by persons with disabilities. This shall include at least one~~  
576 ~~building entrance on an accessible route unless it is impracticable to do so because of~~  
577 ~~the terrain or unusual characteristics of the site;~~

578           ~~2. All the doors designed to allow passage into and within all premises within~~  
579 ~~such dwellings are sufficiently wide to allow passage by persons with disabilities who~~  
580 ~~are in wheelchairs; and~~

581           ~~3. All premises within such dwellings contain the following features of adaptive~~  
582 ~~design:~~

583           ~~a. An accessible route into and through the dwelling;~~

584           ~~b. Light switches, electrical outlets, thermostats and other environmental controls~~  
585 ~~in accessible locations;~~

586           ~~c. Reinforcements in bathroom walls to allow later installation of grab bars; and~~

587           ~~d. Usable kitchens and bathrooms such that an individual in a wheelchair can~~  
588 ~~maneuver about the space.~~

589           ~~(4) Accessibility and usability for persons with disabilities shall comply with the~~  
590 ~~applicable laws and regulations as well as the codes adopted by the city.~~

591           ~~(5) As used in this subsection, “covered multifamily dwelling” means:~~

~~(i) Buildings consisting of four or more units if such buildings have one or more elevators; and~~

~~(ii) Ground floor units in other buildings consisting of four or more units.~~

~~(6) Nothing in this article shall be construed to invalidate or limit any state law or ordinance that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required by this article.~~

~~(7) Nothing in this section requires a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.~~

Section 27. That section 9.25.100, Discrimination in residential real estate related transactions, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Discrimination in residential real estate related transactions.~~**

~~(a) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, religion, color, sex, disability, familial status or national origin.~~

~~(b) "Residential real estate related transaction," as used in this section, means any of the following:~~

~~(1) The making or purchasing of loans or providing other financial assistance:~~

~~(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling;~~

~~or~~

615 ~~(ii) Secured by residential real estate.~~

616 ~~(2) The selling, brokering, or appraising of residential real property.~~

617 ~~(c) Nothing in this section prohibits a person engaged in the business of~~  
618 ~~furnishing appraisals of real property to take into consideration factors other than race,~~  
619 ~~religion, color, sex, disability, familial status or national origin.~~

620 ~~(d) This section is applicable to businesses transacting real estate related~~  
621 ~~transactions in the preceding 12 months of the filing of a complaint.~~

622 Section 28. That section 9.25.110, Discrimination in residential real estate  
623 related transactions – In the provision of brokerage services, of The Code of the City of  
624 Topeka, Kansas, is hereby repealed.

625 ~~**Discrimination in residential real estate related transactions — In the**~~  
626 ~~**provision of brokerage services.**~~

627 ~~It shall be unlawful for any person to deny any other person access to, or~~  
628 ~~membership, or participation in any multiple listing service, real estate brokers'~~  
629 ~~organization or other service, organization or facility relating to the business of selling or~~  
630 ~~renting dwellings, or to discriminate against any person in terms or conditions of such~~  
631 ~~access, membership or participation, on account of race, religion, color, sex or disability.~~

632 ~~This section is applicable to businesses transacting real estate related transactions in~~  
633 ~~the preceding 12 months of the filing of a complaint. Nothing in this section prohibits a~~  
634 ~~person engaged in the business of furnishing appraisals of real property to take into~~  
635 ~~consideration factors other than race, religion, color, sex, disability, familial status or~~  
636 ~~national origin.~~

637           Section 29. That section 9.25.120, Limitations, of The Code of the City of  
638 Topeka, Kansas, is hereby repealed.

639           **Limitations.**

640           ~~(a) Nothing in this chapter shall prohibit a religious organization, association or~~  
641 ~~society, or any nonprofit institution or organization operated, supervised or controlled by~~  
642 ~~or in conjunction with a religious organization, association or society, from limiting the~~  
643 ~~sale, rental or occupancy of dwellings which it owns or operates for other than a~~  
644 ~~commercial purpose to persons of the same religion, or from giving preference to such~~  
645 ~~persons, unless membership in such religion is restricted on account of race, color, or~~  
646 ~~national origin. Nor shall anything in this chapter prohibit a private club not in fact open~~  
647 ~~to the public, which as an incident of its primary purpose or purposes provides lodging~~  
648 ~~which it owns or operates for other than a commercial purpose, from limiting the rental~~  
649 ~~or occupancy of such lodging to its members or from giving preference to its members.~~

650           ~~(b) Nothing in this chapter, other than the prohibitions against discriminatory~~  
651 ~~advertising as provided in TMC [9.25.090](#)(c), shall apply to:~~

652           ~~(1) The sale or rental of any single-family house by an owner, providing the~~  
653 ~~following conditions are met:~~

654           ~~(i) The owner must not own or have an interest in more than three such single-~~  
655 ~~family houses at any one time; and~~

656           ~~(ii) The house is sold or rented without the use of a real estate broker, agent or~~  
657 ~~salesperson or the services and facilities of any person in the business of selling and~~  
658 ~~renting dwellings, and without publication, posting or mailing, after notice, of any~~  
659 ~~advertisement or written notice in violation of TMC [9.25.090](#). But nothing in this~~

provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as is necessary to perfect title or transfer of title. In the case of the sale of any such house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted in this subsection shall apply only with respect to one such sale in any 24-month period; or

(2) Rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as the owner's residence.

(c)(1) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this section regarding familial status apply with respect to housing for older persons.

(2) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(i) Persons residing in such house as of the date of adoption of the ordinance codified in this article who do not meet the age requirements set forth in the definition of "housing for older persons" in TMC [9.25.050](#); provided, that new occupants of such housing meet the age requirements; or

(ii) Unoccupied units; provided, that such units are reserved for occupancy by persons who meet the age requirement set forth in the definition of "housing for older persons" in TMC [9.25.050](#).

~~(3) A person shall not be held personally liable for monetary damages for a violation of this chapter if such person reasonably relied, in good faith, on the application of the exemptions under this subsection relating to housing for older persons.~~

~~(d) Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Federal Controlled Substances Act (21 U.S.C. Section 802).~~

Section 30. That section 9.25.130, Filing a discrimination in housing complaint, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Filing a discrimination in housing complaint.~~**

~~(a) Procedure Generally. Any person claiming to be aggrieved by an alleged unlawful housing practice, or an attorney at law representing such a person, may make, sign and file with the commission at the commission's official office a written verified complaint, which shall state the name and address of the person alleged to have committed the unlawful housing practice, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, on its own initiative, may also file such a complaint. Notwithstanding the above, neither the commission nor the director shall initiate, accept for investigation, or investigate a complaint alleging an unlawful housing practice by the city, its agents or employees.~~

~~(b) Amendments. A complaint may be amended at any time.~~

~~(c) Notice to Complainant. Upon the filing of a complaint, the commission shall give the aggrieved person notice that the complaint has been received, advise the~~

aggrieved person of the time limits and choice of forums under this article and include a copy of the complaint.

~~(d) Complaint Filing Period. A written verified housing complaint shall be filed within 365 days (one year) after the alleged discriminatory housing practice has occurred or terminated, whichever is later.~~

~~(e) Additional Respondents. A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent in accordance with TMC [9.25.160](#).~~

~~(f) Open Records. The commission and the director shall use the Kansas Open Records Act (K.S.A. 45-215 et seq.) in determining any requests for public records.~~

Section 31. That section 9.25.140, Notice to respondent - Answer, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Notice to respondent — Answer.~~**

~~(a) Within 10 days of the filing of a written verified complaint from any source, the director shall notify the respondent by certified mail that a complaint has been filed, attach a copy of the complaint, identify the alleged discriminatory housing practices, and advise the respondent of his or her procedural rights and obligations under this article.~~

~~(b) A respondent may file an answer to the complaint with the commission not later than 10 days after receipt of notice of the complaint.~~

~~(c) An answer must be in writing, under oath and in the form prescribed by the commission. An answer may be amended at any time and an answer does not inhibit the investigation of a complaint.~~



Section 32. That section 9.25.150, Investigation – Time limit, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Investigation – Time limit.~~**

~~(a) Upon the filing of a complaint alleging that any person has engaged in an unlawful housing practice, the chairperson of the commission, in consultation with the director, shall designate a commission member as investigating commissioner. The director, or designated staff, shall investigate the alleged illegal act.~~

~~(b) The director or designated staff shall commence proceedings within 30 days of receipt of the complaint and within 100 days of filing determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so. If the director or designated staff is unable to make such a determination within 100 days, then he or she shall notify the complainant and respondent in writing of the reasons for not doing so.~~

~~(c) The director or designated staff shall make a final administrative disposition of a housing complaint within one year of the date of receipt of a complaint unless it is impracticable to do so, in which case the director shall notify the complainant and respondent in writing of the reasons for not doing so.~~

~~(d) The director or designated staff shall prepare a final investigative report showing:~~

~~(1) The names and dates of contact with witnesses;~~

~~(2) A summary of correspondence and other contacts with the aggrieved person and the respondent showing the dates of the correspondence and contacts;~~

~~(3) A summary description of other pertinent records;~~

751 ~~(4) A summary of witness statements; and~~

752 ~~(5) Answers to interrogatories.~~

753 ~~A final report under this section may be amended if additional evidence is~~  
754 ~~discovered.~~

755 Section 33. That section 9.25.160, Additional or substitute respondent, of The  
756 Code of the City of Topeka, Kansas, is hereby repealed.

757 **~~Additional or substitute respondent.~~**

758 ~~The commission may join a person not named in the complaint as an additional~~  
759 ~~or substitute respondent if in the course of the investigation the commission determines~~  
760 ~~that the person may have committed a discriminatory housing practice. In addition to the~~  
761 ~~information required in the notice under TMC [9.25.130](#), the commission shall include in~~  
762 ~~a notice to a respondent joined under this section an explanation of the basis for the~~  
763 ~~determination that the person is properly joined as a respondent.~~

764 Section 34. That section 9.25.170, Conciliation, of The Code of the City of  
765 Topeka, Kansas, is hereby repealed.

766 **~~Conciliation.~~**

767 ~~During the period beginning with the filing of a complaint and ending with the~~  
768 ~~filing of a charge or a dismissal by the commission, the investigating commissioner~~  
769 ~~and/or the director shall immediately endeavor to eliminate the unlawful act or practice~~  
770 ~~complained of by conciliation. A conciliation agreement arising out of such conciliation~~  
771 ~~shall be an agreement between the respondent and the complainant and shall be~~  
772 ~~subject to approval by the commission. Such conciliation agreement may provide for~~  
773 ~~binding arbitration of the dispute arising from the complaint. Any such arbitration that~~

~~results from a conciliation agreement may award appropriate relief, including monetary relief. The members of the commission, the director and the staff shall not disclose what has transpired in the course of such endeavors. Each conciliation agreement shall be made public unless the person aggrieved and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.~~

Section 35. That section 9.25.180, Reasonable cause determination, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Reasonable cause determination.~~**

~~The commission shall determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. Such determination shall be made within 100 days of the filing of the complaint unless the commission has approved a conciliation agreement relating to the complaint. If the commission determines that reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the commission shall, except as provided by TMC [9.25.210\(e\)](#), immediately issue a charge on behalf of the aggrieved person.~~

Section 36. That section 9.25.190, Dismissal, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Dismissal.~~**

~~If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice occurred or is about to occur, the commission shall~~

796 promptly dismiss the complaint and shall make public disclosure of each dismissal  
797 under this section.

798 Section 37. That section 9.25.200, Public hearings, of The Code of the City of  
799 Topeka, Kansas, is hereby repealed.

800 **Public hearings.**

801 ~~(a) The procedure for notice and conduct of commission hearings shall be in~~  
802 ~~accordance with the Kansas Administrative Procedures Act, specifically K.S.A. 77-514~~  
803 ~~through 77-532 and any applicable amendments. Additionally, if the director concludes~~  
804 ~~at any time following the filing of a complaint that prompt judicial action is necessary to~~  
805 ~~carry out the purpose of this article, the director may authorize a civil action for~~  
806 ~~appropriate temporary or preliminary relief pending final disposition of the complaint~~  
807 ~~under this section. The commencement of a civil action under this subsection does not~~  
808 ~~affect the initiation or continuation of administrative proceedings under this section. A~~  
809 ~~temporary restraining order or other orders granting preliminary or temporary relief~~  
810 ~~under this section are governed by the applicable Kansas Rules of Civil Procedure.~~

811 ~~(b) Election to File Civil Action in Housing Cases.~~

812 ~~(1) When a written notice of hearing on a complaint of housing discrimination is~~  
813 ~~issued, a complainant, a respondent, or an aggrieved person on whose behalf the~~  
814 ~~complaint was filed may elect to have the claims asserted in that complaint decided in a~~  
815 ~~civil action. Written notice of an election made under this subsection shall be filed with~~  
816 ~~the commission with notice to all parties within 20 days of the date on which the notice~~  
817 ~~of hearing was received.~~

~~(2) If such an election is made, the director shall request that the city attorney file a suit on behalf of the city and the complainant unless the complainant chooses to bring an action through his or her own private counsel. Within 30 days of the election, the city attorney shall commence, maintain and pay the costs of a civil action in the name of the city and any complainant not represented by private counsel seeking relief; however, before such suit is filed by the city on behalf of any complainant, the complainant will agree in writing that any costs or attorneys' fees recovered in such action will be remitted to the city. The complainant shall have no liability to the city for costs and attorneys' fees except to the extent that such costs and attorneys' fees are awarded by the court to the complainant and paid by a respondent (defendant). Should the city attorney prevail in such suit, the city attorney is hereby authorized and directed to seek and recover costs and attorneys' fees. Any attorneys' fees or costs recovered by the city or by a complainant and remitted to the city shall be paid into the general fund of the city.~~

~~(3) The court hearing such civil action may award actual and punitive damages in accordance with TMC [9.25.220](#) and may grant temporary or permanent injunctions, temporary restraining orders and any other such orders that it determines appropriate.~~

~~(4) The commission may not issue a charge under TMC [9.25.210](#) after the beginning of the trial of a civil action commenced by the aggrieved party.~~

~~(c) Enforcement by Private Persons. An aggrieved person may commence a civil action in an appropriate court with competent jurisdiction not later than two years after the occurrence or the termination of an alleged discriminatory housing practice whether or not a complaint has been filed under TMC [9.25.130](#). Such two-year limitation shall~~

not include any time during which an administrative proceeding under this article was pending. Provided, an aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the director if an administrative law judge has commenced a hearing on the record under this subsection with respect to such charge.

~~(d) Civil Enforcement of Order. Any party aggrieved by a final decision or order may secure enforcement of such decision or order of the hearing commissioners in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions as provided by K.S.A. 77-606 et seq.~~

Section 38. That section 9.25.210, Order -- Charge, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Order — Charge.~~**

~~(a) Order. If, upon all the evidence in the hearing, the hearing commissioners find that the respondent has engaged in, is about to engage in, or is engaging in any unlawful act or practice as defined in this article, the hearing commissioners shall state the findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such discriminatory housing practice, and such order may direct the respondent to take such affirmative action as the hearing commissioners deem necessary to effectuate the intent and purposes of this article.~~

~~(b) Charge. A charge issued under this section must consist of a short plain statement of the facts on which the commission has found cause to believe that a~~

~~discriminatory housing practice occurred or is about to occur, must be based on the investigation and need not be limited to the facts or grounds alleged in the complaint.~~

~~(c) Notice. Immediately upon issuing a charge, the commission shall send a copy of the charge with information concerning the election of a civil action or opportunity for an administrative hearing under TMC [9.25.200](#) to:~~

~~(1) Each respondent; and~~

~~(2) Each aggrieved person on whose behalf the complaint was filed.~~

~~(d) Damages. Such order and charge issued under this section may include an award of damages consistent with TMC [9.25.220](#).~~

~~(e) State or Local Zoning. If the commission determines that the matter involves the legality of a state or local zoning or other land use law or ordinance, the commission may not issue a charge and shall immediately refer the matter to the city attorney for appropriate action.~~

Section 39. That section 9.25.220, Remedies, of The Code of the City of Topeka, Kansas, is hereby repealed.

#### **Remedies.**

~~An order issued under this article may include an award of compensatory and punitive damages, and of damages for pain, suffering and humiliation which are incidental to the act of discrimination, except that an award for such pain, suffering and humiliation shall in no event exceed the sum of \$2,000. Such order may also, to vindicate the public interest, assess a civil penalty against the respondent:~~

~~(a) In an amount not exceeding \$11,000, if the respondent has not been adjudged to have committed any prior discriminatory housing practice.~~

~~(b) Except as provided in subsection (d) of this section, in an amount not exceeding \$27,500, if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint.~~

~~(c) Except as provided in subsection (d) of this section, in an amount not exceeding \$55,000, if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven years ending on the date of the filing of the complaint.~~

~~(d) If the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same individual who has been previously adjudged to have committed acts constituting a discriminatory housing practice, the civil penalties in subsections (b) and (c) of this section may be imposed without regard to the period of time within which any other discriminatory housing practice occurred.~~

Section 40. That section 9.25.230, Effect of commission order or relief granted, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Effect of commission order or relief granted.~~**

~~A commission order or relief granted under this article does not affect a contract, sale, encumbrance, or lease that was consummated before the commission issued an order or relief was granted if it involved a bona fide purchaser, encumbrancer or tenant who did not have actual notice of the charge filed under this article.~~

Section 41. That section 9.25.240, Subpoena enforcement, of The Code of the City of Topeka, Kansas, is hereby repealed.

**~~Subpoena enforcement.~~**



~~The city attorney, on behalf of the commission or other party at whose request a subpoena is issued under this article, may enforce the subpoena in appropriate proceedings in district court.~~

Section 42. That original §§ 2.135.010, 2.135.130, 2.55.010, 2.55.030, 2.55.040 and 9.20.020 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 43. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 44. All ordinances, resolutions or rules, or portions thereof, inconsistent with the provisions of this ordinance are hereby rescinded or repealed.

Section 45. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council June 15, 2010.

CITY OF TOPEKA, KANSAS

\_\_\_\_\_  
William W. Bunten, Mayor

ATTEST:

\_\_\_\_\_  
Brenda Younger, City Clerk