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Ordinance No. 2481 Summary

On December 5, 2019, the City of De Soto, Kansas, adopted Ordinance No. 2481, amending Chapter V of the City Code to include new Article 1 prohibiting discrimination within the City based on an individual's gender identity or sexual orientation, and providing a complaint and hearing process to address such discrimination. A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 32905 West 84th Street, De Soto, Kansas or at www.desotoks.us. This summary is certified by Patrick G. Reavey, De Soto City Attorney pursuant to K.S.A. 12-3001, et seq.

ORDINANCE NO. 2481

AN ORDINANCE AMENDING CHAPTER V OF THE DE SOTO CITY CODE TO INCLUDE NEW ARTICLE 1 PROHIBITING INTENTIONAL DISCRIMINATION WITHIN THE CITY ON THE BASIS OF A PERSON'S GENDER IDENTITY AND/OR SEXUAL ORIENTATION

WHEREAS, the City of De Soto strives to be a welcoming community to all who reside, visit, or do business in the City; and

WHEREAS, the City has an interest in maintaining a community free from intentional discrimination against people based on their gender identity and/or sexual orientation; and

WHEREAS, the City believes there should be protection against wrongful discrimination based on gender identity and sexual orientation; and

WHEREAS, state and federal laws provide protection to prohibit discrimination against certain classes of individuals in employment, public accommodations, and the sale or rental of housing, but such protection does not currently extend to discrimination based on gender identity and/or sexual orientation; and

WHEREAS, the City desires to prohibit discrimination and retaliation based upon gender identity and sexual orientation, and to provide a complaint and enforcement process to effectuate such prohibition and protection; and

WHEREAS, this Ordinance is in furtherance of providing equal protection to all residents of the City and the provisions set forth herein are the least restrictive means of furthering a compelling governmental interest; and

WHEREAS, nothing herein shall be construed to conflict with the Kansas Preservation of Religious Freedom Act, K.S.A. 60-5301 through 60-5305, and amendments thereto.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

SECTION 1. Chapter V of the De Soto City Code is amended to include new Article 1 to read as follows:

ARTICLE 1. PROHIBITED DISCRIMINATION

5-101. Declaration of Policy.

(a) The right of an individual to be free from discrimination because of that individual's sexual orientation and gender identity is hereby recognized. This right shall include, but not be limited to, any of the following:

- (1) The right to pursue and hold employment and the benefits associated therewith without unlawful discrimination.
- (2) The right to the full enjoyment of any of the services, advantages or privileges of any place of public accommodation without unlawful discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rent or purchase, without unlawful discrimination.
- (4) The right to exercise any right granted under this Article without retaliation.

(b) To protect these rights, it is hereby declared to be the purpose of this Article 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 gender identity arising hereunder. If discrimination and retaliation relating to sexual orientation and/or gender identity is prohibited by federal or state law(s), and such law(s) provide procedures for addressing complaints of such discrimination and retaliation, nothing shall prevent the city from referring a complainant to the appropriate federal or state procedure and/or federal or state agency.

5-102. Definitions.

(a) Except to the extent they conflict with the definitions below, the definitions contained within the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., and

amendments thereto, and the Kansas Preservation of Religious Freedom Act, K.S.A. 60-5301 through 60-5305, and amendments thereto, shall be applicable under this Article.

(b) For purposes of this Article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise:

Employee means any person employed by an *Employer* within the City of De Soto but does not include persons who are employed as independent contractors instead of employees.

Employer means any person or entity, with four or more employees, conducting business within the City but shall not include a *Nonprofit Fraternal or Social Association*.

Gender Identity means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Hearing Officer means a qualified objective third party designated by joint approval of the Mayor and the City Administrator, who shall serve in an independent civil administrative capacity, in accordance with the provisions of this Article, to determine the validity of alleged violations of this Article; and if a violation has occurred, assessing appropriate civil penalties as provided in this Article.

Investigator means a qualified objective third party designated by joint approval of the Mayor and the City Administrator, who shall be charged with an independent civil administrative investigation of alleged violations of this Article.

Mediator means a mediator that is on the approved list published by the Kansas Supreme Court or Johnson County District Court.

Nonprofit Fraternal or Social Association means an association or corporation that meets all the following requirements:

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

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.

Place of Public Accommodation shall mean and include every establishment within the City, whether wholesale or retail, which is open to the general public and offers any product, goods, services, facilities or accommodations. The term 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. *Place of Public Accommodation* shall not apply to or include a *Nonprofit Fraternal or Social Association* that is not open to the general public, or a *Religious Organization*.

Religious Organization includes, but is not limited to, churches, mosques, synagogues, temples, nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, faith-based social agencies, and other entities whose principal purpose is the study or advancement of religious practice or religious teaching.

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.

5-103. Unlawful Employment Practices.

(a) It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of an otherwise qualified person, to refuse to hire or employ such person, to bar or discharge such person from employment, or to otherwise discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of an otherwise qualified person, to limit, segregate, separate, classify or make any distinction in regard to employees, or to follow any employment procedure or practice which, in fact, results in discrimination, segregation or separation, without a valid business necessity.

(c) It shall be an unlawful discriminatory practice for an employer to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this Article or because such person has filed a complaint, testified or assisted in any proceeding under this Article.

(d) It shall be an unlawful discriminatory practice for any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this Article, or attempt to do so.

(e) The provisions of this Article shall not apply to employment by a religious organization as an employer, when such employment consists of religious teaching, ministry, or other religious duties or practices.

5-104. Unlawful sale or lease of real property practices.

(a) It shall be an unlawful discriminatory practice for any person 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 sexual orientation or gender identity, or to discriminate against any person in such person's use or occupancy of rental housing because of the sexual orientation or gender identity of the person with whom such person associates.

(b) As used in this Section, real property shall have the same meaning as the Kansas Act Against Discrimination, K.S.A. 44-1015, and any amendments thereto, and shall mean and include all vacant or improved land and any building or structure which is occupied or designed or intended for occupancy, or any building or structure having a portion thereof which is occupied or designed or intended for occupancy. As used in this Section, 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.

(c) Nothing in this Section 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. Nothing in this Section shall prohibit a nonprofit fraternal or social association, 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 its members, or from giving preference to such members.

5-105. Unlawful discrimination in place of public accommodation.

It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, or agent 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 covered by this Article because of the sexual orientation or gender identity of such person.

5-106. Interpretation.

(a) Nothing in this Article shall be construed to mean that a business shall be forced to hire or provide a preference to unqualified or incompetent personnel or discharge qualified or competent personnel.

(b) Nothing in this Article shall be construed to prohibit an employer from requiring all employees, as a condition of employment, to utilize the employer's applicable

established internal human resource procedures to address any allegation of discrimination in the workplace. The fact that an employer requires an employee to utilize the employer's applicable established internal human resource procedures to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this Article. Completion of the employer's procedures is not a pre-requisite to filing a complaint with the City.

(c) It shall be a defense to an alleged violation of this Article that any adverse action taken by a person would have been taken regardless of the person's sexual orientation or gender identity (i.e. the complainant violated the law, a workplace rule, a lease provision or policy applicable to all similarly situated individuals, such as employees, lessees, customers, etc.).

(d) 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.

(e) Nothing in this Article shall be construed as giving, enhancing, taking away, or infringing on any personal rights that may or may not exist related to the use of restroom, shower, or dressing room facilities. Relatedly, nothing in this Article shall be construed to prohibit an employer or public accommodation from posting signs for restroom, shower, or dressing room facilities based on gender, nor shall anything stated herein authorize any person to violate another person's individual privacy in any restroom, shower, or dressing room facilities.

(f) Nothing in this Article shall be construed to approve, permit, authorize, or serve as a defense to conduct that would constitute a crime of lewd and lascivious conduct or voyeurism as defined and prohibited by state law or the De Soto Municipal Code.

(g) Nothing in this Article shall apply to:

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

- a. The owner does not own or have any interest in more than three (3) single-family houses at any one time; and
- b. The house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings. If the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this subsection applies to only one (1) such sale in any twenty-four-month period; or

- (2) Rooms or units in buildings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner maintains and occupies one (1) of such living quarters as the owner's residence. (*See* K.S.A. 44-1018).

(h) Nothing in this Article shall be construed to approve of or make it lawful to discriminate against individuals based on ancestry, race, color, religion, sex, pregnancy, age, national origin, disability, low income, genetic information, or familial status. Such discrimination is not addressed in this Article because federal and state law address unlawful discriminatory practices related to those protected classes and provide a complaint, investigation and enforcement process for such discrimination.

(i) Nothing in this Chapter shall be construed to conflict with the Kansas Preservation of Religious Freedom Act, K.S.A. 60-5301 through 60-5305, and amendments thereto.

5-107. Enforcement.

(a) Any person aggrieved by an alleged violation of this Article may file a written complaint with the City Administrator. Any such complaint shall state detailed information supporting the alleged unlawful discriminatory practice, the name and contact information for the person submitting the complaint and the person alleged to have committed the unlawful discriminatory practice. The complaint shall be filed within sixty (60) calendar days of the alleged act of discrimination.

(b) The complaint may be referred to an approved mediator for non-binding mediation at the request of the parties. 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 Administrator to serve as the mediator. Any fees charged by the mediator shall be split equally between the parties. If mediation is not successfully completed within sixty (60) calendar days of the referral, it shall be referred to the Investigator.

(c) If, within fifteen (15) calendar days of the conclusion of the mediation, either party notifies the City Administrator in writing that such person is dissatisfied with the results of the mediation or elects not to participate in mediation, the complaint shall be referred to the Investigator for investigation.

(d) After initial investigation by the investigator, the investigator shall determine whether there exist reasonable and articulable facts and evidence of discrimination to conduct a hearing on the complaint. If the investigator determines there is not reasonable and articulable facts and evidence of discrimination to conduct a hearing on the complaint, the complaint shall be dismissed.

(e) Upon a finding of reasonable and articulable facts and evidence to warrant a hearing and upon reasonable notice of not less than thirty (30) calendar days 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 are established by K.S.A. 77-524. Any determination of the hearing officer shall be in writing within sixty (60) calendar days of the hearing, shall be based upon clear and convincing evidence, and shall set forth the essential elements and facts of the determination. Evidence shall be considered clear and convincing if it shows that the truth of the fact asserted is highly probable.

(f) If the hearing officer finds that a civil violation of this Article has occurred, the hearing officer may impose a civil penalty not to exceed the sum of one thousand dollars (\$1,000.00) for each violation. Said civil penalty shall be enforced only through a civil action. In no event shall the adjudication by the hearing officer be punishable by criminal fine or imprisonment nor regarded as a criminal conviction for any purpose.

(g) Any penalty that remains unpaid after the exhaustion of, or failure to exhaust, procedures for judicial review as allowed by K.S.A. 60-2101(d), is a debt due and owed to the city. The city may commence a proceeding in the District Court of Johnson County, Kansas for purposes of obtaining a judgment on the hearing officer's order.

(h) Any person aggrieved by a determination of the hearing officer 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.

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

SECTION 2. This Ordinance shall take effect upon its adoption by the City Council, approval by the Mayor and publication in the City's official newspaper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS
AND APPROVED BY THE MAYOR ON THE 5th DAY OF DECEMBER 2019.

(seal)

RICK WALKER, Mayor

ATTEST:

LANA R. McPHERSON, MMC
City Clerk

APPROVED AS TO FORM:

PATRICK G. REAVEY
City Attorney