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081017
SUBSTITUTE 2

ALD. HAMILTON and KOVAC

A substitute ordinance revising and updating protections against housing and employment discrimination and providing for the promotion of equity and equal rights.

109 rc

This ordinance repeals and recreates chapter 109 of the code reconstituting the city’s equal rights commission (“the commission”).

The role and procedures of the commission in enforcing prohibitions against discrimination in housing and employment are retained for those matters and complaints that are not subject to federal or state jurisdiction and enforcement. Matters and complaints investigated and prosecuted by the commission are subject to the same procedural requirements as previously codified.

This ordinance provides for cooperation among city departments and the commission to identify those programs and activities of the city that provide opportunities for the promotion of equal rights, to evaluate city efforts related to equal rights, to recognize accomplishments, and to develop recommendations for extending and improving equal rights and opportunities in city programs and activities. The commission is required to provide a report at least annually to the mayor and common council reflecting the status and progress of efforts and activities undertaken by city government to promote equal rights and address discrimination internally and as a community leader.

The department of employe relations is responsible for providing staffing and support for the activities of the commission as necessary and appropriate to meet the goals and objectives of the chapter. The commission and the department of employe relations are authorized to establish cooperative working relationships with other organizations in Milwaukee, with academia, and with the business community, to review and monitor city policies and programs that impact the equal rights climate of the Milwaukee community, and to facilitate discussion and public education on equal rights issues.

The commission is further charged with the responsibility for monitoring and reviewing the equal rights climate within the city and to make recommendations to the mayor and the common council to promote social and economic equity for all residents of the city..

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Chapter 109 of the code is repealed and recreated to read:

**CHAPTER 109
EQUAL RIGHTS**

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SUBCHAPTER 1
PURPOSE; EQUAL RIGHTS COMMISSION

109-1. Findings; Declaration of Policy. 1. A vibrant, livable, successful and productive city is made possible by the talents, contributions and well-being of its diverse residents. It is the policy of the city that the equal rights of all those who live and work in the city are assured, and that equal rights and equal opportunities within the context of the larger commercial and social fabric of the Milwaukee community are promoted.

2. The practice of providing equal opportunities in housing and employment to persons without regard to sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or an individual's affiliation with, or perceived affiliation with any of these categories, is a desirable goal of the city and a matter of legitimate concern to its government. Discrimination against any city resident endangers the rights and privileges of all. The denial of equal opportunity intensifies group conflict, undermines the foundations of democratic society and adversely affects the general welfare of the community. Denial of equal opportunity in housing compels individuals and families who are discriminated against to live in housing below the standards to which they are entitled. Denial of equal opportunity in employment deprives the community of the fullest productive capacity of those of its members so discriminated against and denies to them the sufficiency of earnings necessary for maintaining the standards of living consistent with their abilities and talents.

3. Provision for adequate safeguards against discrimination is a proper and necessary function of city government. To protect the health, safety and general welfare of all inhabitants of the city, and all persons employed within the city, it is declared to be the public policy of this city to foster and enforce to the fullest extent the protection by law to equal opportunity in housing and gainful employment without regard to sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or an individual's affiliation with, or perceived affiliation with any of these protected categories, and workplace free from discrimination. To fully effectuate this policy of promoting nondiscrimination, the city shall endeavor to eliminate all discrimination that may occur in housing and employment in the city.

4. Where applicable, this chapter shall be interpreted and applied consistently with the provisions of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. sections 3601, et seq., 24 C.F.R. sections 100, et seq., and ss. 66.1011, 106.50 and 111.31, Wis. Stats., and any successor provisions of state and federal law.

109-3. Definitions. In this chapter:

1. COMMISSION means the equal rights commission.

2. COMPLAINANT means any person who files a complaint alleging a violation of this chapter.

3. CONCILIATION means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent and the commission.

4. CONCILIATION AGREEMENT means a written agreement setting forth the resolution of the issues in conciliation.

5. COVERED MULTI-FAMILY DWELLINGS means buildings consisting of 4 or more units if such buildings have one or more elevators, and ground floor units in other buildings consisting of 4 or more units.

6. EMPLOYEE means any person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment, but does not mean a person employed by the person's parents, spouse or child, or any individual employed by the state or federal

government.

7. EMPLOYER means any person engaging in any activity, enterprise or business employing one or more individuals but shall not include a social club or fraternal society under ch. 188, Wis. Stats., with respect to a particular job for which the club or society seeks to employ or employs a member, if the particular job is advertised only within the membership.

8. EMPLOYMENT AGENCY means any person who regularly undertakes to procure employees or opportunities for employment for any other person.

9. FAMILIAL STATUS means one or more individuals, who have not attained the age of 18 years, being domiciled with a parent or another person having legal custody of such individuals; or the designee of the parent or other person having such custody, with the written permission of the parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

10. DISABILITY means, with respect to a person, any of the following:

a. A physical or mental impairment which substantially limits one or more of the person's major life activities.

b. A record of having an impairment.

c. Being perceived as having an impairment.

d. This term does not include current, illegal use of or addiction to a controlled substance. The behavioral manifestations of a mental disability may be taken into consideration in determining whether or not the applicant is qualified. A housing provider may consider a history of disruptive, abusive, or dangerous behavior.

11. GENDER IDENTITY OR EXPRESSION means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.

12. HOUSING means any building, structure or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied as a residence, home or place of habitation of one or more human beings, including a mobile home as defined in s. 66.0435, Wis. Stats., and a trailer as defined in s. 246-1-5 and any land which is offered for sale, lease or use as a site for a building, structure or part thereof intended or designed to be used or occupied as a residence, home or place of habitation of one or more human beings, including a mobile home park as defined in s. 66.0435, Wis. Stats., and a trailer house community as defined in s. 246-1-6. The definition of "housing" is qualified by the exceptions in s. 109-43.

13. LABOR ORGANIZATION means either of the following:

a. Any organization, agency or employee representation committee, group, association or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

b. Any conference, general committee, joint or system board or joint council which is subordinate to a national or international committee, group, association or plan under par. a.

14. MARITAL STATUS means the status of being married, separated, divorced, widowed or single.

15. PERSON means one or more individuals, labor organizations, corporations, partnerships, associations, cooperatives, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers or other fiduciaries, and the agent or agents of any of the foregoing but, because of actual, potential or perceived conflicts of interest, shall not include the city of Milwaukee, the housing authority and the redevelopment authority of the city of Milwaukee, any agency of the city, or any other municipal, state or federal governmental body or any agent, officer or employee acting in the course of such employment.

16. PROTECTED PERSON means any individual intended to be protected from violations of prohibited discrimination in housing and employment under this chapter.

17. RESPONDENT means the person or other entity accused in a complaint of an unfair housing or employment practice and any other person or entity identified in the course of investigation and notified as required with respect to respondents

so identified under s. 109-51-3-a.

18. SEXUAL HARASSMENT means unwelcome sexual advances; unwelcome physical contact of a sexual nature; or verbal or physical conduct of a sexual nature which includes, but is not limited to, deliberate or repeated unsolicited gestures, verbal or written comments and display of offensive sexually graphic materials.

19. SEXUAL ORIENTATION means homosexuality, heterosexuality and bisexuality by preference or practice.

20. SOURCE OF INCOME means, but is not limited to, moneys received from public assistance, pension and supplementary security income. Source of income means income that is legally derived and that is subject to reasonable and good-faith efforts to verify the lawfulness of its derivation.

21. TRANSFER shall not include the transfer of property by will or gift.

109-5. Equal Rights Commission. 1. There is established an equal rights commission consisting of 7 members, to be appointed by the mayor subject to confirmation by the common council. A chair shall be elected from the membership of the commission at the first regular meeting of each calendar year by a majority of the members of the commission. Members shall be city residents, appointed from a representative cross-section of the community and shall continue to hold office only so long as they shall reside within the city.

2. Each member of the commission shall be appointed for a term of 3 years except that 3 members initially appointed by the mayor shall serve for 1 year, and 2 members shall be appointed for a term of 2 years. Each member shall hold office until a successor is appointed and confirmed. A vacancy occurring other than by expiration of the member's term shall be filled by appointment of the mayor and confirmation by the common council for the unexpired term.

3. Four members shall constitute a quorum for the purpose of conducting business, and a majority of members present shall be required to adopt or approve any action of the commission.

4. The commission shall:

a. Meet not less than 4 times annually for monitoring the employment, contracting, and program activities of the city, prepare and provide timely reports to the mayor and common council on efforts to promote equal rights, equal opportunities, positive community relations, and to eliminate discrimination and inequities in city government and the city.

b. Receive complaints alleging violation of this chapter and pursue remedies by means of mediation, conciliation, litigation or other appropriate means supported by findings of fact and conclusions of law.

c. Not have or exercise jurisdiction over any complaint that sets forth or states any facts or allegations that are the subject matter within the jurisdiction of any state or federal agency, including, but not limited to the U.S. Equal Employment Opportunity Commission or the State of Wisconsin, Department of Workforce Development, regardless of whether the Complainant has chosen to file with that said agency or not.

d. Render from time to time, but not less than once a year, a written report of its activities and recommendations to the mayor and the common council.

e. Adopt rules and regulations consistent with this chapter and the laws of the state to carry out the policy and provisions of this chapter and the powers and duties of the commission.

f. Issue subpoenas under s. 885.01(4), Wis. Stats., or its successor provisions, to assist in the execution of its duties.

g. Designate commissioners or commission staff to carry out its duties.

h. Conduct hearings under this chapter and, upon appropriate findings of fact and conclusions of law, take action:

h-1. Ordering a respondent to redress any injury occasioned by violation of this chapter.

h-2. Ordering a respondent to cease and desist from violation of this chapter.

h-3. Undertaking any action necessary to effectuate the purpose of this chapter or to bring a respondent into compliance with this chapter including referral to the city attorney of matters and complaints that may be resolved by equitable or

other relief in actions brought in Wisconsin circuit court or other courts of competent jurisdiction.

i. Initiate proceedings seeking forfeiture for violation of this chapter or any lawful order issued by the commission under this chapter.

j. Enforce the provisions of ch. 112. The commission shall exercise all authority granted under this subsection with respect to violations of ch. 112, including, but not limited to the power to receive complaints, remedy violations, adopt rules, issue subpoenas and order redress following a hearing regarding violation of ch. 112.

k. Use the procedures described in s. 109-51 in acting on complaints concerning violations of ch. 112 as follows:

k-1. Any party aggrieved by failure to act on a complaint filed or by the decision of an administrative law judge pursuant to the procedures described in s. 109-51 may seek review pursuant to s. 109-51 within the time limits and the procedures provided in that section.

k-2. If the commission is abolished or reconstituted and its authority transferred to a successor entity, the successor entity shall have full authority to enforce the provisions of ch. 112.

k-3. If the commission, due to lack of funding or staffing, is unable to enforce the provisions of ch. 112, any agency enforcing rights protected under ch. 109 shall also have full authority to enforce the provisions of ch. 112.

109-7. Staffing and Support. 1. The department of employee relations shall assign staff and provide support to the commission as necessary and appropriate to assist the commission in fulfilling its mission and responsibilities.

2. The department of employee relations shall assist the commission by staffing its meetings, drafting reports and other documents, maintaining commission documents, initial processing of complaints, and providing resources necessary to the proper hearing of complaints.

SUBCHAPTER 2 EQUAL RIGHTS AND CITY ACCOUNTABILITY

109-21. Objective. All sectors of society engaged in the life of the city have a role in promoting equal rights, equity, and a social fabric free of discrimination. City government is uniquely positioned to assume a primary leadership role in these efforts. To achieve this leadership objective, each department, agency and unit of city government shall be accountable for promoting social and economic equity for all residents of the city, and structuring their work so that the outcomes are directed toward social and economic equity for all residents.

109-23. Reports by Departments. The department of employee relations, with the cooperation of all departments, shall regularly provide the commission with information of efforts and activities undertaken across city government to achieve the leadership objective described in s. 109-21. This information shall from time to time identify programs and activities conducted by the city to promote equal rights and equal opportunity both within city government and goals, challenges and strategies. The department of employee relations shall provide the commission with information about activities and accomplishments with respect to the requirements in s. 350-203. Upon the request of the commission, other city departments, agencies and units shall report to the commission orally, in writing or both, at the pleasure of the commission.

109-25. Report to the Mayor and Common Council. The commission shall provide a written communication to the mayor and the common council, not less than annually, summarizing the activities of the commission and the progress of the city in meeting the leadership objective described in s. 109-21. This communication shall further include an examination of those conditions in the city at large which contribute to or detract from equal rights and an environment free from discrimination in housing and employment. The communication shall provide recommendations for furthering the purposes and objectives described in ss. 109-1 and 109-21.

SUBCHAPTER 3 HOUSING AND EMPLOYMENT DISCRIMINATION

109-41. Housing Discrimination Prohibited. No person may engage in any act of discrimination with respect to housing against any individual on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. No

person may:

1. Refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny housing to any protected person.
2. Discriminate against any protected person in the terms, conditions or privileges of sale or rental of housing, or in the provision of services or facilities in connection therewith.
3. Make, print or publish, or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of housing that indicates any unlawful preference, limitation or discrimination, or an intention to make any preference, limitation or discrimination to the exclusion of any protected person.
4. Represent to any protected person that any housing is not available for inspection, sale or rental when the housing is in fact so available.
5. Whose business includes engaging in residential real estate-related transactions, discriminate against any protected person in making available such a transaction, or in the terms or conditions of such a transaction.
 - a. In this subsection "residential real estate-related transaction" means any of the following:
 - a-1. The making or purchasing of loans providing financial assistance for either of the following:
 - a-1-a. The purchase, construction, improvement, repair or maintenance of a dwelling.
 - a-1-b. The creation of a security interest in residential real estate.
 - a-2. The selling, brokering or appraising of residential real property.
 - b. Nothing in this subsection prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. Inquiries concerning source of income may be made if they are reasonably directed toward determining solvency, reliability, credit record or ability to pay, and are not a subterfuge to evade the purposes of this chapter.
6. In the business of insuring against hazards, refuse to enter into or exact different terms, conditions or privileges with respect to a contract of insurance against hazards to a dwelling on the basis of an individual's protected status.
7. Refuse to renew a lease, causing the eviction of a tenant from rental housing, or engaging in the harassment of a tenant on the basis of the tenant's protected status.
8. Deny any person access to membership or participation in any multiple-listing service, real estate brokers' association or other service, organization or facility relating to the business of selling or renting dwellings or discriminate against a person on the basis of the person's protected status.
9. Induce or attempt to induce any person to sell, rent or lease any dwelling by representations regarding the present or prospective entry into the neighborhood of a person of a particular sex, race, religion, color, national origin or ancestry, age, disability, source of income, economic status, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories, or by representations to the effect that such present or prospective entry will or may result in:
 - a. The lowering of real estate values in the area concerned.
 - b. A deterioration in the character of the area concerned.
 - c. An increase in criminal or anti-social behavior in the area concerned.
 - d. A decline in the quality of the schools or other public facilities serving the areas.

10. a. Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing to any buyer or renter because of a disability of:

a-1. That buyer or renter.

a-2. A person residing in or intending to reside in that dwelling after it is sold, rented or made available.

a-3. Any person associated with that buyer or renter.

b. For purposes of this subsection, "discrimination" includes but is not limited to:

b-1. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the 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 agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

b-2. A refusal to make reasonable accommodation in rules, policies, practices or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.

b-3. In connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in a manner that:

b-3-a. The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons.

b-3-b. All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs.

b-3-c. All premises within the dwellings contain the following features of adaptive design: an accessible route into and through the dwelling; light switches, electrical outlets, thermostats and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

b-3-d. Compliance with the appropriate requirements of the American National Standard for building and facilities providing accessibility and usability for physically disabled people, commonly cited as ANSI A117.1, suffices to satisfy the requirements of subpar. c.

109-43. Exceptions. Nothing in this chapter shall:

1. Prevent any person from renting or leasing housing, or any part thereof, to solely male or female persons if the housing or part thereof is rented with the understanding that toilet and bath facilities must be shared with the landlord or with other tenants.

2. Limit the applicability of reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

3. 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 dwellings 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 the religion is restricted on account of race, color or national origin.

4. Prohibit a private club not in fact 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 the lodgings to its members or from giving preference to its members.

5. Regarding familial status, apply with respect to housing for older persons.

a. As used in this subsection, "housing for older persons" means any housing:

a-1. Provided under any state or federal program that is specifically designed and operated to assist elderly persons as defined in the state or federal program.

a-2. Intended for and solely occupied by persons 62 years of age or older.

a-3. Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing for older persons shall include at a minimum all of the following:

a-3-a. Significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide housing opportunities for older persons.

a-3-b. At least 80 percent of the units are occupied by at least one person 55 years of age or older per unit.

a-3-c. Publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

b. Housing shall not fail to meet the requirements for housing for older persons by reason of:

b-1. Persons residing in such housing as of January 2, 1991, who do not meet the age requirements in par. a-2 or 3, provided that new occupants of the housing meet the age requirements of par. a-2 or 3.

b-2. Unoccupied units, provided that the units are reserved for occupancy by persons who meet the age requirements of par. a-2 or 3.

6. Prohibit the development of housing designed specifically for persons with a disability and discrimination on the basis of disability with respect to such housing.

7. Prevent a landlord, with respect to an eyesight-impaired, hearing-impaired or mobility-impaired person who owns a guide or service animal, from:

a. Imposing reasonable rental regulations on such animals, as necessary for health, safety and welfare, but any lease provision which purports to waive or avoid the requirements of these provisions shall be void and unenforceable.

b. Requiring the animal's owner to provide current proof that the animal has successfully passed a course of training at a bona fide school for training such animals.

c. Charging a tenant for any damage caused by the animal.

d. In the case of an owner-occupied dwelling, pars. a to c shall not apply if the owner or a member of his or her immediate family occupying the dwelling unit possesses and, upon request, presents to the guide or service animal owner a certificate signed by a physician which states that the owner or family member is allergic to animals.

8. Affect any person's decision to share occupancy of a lodging room, apartment or dwelling unit with another person.

9. Regarding familial status, apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than 2 families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his or her residence.

10. Prohibit conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

109-45. Employment Discrimination Prohibited. No person may engage in any act of discrimination with respect to employment against any individual on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

1. No person individually, or in concert with others, may fail or refuse to hire or discharge any individual, or otherwise

discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment in violation of this section; provided that an employer who is discriminating with respect to compensation in violation of this subsection shall not, in order to comply with this subsection, reduce the wage rate of any employee.

2. No person individually, or in concert with others, may limit, segregate or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee in violation of this section.
3. No employment agency may fail or refuse to refer for employment or otherwise to discriminate against, any individual in violation of this section.
4. No labor organization may:
 - a. Exclude or expel from its membership or otherwise discriminate against any individual in violation of this section.
 - b. Limit, segregate or classify its membership or applicants for membership, or classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or as an applicant for employment in violation of this section.
 - c. Cause or attempt to cause an employer to discriminate against an individual in violation of this section.
5. No person may print or publish or cause to be printed or published any notice or advertisement relating to employment by the person or membership in or any classification or referral for employment by a labor organization, or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification or discrimination in violation of this section, subject to the limitations in s. 109-47.
6. No person may refuse to reasonably accommodate an employee's or prospective employee's disability, subject to the limitations in s. 109-47-5.
7. No employer, labor organization, or employment agency or other person may engage in sexual harassment.
 - a. It shall constitute employment discrimination in violation of this subsection when any of the following occurs:
 - a-1. An employee's acquiescence in or submission to sexual harassment is made either explicitly or implicitly a term or condition of employment.
 - a-2. An employee's acquiescence in or submission to sexual harassment is used as the basis or any part of the basis for employment decisions affecting the employee.
 - a-3. Sexual harassment has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile or offensive work environment.
 - b. An employer, employment agency or labor organization is presumed responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized by the employer.
 - c. An employer, employment agency or labor organization is responsible for acts of sexual harassment of its employees by persons other than its agents or supervisory employees if those acts occur while the complaining employee is performing service growing out of or incidental to his or her employment and if the employer or its agents or supervisory employee knew or should have known of the conduct.
8. **CONTRACT TO INCLUDE PROVISION.** All contracting agencies of the city shall include in all contracts hereafter negotiated, or renegotiated by them, a provision obligating the contractor not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories, and shall require the contractor to include a similar provision in all subcontracts.

109-47. Exceptions and Special Cases. 1. RELIGION. For purposes of this section, discrimination because of religion includes, but is not limited to, refusing to reasonably accommodate an employee's or prospective employee's religious

observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.

a. It is not employment discrimination because of religion for a religious association not organized for private profit, or an organization or corporation which is primarily owned or controlled by the religious association, to give preference to an applicant or employee who is a member of the same or a similar religious denomination, in hiring or promotion to an instructional or policy-making position including, but not limited to, the position of chaplain or counselor.

b. It is not employment discrimination because of religion for a fraternal organization, as defined in s. 614.01(1), Wis. Stats., to give preference to an employee or applicant who is a member or is eligible for membership in the fraternal organization, with respect to hiring to or promotion to the position of officer, administrator or salesperson.

2. BONA FIDE OCCUPATIONAL QUALIFICATION. Notwithstanding s. 109-45, it shall not be an unlawful employment practice for an employer, employment agency or labor organization to indicate within a notice or advertisement for employees, a preference, limitation, specification or discrimination based on religion, sex, age, disability, national origin or ancestry, color, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories; or to employ, classify or refer for employment any individual on the basis of religion, sex, age, disability, national origin or ancestry, color, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories where it is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

3. BONA FIDE DISTINCTIONS. Notwithstanding any other provision of s. 109-45, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity, or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of sex, race, religion, color, national origin or ancestry, age, disability, source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

4. AGE. a. It shall not be unlawful age discrimination to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension or insurance plan which is not a subterfuge to evade the purposes of s. 109-45, except that no such employee benefit plan shall excuse the failure to hire any person.

b. Discrimination on the basis of age does not apply to any person less than 40 years of age.

5. DISABILITY. Discrimination because of disability is not prohibited if the employer, labor organization or employment agency can show that the disability is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment. It is prohibited discrimination for an employer to contribute a lesser amount to the fringe benefits, including life or disability insurance coverage, of an employee because of his or her disability.

6. MARITAL STATUS. It is not employment discrimination because of marital status to prohibit an individual from directly supervising or being directly supervised by that individual's spouse.

109-49. Other Acts Prohibited. 1. No person may coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter, or with any person who has aided or encouraged another person in the exercise or enjoyment of any right granted or protected by this chapter.

2. No person may aid, abet, incite, compel or coerce the doing of any act which violates this chapter or obstructs or prevents any person from complying with the provisions of this chapter.

3. No person, whether individually or in concert with others, may take any retaliatory action against or otherwise discriminate against any person who has opposed any discriminatory practices proscribed by this chapter or who has made a complaint, testified or assisted in any proceeding under this chapter.

109-51. Complaint Procedure. The commission shall use the following procedures in acting on complaints of discrimination, including violations of the provisions of ch. 112:

1. An aggrieved person (“the complainant”) may, not later than 300 days after an alleged discriminatory practice has occurred, file a written complaint to the commission alleging a discriminatory practice or violation. The commission shall not accept or investigate any complaint unless it is in writing and verified by the complainant.

2. When a complaint or inquiry is presented to the commission or to designated staff of the department of employee relations, and it appears that the commission does not have jurisdiction pursuant to 109-5 4-c, the complainant shall be referred to appropriate state or federal enforcement agencies, and the complainant shall be advised that the commission does not have jurisdiction over the matter.

3. An aggrieved person whose complaint has been denied by a federal or state agency on the basis of a lack of subject matter jurisdiction, and all appeals of the denial have been exhausted, may, not later than 60 days from the date of written notice of the federal or state determination or final appeal, file a complaint with the commission alleging a discriminatory practice or violation subject to further review by the Commission for jurisdiction and timeliness.

4. Upon the receipt and acceptance of a written complaint:

a. The commission shall serve notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of the time limits within 30 days after receipt of the complaint.

b. Not later than 10 days after the filing or the identification of an additional respondent under par. a, the commission shall serve on the respondent a notice identifying the alleged discriminatory housing or employment practice and advising the respondent of the procedural rights and obligations of respondents under this chapter, together with a copy of the original complaint.

c. Each respondent may file, not later than 10 days after receipt of notice from the commission, an answer to the complaint.

d. The commission shall initiate and complete a probable cause investigation within 100 days after receipt of the complaint unless the circumstances render it impracticable, in which case, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

5. a. 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 upon written notice, under sub. 3, to the person, from the commission.

b. The notice, in addition to meeting the requirements of sub. 3, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

6. The department of employee relations may employ such investigators and administrative law judges as it deems necessary to hear and decide complaints of discrimination and to assist in the administration of this chapter. An administrative law judge may propose findings of fact and make recommendations to the commission for resolution of a complaint.

7. If an investigator finds probable cause to believe that any discrimination has been or is being committed, the commission shall endeavor to eliminate the practice by conference, conciliation or persuasion. Upon completion of an investigation, the investigator shall prepare a final investigative report containing:

a. The names and dates of contacts and witnesses.

- b. A summary and dates of correspondence and other contacts with the aggrieved person and the respondent.
 - c. A summary description of other pertinent records.
 - d. A summary of witness statements.
 - e. Answers to interrogatories.
- 8.** If agreement is reached, a written conciliation agreement shall be approved by the commission and signed by the complainant, the respondent and the representative of the commission. The signed conciliation agreement shall have the effect of a commission order.
- 9.** Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of the chapter.
- 10.** a. In case of failure to eliminate the discrimination, the commission shall issue and serve a written notice of hearing before an administrative law judge specifying the nature of the discrimination which appears to have been committed, and requiring the respondent to answer the complaint in writing within 10 days after receipt of the notice of hearing and to appear at the hearing on the appointed date. The notice shall specify a time of hearing not less than 10 days after service of the notice of hearing.
- b. In accordance with the requirements of s. 68.11, Wis. Stats., each party at the hearing may be represented by counsel and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Witnesses shall be sworn by the person conducting the hearing. The administrative law judge may issue subpoenas.
 - c. The administrative law judge may take notes of the testimony and shall mark and preserve all exhibits. The testimony at the hearing shall be recorded.
- 11.** If, after hearing, the administrative law judge finds by a preponderance of the evidence that the respondent has engaged in discrimination, the administrative law judge shall make proposed written findings and order such action by the respondent as will redress the injury done to the complainant in violation of this chapter, bring respondent into compliance with its provisions and generally effectuate the purpose of this chapter. The commission shall serve a certified copy of the administrative law judge's proposed findings and order on the respondent and complainant.
- 12.** If the administrative law judge finds that the respondent has not engaged in discrimination as alleged in the complaint, the commission shall serve a certified copy of the administrative law judge's proposed findings on the complainant and the respondent together with an order dismissing the complaint.
- 13.** Upon finding that employment discrimination has taken place, an administrative law judge may award back pay. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the commission. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against shall not operate to reduce back pay allowable, but shall be

withheld from the person discriminated against and immediately paid to the state unemployment reserve fund or, in the case of welfare payments, to the welfare agency making the payments.

109-53. Review of Decision. 1. a. Pursuant to s. 68.09 Wis. Stats., and s. 320-11, any party aggrieved by the investigator's failure to find probable cause or the administrative law judge granting or denying in whole or in part the relief sought shall be entitled to seek review by written request filed with the commission within 30 days of notice to such person of the determination. If review is not sought within the time prescribed, the commission may set aside the proposed findings and order, and remand the action to the administrative law judge for such action necessary to effectuate the purpose of the chapter, or the commission may adopt the proposed findings and orders, and upon adoption, such determination shall become a final determination.

b. A request for review shall state the grounds upon which the person aggrieved contends that the decision should be modified or reversed.

c. The commission shall review the determination within 45 days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

d. The person aggrieved may file with the request for review or within the time specified by the commission, statement of facts, and argument or legal brief in support of the person's position and, at the same time, shall serve a copy of the request for review and the statement of facts and argument or legal brief upon all other parties to the original proceeding. Each party may file a response not later than 10 days after receipt of the copy of the aggrieved party's request for review.

e. The commission shall mail or deliver to all parties in this action, within 20 days after making a determination, a copy of its decision on review, which shall state the reasons for its decision and advise such persons of the right to appeal that decision, the time in which the appeal shall be taken and the office or person with whom notice of appeal shall be filed. This determination shall be a final determination.

2. Any party to a proceeding resulting in a final determination may seek judicial review by certiorari within 30 days of the receipt of the final determination, pursuant to ch. 68, Wis. Stats.

109-55. Forfeiture. 1. Any person who willfully violates this chapter or any lawful order of the commission under this chapter shall, for the first violation, forfeit not less than \$500 nor more than \$5,000.

2. For each successive violation within 5 years of having been adjudged to be in violation of this chapter or any lawful order of the commission under this chapter, the person shall forfeit not less than \$1,000 nor more than \$10,000.

3. Each day or fraction thereof on which such person shall willfully violate this chapter or a lawful order of the commission under this chapter shall be deemed a separate offense.

109-57. Enforcement. 1. Whenever in the judgment of the commission, the enforcement of a forfeiture imposed for violation of this chapter or of an order under this chapter is necessary, the commission shall refer the matter in writing to the city attorney for enforcement in the name of the city or the commission.

2. Upon referral, the city attorney may seek enforcement of this chapter in a court of competent jurisdiction and as provided in ss. 66.0114 and 66.1011(2), Wis. Stats., or otherwise.

3. At any time after a complaint is filed, the commission may request the city attorney to file a petition in circuit court, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining the respondent from performing an act tending to render ineffectual an order the commission may enter with respect to the complaint.

SUBCHAPTER 4.
NEIGHBORHOOD AND COMMUNITY RELATIONS

109-61. Community and Neighborhood Engagement. The commission shall, with the support and assistance of the department of employee relations, and such other departments, agencies, boards and commissions as may from time to time be appropriate, establish and maintain collaborative relationships with area human rights organizations, with the academic community, and with the private sector, for promoting equal rights by recognizing accomplishments and best practices, by facilitating community discussions relating to the equal rights and equal opportunities within respective neighborhoods and the city as a whole, and by providing, sponsoring or participating in informational and educational programs addressing equal rights issues, the laws prohibiting discrimination and promoting equal opportunities, and the availability of services and programs. Primary objectives for engagement with neighborhoods and the community shall include the promotion of diversity and community cohesion.

109-63. Clearinghouse. The commission shall, with the support and assistance of the department of employee relations, provide a clearinghouse of information and publications relating to human rights, equal rights and non-discrimination, including information about services and programs available to the public. Clearinghouse information shall include summaries of the numbers and types of referrals made and complaints handled by the commission and, to the extent practicable, the matters handled by other equal rights agencies and organizations in the community.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB08518-4

RLW

12/8/2008

