

ORDINANCE NUMBER 18-10943

AN ORDINANCE AMENDING SALINA CODE SECTIONS 13-1, 13-2, 13-53, 13-55, 13-57, 13-58, 13-59, 13-60, 13-81, 13-82, 13-83, 13-84, 13-85, 13-86, 13-87, 13-88, 13-89, 13-91, 13-105, 13-106, 13-107, 13-108, 13-109, 13-110, 13-110.1, 13-111, 13-112, 13-113, 13-114, 13-115, 13-117, 13-119, 13-131, 13-147, 13-149 PERTAINING TO EQUAL OPPORTUNITY AND REPEALING THE EXISTING SECTIONS.

BE IT ORDAINED by the Governing Body of Salina, Kansas:

Section 1. Amendment. Salina Code Sections 13-1, 13-2, 13-53, 13-55, 13-57, 13-58, 13-59, 13-60, 13-81, 13-82, 13-83, 13-84, 13-85, 13-86, 13-87, 13-88, 13-89, 13-91, 13-105, 13-106, 13-107, 13-108, 13-109, 13-110, 13-110.1, 13-111, 13-112, 13-113, 13-114, 13-115, 13-117, 13-119, 13-131, 13-147, 13-149 are amended to read as follows:

ARTICLE I. - IN GENERAL

Sec. 13-1. - Declaration of policy.

- (a) The practice or policy of discrimination against individuals by reason of race, sex, familial status, disability, religion, age, color, national origin or ancestry is a matter of concern to the city since such discrimination threatens not only the rights and privileges of the inhabitants of the city but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the policy of the city to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation or separation in all areas of public accommodations, and to eliminate and prevent discrimination, segregation or separation in housing as provided in this chapter.
- (b) It is also declared to be the policy of the city to assure equal opportunities and encouragement to every citizen regardless of race, sex, disability, religion, age, color, national origin or ancestry, in securing and holding, without discrimination, employment in any field of work or labor for which a person is properly qualified or qualifiable, to assure equal opportunity to all persons within the city to full and equal public accommodations, and to assure equal opportunities in housing without distinction on account of race, sex, familial status, disability, religion, color, national origin or ancestry. It is further declared that the opportunity to secure and to hold employment, the opportunity for full and equal public accommodations as covered by this chapter and the opportunity for full and equal housing are civil rights of every citizen. To protect these rights, it is hereby declared to be the purpose of this chapter to establish and to provide a city human relations commission and a community relations division of the community and development services.

Sec. 13-2. - Definitions.

When used in this chapter, the following words and phrases shall have the meaning indicated. This chapter prohibits discrimination based upon sex, and accordingly, the personal pronouns and gender of nouns used in this chapter shall not be construed as limiting the provisions of this chapter to one or to the other sex:

Age means an age of forty (40) or more years but less than seventy (70) years.

Chairperson means the individual chairing the human relations commission created by this chapter.

Complainant means the person who files a complaint under this chapter.

Complaint means a written statement made under oath or affirmation and filed with the human relations commission alleging any violation of any statutory or other authority, orders, rules or

regulations over which the human relations commission may have jurisdiction or which the human relations commission may enforce.

Conciliation means the attempted resolution of issues raised by a complaint, or by the investigation of a complaint, through informal negotiations involving the complainant, the respondent, and the supervisor.

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

Contract means any contract entered into by the city or any of its agencies.

Contractor means any individual, partnership, corporation, association or other entities entering into a contract with the city and who is an employer as herein defined.

Designated legal counsel means any legal counsel designated by the city manager to assist the division and the human relations commission.

Director means the director of the community and development services department.

Disability means, with respect to an individual:

- (1) A physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment.

"Disability" does not include current, illegal use of a controlled substance as defined in section 102 of the federal Controlled Substance Act (21 U.S.C. § 802). "Disability" does not include an individual who is currently engaging in the illegal use of drugs where possession or distribution of such drugs is unlawful under the controlled substance act (21 U.S.C. § 812) when the covered entity acts on the basis of such use.

Discrimination means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial or any other differentiation or preference in the treatment of a person or persons on account of age, race, religion, color, sex, familial status, national origin, ancestry or disability and/or any denial of any right, privilege or immunity secured by or protected by law. Discrimination shall include but not be limited to any practice which produces a demonstrable racial or ethnic effect without a valid business motive.

Division means the community relations division of the community and development services department.

Dwelling means any building, structure or portion thereof which is occupied as, or designated or intended for occupancy as, a residence by one (1) 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.

Employee means any person employed by an employer but does not include any individual employed by such individual's parents, spouse, or child, or in the domestic service of any person.

Employer includes any person within the city employing four (4) or more persons, and any person acting directly or indirectly for an employer, labor organizations, nonsectarian corporations, organizations engaged in social service work, and the city and all political and municipal subdivisions thereof, but shall not include a nonprofit fraternal or social association or corporation.

Employment agency includes any person or governmental agency undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer or place employees.

Familial status means having one (1) or more individuals less than eighteen (18) years of age domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections against discrimination afforded individuals on the basis of familial status shall apply to any person who is pregnant or is in the processing of securing legal custody of any individual who has not attained the age of eighteen (18) years.

Financial institution means any person regularly engaged in the business of lending money or guaranteeing loans on housing accommodations or real property.

Genetic screening or testing means a laboratory test of a person's genes or chromosomes for abnormalities, defects or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease or other disorders, whether physical or mental, which test is a direct test for abnormalities, defects or deficiencies, and not an indirect manifestation of genetic disorders.

Hotel means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four (4) or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

Housing accommodation means:

- (1) Any building or portion thereof which is used or intended for use as the residence or sleeping place of one (1) or more persons.
- (2) The term "housing accommodations" shall not mean or include:
 - a. The rental of a dwelling, or a portion thereof, containing accommodations for no more than two (2) families, one (1) of which is occupied by the owner or the owner's family at the time of rental;
 - b. The rental of less than four (4) rooms in a one-family dwelling to another person or persons by the owner or occupant of such accommodations in which the owner or members of the owner's family reside.

Human relations commission means the human relations commission created by this chapter.

Labor organization includes any organization which exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

Occupational qualifications as used herein, are those qualifications which can be shown to be demonstrably valid to the normal operation or performance of a particular job, business or enterprise.

Owner shall mean and include the owner, lessee, sublessee, assignee, manager, agent, or other person, firm or corporation having the right to sell, rent or lease any housing accommodation or real property within the corporate limits of the city.

Person includes, as the legal context may permit, one (1) or more individuals, partnerships, associations, organizations, corporations, municipal corporations, quasi-municipal corporations, governmental agencies, public bodies, legal representatives, trustees, trustees in bankruptcy, receivers, fiduciaries, mutual companies or unincorporated organizations.

Person aggrieved means any person who claims to have been injured by a discriminatory act or practice or believes that such person will be injured by a discriminatory act or practice that is about to occur.

Probable cause means the presence of a reasonable ground for belief in the existence of the alleged violation of any statute, ordinance, or other authority, orders, rules or regulations.

Public accommodations shall include any person who caters or offers goods, services, facilities and accommodations to the public. Public accommodations include, but are not limited to, any lodging establishment or food service establishment, as defined by K.S.A. 36-501 and amendments thereto; any bar, tavern, barbershop, beauty parlor, theater, skating rink, bowling alley, billiard parlor, amusement park, recreation park, swimming pool, lake, gymnasium, mortuary or cemetery which is open to the public; or any public transportation facility. Public accommodations do not include a religious or nonprofit fraternal or social association or corporation.

Real estate broker means any person who, for a fee or other valuable consideration, sells, purchases, exchanges, rents, negotiates, offers or attempts to negotiate the sale, purchase, exchange or rental of housing accommodations or real property of another person.

Real estate salesman or agent means any person employed by a real estate broker to perform, or to assist in the performance of, any or all of the functions of a real estate broker.

Reasonable accommodation means:

- (1) In the context of employment under article III of this chapter, making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials or policies; provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.
- (2) In the context of housing under article V of this chapter, those reasonable measures which may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

Restaurant means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

Respondent means any person against whom a complaint has been filed alleging a violation of this chapter.

Subcontractor means any individual, partnership, corporation, association, or other entity, or any combination of the foregoing which shall undertake, by virtue of a separate contract with a contractor as defined herein, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who is an employer as herein defined.

Supervisor means the supervisor of the human relations division of the community and development services department.

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.

Unlawful practice means any practice described as unlawful in section 13-71 or in section 13-72.

ARTICLE II. - HUMAN RELATIONS COMMISSION^[2]

Sec. 13-53. - Terms.

Initial appointments to the human relations commission shall be for one-, two-, and three-year terms, and thereafter all appointments shall be for a term of three (3) years and until a successor is qualified, provided; however, no person shall serve for more than eight (8) consecutive years. The term of office of each chairperson and vice-chairperson shall be for one (1) year, and no person shall serve for more than two (2) consecutive terms in the same office, unless such election to the immediately subsequent term is made by members of the human relations commission by unanimous vote.

Sec. 13-55. - Officers.

The human relations commission shall elect one (1) of its members as chairperson, who shall preside at all meetings of the human relations commission and perform all the normal duties and functions of the chairperson. The mayor shall convene the first meeting of the human relations commission and conduct the election of the chairperson. The human relations commission shall elect, in the same manner, one (1) of its members as vice chairperson who shall act as chairperson during the absence or incapacity of the chairperson and, when so acting, the member so designated shall have and perform all the duties and functions of the chairperson of the human relations commission. The chairperson or vice-chairperson may resign from office without resigning from the human relations commission. In such event, the human relations commission shall elect another member as a replacement for the unexpired term.

Sec. 13-57. - Powers and duties.

The human relations commission shall have the following functions, powers and duties:

- (1) To receive, initiate, investigate and pass upon complaints alleging violations of this chapter.
- (2) To subpoena witnesses, compel their appearance and require the production for examination of records, documents and other evidence or possible sources of evidence and to examine, record and copy such materials and take and record the testimony or statements of such persons. The human relations commission may issue subpoenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoena or interrogatories were issued or served in aid of a civil action in the district court. The human relations commission shall have access at all reasonable times to premises and may compel such access by application to a court of competent jurisdiction; provided that the human relations commission first complies with the provisions of Article 15 of the Kansas Bill of Rights and the Fourth Amendment to the United States Constitution relating to unreasonable searches and seizures.
- (3) To hold public hearings, administer oaths, and take depositions to the same extent and subject to the same limitations as would apply if the deposition was taken in aid of a civil action in the district court. In case of the refusal of any person to comply with any subpoena, interrogatory

or search warrant issued hereunder, the human relations commission may make application to the district court to compel compliance pursuant to state law.

- (4) To act in concert with other parties in interest in order to eliminate and prevent discrimination and segregation, prohibited by this chapter, by including any term in a conciliation agreement as could be included in a final order under this chapter.
- (5) To apply to the district court for enforcement of any conciliation agreement by seeking specific performance of such agreement.
- (6) To bring a civil action in the district court of the county for appropriate temporary or preliminary relief pending final disposition of a complaint under this chapter.
- (7) To issue such final orders after a public hearing as may remedy any existing situation found to violate this chapter and prevent its recurrence; and, if necessary, to seek enforcement of such final orders pursuant to federal and state law.
- (8) To create such advisory agencies and conciliation councils, as in its judgment will aid in effectuating the purposes of this chapter; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, sex, disability, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the city; and to make recommendations to the human relations commission for the development of policies and procedures, and for programs of formal and informal education, which the human relations commission may recommend to the city commission. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The human relations commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the city.
- (9) To create such advisory agencies and conciliation councils, as in its judgment will aid in effectuating the purposes of this chapter; to study the problem of discrimination in all or specific fields or instances of discrimination because of race, religion, color, sex, disability, national origin or ancestry; to foster, through community effort or otherwise, good will, cooperation and conciliation among the groups and elements of the population of the city; and to make recommendations to the human relations commission for the development of policies and procedures, and for programs of formal and informal education, which the human relations commission may recommend to the city commission. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The human relations commission may itself make the studies and perform the acts authorized by this paragraph. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster good will and cooperation among all elements of the population of the city.
- (10) To accept contributions from any person to assist in the effectuation of this chapter and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this chapter.
- (11) To issue such publications and such results of investigation and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, disability, national origin or ancestry.

- (12) To render each year to the city manager and to the city commission a full written report of all of its activities and of its recommendations.
- (13) To receive and accept federal funds to effectuate the purposes of this chapter and to enter into agreements with any federal agency for such purpose.

Sec. 13-58. - Purpose of division.

The division shall administer and enforce the provisions of this chapter or as hereafter amended.

Sec. 13-59. - Position of supervisor of community relations created; appointment.

Pursuant to the authority of the city manager and under the direction of the director, the supervisor shall supervise the administration and enforcement of this chapter by the division. Merit and fitness shall be the governing criteria in the selection of the supervisor of community relations.

Sec. 13-60. - Duties, responsibilities, and authority of the supervisor.

The supervisor shall have the following duties, responsibilities, and authority. The administration of this chapter shall be the responsibility of the supervisor and the supervisor's designated staff. The supervisor shall promulgate procedures to implement, expedite, and effectuate the provisions of this chapter. In addition to any powers and responsibilities heretofore conferred upon the supervisor, the supervisor shall have the power and responsibility to:

- (1) Seek to eliminate and prevent discrimination in employment because of race, sex, religion, age, color, national origin, ancestry, disability, or familial status, by employers, labor organizations, employment agencies, or other persons, and to take other actions against discrimination because of race, sex, religion, age, color, national origin, ancestry, disability, or familial status, as provided herein;
- (2) Effectuate the purposes of this chapter first by conference, conciliation, and persuasion so that persons may be guaranteed their civil rights and good will fostered;
- (3) Seek cooperation from, and upon request, make technical assistance available to all city government departments and agencies;
- (4) Receive, investigate, initiate and attempt to conciliate complaints alleging violations of this chapter;
- (5) Pursue the goals of affirmative action implementation within municipal government and external to municipal government through continued dialogue and technical assistance;
- (6) In conducting an investigation, the supervisor or the supervisor's staff shall have access at all reasonable times to premises, records, documents, and other evidence or possible sources of evidence, and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. In case of the refusal of any person to comply with any subpoena issued by the local human relations commission, or to testify to any matter regarding which such person may be lawfully questioned, the district court of the county may, upon application of the division on behalf of the human relations commission, order such person to comply with such subpoena and to testify to the extent such person could be so compelled pursuant to the provisions of subsection (2) of section 13-57 and state law;
- (7) Request that the designated legal counsel apply to the district court of the county for temporary or permanent injunctive relief to enjoin violation of this chapter;

- (8) Request that the designated legal counsel apply to the district court of the county for enforcement of any conciliation agreement by seeking specific performance of such agreement;
- (9) Attend all meetings and serve as secretary of the human relations commission; provide necessary reports, such as agenda, minutes, and schedules of human relations commission meetings to the human relations commission, to the city commission, and to the city manager; and advise the local news media of human relations commission meetings and agenda.

ARTICLE IV. - COMPLAINT PROCEDURES FOR UNLAWFUL EMPLOYMENT AND DISCRIMINATORY PRACTICES

Sec. 13-81. - Investigation by human relations commission.

Whenever the commission has, in its own judgment, reason to believe that any person has engaged in an unlawful practice in violation of sections 13-71 or 13-72, the human relations commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for in the investigation of complaints. The person to be investigated shall be advised of the nature and scope of the investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the human relations commission may issue a complaint whenever the investigation reveals a violation of this chapter has occurred. The information gathered in the course of this investigation may be used in processing the complaint.

Sec. 13-82. - Complaints.

- (a) Any person claiming to be aggrieved by an alleged unlawful practice may, personally or by an attorney-at-law, make, sign and file with the human relations commission a verified complaint in writing which shall state the name and address of the person alleged to have committed the unlawful practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the human relations commission. The supervisor or human relations commission upon its own initiative may, in like manner, make, sign and file such complaint.
- (b) In the event a complaint is against the city or any of its officials or employees, the complaint will be referred to the Kansas human rights commission.
- (c) Any complaint filed pursuant to this chapter alleging a violation of sections 13-71 or 13-72 must be filed within one hundred eighty (180) days after the alleged unlawful practice, However, if the unlawful practice consists of a continuing pattern or practice, it must be filed within one hundred eighty (180) days of the final occurrence.
- (d) Upon receipt of any such complaint the supervisor shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits and choice of forums provided under this article. Within ten (10) days after the filing of the complaint the supervisor shall serve on the respondent a notice identifying the alleged unlawful practice and advising the respondent of respondent's procedural rights and obligations under this article, together with a copy of the original complaint. Service of the notice shall be made in the manner prescribed by the state code of civil procedure.
- (e) A respondent may file an answer to the complaint with the supervisor no later than ten (10) days after service of the notice of the complaint.

- (f) A person who is not named as a respondent in a complaint, but who is identified as a possible respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under subsections (a) and (b), to such person from the human relations commission.

Sec. 13-83. - Submission of a false, misleading or incomplete complaint, statement, response or report.

Any person who knowingly and intentionally submits or files or causes to be submitted or filed, a false, misleading, or incomplete complaint, statement, response or report with the human relations commission, the supervisor or any of the division's personnel, shall be guilty of a misdemeanor.

Sec. 13-84. - Conciliation.

- (a) During the period beginning with the filing of such complaint and ending with the commencement of an administrative hearing or a dismissal of the complaint, the supervisor shall, to the extent feasible, engage in conciliation with respect to such complaint.

- (b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the

supervisor. Such agreements may include in the provisions thereof any terms or condition which may be included in a final order of the human relations commission.

- (c) In a manner consistent with K.S.A. 44-1019(f)(1) and amendments thereto, each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the human relations commission determines that disclosure is not required to further the purposes of this article.

- (d) Any of the parties to a conciliation agreement may apply to the county district court for specific performance of any such agreement.

Sec. 13-85. - Notice and investigation.

After the filing of any complaint by an aggrieved individual or by the human relations commission, the supervisor shall within ten (10) days after the filing of the complaint, serve a copy on each of the parties alleged to have violated this chapter. The supervisor shall then make, with the assistance of staff, a prompt investigation of the alleged unlawful practice.

Sec. 13-86. - Prompt judicial action.

If the human relations commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the human relations commission may bring a civil action in the district court of the county, for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this article.

Sec. 13-87. - Probable cause; conciliation; determination.

- (a) Upon completion of the investigation, three (3) human relations commissioners will be assigned by the supervisor to determine by majority vote, with the advice of the supervisor, and, if needed, designated legal counsel, whether probable cause exists based upon the documented results of the investigation.

- (b) If it is determined that no probable cause exists for crediting the allegations of the complaint, the supervisor within ten (10) business days from such determination, shall cause to be issued and

served upon the complainant and respondent written notice of such determination. The supervisor shall then administratively close the human relations commission's complaint file.

- (c) If it is determined that probable cause exists for crediting the allegations for the complaint, the supervisor shall immediately serve written notice of such determination on the parties and endeavor to eliminate the unlawful practice complained of by conference and conciliation. The complainant and respondent shall have forty-five (45) days from the date the respondent is notified in writing of a finding of probable cause to enter into a conciliation agreement.

Sec. 13-88. - Administrative hearing.

In case of failure to eliminate the unlawful practice complained of by conference and conciliation either

- (1) Within the time allowed under section 13-87(c); or
- (2) In advance thereof if in the judgment of the human relations commission circumstances so warrant;

the human relations commission shall commence a hearing in accordance with the provisions of the Kansas administrative procedures act naming as parties the complainant and the respondent(s). A copy of the notice of hearing shall be served on the parties. The municipal judge shall serve as the hearing officer. The burden of proof shall be on the complainant.

Sec. 13-89. - Subpoenas.

The complainant or respondent may apply to the supervisor with a request that the human relations commission issue subpoenas for the attendance of any person or the production or examination of any books, records or documents pertinent to the proceeding at the hearing. Upon such application the human relations commission shall issue such subpoenas.

Sec. 13-91. - Order of hearing officer; equal employment opportunity; notice of compliance.

- (a) If the hearing officer finds a respondent has engaged in or is engaging in any unlawful practice as defined in this chapter, the hearing officer shall render an order requiring such respondent to cease and desist from such unlawful practice and to take such affirmative steps, 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 organizations, 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 officer, will effectuate the purposes of this chapter, including a requirement for report of the manner of compliance. Such order may also include an award of compensatory damages and 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 two thousand dollars (\$2,000.00).
- (b) The order of the hearing officer shall be deemed an order of the human relations commission.
- (c) The human relations commission's order shall be subject to enforcement and review pursuant to K.S.A. 12-16,106 and amendments thereto.

- (d) Within fifteen (15) days after the hearing officer's order is served by the human relations commission requiring or prohibiting action by a respondent, the respondent shall notify the human relations commission in writing of the manner in which the respondent has complied with the order.
- (e) In the case of an order with respect to an unlawful practice that occurred in the course of a business subject to licensing or regulation by a state agency, the human relations commission may, not later than thirty (30) days after the respondent has complied with the order, or, if such order is judicially reviewed under subparagraph (c) above, thirty (30) days after such order is in substance affirmed upon such review:
 - (1) Send copies of the findings of fact, conclusions of law, and the order, to that agency; and
 - (2) Recommend to the agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

ARTICLE VI. - HOUSING COMPLAINT PROCEDURES

Sec. 13-105. - Investigation by human relations commission.

Whenever the human relations commission has, in its own judgment, reason to believe that any person has engaged in a discriminatory housing practice in violation of this article, the human relations commission may conduct an investigation without filing a complaint and shall have the same powers during such investigation as provided for in the investigation of complaints. The person to be investigated shall be advised of the nature and scope of the investigation prior to its commencement. The purpose of the investigation shall be to resolve any such problems promptly. In the event such problems cannot be resolved within a reasonable time, the human relations commission may issue a complaint whenever the investigation reveals a violation of this chapter has occurred. The information gathered in the course of this investigation may be used in processing the complaint.

Sec. 13-106. - Complaints.

- (a) Any person aggrieved may file a verified complaint with the supervisor. Such complaints shall be in writing, shall state the facts upon which the allegations of a discriminatory housing practice are based and shall contain such other information and be in such form as the human relations commission may require. Complaints must be filed within one (1) year after the alleged discriminatory housing practice occurred, but may be reasonably and fairly amended at any time.
- (b) Upon receipt of any such complaint the supervisor shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits and choice of forums provided under this article. Within ten (10) days after the filing of the complaint the supervisor shall serve on the respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of respondent's procedural rights and obligations under this article, together with a copy of the original complaint. Service of the notice shall be made in the manner prescribed by the state code of civil procedure.
- (c) A respondent may file an answer to the complaint with the supervisor no later than ten (10) days after service of the notice of the complaint.
- (d) A person who is not named as a respondent in a complaint, but who is identified as a possible respondent in the course of investigation, may be joined as an additional or substitute respondent

upon written notice, under subsections (a) and (b), to such person from the human relations commission.

Sec. 13-107. - Submission of a false, misleading or incomplete complaint, statement, response or report.

Any person who knowingly and intentionally submits or files or causes to be submitted or filed, a false, misleading, or incomplete complaint, statement, response or report with the human relations commission, the supervisor or any of the division's personnel, shall be guilty of a misdemeanor.

Sec. 13-108. - Conciliation.

- (a) During the period beginning with the filing of such complaint and ending with the commencement of an administrative hearing or a dismissal of the complaint, the supervisor shall, to the extent feasible, engage in conciliation with respect to such complaint.
- (b) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the supervisor. Such agreements may include in the provisions thereof any terms or condition which may be included in a final order of the human relations commission.
- (c) In a manner consistent with K.S.A. 44-1019(f)(1) and amendments thereto, each conciliation agreement shall be made public unless the person aggrieved and respondent otherwise agree and the human relations commission determines that disclosure is not required to further the purposes of this article.
- (d) Any of the parties to a conciliation agreement may apply to the county district court for specific performance of any such agreement.

Sec. 13-109. - Investigation.

After the human relations commission assumes jurisdiction of a complaint, the human relations commission shall within thirty (30) days after receipt of the complaint commence an investigation thereof, and complete such investigation, including conciliation, within one hundred (100) days after the filing of the complaint, unless it is impracticable to do so. If the human relations commission is unable to complete the investigation within one hundred (100) days, the human relations commission shall inform the parties in writing of the reasons for not doing so.

Sec. 13-110. - Prompt judicial action.

If the human relations commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this chapter, the human relations commission may bring a civil action in the district court of the county, for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this article.

Sec. 13-110.1. - Final administrative disposition.

The human relations commission shall make final administrative disposition within one (1) year after the filing of the complaint under this article unless it is impracticable to do so. If the human relations commission is unable to make final administrative disposition of the complaint within one (1) year of the date of filing, the human relations commission shall inform the parties in writing of the reasons for not doing so.

Sec. 13-111. - Probable cause, conciliation.

- (a) Upon completion of the investigation, three (3) human relations commissioners will be assigned by the supervisor to determine by majority vote, with the advice of the supervisor and, if needed,

designated legal counsel, whether probable cause exists based upon the documented results of the investigation.

- (b) If it is determined that no probable cause exists for crediting the allegations of the complaint, the supervisor, within ten (10) business days from such determination, shall cause to be issued and served upon the complainant and respondent written notice of such determination. The supervisor shall then administratively close the human relations commission's complaint file.
- (c) If it is determined that probable cause exists for crediting the allegations of the complaint, the human relations commission shall serve written notice of such determination on the complainant. The human relations commission shall proceed to try to eliminate or correct the alleged unlawful housing practice by informal methods of conference, conciliation and persuasion which shall be held, insofar as possible.

Sec. 13-112. - Conciliation failure.

If the human relations commission is unable to resolve the alleged unlawful housing practice, it shall notify the parties in writing that conciliation efforts have failed.

Sec. 13-113. - Election for civil action.

- (a) After the human relations commission has issued a notice of conciliation failure pursuant to section 13-112 of this article, the complainant, the respondent, or the human relations commission may elect to have the claims and issues asserted in the probable cause determination decided in a civil action commenced and maintained by the human relations commission.
 - (1) An election for a civil action under this subsection shall be made no later than twenty (20) days after an electing complainant or respondent receives the notice of conciliation failure, or if the human relations commission makes the election, not more than twenty (20) days after the notice of conciliation failure is issued. A complainant or respondent who makes an election for a civil action pursuant to this subsection shall give notice to the human relations commission. If the human relations commission makes an election, it shall notify all complainants and respondents of the election.
 - (2) If an election is made under this subsection, no later than sixty (60) days after the election is made the human relations commission shall commence a civil action in the federal district court in its own name on behalf of the complainant. In such an action, the human relations commission shall be represented by an attorney employed by the human relations commission.
- (b) In a civil action brought under this section, the rights and remedies of the parties shall be determined by applicable federal law. The relief that may be granted in such a civil action shall include at least actual and punitive damages, injunctive and equitable relief as provided by applicable federal law.

Sec. 13-114. - Administrative hearing.

If the human relations commission is unable to eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation and persuasion, and if an election for a civil action is not made pursuant to section 13-113, the human relations commission shall commence a hearing before a hearing officer in accordance with the provisions of the Kansas administrative procedures act naming as parties the complainant and the respondent(s). The burden of proof shall be on the complainant.

Sec. 13-115. - Subpoenas.

The complainant or respondent may apply to the supervisor with a request that the human relations commission issue subpoenas for the attendance of any person or the production or examination of any

books, records or documents pertinent to the proceeding at the hearing. Upon such application the human relations commission shall issue such subpoenas.

Sec. 13-117. – Order of hearing officer; affirmative action; notice of compliance.

- (a) If the hearing officer shall find that a respondent has engaged in or is engaging in any discriminatory housing practice, the hearing officer shall render an order requiring the respondent to cease and desist from such discriminatory housing practice, and such order may direct a respondent to take such affirmative action as the hearing officer deems necessary to effectuate the intent and purposes of this article, including, but not limited to, the selling or renting of specified real property and the lending of money for the acquisition, construction, rehabilitation, repair or maintenance of real property. Such order may also include an award of compensatory 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 two thousand dollars (\$2,000.00). Such order may also, to vindicate the public interest, assess a civil penalty against the respondent:
- (1) In an amount not exceeding ten thousand dollars (\$10,000.00), if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
 - (2) Subject to the provisions of subsection (a)(4), in an amount not exceeding twenty-five thousand dollars (\$25,000.00), if the respondent has been adjudged to have committed one (1) other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint;
 - (3) Subject to the provisions of subsection (a)(4), in an amount not exceeding fifty thousand dollars (\$50,000.00), if the respondent has been adjudged to have committed two (2) or more discriminatory housing practices during the seven-year period ending on the date of the filing of the complaint; and
 - (4) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice in the amounts provided by subsections (a)(2) and (a)(3) without regard to the period of time within which any subsequent discriminatory housing practice occurred.

Such civil penalties shall be paid into the city treasury to the credit of the city general fund.

- (b) The order of the hearing officer shall be deemed an order of the human relations commission.
- (c) The human relations commission's order shall be subject to enforcement and review pursuant to K.S.A. 12-16,106 and amendments thereto.
- (d) Within fifteen (15) days after the hearing officer's order is served by the human relations commission requiring or prohibiting action by a respondent, the respondent shall notify the human relations commission in writing of the manner in which the respondent has complied with the order.
- (e) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a state agency, the human relations commission may, not later than thirty (30) days after the respondent has complied with the order, or, if such order is judicially reviewed under subparagraph (c) above, thirty (30) days after such order is in substance affirmed upon such review:
 - (1) Send copies of the findings of fact, conclusions of law, and the order, to that agency; and

- (2) Recommend to the agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

Sec. 13-119. - Rules.

The human relations commission is hereby authorized to adopt rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder.

ARTICLE VII. - PUBLIC CONTRACTS

Sec. 13-131. - Required contract provisions.

- (a) Every contract for or on behalf of the city or any agency thereof, for construction, alteration or repair of any public building or public work or for the acquisition of materials, equipment, supplies, or services, shall contain provisions by which the contractor and any subcontractors agree that:
 - (1) The contractor and any subcontractor shall observe the provisions of this chapter and the state Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, age, color, sex, disability, national origin, or ancestry;
 - (2) In all solicitations, or advertisements for employees, the contractor shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the city's community relations supervisor;
 - (3) If the contractor fails to comply with the manner in which the contractor reports to the human relations commission or the Kansas human rights commission in accordance with the provisions of this chapter or K.S.A. 44-1031 and amendments thereto, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the city;
 - (4) If the contractor is found guilty of a violation of this chapter or the Kansas act against discrimination under a decision or order of the human relations commission or the Kansas human rights commission which has become final, the contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the city; and
 - (5) The contractor shall include the provisions of subsections (a)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.
- (b) Every contract entered into by the city or any of its agencies shall include a provision that during the performance of the contract, the contractor will not discriminate against any employee or applicant for employment in the performance of the contract, and every contractor shall include similar provisions in all subcontracts under such person's contract with the city.
- (c) The provisions of this article shall not apply to a contract entered into by a contractor
 - (1) Who would not be considered an "employer" as defined in section 13-2;
 - (2) Whose contracts with the city cumulatively total five thousand dollars (\$5,000.00) or less during the calendar year.

ARTICLE VIII. - ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES FOR CARRYING OUT CITY'S COMMITMENT TO PRINCIPLE OF NONDISCRIMINATION IN CITY EMPLOYMENT

Sec. 13-147. - Recruiting and advertising.

- (a) In order to insure nondiscrimination in employment opportunities, the human resources director shall promptly notify the supervisor of any vacancy to be filled. The human resources director shall, upon receiving any job vacancy listing, promptly post notice of such in public locations in at least three (3) places throughout the city. The human resources director shall be responsible for seeing that an advertisement is given publication in at least one (1) and not more than three (3) periodical news agencies with general circulation in the city. The city shall be responsible for the payment of all advertising costs. No person shall be employed to fill any vacancy, except in the semiskilled and laborer-type categories, within ten (10) days after the vacancy is listed with the supervisor, unless in the opinion of the city manager, an emergency exists. Vacancies in the semiskilled and laborer-type categories may be filled after publication of the vacancy. All applications for employment shall be filled with the human resources director.
- (b) Recruiting efforts shall be directed toward educational institutions having minority and/or female or disabled enrollment.
- (c) Communications and referral relationships shall be established and maintained with groups and organizations likely to yield minority, female or disabled applicants.
- (d) Advertising for applicants shall be done in the manner most likely to reflect the city's affirmative desire to attract minority, female and disabled applicants.

Sec. 13-149. - Evaluation.

- (a) There is hereby established an equal employment opportunity evaluation committee composed of the city manager, the human resources director, the supervisor and other department heads as the city manager may deem appropriate. The city manager shall serve as chair of the committee.
- (b) The committee shall advise the department heads on implementation procedures, identification of areas for concentrated efforts, and aid in other matters related to implementation of the program.
- (c) The committee shall meet not less than semi- annually review overall progress on implementation of the program. They shall make any modifications as may be necessary to assure maximum, effective implementation of the program.

Section 2. Repealer. Existing Salina Code Sections 13-1, 13-2, 13-53, 13-55, 13-57, 13-58, 13-59, 13-60, 13-81, 13-82, 13-83, 13-84, 13-85, 13-86, 13-87, 13-88, 13-89, 13-91, 13-105, 13-106, 13-107, 13-108, 13-109, 13-110, 13-110.1, 13-111, 13-112, 13-113, 13-114, 13-115, 13-117, 13-119, 13-131, 13-147, 13-149 are repealed.

Section 3. Effective. This ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper by the following summary:

Ordinance No. 18-10943 Summary

On July 2, 2018, the City Commission passed Ordinance No. 18-10943. The Ordinance amending Salina Code Sections 13-1, 13-2, 13-53, 13-55, 13-57, 13-58, 13-59, 13-60, 13-81, 13-82, 13-83, 13-84, 13-85, 13-86, 13-87, 13-88, 13-89, 13-91, 13-105, 13-106, 13-107, 13-108, 13-109, 13-110, 13-110.1, 13-111, 13-112, 13-113, 13-114, 13-115, 13-117, 13-119, 13-131, 13-

147, 13-149 pertaining to equal opportunity and repealing the existing sections. A complete copy of the Ordinance can be found at www.salina-ks.gov or in the office of the City Clerk, 300 W. Ash, free of charge. This summary is certified by the City's legal counsel.

Introduced: June 25, 2018

Passed: July 2, 2018

Karl F. Ryan, Mayor

[SEAL]

ATTEST:

Shandi Wicks, CMC, City Clerk

The publication summary set forth above is certified this ___ day of July, 2018.

Greg A. Bengtson, City Attorney