

1 (Published in the Topeka Metro News _____)
2

3 ORDINANCE NO. _____
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5 AN ORDINANCE introduced by City Manager Dr. Robert M. Perez, updating anti-
6 discrimination policies in the Topeka Municipal code, amending and
7 repealing original § 2.105.010, § 2.105.040, § 2.105.050, §
8 2.255.040, § 3.30.440, § 3.30.470, § 3.30.480, § 9.20.020 and §
9 9.20.030 and repealing in their entireties § 2.20.120, § 3.30.420
10 and § 3.30.460.
11

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

13 Section 1. That section 2.20.120, Office of Diversity, Equity and Inclusion, of
14 The Code of the City of Topeka, Kansas, is hereby repealed.

15 ~~**Office of Diversity, Equity and Inclusion.**~~

16 ~~Created — Officer. There is hereby created an Office of Diversity, Equity and~~
17 ~~Inclusion. The Officer shall be appointed by the City Manager and be known as the~~
18 ~~Chief Diversity, Equity and Inclusion Officer. The City Manager, pursuant to Charter~~
19 ~~Ordinance No. 94, shall be responsible for supervising and evaluating the performance~~
20 ~~of the Officer.~~

21 Section 2. That section 2.105.010, Policy, of The Code of the City of Topeka,
22 Kansas, is hereby amended to read as follows:

23 **Policy.**

24 (a) Policy Statement. It is the policy of the City to ~~take affirmative action to~~
25 ~~achieve~~provide equal ~~treatment, diversity and inclusion~~opportunity when employing
26 individuals and not to discriminate against any individual based on his/her age, color,
27 disability, familial status, ~~gender identity,~~ genetic information, national origin, ancestry,
28 race, religion, sex, ~~sexual orientation,~~ veteran status or any other factor protected by
29 law (“protected class”). This shall apply to all personnel actions and procedures

30 including, but not limited to, recruitment, hiring, training, transfer, promotion,
31 compensation and other benefits.

32 ~~(b) General Objectives.~~

33 ~~(1) Intensify efforts to recruit applicants within a protected class for every level~~
34 ~~of responsibility;~~

35 ~~(2) Develop special training programs to qualify persons within a protected class~~
36 ~~for beginning level positions and for advancement; and~~

37 ~~(3) Develop procedures for monitoring the application flow, final hiring and~~
38 ~~disposition of persons within a protected class.~~

39 ~~(c) Administrative Responsibility. The City Manager and all department directors~~
40 ~~shall be responsible for ensuring that the City takes affirmative action to achieve equal~~
41 ~~opportunity, inclusion and diversity when employing individuals within all departments in~~
42 ~~accordance with the equal employment opportunity/affirmative action policy. The Office~~
43 ~~of Diversity, Equity and Inclusion, in conjunction with the Director of Human Resources~~
44 ~~or designee, shall be responsible for developing recruitment and training programs to~~
45 ~~include employment goals for each City department.~~

46 Section 3. That section 2.105.040, Reports and records, of The Code of the
47 City of Topeka, Kansas, is hereby amended to read as follows:

48 **Reports and records.**

49 The Director of Human Resources or designee shall comply with required equal
50 employment opportunity/~~affirmative action~~ reporting. Position interview records and
51 information related to new hires, transfers, promotions and terminations shall be
52 maintained by the Human Resources Department.

53 Section 4. That section 2.105.050, Equal Opportunity Officer of The Code of
54 the City of Topeka, Kansas, is hereby amended to read as follows:

55 **Equal Opportunity Officer.**

56 (a) Designated Officer. The ~~Chief Diversity, Equity and Inclusion Officer~~Human
57 Resources Director is designated as the Equal Opportunity Officer to ensure equal
58 employment opportunities.

59 (b) ~~General Duties.~~ It shall be the duty of the Equal Opportunity Officer to:

60 (1) ~~Conduct periodic departmental reviews to determine compliance with the~~
61 ~~City's equal employment opportunity/affirmative action policy;~~

62 (2) ~~Report results obtained, problems encountered, and/or resistance or failure~~
63 ~~to implement the equal employment opportunity/affirmative action policy to the~~
64 ~~Governing Body, City Manager and Human Relations Commission and provide~~
65 ~~recommendations to resolve any problems identified;~~

66 (3) ~~Serve as a consultant to the Governing Body, City Manager and department~~
67 ~~directors in developing recruitment programs, selection procedures, training programs~~
68 ~~or other personnel functions necessary to implement the City's equal employment~~
69 ~~opportunity/affirmative action policy;~~

70 (4) ~~Recruit personnel in such a manner that clearly demonstrates the City's~~
71 ~~interest in employing persons within a protected class; and~~

72 (5) ~~Establish communication with institutions and organizations that provide~~
73 ~~referral of qualified applicants within a protected class for available positions.~~

74 Section 5. That section 2.255.040, Duties and responsibilities, of The Code of
75 the City of Topeka, Kansas, is hereby amended to read as follows:

76 **Human Relations Commission; Duties and responsibilities.**

77 The Commission shall:

78 (a) Support and advise the City of Topeka in its efforts to eliminate prejudice on
79 the basis of membership in a protected class described in TMC 9.20.020, further
80 goodwill among all people of the City and promote cooperation and conciliation within
81 the City.

82 (b) Select one or more issues or topics of special focus to conduct research on,
83 advocate on behalf of, and/or develop policy recommendations relating to, which shall
84 be adopted on an annual basis by February 1st. The chosen issue or topic may be
85 directly or indirectly related to the City of Topeka government and/or in the greater City
86 of Topeka community. The Commission may produce progress reports, engage with
87 staff, and/or engage with the Governing Body in this process. Results shall be reported
88 in the Commission's Annual Report.

89 (c) Engage in one or more of the following activities relating to the
90 Commission's mission and/or chosen issue or topic:

91 (1) Hold Town Hall meetings and public forums;

92 (2) Conduct inclusive outreach and education activities and develop resources
93 relevant to human and civil rights issues;

94 (3) Partner with related organizations and groups;

95 (4) Develop and administer annual and/or periodic programs recognizing
96 individuals and/or organizations who have advanced the mission of the Human
97 Relations Commission;

98 (5) Refer public concerns related to civil ~~rights, and~~ human rights, ~~and affirmative~~

99 ~~action~~ to the appropriate agency and/or Governing Body for the sole purpose of
100 providing assistance and support to the aggrieved party or parties as they pursue
101 redress; and/or

102 (6) Develop and recommend policy and/or administrative changes to the City
103 Manager and Governing Body when the Commission finds a special need for such or
104 deems necessary because of concerns received under subsection (c)(5) of this section.

105 ~~(d) Review quarterly affirmative contracting reports and report concerns to the~~
106 ~~City Manager.~~

107 (ed) Review quarterly reports from the Independent Police Auditor and report
108 any concerns to the City Manager.

109 (fe)By February 1st on an annual basis, the Commission shall prepare and
110 submit an annual report to the Governing Body of the Commission's activities,
111 identifying issues and problem areas within the Topeka community and, after reviewing
112 the performance of the Commission during the year, propose any modifications to this
113 chapter and Chapters 2.105, 2.250, and 9.20 TMC that would improve the effectiveness
114 of the Commission and better fulfill the antidiscrimination policies of the City.

115 Section 6. That section 3.30.420, Incorporation of affirmative action, of The
116 Code of the City of Topeka, Kansas, is hereby repealed:

117 ~~**Incorporation of affirmative action.**~~

118 ~~All affirmative action procedures required for public contracts shall be applicable~~
119 ~~and are incorporated by reference.~~

120 Section 7. That section 3.30.440, Definitions, of The Code of the City of
121 Topeka, Kansas, is hereby amended to read as follows:

122 **Definitions.**

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

126 ~~“Affirmative action program” means a positive program designed to ensure that a~~
127 ~~good faith effort will be made to employ applicants and to treat employees during~~
128 ~~employment equally without regard to their race, religion, creed, color, sex, disability~~
129 ~~which is unrelated to the ability to perform a particular job or occupation, national origin,~~
130 ~~ancestry or age. Such program shall include, where applicable, but not be limited to, the~~
131 ~~following:~~

132 ~~(1) Recruitment and recruitment advertising;~~

133 ~~(2) Employment, including upgrading, promotion, demotion, transfer, layoff or~~
134 ~~termination;~~

135 ~~(3) Rates of pay or other forms of compensation;~~

136 ~~(4) Other terms or conditions of employment; and~~

137 ~~(5) Selection for training, including apprenticeship.~~

138 ~~The program shall include goals, methods and timetables for implementation of~~
139 ~~the program.~~

140 ~~“Certificate of compliance” means a written certificate issued by a State or~~
141 ~~Federal agency charged with administration of a governmentally recognized affirmative~~
142 ~~action program stating that the person named in the certificate is in compliance with the~~
143 ~~terms of an affirmative action program filed by the named person with the State or~~
144 ~~Federal agency.~~

145 “Contract” means any contract, agreement, purchase order or arrangement
146 required or permitted by the ordinances of the City to which the City shall be a
147 contracting party and which shall hereafter be entered into or renewed, except the
148 following:

149 ~~(1) Emergency requisitions for goods, supplies and services as provided for by~~
150 ~~the Contracts and Procurement Division;~~

151 ~~(21) Imprest accounts in the nature of petty cash funds;~~

152 ~~(32) Any bona fide religious institutions with respect to any qualifications for~~
153 ~~employment when such qualifications are related to a bona fide religious purpose; and~~

154 ~~(43) Any type of employment where religious creed, national origin or ancestry~~
155 ~~would be considered an essential qualification for employment. or~~

156 ~~(5) Contracts for goods, supplies or services, the cost of which will not exceed~~
157 ~~\$15,000; provided, however, that if any contractor shall do a total annual business with~~
158 ~~the City in excess of \$15,000, such contractor shall submit an affirmative action~~
159 ~~program in writing to the Contracts and Procurement Division. For the purposes of this~~
160 ~~article, total annual business shall be measured by the amount of business done by the~~
161 ~~contractor with the City during either the current or the preceding fiscal year of the City.~~

162 “Contracting agency” means any department, agency, commission or authority of
163 the City which enters into contracts.

164 “Contractor” means any individual, partnership, corporation, association or other
165 entity, or any combination of the foregoing, which enters into a contract with the City,
166 and which has four or more employees during the term of the contract with the City.

167 “Disadvantaged business enterprise” means small business concerns controlled

168 ~~by socially and economically disadvantaged individuals or women.~~

169 ~~“Minority business enterprise” means a business at least 51 percent of which is~~
170 ~~owned and operated by a minority or by minority group members or, in the case of a~~
171 ~~publicly owned business or corporation, at least 51 percent of the stock of which is~~
172 ~~owned by minority group members.~~

173 “Performance of work” means the furnishing of any personal service, labor,
174 materials or equipment used in the fulfillment of a contractor’s obligation under a City
175 contract.

176 “Person” means any natural person, contractor, subcontractor, supplier of goods
177 or services, or any agent, servant or employee of any of the foregoing. As used in this
178 article, the word “person” is a generic term unless the context clearly indicates
179 otherwise.

180 “Subcontractor” means, in a construction project, any individual, partnership,
181 corporation, association or other entity, or any combination of the foregoing, who shall
182 undertake, by virtue of a separate contract directly with the general contractor awarded
183 the construction project, to fulfill all or any part of any contractor’s obligation, exclusive
184 of a contract solely to furnish supplies, ~~and who has four or more employees during the~~
185 ~~term of the subcontract.~~

186 ~~“Women business enterprise” means a business at least 51 percent of which is~~
187 ~~owned and operated by a woman or by women or, in the case of a publicly owned~~
188 ~~business or corporation, at least 51 percent of the stock of which is owned by a woman~~
189 ~~or women.~~

190 Section 8. That section 3.30.460, Affirmative action programs, of The Code of

191 the City of Topeka, Kansas, is hereby repealed:

192 **~~Affirmative action programs~~**

193 ~~(a) Submission of Program. All persons seeking to enter into a contract with the~~
194 ~~City shall submit in writing to the Contracts and Procurement Division either an~~
195 ~~affirmative action program, a certificate of compliance, or such other certificate as is~~
196 ~~acceptable to the Contracts and Procurement Division which evidences the adoption of~~
197 ~~an affirmative action program. Such affirmative action program, certificate of compliance~~
198 ~~or other certificate shall be approved and on file with the Contracts and Procurement~~
199 ~~Division, or such plan shall be submitted with the contract bid. If no affirmative action~~
200 ~~plan is submitted with the contract bid, the bid will be considered nonresponsive and will~~
201 ~~not be accepted. If any person shall fail or refuse to submit an affirmative action~~
202 ~~program as required by this article, such person shall be ineligible to enter into any City~~
203 ~~contract until the person has so complied.~~

204 ~~(b) Review by Contracts and Procurement Division.~~

205 ~~(1) Affirmative Action Program. The Contracts and Procurement Division shall~~
206 ~~receive and review affirmative action programs submitted to it, and shall approve any~~
207 ~~such program or shall specify in writing any modification of the program needed to make~~
208 ~~it conform to the requirements of this article; provided, that prior to final rejection of the~~
209 ~~program, the Contracts and Procurement Division shall advise and consult with the~~
210 ~~person submitting such program for the purpose of assisting the person to develop an~~
211 ~~acceptable affirmative action program.~~

212 ~~(2) Certificates of Compliance. The Contracts and Procurement Division shall~~
213 ~~receive and accept certificates of compliance as conforming with the terms of this article~~

214 ~~respecting submission of affirmative action programs.~~

215 ~~(3) Program Review Committee. A Program Review Committee shall be~~
216 ~~established for the purpose of reviewing and evaluating the City's minority business~~
217 ~~enterprise, women business enterprise and disadvantaged business enterprise~~
218 ~~utilization. The Committee members shall be designated by the City Manager. There~~
219 ~~shall be at least three members of the Committee and other members may be added by~~
220 ~~the City Manager. The Chief Diversity, Equity and Inclusion Officer, the Director of the~~
221 ~~Public Works Department, and the Director of the Contracts and Procurement Division~~
222 ~~shall all be members of the committee. All recommendations and determinations of the~~
223 ~~review committee may be appealed to the City Manager, whose decision shall be final~~
224 ~~and binding. The committee shall have the following duties and responsibilities:~~

225 ~~(i) Establish, on an annual basis, percentage goals for the utilization of minority~~
226 ~~business enterprise, women business enterprise and disadvantaged business~~
227 ~~enterprise participation on City contracts. Goals shall be established upon consideration~~
228 ~~of the following factors: the number and type of contracts to be awarded, the number~~
229 ~~and type of minority, women, and socially and economically disadvantaged contractors~~
230 ~~available, and past results of the City's minority business enterprise, women business~~
231 ~~enterprise and disadvantaged business enterprise utilization.~~

232 ~~(ii) Review and analyze, on a quarterly basis, minority business enterprise,~~
233 ~~women business enterprise and disadvantaged business enterprise requirements, to~~
234 ~~include evaluating the methods for achieving utilization goals and the guidelines for~~
235 ~~ascertaining contractors' compliance with the City's policies and procedures.~~

236 ~~(iii) Report to the Governing Body on a quarterly basis, through the City~~

237 ~~Manager, the findings from the review and analysis of minority business enterprise,~~
238 ~~women business enterprise and disadvantaged business enterprise participation and~~
239 ~~utilization. The Governing Body shall consider goals for the City's minority business~~
240 ~~enterprise, women business enterprise and disadvantaged business enterprise~~
241 ~~utilization in conjunction with the annual setting of budget priorities.~~

242 Section 9. That section 3.30.470, Contract conditions, of The Code of the City
243 of Topeka, Kansas, is hereby amended to read as follows:

244 **Contract conditions.**

245 (a) Contents, Posting. All contracts to be executed by the City shall contain
246 language therein requiring as a condition thereof that all persons contracting with the
247 City shall not discriminate against any person in the performance of work under the
248 contract because of age, race, sex, creed, color, disability which is unrelated to the
249 ability to perform a particular job or occupation, familial status, genetic information,
250 ~~religion, national origin, ancestry or age, race, religion, sex, veteran status or any other~~
251 factor protected by law, except by reason of demonstrably valid occupational
252 disqualification. Each person will post the office of employment of its premises with
253 notices setting forth both the above-stated provisions and that the person agrees to
254 abide by such provisions, ~~including implementation of the affirmative action program~~
255 ~~submitted in connection with the contract.~~ The contractor shall be bound by both the
256 terms of this section and the rules and regulations. In all solicitations or advertisements
257 for employees, the contractor shall include the phrase "equal opportunity employer" or a
258 similar phrase to be approved by the Contracts and Procurement Division.

259 (b) Failure to Comply – Breach of Contract. If a contractor shall fail, refuse or

260 neglect to comply with the terms of the contract conditions, such failure shall be deemed
261 a total breach of the contract, and such contract may be terminated, canceled or
262 suspended, in whole or in part, and such contractor may be declared ineligible for any
263 further City contracts for a period of up to one year; provided, that if a contract is
264 terminated, canceled or suspended for failure to comply with this section, the contractor
265 shall have no claims for damages against the City on account of such termination,
266 cancellation or suspension or declaration of ineligibility.

267 Section 10. That section 9.20.020, Policy, of The Code of the City of Topeka,
268 Kansas, is hereby amended to read as follows:

269 **Policy.**

270 The practice or policy of discrimination against persons by reason of their age,
271 color, disability, familial status, ~~gender identity~~, genetic information, national origin or
272 ancestry, race, religion, sex, ~~sexual orientation~~, veteran status or any other factor
273 protected by law (“protected class”) is a matter of concern to the City, since such
274 discrimination not only threatens the rights and privileges of the inhabitants of the City
275 but also menaces the institutions and foundations of a free democratic state. It is hereby
276 declared to be the policy of the City, in exercise of its police power for the protection of
277 the public safety, health and general welfare, for the maintenance of business and good
278 government, and for the promotion of the City’s trade and commerce, to eliminate and
279 prevent discrimination or segregation based on a protected class. It is further declared
280 to be the policy of the City to assure equal opportunity and encouragement for every
281 person, regardless of their membership in a protected class, to secure and hold, without
282 discrimination, employment in any field of work or labor for which the person is

283 otherwise properly qualified; to assure equal opportunity for all persons within this City
284 to full and equal public accommodations and the full and equal use and enjoyment of
285 the services, facilities, privileges and advantages of all governmental departments or
286 agencies; and to assure equal opportunity for all persons within this City in housing.

287 Section 11. That section 9.20.030, Civil rights declared, of The Code of the City
288 of Topeka, Kansas, is hereby amended to read as follows:

289 **Civil rights declared.**

290 (a) The right of an otherwise qualified person to be free from discrimination
291 because of that person's ~~actual or perceived~~ age, color, disability, familial status, ~~gender~~
292 ~~identity~~, genetic information, national origin or ancestry, race, religion, sex, ~~sexual~~
293 ~~orientation or veteran status~~, or any other factor protected by law is recognized as, and
294 declared to be, a civil right. This right shall include, but not be limited to, all of the
295 following:

296 (1) The right to obtain and hold employment and the benefits associated
297 therewith without discrimination.

298 (2) The right to the full enjoyment of any of the accommodations,
299 advantages, facilities or privileges of any place of public accommodation without
300 discrimination.

301 (3) The right to engage in property transactions, including obtaining
302 housing for rental or sale and credit therefor, without discrimination.

303 (4) The right to exercise any right granted under this chapter without
304 suffering coercion or retaliation.

305 (b) Because Federal and State law consistently address unlawful discriminatory

306 and retaliatory practices related to the above-described civil rights, a separate
307 enforcement procedure is not created.

308 Section 12. That original § 2.105.010, § 2.105.040, § 2.105.050, § 2.255.040, §
309 3.30.440, § 3.30.470, § 9.20.020 and § 9.20.030 of The Code of the City of Topeka,
310 Kansas, are hereby specifically repealed.

311 Section 13. This ordinance shall take effect and be in force from and after its
312 passage, approval and publication in the official City newspaper.

313 Section 14. This ordinance shall supersede all ordinances, resolutions or rules,
314 or portions thereof, which are in conflict with the provisions of this ordinance.

315 Section 15. Should any section, clause or phrase of this ordinance be declared
316 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
317 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

318 PASSED AND APPROVED by the Governing Body on _____.

319 CITY OF TOPEKA, KANSAS

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325 _____
Michael A. Padilla, Mayor

326 ATTEST:
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330 _____
331 Brenda Younger, City Clerk