

Chapter 8.08 FAIR HOUSING

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8.08.010 Policy to Provide Fair Housing.

It is the policy of the City to provide, within constitutional limitations, for fair housing within the city limits.

(History: Ord. FH-1681 ' 1, 91; FH-521 ' 1, 68)

8.08.020 Definitions as Used in this Chapter.

- A. "Chairman" refers to the chairman of the Fair Housing Committee or in the event of his or her absence from the City, the vice chairman of the committee;
- B. "Discriminatory housing practice" means an act that is unlawful under Sections 8.08.060 through 8.08.080;
- C. "Dwelling" means any building, structure, or portion thereof which is occupied as or designed or intended for occupancy, as a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof;

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- D. "Familial status" means one or more individuals (who have not attained the age of 18 years) being 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 protection 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.

E. "Family" includes a single individual;

F. "Disability" means, with respect to a person:

1. a physical or mental impairment which substantially limits one or more of such person's major life activities,
2. a record of having such an impairment, or
3. being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance, as that term is defined in the federal statutes from time to time (presently defined in section 102 of the Controlled Substances Act, 21 U.S. C. 802), and neither the term "disability" nor the term "individual with disabilities" shall apply to an individual solely because that individual is a transvestite.

G. "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries;

H. "Real estate broker" means any person who, for a fee or other valuable consideration, sells, purchases, exchanges or rents, or negotiates or offers or attempts to negotiate the sale, purchase, exchange or rental of real property of another or holds himself out as engaged in the business of selling, purchasing, exchanging or renting the real property of another, or collects rental for the use of the real property of another;

I. "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(History: Ord. FH-1745 ' 1, 92; FH-1681 ' 1, 91; FH-521 ' 2, 68)

8.08.030 Application of Prohibition Against Discrimination.

Subject to the provisions of Sections 8.08.040 and 8.08.090, the prohibitions against discrimination in the sale or rental of housing set forth in Section 8.08.060, shall apply to all dwellings except as exempted by 8.08.040.

(History: Ord. FH-1681 ' 1, 91; FH-521 ' 3(a), 68)

8.08.040 Application of Section 8.08.060.

Nothing in Section 8.08.060 (other than subsection C.) shall apply to:

- A. Any single family house sold or rented by an owner; provided, that such private individual owner does not own more than three such single family houses at any one time; provided further, that in the case of the sale of any such single family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24-month period; provided further, that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three such single family houses at any one time; provided further, that the sale or rental of any such single family house shall be excepted from the application of this ordinance only if such house is sold or rented:
 - 1. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person, and
 - 2. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of Section 8.08.050; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and any other such professional assistance as necessary to perfect or transfer the title; or
- B. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(History: Ord. FH-1681 ' 1, 9l; FH-521 ' 3(b), 68)

8.08.050 Definition of Person in Business of Selling or Renting.

For the purpose of Section 8.08.040, a person shall be deemed to be in the business of selling or renting dwellings if:

- A. He or she has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; or
- B. He or she has, within the preceding 12 months, participated as agent, other than in the sale of his or her own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or
- C. He or she is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(History: Ord. FH-1681 ' 1, 9l; FH-521 ' 3(c), 68)

8.08.060 Discrimination in Sale or Rental of Housing.

As made applicable by Sections 8.08.030 through 8.08.050 and except as exempted by Sections 8.08.040 and 8.08.090, it shall be unlawful:

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- A. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin;
- B. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin;
- C. To 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 a dwelling that indicates any preference limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin or an intention to make any such preference, limitation, or discrimination;
- D. To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental, when such dwelling is in fact so available;
- E. For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, disability, familial status, or national origin.
- F.
 - 1. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:
 - a. that buyer or renter,
 - b. a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
 - c. any person associated with that buyer or renter.
 - 2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
 - a. that person; or
 - b. a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
 - c. any person associated with that person.
 - 3. For purposes of this subsection, discrimination includes:
 - a. a refusal to permit, at the expense of the person with disabilities, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

- b. a refusal to make accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
 - c. in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988 [enacted September 13, 1988], a failure to design and construct those dwellings in such a manner that:
 - (1) the public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;
 - (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - (3) all premises within such dwellings contain the following features of adaptive design:
 - (a) an accessible route into and through the dwelling;
 - (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - (c) reinforcements in bathroom walls to allow later installation of grab bars; and
 - (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
4. 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 paragraph 3.c.(3).
 5. As used in this section, the term "covered multifamily dwellings" means:
 - a. buildings consisting of 4 or more units if such buildings have one or more elevators; and
 - b. ground floor units in other buildings consisting of 4 or more units.
 6. Nothing in this section shall be construed to invalidate or limit any law of the State of Kansas, the City of Overland Park or political subdivision of the state having lawful jurisdiction, that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required by this section.
 7. Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(History: Ord. FH-1745 ' 2, 92; FH-1681 ' 1, 91; FH-1110 ' 1, 81; FH-521 ' 4, 68)

8.08.070 Discrimination in Residential Real Estate-related Transactions.

- A. In general. It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms and conditions of such a transaction, because of race, color, religion, sex, disability, familial status, or national origin.
- B. Definition. As used in this section, the term "residential real estate-related transaction" means any of the following:
 - 1. The making or purchasing of loans or providing other financial assistance:
 - a. for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - b. secured by real estate.
 - 2. The selling, brokering, or appraising of residential real property.
- C. Appraisal exemption. Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, disability, or familial status.

(History: Ord. FH-1745 ' 3, 92; FH-1681 ' 1, 9l; FH-1110 ' 2, 81; FH-521 ' 5, 68)

8.08.080 Discrimination in Provision of Brokerage Services.

It is unlawful to deny any person access to or membership or participation in any multiple-listing services, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, disability, familial status or national origin.

(History: Ord. FH-1745 ' 4, 92; FH-1681 ' 1, 9l; FH-1110 ' 3, 81; FH-521 ' 6, 68)

8.08.090 Exemption.

- A. Nothing in this chapter shall 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 such religion is restricted on account of race, color, or national origin. Nor shall anything in this chapter 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 such lodgings to its members or from giving preference to its members.
- B. 1. Nothing in this chapter limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this chapter regarding familial status apply with respect to housing for older persons.

2. As used in this section, "housing for older persons" means housing:
 - a. provided under any state or federal program that the Secretary determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or
 - b. intended for, and solely occupied by, persons 62 years of age or older; or
 - c. intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this section, the regulations of the Secretary implementing 42 U.S.C. Section 3607, which requires the following factors, shall be applicable:
 - (1) the existence of 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 important housing opportunities for older persons; and
 - (2) that at least 80 percent of the units are occupied by at least one person 55 years of age or older; and
 - (3) the 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.
3. Housing shall not fail to meet the requirements for housing for older persons by reason of:
 - a. persons residing in such housing as of September 13, 1988 who do not meet the age requirements of subsections 2.b. or c.; provided, that new occupants of such housing meet the age requirements of subsections 2.b. or c.; or
 - b. unoccupied units: provided, that such units are reserved for occupancy by persons who meet the age requirements of subsections 2.b. or c..
4. Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)

(History: Ord. FH-1681 ' 1, 91; FH-521 ' 7, 68)

8.08.100 Prevention of Intimidation in Fair Housing Cases.

It is unlawful for any person, whether or not acting under color of law, by force, or threat of force, to wilfully injure, intimidate or interfere with, coerce or threaten, or attempt to injure, intimidate or interfere with, coerce or threaten:

- A. Any person because of his or her race, color, religion, sex, familial status, disability, or national origin and because he or she is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwellings, or applying for or participating in any service, organization, or facility relating to the business of selling or renting dwellings; or
- B. Any person because he or she is or has been, or in order to intimidate such person, or any other person, or any classes of persons from
 - 1. Participating, without discrimination on account of race, color, religion, sex, familial status, disability, or national origin in any of the activities, services, organizations or facilities described in subsection A, or
 - 2. Affording another person or class of persons opportunity or protection so to participate, or
- C. Any person because he or she is or has been or in order to discourage such citizen, or any other citizen, from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, familial status, disability, or national origin, in any of the activities, services, organizations or facilities described in subsection A or participating lawfully in speech or peaceful assembly opposing any denial of opportunity to so participate.

(History: Ord. FH-1745 ' 5, 92; FH-1681 ' 1, 9l; FH-1110 ' 4, 81; FH-521 ' 8, 68)

8.08.110 Procedure for Discontinuance of Violations Generally.

To secure within a reasonable time, bona fide accomplishment of this chapter in individual cases, the following procedure in Sections 8.08.120 through 8.08.200 to facilitate discontinuance of violations without imposition of penal sanctions shall be employed.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1 (part), 71; FH-521 ' 9 (part) 68)

8.08.120 Complaint - Filing and Contents.

Any person claiming to be aggrieved by violation, as defined in this chapter, may on a standardized form, file with the City Clerk a written, verified complaint, identifying the person alleged to have committed the violation and setting forth the particulars thereof; the city clerk is directed to adopt and furnish, without charge, official complaint forms, and is empowered to administer oaths to complainants, and he or she and his or her staff may assist in the clerical preparation of such complaints. Such complaints shall be filed within 180 days after the date on which the violation allegedly occurred.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1(part), 71; FH-521 ' 9(a) 68)

8.08.130 Referral of Complaint to Fair Housing Committee -Investigation.

Upon the filing of a complaint, as herewith provided, the City Clerk shall refer the complaint to the then designated chairman of the Fair Housing Committee or, in his or her absence from the City, the vice chairman of the committee. The chairman shall cause an immediate investigation of the matter stated in the complaint and shall attempt to effect an adjustment or conciliation by conference and negotiation.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1 (part), 71; FH-521 ' 9(b), 68)

8.08.140 Findings of Investigation - Actions.

After the investigation and attempted adjustment or conciliation by the chairman or vice chairman but within 30 days of the filing of the complaint, if in the judgment of the chairman to whom said complaint has been referred the complaint is substantial and the adjustment or conciliation has not occurred, the chairman shall refer the complaint, together with a full report of his or her activities in connection therewith, to the Fair Housing Committee. If the chairman finds the complaint is frivolous or not in good faith, he or she shall submit his or her findings, together with all the evidence he has gathered, to the Fair Housing Committee who may adopt the finding as a final disposition of the complaint, or upon motion of two members of the Fair Housing Committee act upon the finding in the same manner as if the chairman had found the complaint to be substantial and adjustment or conciliation had not occurred.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1 (part) 71; FH-521 ' 9(c) 68)

8.08.150 Fair Housing Committee Established - Membership - Terms - Quorum.

There is established a fair housing committee of six members to be appointed by the mayor, by and with the consent of the council. The mayor, by and with the consent of the council, shall designate one member as chairman, who shall have voting privileges only in case of a tie vote, and another member as vice chairman, which designation shall be for the extent of the respective terms. Three of the members first appointed shall serve for a term of two years and three of the members first appointed shall serve for a term of three years. Thereafter, members shall be appointed for terms of two years each. Vacancies shall be filled by appointment for the unexpired term. A quorum shall consist of a majority of the then current membership of the committee, and a quorum may perform its duties and may keep minutes and execute its reports in the name of the committee. The committee shall meet a minimum of once each calendar year regardless of the pendency of business before the committee.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1(part) 71; FH-521,A ' 1, 69; FH-521 ' 9(d) 68)

8.08.160 Hearing.

Upon reference of a complaint from the chairman, the Fair Housing Committee shall promptly set a date for hearing of the matters alleged in such complaint and subsequent occurring related matters; such hearing shall occur in the City Hall not more than 30 days after the date on which the chairman shall have so referred such complaint, but only after giving at least five days' prior written notice to the complainant and to the person alleged to have committed the violation; for purposes of such hearing the Fair Housing Committee shall have the power to administer oaths and at the request of the complainant, or the person alleged to have committed the violation, or upon its own motion to issue process and to compel the attendance of any person or witness, together with books, papers and other documents; such process shall be executed by the police

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department and shall be enforced as in all cases by City ordinance violations; such hearings shall be conducted in a fair and impartial manner according to rules generally applicable to administrative hearings under state law allowing liberal application of the rules of evidence and flexible procedures consistent with the requirements of due process; the proof of the matters contained within the complaint may be presented by a member of the legal department at the hearing upon request of the Fair Housing Committee; the complainant and the person alleged to have committed the violation may appear with legal counsel and shall have the right to present proof and cross-examine witnesses in all matters relating to the complaint and subsequent related occurrences.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1(part) 71; FH-521 ' 9(e) 68)

8.08.170 Action after Hearing When Complaint Is Considered Well Founded.

After such hearing, if a majority of the Fair Housing Committee is convinced by the evidence upon the hearing that the complaint is well founded, the Fair Housing Committee shall forthwith by persuasion, education and entreaty diligently attempt to secure within a reasonable time, not to exceed 60 days, voluntary discontinuance of the violation complained of.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1(part) 71; FH-521 ' 9(f), 68)

8.08.180 Hearing and Conciliation to be in Compliance with the Kansas Open Meetings Law.

The Fair Housing Committee shall conduct the hearing and adjustment or conciliation discussions in compliance with the Kansas Open Meetings Law, K.S.A. 75-4317, et seq. Following the procedures required by that law, the committee may meet in executive session when deliberating matters relating to a decision involving quasi-judicial functions.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1 (part), 71; FH-521 ' 9(g) 68)

8.08.190 Recording Proceedings, When.

If the complainant or the person alleged to have committed the violation requests and posts reasonable security for the costs thereof, the Fair Housing Committee shall secure the attendance of a certified shorthand reporter for the purpose of recording the proceedings at the hearing. The committee may direct the recording or other preservation of the transcript of any of its proceedings that it deems advisable.

(History: Ord. FH-1681 ' 1, 9l; FH-521-B ' 1(part) 71; FH-521 ' 9(h), 68)

8.08.200 Failure to Secure Compliance - Certification of Matter to Legal Department.

The Fair Housing Committee, in the event failure to secure voluntary compliance with the requirements of this chapter may direct the chairman thereof to certify in writing to the legal department that all reasonable efforts of the committee to secure conciliation are concluded in the matter and the committee shall, with such certification, transmit the committee file, the transcript of the hearing, if any, and in all other respects cooperate with the legal department.

(History: Ord. FH-1681 ' 1, 9l; FH-521 ' 10, 68)

8.08.210 Prosecution of Violation.

Upon certification by the Fair Housing Committee the legal department shall initiate a charge in the municipal court against the alleged violator and prosecute the same to final conclusion. No prosecution shall be brought under Sections 8.08.020 through 8.08.080 except upon certification to the City legal department, as provided for in Section 8.08.200.

(History: Ord. FH-1681 ' 1, 9l; FH-521 ' 11, 68)

8.08.220 Punishment of Violators.

Any person who violates any of the provisions of this chapter shall upon conviction thereof be punished for such violation by a fine of \$250 or imprisonment for not more than 30 days for such violation, or by both such fine and imprisonment. Upon a second conviction thereof such person shall be punished by a fine of \$500 or imprisonment for not more than 60 days for such violation, or by both such fine and imprisonment. Upon a third conviction thereof, and any subsequent convictions after such third conviction thereof, such persons shall be punished for such violation by a fine of \$1,000 or imprisonment of not more than 120 days for such violation, or by both such fine and imprisonment.

(History: Ord. FH-1681 ' 1, 9l; FH-521 ' 12, 68)

8.08.230 Penalty for Disobeying or Interfering with Fair Housing Committee.

Any person who wilfully disobeys or interferes with the processes of the Fair Housing Committee without lawful justification therefor is guilty of a violation and upon conviction thereof shall be punished by a fine of \$250 or by imprisonment for not more than 30 days for such violation, or by both such fine and imprisonment. Upon a second conviction thereof such person shall be punished by a fine of \$500 or imprisonment for not more than 60 days for such violation, or by both such fine and imprisonment. Upon a third conviction thereof, and any subsequent convictions after such third conviction thereof, such person shall be punished for such violation by a fine of \$1,000 or imprisonment of not more than 120 days for such violation, or by both such fine and imprisonment.

(History: Ord. FH-1681 ' 1, 9l; FH-521 ' 13, 68)

8.08.240 False Statements Deemed Violation.

Any person willfully making false, malicious or unfounded accusations against any person or persons complained of is guilty of a violation and upon conviction thereof shall be punished by a fine of \$250 or by imprisonment for not more than 30 days for such violation or by both such fine and imprisonment. Upon a second conviction thereof such person shall be punished by a fine of \$500 or imprisonment for not more than 60 days for such violation, or by both such fine and imprisonment. Upon a third conviction thereof, and any subsequent convictions after such third conviction thereof, such person shall be punished for such violation by a fine of \$1,000 or imprisonment of not more than 120 days for such violation, or by both such fine and imprisonment.

(History: Ord. FH-1681 ' 1, 9l; Amended during codification in accordance with KSA 12-3015; FH-521 ' 14, 68)

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