



# **City of Grand Island**

**Tuesday, October 2, 2012**

**Study Session**

## **Item X3**

**Discussion Concerning Proposed Ordinance Prohibiting  
Discrimination Based on Sexual Orientation - At the Request of  
Councilmember Larry Carney.**

**Staff Contact: Robert J. Sivick, City Attorney**

# **Council Agenda Memo**

**From:** Robert J. Sivick, City Attorney

**Meeting:** October 2, 2012

**Subject:** Discussion Related to a Possible City Ordinance  
Prohibiting Discrimination in Employment, Housing, and  
Public Accommodations against Persons based on their  
Sexual Orientation

**Item #'s:** 3

**Presenter(s):** Councilman Larry Carney

## **Background**

Both United States and Nebraska law prohibits discrimination against persons who are members of protected classes such as race, religion, and ethnic origin. However, neither the laws of the United States or the State of Nebraska consider sexual orientation to be a protected class and thus offer protection to persons suffering discrimination as a result of being gay, lesbian, bisexual, or transgendered (GLBT).

In recent years some States and numerous cities have enacted laws offering such protection lacking at the Federal or State level. In 2012 two Nebraska cities (Omaha and Lincoln) have enacted ordinances prohibiting discrimination based on sexual orientation. Nebraska Attorney General Jon Bruning issued an opinion stating neither City had the right to expand civil rights protections to additional protected classes without a vote of the electorate approving such a revision of their City charters. Both the Omaha and Lincoln City Attorneys rejected the legal reasoning in the Attorney General's opinion. Presently the Omaha ordinance is facing possible repeal through referendum and the Lincoln ordinance has already suffered such a fate.

## **Discussion**

The trend in American law is the expansion of Civil Rights protections. In recent years these protections have been afforded to the GLBT community either through the enactment of anti-discrimination laws or the expansion of marriage and adoption rights. It is debatable if these legal developments are a result of changing societal attitudes or societal attitudes have changed in response to the legal expansion of civil rights. Nonetheless, these changes are taking place not only in the legal arena but in

communities and workplaces. Tolerance of homosexuality has increased over the last few decades as evidenced by the fact 477 of the Fortune 500 companies have written company policies prohibiting discrimination based on sexual orientation.

Any proposed ordinance prohibiting discrimination based on sexual orientation will have to be carefully crafted so as not to have language that is vague, to exempt religious organizations engaging in constitutionally protected activities, and to consider the practical effects of the enactment and enforcement of such an ordinance.



City of Omaha  
Jim Suttle, Mayor

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**Paul D. Kratz**  
City Attorney

Honorable President

and Members of the City Council,

Attached please find an Ordinance which was prepared at the request of Councilmember Ben Gray. This Ordinance adds sexual orientation and gender identity as additional protected categories under the City of Omaha's prohibitions against discriminatory practices. In addition, the Ordinance provides an exemption for religious organizations from these new requirements. The Ordinance also amends the Equal Employment Opportunity clause which is required to be inserted in City contracts to include these protected categories.

Should you have any questions or wish to discuss this further, please do not hesitate to contact me.

Respectfully submitted,

Bernard J. in den Bosch  
Assistant City Attorney

2/21/12  
Date

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE to amend 13-82, 13-84, 13-85, 13-89, 13-90, 13-91, 13-92, 13-93, 13-94, 13-95, 13-97 and 10-192 of the Omaha Municipal Code to add prohibitions for discrimination on the basis of sexual orientation, and gender identity within the City of Omaha and in City of Omaha contracts; and to provide the effective date hereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That section 13-82 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-82. General definitions.**

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

(a) *Age*: Forty through 70 years of age inclusive for employment purposes and all ages 40 and above on all matters; provided, however, that the definition of "age" as contained in this section shall not apply to the mandatory retirement age for uniformed personnel of the police and fire departments as established by section 23-309.

(b) *Charge*: A written statement under oath or affirmation which alleges an unlawful practice and which is filed with the director.

(c) *Charge filed with the director*: A charge which is received and accepted by the director for further action.

(d) *Charging party*: The individual making a charge alleging an unlawful practice, or the director.

(e) *Director*: The human rights and relations director or a designate.

(f) *Discrimination*: Any act or failure to act, whether by itself or as a part of a practice, the effect of which is to differentiate between or among individuals or groups of individuals by reason of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability.

(g) *Disability*: The physical or mental condition of an individual who:

(1) Has a physical or mental impairment which substantially limits one or more major life activities;

(2) Has a record of such impairment; or

(3) Is regarded as having such impairment.

(h) Gender identity: Means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.

(i) *Hearing board*: The civil rights hearing board created by this article.

(j) *Individual*: Includes individuals.

(k) *Marital status*: The state of being married, single, divorced, separated or widowed or the changing of such state.

(l) *National origin*: Ancestry, lineage, name, place of birth or any factor indicative of any of these; includes the national origin of an ancestor.

(m) *Person*: Any individual, association, committee, corporation, joint apprenticeship committee, joint-stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, and any other legal or commercial entity, the city or any governmental entity or agency, excluding the United States of America and the State of Nebraska, or any agent or representative of any of the foregoing.

(n) *Religious organization*: A bona fide religious corporation, association, institution or society which does not limit or exclude or discriminate against individuals on the basis of race, color, national origin, sex or disability.

(o) *Respondent*: Any person against whom a charge has been filed.

(p) *Sex*: The state of being either male or female.

(q) Sexual Orientation: Actual or perceived heterosexuality, homosexuality, or bisexuality.

(r) *Unlawful practice*: A practice or act within the city which is designated as discriminatory under the terms of this article.

Section 2. That section 13-84 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-84. Unlawful practices.**

It is an unlawful practice for any person, wholly or partially because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability, to do any of the following:

(a) To deny an individual a full and equal enjoyment of any place of public accommodation;

(b) To discriminate against or segregate any individual in a place of public accommodation;

(c) Directly or indirectly to refuse, withhold from or deny to any individual the accommodations, advantages, facilities, services or privileges of a place of public accommodation;

(d) To attempt to refuse, withhold from or deny to any individual, directly or indirectly, the accommodations, advantages, facilities, services or privileges of a place of public accommodation; or

(e) To print, circulate, post, or mail or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be refused, withheld from, or denied an individual because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age, or disability, or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable, because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability.

Section 3. That section 13-85 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-85. Authorized exceptions—Religious preference.**

It is not an unlawful practice for any place of public accommodation owned by or operated on behalf of a religious organization to give preference in the use of such place to members of the same faith as that of the administering body. If a place of public accommodation owned by or operated on behalf of a religious organization is made available for use only to members of the

1 same faith as that of the administering body, the provisions concerning discriminatory practices  
2 that relate to sexual orientation and gender identity shall not apply.  
3

4 Section 4. That section 13-89 of the Omaha Municipal Code is hereby amended as follows:

5 **Sec. 13-89. Unlawful practices--Employers.**  
6

7 It is an unlawful practice for an employer, wholly or partially because of race, color, creed,  
8 religion, sex, marital status, sexual orientation, gender identity, national origin, age, or disability, to  
9 do any of the following:

10  
11 (a) To fail or refuse to hire an individual;

12  
13 (b) To discharge an individual;

14  
15 (c) To discriminate against an individual with respect to compensation, benefits, or  
16 the terms, conditions or privileges of employment; provided, however, that this  
17 section shall not be interpreted to require an employer provide employment benefits  
18 to same sex partners; or  
19

20 (d) To limit, segregate or classify an employee or any prospective employee in a  
21 way which would deprive or tend to deprive an individual of employment  
22 opportunities or otherwise adversely affect an individual's employment status.  
23

24 Section 5. That section 13-90 of the Omaha Municipal Code is hereby amended as follows:

25 **Sec. 13-90. Same--Employment agencies.**  
26

27 It is an unlawful practice for an employment agency, wholly or partially because of race,  
28 color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or  
29 disability, to do any of the following:

30  
31 (a) To fail or refuse to refer an individual for employment;

32  
33 (b) To fail to list or properly classify an individual for employment; or

34 (c) To comply with a request from an employer for referral of applicants for  
35 employment if the request indicates either directly or indirectly that the employer  
36 discriminates in employment.  
37



Section 6. That section 13-91 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-91. Same--Labor organizations.**

It is an unlawful practice for a labor organization, wholly or partially because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability, to do any of the following:

(a) To exclude or to expel from membership, or otherwise to discriminate against, a member or prospective member;

(b) To limit, segregate or classify its membership or prospective membership, or to classify or to fail or refuse to refer for employment an individual in a way:

(1) Which would deprive or tend to deprive an individual of employment opportunities; or

(2) Which would limit employment opportunities or otherwise adversely affect the status of an employee or of a prospective employee;

(c) To cause or attempt to cause an employer, or to cooperate with an employer, to violate any of the provisions of section 13-89; or

(d) To fail or refuse to represent a person in a dispute with respect to compensation, benefits or other terms, conditions or privileges of employment.

Section 7. That section 13-92 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-92. Same--Training programs.**

It is an unlawful practice for an employer, labor organization or joint labor-management committee controlling apprenticeship, on-the-job training or other training or retraining program, wholly or partially because of race, color, creed, religion, sex, sexual orientation, gender identity, marital status, national origin, age or disability, to discriminate against an individual in admission to, or employment in, a program established to provide apprenticeship or other training.

Section 8. That section 13-93 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-93. Same--Advertisements.**

1 It is an unlawful practice for any person to print, publish, circulate or display or cause to be  
2 published, printed, circulated or displayed any advertisement, notice or statement relating to  
3 employment, employment opportunities, job openings, union membership, apprentice programs, job-  
4 training programs, or any of the terms, conditions or privileges thereof, the language of which  
5 advertisement, notice or statement expresses any limitation, specification, discrimination or  
6 preference as to race, color, creed, religion, sex, marital status, sexual orientation, gender identity,  
7 national origin, age or disability. A limitation, specification, discrimination or preference as to  
8 religion, national origin, sex, age or marital status is not a violation where religion, national origin,  
9 sex, age or marital status is a bona fide occupational qualification for the particular job advertised.

10  
11 Section 9. That section 13-94 of the Omaha Municipal Code is hereby amended as follows:

12 **Sec. 13-94. Same--Applications.**

13  
14 It is an unlawful practice for an employer, labor organization, employment agency or joint  
15 labor-management training committee to make or use a written or oral inquiry or form of application  
16 that expresses or implies a preference, limitation or specification based on race, color, creed,  
17 religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability,  
18 where the employer, employment agency, labor organization or joint labor-management training  
19 committee cannot show that religion, national origin, sex, age or marital status is a bona fide  
20 occupational qualification for the particular job.

21  
22  
23 Section 10. That section 13-95 of the Omaha Municipal Code is hereby amended as follows:

24 **Sec. 13-95. Authorized exceptions--Employers.**

25  
26 It is not an unlawful practice for an employer to do any of the following:

27  
28 (a) To fail or refuse to hire an individual or to discharge an individual on the basis  
29 of disability if:

30  
31 (1) The disability actually prevents the disabled individual from performing  
32 the essential functions of the job in question; and

33  
34 (2) There is no reasonable accommodation that the employer can make with  
35 regard to the disability;

36 (b) To fail or refuse to hire an individual on the basis of national origin, sex, marital  
37 status or age in those certain instances where national origin, sex, marital status or  
38 age is a bona fide occupational qualification for the particular job;

(c) To apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that such differences do not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability;

(d) To refuse an individual employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes;

(e) To adopt a voluntary affirmative action plan designed to aid in the elimination of patterns of exclusion, segregation or discrimination based on race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, age or disability.

Section 11. That section 13-97 of the Omaha Municipal Code is hereby amended as follows:

**Sec. 13-97. Same—Other.**

It is not an unlawful practice for:

(a) A religious organization to employ an individual on the basis of the individual's religion to perform work connected with the carrying on by such religious organization of its religious activity. Furthermore, the provisions in this Chapter relating to unlawful practices based on sexual orientation and gender identity do not apply to any religious organization with respect to its employment of individuals to perform work connected with the carrying on by such religious organization of its religious activity.

(b) A school, college, university or other educational institution to hire and employ employees of a particular religion if the school, college, university or other educational institution is, in whole or substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious organization and if the curriculum of the school, college, university or other education institution is directed toward the propagation of a particular religion and the choice of employees is necessary to promote the religious principles for which it is established or maintained. Furthermore, the provisions in this Chapter relating to unlawful practices based on sexual orientation and gender identity do not apply to any school, college, university or other educational institution if that school, college, university or other educational institution is, in whole or substantial part, owned, supported,

controlled or managed by a particular religion or by a particular religious institution and if the curriculum of the school, college, university or other education institution is directed toward the propagation of a particular religion and the choice of employees is necessary to promote the religious principles for which it is established or maintained.

(c) A labor organization to classify its membership or to classify or refer for employment an individual or for a labor organization or joint labor-management committee controlling apprenticeship or other training or retraining program to admit or employ an individual in any such program on the basis of religion, national origin, sex, age or marital status in those certain instances where religion, national origin, sex, age or marital status is a bona fide occupational qualification for the particular job.

(d) A labor organization or a joint labor-management committee to adopt a voluntary affirmative action plan designed to aid in the elimination of patterns of exclusion, segregation or discrimination based on race, color, creed, religion, sex, marital status, national origin, age or disability.

Section 12. That section 10-192 of the Omaha Municipal Code is hereby amended as

follows:

**Sec. 10-192. Equal employment opportunity clause.**

All contracts hereafter entered into by the city shall incorporate an equal employment opportunity clause, which shall read as follows:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, gender identity, disability or national origin. The contractor shall ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment,

1 notices to be provided by the contracting officers setting forth the provisions of this  
2 nondiscrimination clause.

3 (2) The contractor shall, in all solicitations or advertisements for employees placed  
4 by or on behalf of the contractor, state that all qualified applicants will receive  
5 consideration for employment without regard to race, religion, color, sex, sexual  
6 orientation, gender identity, or national origin, age, disability.  
7

8 (3) The contractor shall send to each representative of workers with which he has a  
9 collective bargaining agreement or other contract or understanding a notice advising  
10 the labor union or workers' representative of the contractor's commitments under the  
11 equal employment opportunity clause of the city and shall post copies of the notice in  
12 conspicuous places available to employees and applicants for employment.  
13

14 (4) The contractor shall furnish to the human rights and relations director all federal  
15 forms containing the information and reports required by the federal government for  
16 federal contracts under federal rules and regulations, including the information  
17 required by sections 10-192 to 10-194, inclusive, and shall permit reasonable access  
18 to his records. Records accessible to the human rights and relations director shall be  
19 those which are related to paragraphs (1) through (7) of this subsection and only after  
20 reasonable notice is given the contractor. The purpose of this provision is to provide  
21 for investigation to ascertain compliance with the program provided for herein.  
22

23 (5) The contractor shall take such actions with respect to any subcontractor as the  
24 city may direct as a means of enforcing the provisions of paragraphs (1) through (7)  
25 herein, including penalties and sanctions for noncompliance; however, in the event  
26 the contractor becomes involved in or is threatened with litigation as the result of  
27 such directions by the city, the city will enter into such litigation as is necessary to  
28 protect the interests of the city and to effectuate the provisions of this division; and,  
29 in the case of contracts receiving federal assistance, the contractor or the city may  
30 request the United States to enter into such litigation to protect the interests of the  
31 United States.  
32

33 (6) The contractor shall file and shall cause his subcontractors, if any, to file  
34 compliance reports with the contractor in the same form and to the same extent as  
35 required by the federal government for federal contracts under federal rules and  
36 regulations. Such compliance reports shall be filed with the human rights and  
37 relations director. Compliance reports filed at such times as directed shall contain  
38 information as to the employment practices, policies, programs and statistics of the  
39 contractor and his subcontractors.

ORDINANCE NO. \_\_\_\_\_  
PAGE 10

(7) The contractor shall include the provisions of paragraphs (1) through (7) of this section, "Equal employment opportunity clause," and section 10-193 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

Section 13. This Ordinance shall be in full force and take effect fifteen (15) days from and after its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

MAYOR OF THE CITY OF OMAHA DATE

PASSED \_\_\_\_\_

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

 2/21/12  
ASSISTANT CITY ATTORNEY DATE

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## ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Title 11 of the Lincoln Municipal Code, Equal  
2           Opportunity, and Chapter 2.76 of the Lincoln Municipal Code, the City's Personnel Rules and  
3           Regulations, to prohibit discrimination on the basis of sexual orientation or gender identity.

4           WHEREAS, it has long been the policy of the City of Lincoln to encourage and foster  
5           employment of people in the City on the basis of merit and to prevent discrimination based on  
6           characteristics that are unrelated to a person's abilities and productivity.

7           WHEREAS, a person's sexual orientation and gender identity are not related to his or  
8           her abilities or productivity in the workforce.

9           WHEREAS, it is good public policy to welcome and support business owners who  
10          employ workers based on their talents and work ethic rather than on the basis of sexual orientation  
11          or gender identity.

12          WHEREAS, denying equal opportunity for employment due to sexual orientation or  
13          gender identity is contrary to American principles of freedom and is a burden on the economic and  
14          cultural growth of the City of Lincoln.

15          WHEREAS, it is the policy of the City of Lincoln to promote the full and equal  
16          enjoyment of any place of public accommodation without discrimination or segregation.

17          BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

18          Section 1. That Section 11.01.010 of the Lincoln Municipal Code be amended to read  
19          as follows:

1     **11.01.010 Definitions.**

2             As used in this title, the following terms shall mean:

3             **Age** shall mean the age of any individual from forty years of age and above.

4             **Aggrieved person** shall mean any person who (1) claims to have been injured by a  
5     discriminatory housing practice, or (2) believes that such person will be injured by a discriminatory  
6     housing practice that is about to occur.

7             **Attorney** shall mean the City Attorney or a member of that department's staff.

8             **Commission** shall mean the Commission on Human Rights of the City of Lincoln, Nebraska  
9     or any members of the Commission who may be assigned by the Commission to hear complaints  
10    by public hearing proceedings.

11            **Complainant** shall mean the person, including the Commission, who files a complaint under  
12    this title.

13            **Conciliation** shall mean the attempted resolution of issues raised by a complaint or by the  
14    investigation of a complaint through informal negotiations involving the aggrieved person, the  
15    respondent, and the Commission.

16            **Covered multi-family dwelling** shall mean:

17                (1) A building consisting of four or more units if such building has one or more  
18    elevators; and

19                (2) Ground-floor units in any other building consisting of four or more units.

20            **Disability** shall mean, with respect to a person:

21                (1) A physical or mental impairment which substantially limits one or more of such  
22    person's major life activities;

23                (2) A record of having such an impairment; or



1           (3) Being regarded as having such an impairment.

2           Disability shall not include current, illegal use of or addiction to a controlled substance  
3 as defined by state law.

4           **Discriminatory housing practice** shall mean an act that is unlawful as provided by Chapter  
5 11.06.

6           **Dwelling** shall mean any building, structure, or portion thereof or mobile home which is  
7 occupied as, or designed or intended for occupancy as, a residence for one or more families, and any  
8 vacant land which is offered for sale or lease for the construction or location of any such building,  
9 structure, or portion thereof, or mobile home.

10          **Employee** shall mean an individual employed by an employer, or an applicant for  
11 employment.

12          **Employer** shall mean a person engaged in an industry who has four or more employees for  
13 each working day in each of twenty or more calendar weeks in the current or preceding calendar  
14 year, and any agent of such person, but such term does not include (1) the United States government,  
15 a corporation wholly owned by the government of the United States, or an Indian tribe; or (2) the  
16 State of Nebraska; or (3) the County of Lancaster; or (4) a bona fide private membership club, other  
17 than a labor organization, which is exempt from taxation under Section 501(c) of the Internal  
18 Revenue Code of 1954; or (5) a religious organization.

19          **Employment agency** shall mean any person regularly undertaking with or without  
20 compensation to procure employees for an employer or to procure for employees opportunities to  
21 work for an employer and includes an agent of such person.

22          **Equal Opportunity Officer** shall mean the duly appointed Equal Opportunity Officer of the  
23 City of Lincoln or the designated representative of such person.

1           **Familial status** shall mean one or more minors being domiciled with:

2                   (1) A parent or other person having legal custody of such individual; or

3                   (2) The designee of a parent or other person having legal custody, with the written  
4 permission of the parent or other person.

5           The protections afforded against discrimination on the basis of familial status shall  
6 apply to any person who is pregnant or is in the process of securing legal custody of any minor.

7           **Family** shall include a single individual.

8           **Gender identity** shall mean the actual or perceived appearance, expression, identity, or  
9 behavior of a person as being male or female, whether or not that appearance, expression, identity,  
10 or behavior is different from that traditionally associated with the person's designated sex at birth.

11          **Housing for older persons** shall mean:

12                   (1) Housing provided under any federal, state, or local program that the Secretary of  
13 Housing and Urban Development or the Commission determines is specifically designed and  
14 operated to assist elderly persons as defined in the federal, state, or local program;

15                   (2) Housing intended for, and solely occupied by, persons sixty-two years of age or  
16 older; or

17                   (3) Housing intended and operated for occupancy by at least one person fifty-five  
18 years of age or older per unit. In determining whether housing qualifies as housing for older persons  
19 under this subsection, the Commission shall develop regulations which require at least the following  
20 factors:

21                   A. The existence of significant facilities and services specifically designed to  
22 meet the physical or social needs of older persons or, if the provision of such

1 facilities and services is not practicable, that such housing is necessary to  
2 provide important housing opportunities for older persons;

3 B. That at least eighty percent of the units are occupied by at least one person  
4 fifty-five years of age or older per unit; and

5 C. The publication of and adherence to policies and procedures which  
6 demonstrate an intent by the owner or manager to provide housing for  
7 persons fifty-five years of age or older.

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

9 (i) Persons residing in the housing as of the effective date of this ordinance  
10 who do not meet the age requirements of (2) or (3) above if succeeding  
11 occupants of the housing meet the age requirements; or

12 (ii) Unoccupied units if the units are reserved for occupancy by persons who  
13 meet the age requirements.

14 **Labor organization** shall mean any organization which exists wholly or in part for one or  
15 more of the following purposes: Collective bargaining; dealing with employers concerning  
16 grievances, terms, or conditions of employment; or of mutual aid or protection in relation to  
17 employment.

18 **Person** shall include one or more individuals, corporations, partnerships, associations, labor  
19 organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated  
20 organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

21 **Private membership club** shall mean one that is organized and operated exclusively for  
22 pleasure, recreation, and other nonprofitable purposes, but if any part of its earnings is used to the  
23 benefit of any private shareholder or member thereof, it shall be deemed not to be a private club.

1 A club which engages in business, such as making its social and recreational facilities available to  
2 the general public, shall not be deemed to be a private club. Generally, it is the intent of this  
3 definition to apply to social and recreational clubs which are supported solely by membership fees,  
4 dues, and assessment.

5 **Public accommodations** shall mean all places or businesses offering or holding out to the  
6 general public goods, services, privileges, facilities, advantages, and accommodations for the peace,  
7 comfort, health, welfare, and safety of the general public and such public places providing food,  
8 shelter, recreation, and amusement including, but not limited to:

9 (1) Any inn, hotel, motel, or other establishment which provides lodging to transient  
10 guests, other than an establishment located within a building which contains not more than five  
11 rooms for rent or hire and which is actually occupied by the proprietor of such establishment as such  
12 proprietor's residence;

13 (2) Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other  
14 facility principally engaged in selling food for consumption on the premises, including, but not  
15 limited to, any such facility located on the premises of any retail establishment;

16 (3) Any gasoline station, including all facilities located on the premises of such  
17 station and made available to the patrons thereof;

18 (4) Any motion picture house, theater, concert hall, sports arena, stadium, or other  
19 place of exhibition or entertainment;

20 (5) Any public facility owned, operated, or managed by or on behalf of the City of  
21 Lincoln or any agency thereof, or any public corporation, and any such facility supported in whole  
22 or in part by public funds; and

1 (6) Any establishment which is physically located within the premises of any  
2 establishment otherwise covered by this section or within the premises of which is physically located  
3 any such covered establishment, and which holds itself out as serving patrons of such covered  
4 establishment.

5 **Qualified individual with a disability** shall mean an individual with a disability who, with  
6 or without reasonable accommodation, can perform the essential functions of the employment  
7 position that such individual holds or desires. For the purposes of this title, consideration shall be  
8 given to the employer's judgment as to what functions of a job are essential, and if an employer has  
9 prepared a written description before advertising or interviewing applicants for the job, this  
10 description shall be considered evidence of the essential functions of the job.

11 **Reasonable accommodation** shall include making existing facilities used by employees  
12 readily accessible to and usable by individuals with disabilities, job-restructuring, part-time or  
13 modified work schedules, reassignment to a vacant position, acquisition or modification of  
14 equipment or devices, appropriate adjustment or modification of examinations, training manuals,  
15 or policies, the provision of qualified readers or interpreters, and other similar accommodations for  
16 individuals with disabilities. Reasonable accommodation shall not include accommodations which  
17 the employer can demonstrate require significant difficulty or expense thereby posing an undue  
18 hardship upon the employer. Factors to be considered in determining whether an accommodation  
19 would pose an undue hardship shall include:

- 20 (1) The nature and the cost of the accommodation needed under this title;  
21 (2) The overall financial resources of the facility or facilities involved in the  
22 provision of the reasonable accommodation, the number of persons employed at such facility, the

1 effect on expenses and resources, or the impact otherwise of such accommodation upon the  
2 operation of the facility;

3 (3) The overall financial resources of the employer, the overall size of the business  
4 of the employer with respect to the number of its employees, and the number, type, and location of  
5 its facilities; and

6 (4) The type of operation or operations of the employer, including the composition,  
7 structure, and functions of the work force of such employer, and the geographic separateness and  
8 administrative or fiscal relationship of the facility or facilities in question to the employer.

9 **Residential real estate-related transaction**, as used in this title, shall mean:

10 (1) The making or purchasing of loans or providing other financial assistance (i) for  
11 purchasing, constructing, improving, repairing, or maintaining a dwelling; or (ii) secured by  
12 residential real estate.

13 (2) The selling, brokering, or appraising of residential real property.

14 **Respondent** shall mean:

15 (1) The person or other entity accused in a complaint of an unfair housing practice;  
16 and

17 (2) Any other person or entity identified in the course of an investigation and notified  
18 as required with respect to respondents so identified under this title.

19 **Restrictive covenants** shall mean any specification limiting the transfer, rental, or lease of  
20 any real property because of race, color, religion, sex, sexual orientation, gender identity, disability,  
21 national origin, familial status, ancestry, age, or marital status.

22 **Sexual orientation** shall mean actual or perceived heterosexuality, homosexuality, or  
23 bisexuality.

1           **Because of sex or on the basis of sex** shall include, but not be limited to, because of or on  
2 the basis of pregnancy, childbirth, or related medical conditions.

3           **Title** shall mean Title 11 of the Lincoln Municipal Code.

4           **To rent** shall include to lease, to sublease, to let, and otherwise to grant for consideration  
5 the right to occupy the premises not owned by the occupant.

6           Section 2. That Section 11.01.020 of the Lincoln Municipal Code be amended to read  
7 as follows:

8    **11.01.020   Protection, Preservation, and Perpetuation of Constitutional Rights.**

9           It is the policy of the City of Lincoln to foster equal opportunity to all persons in the City  
10 regardless of their race, color, religion, sex, sexual orientation, gender identity, disability, national  
11 origin, familial status, ancestry, age, or marital status. Denying equal access to places of public  
12 accommodation or equal opportunity for housing or employment because of race, color, religion,  
13 sex, sexual orientation, gender identity, disability, national origin, familial status, handicap, age,  
14 ancestry, or marital status is contrary to the principles of freedom and is a burden upon the  
15 objectives of the aforestated public policy of the City of Lincoln. It is the intent, purpose, and public  
16 policy of the City of Lincoln to protect, preserve, and perpetuate all constitutional rights, including  
17 the constitutional right to freely speak, write, and publish on all lawful subjects, including the right  
18 to make a comprehensive distribution of such printed material, either commercial or noncommercial,  
19 by using the most effective lawful means or methods.

20           Section 3. That Section 11.02.040 of the Lincoln Municipal Code be amended to read  
21 as follows:

1     **11.02.040   Commission on Human Rights; Powers and Duties.**

2             The provisions of this title shall be administered by the Commission on Human Rights for  
3     the City of Lincoln. The City Attorney is granted the authority to enforce this title. In carrying out  
4     the provisions of this title, the Commission shall act as an advisory body to the Mayor, City Council,  
5     and Equal Opportunity Officer on all matters within its jurisdiction and shall have the power to:

6             (a)   Review those actions of the Equal Opportunity Officer as provided by this title, and  
7     affirm or reverse such actions as may be necessary to further the purposes of this title. If any such  
8     actions are reversed, the Commission shall then direct the Equal Opportunity Officer in appropriate  
9     courses of action to further such purposes.

10            (b)   Institute actions to educate the public as to unlawful discriminatory practices and the  
11    enforcement measures provided in this title for the prevention and punishment of such practices.

12            (c)   Enforce the provisions of this title by appropriate measures, including the requiring of  
13    affirmative action on the part of violators of such provisions in order to correct such violations, and  
14    by ordering such violators to cease and desist from doing any act in violation of this title.

15            (d)   Seek to eliminate and prevent discrimination in places of public accommodation,  
16    housing, and employment as provided in this title on the basis of race, color, religion, sex, sexual  
17    orientation, gender identity, disability, national origin, familial status, ancestry, age, or marital  
18    status.

19            (e)   Effectuate the purposes of this title by conference, conciliation, and persuasion so that  
20    persons may be guaranteed their civil rights and goodwill may be fostered.

21            (f)   Formulate policies to effectuate the purposes of this title and to make recommendations  
22    to agencies and officers of the city government in aid of such policies and purposes, and to advocate



1 for the rights of women, minorities, and disabled individuals and promote causes in the name of the  
2 Commission before agencies and legislative bodies on matters of human rights.

3 (g) Designate one or more members of the Commission, or the Equal Opportunity Officer,  
4 or the Equal Opportunity Officer's staff and such other persons who may be retained for such  
5 purpose to conduct investigations of any complaint alleging discrimination because of race, color,  
6 religion, sex, sexual orientation, gender identity, disability, national origin, familial status, ancestry,  
7 age, or marital status, and in aid of such investigation, subpoena records or witnesses and compel  
8 their attendance, and to attempt to resolve such complaint by conference, conciliation, or persuasion  
9 and conduct such conciliation meetings and conferences as are deemed necessary to resolve a  
10 particular complaint.

11 (h) Determine whether reasonable cause exists to credit the allegations of a complaint;  
12 provided, that reasonable cause may be determined by any Commission committee of at least three  
13 commissioners or a Commission-appointed hearing officer, and such committee's or hearing officer's  
14 actions shall be deemed to be the action of the Commission.

15 (i) Determine that a complaint cannot be resolved by conference, conciliation, or  
16 persuasion.

17 (j) Dismiss complaints when it is determined there is not reasonable cause to credit the  
18 allegations of a complaint, or when a complainant requests the withdrawal of such complaint.

19 In the event that a complainant cannot be reasonably located, or circumstances are such  
20 that the complainant's complaint cannot be finally disposed of, the Commission shall have authority  
21 to administratively close such investigation of such complaint. If no further action is taken on such  
22 claim for a period of four years from the date of closure, the complaint shall then be deemed  
23 dismissed without prejudice.

1 (k) Hold hearings in aid thereof, subpoena witnesses and compel their attendance, and  
2 administer oaths, take testimony of any person under oath and in connection therewith require for  
3 examination any books or papers relating to any matter under investigation or in question before the  
4 Commission.

5 (l) Issue publications and the results of studies and research which will tend to promote  
6 goodwill and minimize or eliminate discrimination because of race, color, religion, sex, sexual  
7 orientation, gender identity, disability, national origin, familial status, ancestry, age, or marital  
8 status.

9 (m) Recommend damages, based on actual pecuniary loss or such damages as the  
10 Commission or Commission-appointed hearing officer may determine should be assessed against  
11 a respondent violating the provisions of this title. Additionally, the Commission may require such  
12 other remedial measures to accomplish the purposes of this title as the Commission may deem  
13 necessary. Such remedial measures may include directing the display of equal access to public  
14 accommodations or housing posters, equal employment posters, and such other informational  
15 materials as the Commission may deem appropriate.

16 (n) The Commission may file in a like manner a verified complaint of an alleged unfair  
17 discriminatory practice whenever there is reason to believe an unfair discriminatory practice has  
18 occurred, but this complaint must contain a bill of particulars setting out dates, names of witnesses,  
19 and the facts upon which the complaint is based.

20 (o) The Commission may, after the filing of a complaint, request the City Attorney to  
21 institute appropriate legal proceedings to protect the rights and privileges of the complainant  
22 provided by this title.

1           Section 4. That Title 11 of the Lincoln Municipal Code be amended so that the section  
2           numbered 11.04.010 reads as follows:

3           **11.04.010   Full and Equal Enjoyment of Place of Public Accommodation.**

4           All persons within the City of Lincoln shall be entitled to a full and equal enjoyment of any  
5           place of public accommodation, as defined in Section 11.01.010 without discrimination or  
6           segregation on the grounds of race, color, sex, sexual orientation, gender identity, religion, national  
7           origin, ancestry, disability, or marital status. Every totally or partially blind person shall have the  
8           right to be accompanied by a dog guide, especially trained for the purpose, in any place of public  
9           accommodation without being required to pay an extra charge for the dog guide.

10          Section 5. That Section 11.04.030 of the Lincoln Municipal Code be amended to read  
11          as follows:

12          **11.04.030   Refusal, Withholding From, or Denial of, Public Accommodations; Unlawful.**

13          Any person who directly or indirectly refuses, withholds from, denies or attempts to  
14          refuse, withhold, or deny to any person the accommodations, advantages, facilities, services, or  
15          privileges otherwise available in a place of public accommodation on the basis of race, color, sex,  
16          sexual orientation, gender identity, religion, national origin, ancestry, disability, or marital status  
17          shall be guilty of discriminatory practice and shall be subject to the penalties set forth in this title.

18          Section 6. That Section 11.04.060 of the Lincoln Municipal Code be amended to read  
19          as follows:

20          **11.04.060   Religious Organization Exempt; Conditions.**

21          Any place of public accommodation owned by or operated on behalf of a religious  
22          corporation, association, or society which gives preference in the use of such place to members of  
23          the same faith as that of the administering body shall not be guilty of discriminatory practice. If a

1 place of public accommodation owned by or operated on behalf of a religious organization is made  
2 available for use only to members of the same faith as that of the administering body, the provisions  
3 concerning discriminatory practices that relate to sexual orientation and gender identity shall not  
4 apply.

5 Section 7. That Section 11.06.020 of the Lincoln Municipal Code be amended to read  
6 as follows:

7 **11.06.020 Unlawful Acts Enumerated.**

8 Except as exempted by Section 11.06.070, it shall be unlawful to:

9 (a) Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for  
10 the sale or rental of, or otherwise make unavailable or deny, or to refuse to show, or to refuse to  
11 receive and transmit an offer for, a dwelling to any person because of race, color, religion, sex,  
12 sexual orientation, gender identity, disability, national origin, familial status, handicap, ancestry, or  
13 marital status;

14 (b) Discriminate against any person in the terms, conditions, privileges of sale or rental of  
15 a dwelling, or in the provision of service or facilities in connection therewith, because of race, color,  
16 religion, sex, sexual orientation, gender identity, disability, national origin, familial status, handicap,  
17 ancestry, or marital status;

18 (c) Make, print, or publish, or cause to be made, printed, or published, any notice,  
19 statement, or advertisement with respect to the sale or rental of a dwelling that indicates any  
20 preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation,  
21 gender identity, disability, national origin, familial status, handicap, ancestry, or marital status, or  
22 an intention to make any such preference, limitation, or discrimination;

(d) Represent to any person because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, familial status, handicap, ancestry, or marital status, that any dwelling is not available for inspection, sale, or rental when such dwelling is, in fact, so available;

(e) Cause to be made any written or oral inquiry or record concerning the race, color, religion, sex, sexual orientation, gender identity, disability, national origin, familial status, handicap, ancestry, or marital status of a person seeking to purchase, rent, or lease any housing;

(f) Include in any transfer, sale, rental or lease of housing any unlawful restrictive covenants, or to honor or exercise or attempt to honor or exercise any unlawful restrictive covenants pertaining to housing;

(g) Discharge or demote an employee or agent or discriminate in the compensation of such employee or agent because of such employee's or agent's obedience to the provisions of this chapter;

(h) Induce or attempt to induce, for profit, any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, gender identity, disability, national origin, familial status, handicap, ancestry, or marital status;

(i) Discriminate in the sale or rental of or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

(1) The buyer or renter;

(2) Any person associated with the buyer or renter; or

(3) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available.

(j) 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 a dwelling because of a handicap of:

(1) Such person;

(2) Any person associated with such person; or

(3) A person residing in or intending to reside in the dwelling after it is so sold, rented, or made available.

Section 8. That Section 11.06.050 of the Lincoln Municipal Code be amended to read as follows:

**11.06.050 Discriminatory Denial of Loan; Unlawful.**

It shall be unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise whose business consists in whole or in part in the making of commercial real estate loans within the city, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, making of commercial real estate loans within the city, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against a person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance because of race, color, religion, sex, sexual orientation, gender identity, national origin, familial status, handicap, disability, ancestry, or marital status of such person or of any person associated with such person in connection with such loan or other financial assistance for the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; provided, that

nothing contained in this section shall impair the scope or effectiveness of the exceptions contained in Section 11.06.070.

Section 9. That Section 11.06.060 of the Lincoln Municipal Code be amended to read as follows:

**11.06.060 Discrimination in Multiple Listing Service or Other Real Estate Service Organization; Discriminatory Refusal of Access or Membership; Unlawful.**

It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to participate or discriminate against any person in the terms or conditions of such access, membership, or participation on account of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, ancestry, familial status, or marital status.

Section 10. That Section 11.06.065 of the Lincoln Municipal Code be amended to read as follows:

**11.06.065 Residential Real Estate Transactions; Discriminatory Refusal to Make Available Transactions.**

(a) It shall be unlawful for any person or other entity whose business includes engaging in transactions related to residential real estate to discriminate against any person in making available such a transaction or in the terms or condition of such a transaction because of race, color, religion, sex, sexual orientation, gender identity, familial status, national origin, marital status, disability, or ancestry.

(b) For purposes of this section, transaction related to residential real estate shall mean any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate; or

(2) The selling, brokering, or appraising of residential real property.

(c) Nothing in this section shall prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, disability, marital status, or familial status.

Section 11. That Section 11.08.010 of the Lincoln Municipal Code be amended to read as follows:

**11.08.010 Purpose.**

It is the policy of the City of Lincoln to foster employment of all employable persons in the city on the basis of merit regardless of their race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status, and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status.

Denying equal opportunity for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status is contrary to the principles of freedom and is a burden on the objectives of the public policy of the City of Lincoln.

Section 12. That Section 11.08.030 of the Lincoln Municipal Code be amended to read as follows:



1     **11.08.030   Exceptions.**

2             This chapter shall not apply to:

3             (a)   A religious corporation, association, or society with respect to the employment  
4     of individuals of a particular religion to perform work connected with the carrying on by such  
5     corporation, association, or society of its religious activities, or

6             **(b)   A religious corporation, association, or society with respect to the employment of**  
7     **individuals based on sexual orientation or gender identity to perform work connected with the**  
8     **carrying on by such corporation, association, or society of its religious activities, or**

9             **(c)   A school, college, university, or other educational institution with respect to the**  
10    **employment of individuals of a particular religion if the school, college, university, or other**  
11    **educational institution is, in whole or substantial part, owned, supported, controlled, or managed by**  
12    **a particular religion, or by a particular religious organization and if the curriculum of the school,**  
13    **college, university, or other educational institution is directed toward the propagation of a particular**  
14    **religion and the choice of employees is necessary to promote the religious principles for which it**  
15    **is established or maintained, or**

16            **(d)** The employment of any individual by:

17                (1)   their parent, grandparent, spouse, child, or grandchild, or

18                (2)   in the domestic service of any person.

19             Section 13. That Section 11.08.040 of the Lincoln Municipal Code be amended to read  
20     as follows:

21     **11.08.040   Unlawful Employment Practices for an Employer.**

22             It shall be an unlawful employment practice for an employer:

(a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against any individual with respect to such individual's compensation, terms, advancement potential, conditions, or privileges of employment because of such individual's race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status; provided, however, that this section shall not be interpreted to require an employer to provide family benefits to same sex partners;

(b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee because of such individual's race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status.

Section 14. That Section 11.08.050 of the Lincoln Municipal Code be amended to read as follows:

**11.08.050 Unlawful Employment Practice for Employment Agency.**

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of race, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability, age, or marital status, or to classify or refer for employment any individual on the basis of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status.

Section 15. That Section 11.08.060 of the Lincoln Municipal Code be amended to read as follows:

**11.08.060 Unlawful Employment Practices for Labor Organization.**

It shall be an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership or otherwise to discriminate against any

individual because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status; or

(b) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect their status as an employee or as an applicant for employment because of such individual's race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status; or

(c) Cause or attempt to cause an employer to discriminate against any individual in violation of this chapter.

Section 16. That Section 11.08.070 of the Lincoln Municipal Code be amended to read as follows:

**11.08.070 Unlawful Employment Practice; Controlling Apprenticeship or Training Program.**

It shall be an unlawful employment practice for any employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status in admission to or employment in any program established to provide apprenticeship or other training.

Section 17. That Section 11.08.100 of the Lincoln Municipal Code be amended to read as follows:

1     **11.08.100   Standards for Compensation Permitted; When.**

2           (a)   Notwithstanding any other provision of this chapter, it shall not be an unlawful  
3   employment practice for an employer to apply different standards of compensation, for different  
4   terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or  
5   a system which measures earnings by quantity or quality of production or to employees who work  
6   in different locations, if the employer can show that such differences are not the result of  
7   discrimination because of race, color, religion, sex, sexual orientation, gender identity, disability,  
8   national origin, ancestry, age, or marital status; nor shall it be unlawful employment practice for an  
9   employer to give and to act upon the results of any validated ability tests if the employer can show  
10   that such test, its administration, or action upon the result is not designed, intended, or used to  
11   discriminate because of race, color, religion, sex, sexual orientation, gender identity, disability,  
12   national origin, ancestry, age, or marital status and are reasonably related to such employment.

13          (b)   It shall not be an unlawful employment practice for an employer, employment agency,  
14   labor organization, or joint labor-management committee to deny privileges of employment when  
15   the nature and extent of a disability reasonably precludes the performance of the particular  
16   employment.

17          (c)   Women affected by pregnancy, childbirth, or related medical conditions shall be treated  
18   the same for all employment-related purposes, including receipt of employee benefits, as other  
19   persons not so affected but similar in their ability or inability to work, and nothing in this section  
20   shall be interpreted to provide otherwise. This section shall not require an employer to provide  
21   employee benefits for abortion except when medical complications have arisen from an abortion.

22                Section 18. That Section 11.08.110 of the Lincoln Municipal Code be amended to read  
23   as follows:

1     **11.08.110    Preferential Treatment Not to be Granted on Account of Existing Numbers or**  
2     **Percentage Imbalance.**

3             Nothing contained in this chapter shall be interpreted to require any employer, employment  
4     agency, labor organization or joint labor-management committee subject to this chapter to grant  
5     preferential treatment to any individual or to any group because of the race, color, religion, sex,  
6     sexual orientation, gender identify, national origin, ancestry, age, or marital status of such  
7     individual or group, on account of an imbalance which may exist with respect to the total number  
8     or percentage of persons of any race, color, religion, sex, sexual orientation, gender identity, national  
9     origin, ancestry, age, or marital status in the city, or in the available work force in the city.

10            Section 19. That Section 11.08.070 of the Lincoln Municipal Code be amended to read  
11     as follows:

12     **11.08.130    Notice of Employment; Preference or Discrimination Because of Race, Color,**  
13     **Religion, Sex, Sexual Orientation, Gender Identity, Disability, National Origin,**  
14     **Ancestry, Age, or Marital Status; Unlawful.**

15            It shall be an unlawful employment practice for an employer, labor organization, or  
16     employment agency to print or publish or cause to be printed or published any notice or  
17     advertisement relating to employment by such an employer or membership in, or any classification  
18     or referral for employment by such a labor organization, or relating to any classification or referral  
19     for employment by such an employment agency indicating any preference, limitation, specification,  
20     or discrimination based on race, color, religion, sex, sexual orientation, gender identity, disability,  
21     national origin, ancestry, age, or marital status, except that such a notice or advertisement may  
22     indicate a preference, limitation, specification, or discrimination based on religion, sex or national  
23     origin, when religion, sex, or national origin is a bona fide occupational qualification for  
24     employment.

Section 20. That Section 11.08.160 of the Lincoln Municipal Code be amended to read as follows:

**11.08.160 Contracts with the City of Lincoln; Requirements.**

Every contract to which the City of Lincoln or any of its agencies is a party shall contain a provision requiring the contractor and subcontractors not to discriminate against any employee or applicant for employment to be employed in the performance of such contract with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status.

Section 21. That Section 2.76.280 of the Lincoln Municipal Code be amended to read as follows:

**2.76.280 Discrimination.**

(a) No action affecting the employment status of an employee or applicant for a position in the city service, including appointment, promotion, demotion, disciplinary action, suspension, dismissal, or layoff shall be taken or withheld by reason of the race, color, religion, sex, sexual orientation, gender identity, disability, national origin, age, marital status, or political opinions or affiliations, except that no person shall be employed or retained in the city service who advocates or belongs to an organization that advocates the overthrow or change of our government by force or violence.

(b) Any reference made in this Chapter 2.76 of the Lincoln Municipal Code to the terms he, she, his, her, or any similar term shall be interpreted in the generic and shall imply no restriction or other action because of the sex of the employee or applicant.

Section 22. That Sections 11.01.010, 11.01.020, 11.02.040, 11.04.010, 11.04.030, 11.04.060, 11.06.020, 11.06.050, 11.06.060, 11.06.065, 11.08.010, 11.08.030, 11.08.040, 11.08.050,

1 11.08.060, 11.08.070, 11.08.100,11.08.110, 11.08.130, 11.08.160, and 2.76.280 of the Lincoln  
2 Municipal Code as hitherto existing be and the same are hereby repealed.

3 Section 23. That this ordinance shall take effect and be in force from and after passage  
4 and publication in one issue of a daily or weekly newspaper of general circulation in the City,  
5 according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2012:

\_\_\_\_\_  
Mayor

§ 20-113. Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when.

## **Nebraska**

### **Chapter 20. Civil Rights**

#### **Article 1. Individual Rights**

##### **(a). General Provisions**

*Current through the 2012 legislative session*

##### **§ 20-113. Protection of civil rights; incorporated cities; ordinances; county; resolutions; powers; jurisdiction; revocation of liquor license, when**

Any incorporated city may enact ordinances and any county may adopt resolutions which are substantially equivalent to the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to 20-143 and 48-1219 to 48-1227 or which are more comprehensive than such acts and sections in the protection of civil rights. No such ordinance or resolution shall place a duty or liability on any person, other than an employer, employment agency, or labor organization, for acts similar to those prohibited by section 48-1115. Such ordinance or resolution may include authority for a local agency to seek an award of damages or other equitable relief on behalf of the complainant by the filing of a petition in the district court in the county with appropriate jurisdiction. The local agency shall have within its authority jurisdiction substantially equivalent to or more comprehensive than the Equal Opportunity Commission or other enforcement agencies provided under such acts and sections and shall have authority to order backpay and other equitable relief or to enforce such orders or relief in the district court with appropriate jurisdiction. Certified copies of such ordinances or resolutions shall be transmitted to the commission. When the commission determines that any such city or county has enacted an ordinance or adopted a resolution that is substantially equivalent to such acts and sections or is more comprehensive than such acts and sections in the protection of civil rights and has established a local agency to administer such ordinance or resolution, the commission may thereafter refer all complaints arising in such city or county to the appropriate local agency. All complaints arising within a city shall be referred to the appropriate agency in such city when both the city and the county in which the city is located have established agencies pursuant to this section. When the commission refers a complaint to a local agency, it shall take no further action on such complaint if the local agency proceeds promptly to handle such complaint pursuant to the local ordinance or resolution. If the commission determines that a local agency is not handling a complaint with reasonable promptness or that the protection of the rights of the parties or the interests of justice require such action, the commission may regain



jurisdiction of the complaint and proceed to handle it in the same manner as other complaints which are not referred to local agencies. In cases of conflict between this section and section 20-332, for complaints subject to the Nebraska Fair Housing Act, section 20-332 shall control.

Any club which has been issued a license by the Nebraska Liquor Control Commission to sell, serve, or dispense alcoholic liquor shall have that license revoked if the club discriminates because of race, color, religion, sex, familial status as defined in section 20-311, handicap as defined in section 20-313, or national origin in the sale, serving, or dispensing of alcoholic liquor to any person who is a guest of a member of such club. The procedure for revocation shall be as prescribed in sections 53-134.04, 53-1,115, and 53-1,116.

**Cite as Neb. Rev. Stat. § 20-113**

**Source:**

**Laws 1969, c. 120, § 9, p. 544; Laws 1974, LB 681, § 1; Laws 1979, LB 438, § 2; Laws 1991, LB 344, § 1; Laws 1991, LB 825, § 46; Laws 2007, LB265, § 2.**

**Cross References:**

**Age Discrimination in Employment Act**, see section 48-1001.

**Nebraska Fair Employment Practice Act**, see section 48-1125.

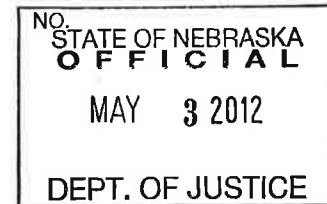
**Nebraska Fair Housing Act**, see section 20-301.



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12.009

**SUBJECT:** Protected Classes Under The State Civil Rights Statutes; Do Cities And Counties Have Statutory Authority To Create Protected Classes Not Listed In State Statute?

**REQUESTED BY:** Senator Beau McCoy  
Nebraska State Legislature

**WRITTEN BY:** Jon Bruning, Attorney General  
Dale A. Comer, Assistant Attorney General

You introduced LB 912 during the 2012 legislative session. Among other things, that bill would have prohibited political subdivisions, including municipalities, from adopting or enforcing any local laws or ordinances which created protected classifications beyond those contained in the state's civil rights statutes such as the Age Discrimination In Employment Act or the Fair Employment Practices Act. LB 912 did not progress out of committee.

In your opinion request correspondence, you indicate that you are now considering reintroducing LB 912. However, to determine if that step is necessary, you have asked us if, under current Nebraska law, "cities and counties have the authority to create protected classes not listed in state statute." For the reasons set out below, it is our opinion that while political subdivisions may pass ordinances or other laws on the

same subject matter which are not inconsistent with the state's civil rights classifications, political subdivisions are not authorized to expand protected classes beyond the scope of the civil rights provided for in state statute.

As a preliminary matter, it is worth noting that this issue has been considered previously by a Nebraska municipality. In the early 1980s, the people of Lincoln voted to reject a proposal to amend the City Charter to include protections for classes beyond those which are currently defined by state statute. At that time, Lincoln's City Attorney, William F. Austin, a highly respected lawyer whose public career includes nearly thirty years of service to Lincoln, issued an opinion to the City's leaders that the proper mechanism for making such a change would require a vote of the people to amend the City Charter. Following the issuance of that opinion, the question was properly submitted to the people of Lincoln and summarily rejected.

We are aware of no changes with regard to that aspect of municipal corporation law in the intervening years since Mr. Austin's opinion, and he recently reaffirmed his views in a letter published in the *Lincoln Journal Star*. Notwithstanding what Nebraska cities may or may not do with regard to the expansion of protected classes beyond that provided by statute, and even if one discounts the analysis that follows in *this* opinion, it remains the case that such an expansion at the city level *must* be pursuant to an amendment to a city's charter. Such an amendment indisputably requires a vote of the people. Lincoln's government recognized the soundness of Mr. Austin's opinion in 1982, and the foundation of that opinion remains fully applicable today.

Apart from home rule charter revisions, there are two Nebraska statutes which pertain to the authority of certain political subdivisions, including municipalities, to create and enforce legislation pertaining to civil rights – Neb. Rev. Stat. § 18-1724 (2007) and Neb. Rev. Stat. § 20-113 (2007). We will discuss each of those statutes in turn.

In *Midwest Employers Council, Inc. v. Omaha*, 177 Neb. 877, 131 N.W.2d 609 (1964), two Omaha corporations challenged Omaha Ordinance No. 22026, entitled "Fair Employment Practices," which would have prohibited "an employer of three or more persons . . . from discriminating on the basis of race, religious creed, color, national origin, or ancestry." *Id.* at 881, 131 N.W.2d at 612. In striking down the ordinance, the Court stated "the state by its Legislature has extensively entered the field of labor" and "it is obvious that the Department of Labor . . . is vested with the power and responsibility of enforcing employment regulations within the state." *Id.* at 886-87, 131 N.W.2d at 615. The Court held that ordinance No. 22026:

[Is] unconstitutional in its entirety for the reason that the state, through the Legislature, did not delegate to the city of Omaha the power to permit its city council to legislate on fair employment practices and civil rights by passing ordinance No. 22026; and for the further reason that the power relating to labor relations and practices, and civil rights, lies in the state, and such matters are of statewide concern and not of local concern nor municipal government concern.

*Id.* at 888. 131 N.W.2d at 616. Clearly the Court was concerned with municipal corporations expanding upon existing state fair employment practices and exercising enforcement in an area in which the state had been vested with power and responsibility.

In an apparent response to the Court's ruling in *Midwest Employers*, the Legislature specifically gave municipal corporations the power to enact civil rights laws by ordinance in 1971. 1971 Neb. Laws LB 161 (codified as amended at Neb. Rev. Stat. § 18-1724 (2007)). Section 18-1724 addressed the situation in *Midwest Employers* by allowing municipal corporations to establish ordinances on the classifications specifically outlined in the bill, and provided for local control and enforcement. However, the power of municipalities under § 18-1724 is limited. That statute currently states:

Notwithstanding any other law or laws heretofore enacted, all cities and villages in this state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination on the basis of race, color, creed, religion, ancestry, sex, marital status, national origin, familial status as defined in section 20-311, handicap as defined in section 20-313, age, or disability in employment, public accommodation, and housing and may provide for the enforcement of such ordinances by providing appropriate penalties for the violation thereof. It shall not be an unlawful employment practice to refuse employment based on a policy of not employing both husband and wife if such policy is equally applied to both sexes.

Neb. Rev. Stat. § 18-1724 (Reissue 2007) (Emphasis added). Thus, municipal corporations have the power, under § 18-1724, to define, regulate and enforce existing classifications as defined by statute.

Neb. Rev. Stat. § 20-113 (2007) also pertains to civil rights legislation by political subdivisions. Section 20-113 specifically states:

Any incorporated city may enact ordinances and any county may adopt resolutions which are substantially equivalent to the Age Discrimination in Employment Act, the Nebraska Fair Employment Practice Act, the Nebraska Fair Housing Act, and sections 20-126 to 20-143 and 48-1219 to 48-1227 or which are more comprehensive than such acts and sections in the protection of civil rights. No such ordinance or resolution shall place a duty or liability on any person, other than an employer, employment agency, or labor organization, for acts similar to those prohibited by section 48-1115. Such ordinance or resolution may include authority for a local agency to seek an award of damages or other equitable relief on behalf of the complainant by the filing of a petition in the district court in the county with appropriate jurisdiction. The local agency shall have within its authority jurisdiction substantially equivalent to or more comprehensive than the Equal Opportunity Commission or other enforcement agencies

provided under such acts and sections and shall have authority to order backpay and other equitable relief or to enforce such orders or relief in the district court with appropriate jurisdiction. Certified copies of such ordinances or resolutions shall be transmitted to the commission. When the commission determines that any such city or county has enacted an ordinance or adopted a resolution that is substantially equivalent to such acts and sections or is more comprehensive than such acts and sections in the protection of civil rights and has established a local agency to administer such ordinance or resolution, the commission may thereafter refer all complaints arising in such city or county to the appropriate local agency. All complaints arising within a city shall be referred to the appropriate agency in such city when both the city and the county in which the city is located have established agencies pursuant to this section. When the commission refers a complaint to a local agency, it shall take no further action on such complaint if the local agency proceeds promptly to handle such complaint pursuant to the local ordinance or resolution. If the commission determines that a local agency is not handling a complaint with reasonable promptness or that the protection of the rights of the parties or the interests of justice require such action, the commission may regain jurisdiction of the complaint and proceed to handle it in the same manner as other complaints which are not referred to local agencies. In cases of conflict between this section and section 20-332, for complaints subject to the Nebraska Fair Housing Act, section 20-332 shall control.

Any club which has been issued a license by the Nebraska Liquor Control Commission to sell, serve, or dispense alcoholic liquor shall have that license revoked if the club discriminates because of race, color, religion, sex, familial status as defined in section 20-311, handicap as defined in section 20-313, or national origin in the sale, serving, or dispensing of alcoholic liquor to any person who is a guest of a member of such club. The procedure for revocation shall be as prescribed in sections 53-134.04, 53-1,115, and 53-1,116.

Neb. Rev. Stat. § 20-113 (2007) (Emphasis added).

We have considered the parameters of § 20-113 previously in our Op. Att'y Gen. No. 160 (December 14, 1981). In that instance, Sen. Landis asked us whether “the state civil rights’ enabling statutes [provide] sufficient legislative authority for a home rule charter city to enact anti-discrimination protections for classifications not specifically mentioned in state law.” In response, we first concluded that a determination regarding the scope of the authority set out in § 20-113 required an “interpretation of the language ‘more comprehensive than.’” *Id.* at 3. To assist in that interpretation, we considered the legislative history of two amendments to §20-113 contained in 1974 Neb. Laws LB 681, where the language at issue was added to the statute, and 1979 Neb. Laws LB 438, which added intent language to the statute. Ultimately, we opined that “although the ‘more comprehensive than’ language could provide incorporated cities and counties

with the authority to enact ordinances or resolutions protecting classifications of persons not specifically set out in the state anti-discrimination statutes, a contrary interpretation also is feasible.” For that reason, we stated that “[i]n order to eliminate any doubts in this matter, one might wish to introduce clarifying legislation.”

While we continue to believe, as we did in 1981, that the legislative history of § 20-113 does not provide an entirely clear answer to your question, it also seems to us that other aspects of the relevant statutes, which we did not discuss in 1981, indicate that the authority of political subdivisions to legislate in the area of civil rights is limited to the civil rights enumerated in state statute, absent changes in a home rule charter. However, before we turn to those additional considerations, we will discuss the portions of the legislative history of § 20-113 which support our conclusion that political subdivisions do not have statutory authority to enlarge the protected classes created by state statute.

The words “or which are more comprehensive than such acts and sections in the protection of civil rights,” were added to § 20-113 in 1974 by LB 681. James Faimon, Assistant City Attorney for the City of Lincoln, who participated in the drafting of LB 681 and testified in support of the change, explained the purpose of the bill, in part, as an attempt to facilitate enforcement of civil rights provisions by cities:

The substantially equivalent language [in § 20-113] I think may, in some instances, create problems in reference to technical objections to passage of ordinances that may be otherwise legal, but because of the substantially equivalent requirement if the ordinance is not exactly the same language as the statute, there’s always that possibly (sic) that enforcement of that ordinance could be delayed because of litigation to determine whether that ordinance is substantially equivalent to state statutes. So, I would like to change that, so we don’t have that possibility arising.

Committee Records on LB 681, 83rd Neb. Leg., 2nd Sess. 11 (February 13, 1974)(Statement of James Faimon). In addition, the introducer of LB 681, Senator Hal Simpson, stated that LB 681 adds language to § 20-113 so “that the locals may, within these sections, be more comprehensive and then so would be able to enforce them at the local level.” Committee Records on LB 681, 83rd Neb. Leg., 2nd Sess. 28 (February 13, 1974)(Statement of Senator Hal Simpson) (Emphasis added). Moreover, Senator Simpson asserted to the legislative committee that there was likely no opposition to the bill from the public because:

We’re not adding something, that isn’t already a fact of law. We’re only asking where the enforcement is going to be.

*Id.* at 27.

Therefore, it appears to us that portions of the legislative history of LB 681 strongly indicate that the purpose of that amendment was not to allow political subdivisions to expand those existing civil rights classifications specifically enumerated in state statute, but only to provide for local enforcement as well as more comprehensive protections within existing state classifications. This is underscored by the fact that the second section of LB 681, relating to the Nebraska Liquor Control Commission, specifically delineates the classifications as they existed in § 18-1724.

Four years after the passage of LB 681, the right of political subdivisions to enforce civil rights protections was addressed again in *Omaha Human Relations Dep't on behalf of Guy v. City Wide Rock & Excavating Co.*, 201 Neb. 405, 268 N.W.2d 98 (1978). That proceeding involved a complaint filed by an employee of City Wide Rock that alleged discrimination because of race, a classification already covered in existing state statute. *Id.* at 406, 268 N.W.2d at 100. The Nebraska Supreme Court cited to *Midwest Employers*, and stated again that in the area of civil rights legislation, municipal corporations require statutory authority from the Legislature.

In 1979, in response to the decision in *City Wide Rock*, the Legislature restated its intent to provide for local enforcement of civil rights remedies as well as more comprehensive protections within existing state classifications by passing LB 438. 1979 Nebraska Laws LB 438. LB 438 amended § 20-113 to provide for additional procedures related to enforcement by municipal corporations. The introducer of LB 438, Senator Newell, indicated that the purpose of the bill was :

. . . to deal with the Supreme Court decision that said the Human Relations Department of the City of Omaha had no authority because it had not been given specific statutory authority by the State of Nebraska. This bill will give it specific statutory authority by the State of Nebraska and it will be able to continue to function.

Floor Debate on LB 438, 86th Neb. Leg., 1st Sess. 2374 (March 29, 1979) (Statement of Senator Dave Newell). The passage of LB 438 supports our conclusion regarding the meaning of the "more comprehensive than" language in § 20-113 because the bill expanded the enumerated sections of state law covered under § 20-113. If "more comprehensive than" in that statute was intended to allow political subdivisions to add new protected classifications for civil rights enforcement, then there was no need for the Legislature to amend new authority into § 20-113.

The passage of LB 438 in 1979 also supports our ultimate conclusion in this instance in another significant way which was not discussed in our previous opinion in 1981. LB 438 created Neb. Rev. Stat. § 20-113.01. That statute provides:

In order to declare the intent of the present Legislature and to effect the original intent of sections 18-1724 and 20-113, the Legislature finds that civil rights are a local as well as state concern and the Legislature desires

to provide for the local enforcement and enactment of civil rights legislation concurrent with the authority of the State of Nebraska.

(Emphasis added). In Nebraska, statutory language is to be given its plain and ordinary meaning in the absence of anything indicating to the contrary. *PSC Credit Services, Inc. v. Rich*, 251 Neb. 474, 558 N.W.2d 295 (1997). In that regard, the term “concurrent” has the following meaning:

Running together, having the same authority; acting in conjunction; agreeing in the same act or opinion; pursuit of the same course; contributing to the same event; contemporaneous.

BLACK'S LAW DICTIONARY 263 (5<sup>th</sup> ed. 1979). As a result, the precise language of § 20-113.01 indicates that the Legislature intended that political subdivisions in Nebraska, including municipalities, should enforce and enact civil rights legislation under §§ 18-1724 and 20-113 in conjunction with the State, and that those entities *have the same authority* under those statutes as the State. That language in § 20-113.01 requires us to conclude that the authority of political subdivisions to legislate in the area of civil rights is limited to the civil rights enumerated in state statute.

We would also point out that our conclusion regarding the authority of political subdivisions to enact civil rights legislation is supported by the fact that the Nebraska Fair Employment Practice Act, cited within § 20-113, explicitly does not include “homosexuality, bisexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender-identity disorders not resulting in physical impairments, [or] other sexual behavior disorders . . . ” within the definition of disability. Neb. Rev. Stat. § 48-1102 (Reissue 2010). Further, the purpose of the Nebraska Fair Employment Practice Act is “to foster the employment of all employable persons in the state on the basis of merit regardless of their race, color, religion, sex, disability, or national origin . . . ” Neb. Rev. Stat. § 48-1101 (Reissue 2010). A municipal corporation operating with “concurrent” authority to the State should not be allowed to create a new category of employer liability that the Legislature has specifically rejected.

It is also clear that should a political subdivision try to enforce an ordinance beyond the scope of its authority in such a way as to implicate the federal constitutional rights of those subject to enforcement, that action may expose public officers and the political subdivision to liability under 42 U.S.C. § 1983. In *Monroe v. Pape*, the Supreme Court held that a police officer was acting “under color of state law” even though his actions were in violation of state law. 365 U.S. 167 (1961). This was the first case in which the Supreme Court allowed liability to attach where a government official acted outside the scope of the authority granted to him by state law. Although the Court in *Monroe v. Pape* originally held that municipal corporations were excluded from such liability, the Court later reversed its decision and determined in *Monell v. Department of Social Service*, that municipal corporations were within the ambit of § 1983. 436 U.S. 658 (1978). (Local governing bodies can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where the action that is alleged to be unconstitutional

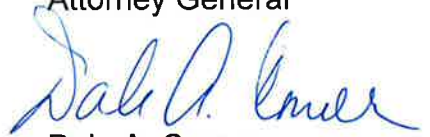


implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.) Therefore, any enforcement action by a political subdivision outside of the authority granted to it under state law which implicates federal constitutional rights could subject the subdivision and its officers to liability. Additionally, a plaintiff need only succeed on "any significant issue" in the § 1983 litigation and achieve "some of the benefit" sought in bringing the suit to be deemed a "prevailing party" under 42 U.S.C. § 1988 and be entitled to an award of attorney's fees. See *Texas State Teachers Assoc. v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92 (1989).

In conclusion, Nebraska law, like federal law, recognizes and protects certain classifications of people from discrimination. And, Nebraska's anti-discrimination provisions may be enforced by both the State and certain local political subdivisions. However, while the pertinent Nebraska statutes authorize local legislation on the same subject matter which is not inconsistent with the state's civil rights classifications, they do not authorize political subdivisions in Nebraska, including municipalities, to expand protected classifications beyond the scope of the civil rights classifications created in state statute.

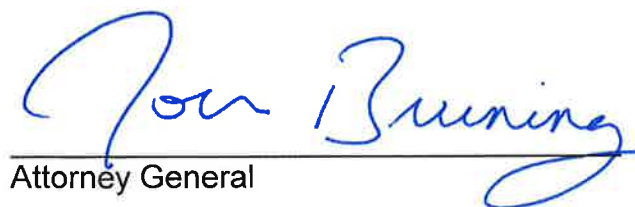
Sincerely,

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