
City of Grand Island



Tuesday, October 2, 2012 Study Session Packet

City Council:

Larry Carney
Linna Dee Donaldson
Scott Dugan
Vaughn Minton
John Gericke
Peg Gilbert
Chuck Haase
Mitchell Nickerson
Bob Niemann
Kirk Ramsey

Mayor:

Jay Vavricek

City Administrator:

Mary Lou Brown

City Clerk:

RaNae Edwards

7:00 PM
Council Chambers, City Hall
100 East 1st Street

Call to Order

This is an open meeting of the Grand Island City Council. The City of Grand Island abides by the Open Meetings Act in conducting business. A copy of the Open Meetings Act is displayed in the back of this room as required by state law.

The City Council may vote to go into Closed Session on any agenda item as allowed by state law.

Invocation

Pledge of Allegiance

Roll Call

A - SUBMITTAL OF REQUESTS FOR FUTURE ITEMS

Individuals who have appropriate items for City Council consideration should complete the Request for Future Agenda Items form located at the Information Booth. If the issue can be handled administratively without Council action, notification will be provided. If the item is scheduled for a meeting or study session, notification of the date will be given.

B - RESERVE TIME TO SPEAK ON AGENDA ITEMS

This is an opportunity for individuals wishing to provide input on any of tonight's agenda items to reserve time to speak. Please come forward, state your name and address, and the Agenda topic on which you will be speaking.



City of Grand Island

Tuesday, October 2, 2012

Study Session

Item C1

Grand Island Fire Department Pinning Ceremony for Fire Chief Cory Schmidt

Mayor Vavricek will present Cory Schmidt with his Fire Chief badge at a pinning ceremony. Pinning ceremonies are part of the Fire Department's tradition when a member is promoted.

Staff Contact: Mayor Jay Vavricek



City of Grand Island

Tuesday, October 2, 2012

Study Session

Item X1

Discussion Concerning Renewal of City's Cable Franchise Agreement with Charter Communications - City Legal Department

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: October 2, 2012

Subject: Consideration of the Renewal of the City's Cable Franchise Agreement with Charter Cable

Item #'s: 1

Presenter(s): Robert J. Sivick, City Attorney

Background

On March 7, 1966 the Grand Island City Council (Council) approved Ordinance 4238 which set forth the City of Grand Island's (City) laws and procedures for awarding cable television franchise agreements. On April 11, 1966 a twenty-five year franchise was awarded to TCI Cablevision of Nebraska, Inc. (TCI). This franchise agreement was renewed on February 10, 1992 for a fifteen year period. TCI's cable television assets were later acquired by CCVI Operating, LLC d/b/a Charter Communications (Charter).

March 7, 2006 the Council approved Resolution 2006-78 which approved a contract with the law firm of Moss & Barnett of Minneapolis for legal and consulting service related to negotiations with Charter for the renewal of its cable franchise agreement with the City.

In August, 2011, at the request of the Administration, the City Attorney began reviewing the status of negotiations between the City and Charter. Progress had been slow due in part to Charter's Chapter 11 bankruptcy filing in 2009.

The City Attorney made contact with representatives of Moss & Barnett and Charter to express the City's disappointment in the slow progress of negotiations and its desire for completion. The City Attorney also began personally participating in negotiations on behalf of the City. An agreement between the City and Charter has been reached and is presented to the Council for its review. The Administration plans to bring the cable franchise agreement before the Council at its meeting on October 9, 2012 for consideration and possible approval.

Discussion

Representatives of the City and Charter negotiated vigorously but professionally on behalf of their respective clients. The City sought to improve its position under the terms of the agreement. Charter sought to maintain control over its operations and costs as a result of the increased competition faced by the cable television industry from satellite and internet content providers.

In broad terms, the proposed agreement to be reviewed by the Council is for a period of fifteen years. It will increase the number of Public, Educational, and Government (PEG) channels from two to three. It sets the PEG fee at forty cents per subscriber, per month. It increases the number of governmental facilities and schools receiving free cable television service. It sets the franchise fee for the City at 5%. Finally, it addresses and strengthens customer service standards for Grand Island citizen subscribers.

MEMORANDUM

To: Robert Sivick, Grand Island City Attorney

From: Brian T. Grogan, Esq.

Date: August 31, 2012

Re: Cable Television Franchise – Charter Communications

Introduction

Charter Communications ("Charter") provides cable service to residents of the City of Grand Island, Nebraska ("City") on its own infrastructure under the terms of non-exclusive franchise agreements dated February 10, 1992. The City, as local franchising authority, has the right to issue cable franchise agreements, and to oversee and regulate the cable operator's compliance with the franchise provisions. The term of the existing franchise agreements expired on or about February 10, 2007.

The City initiated the process of identifying the cable-related needs and interests and evaluating the existing cable system operated by Charter. In order to accomplish these tasks the City approved the following studies:

Franchise Fee Payment Desk Review: In April 2006, Moss & Barnett began the process to conduct a review of the financial history and financial qualifications of Charter Communications, a review of the company's financial projections, and a review of the past franchise fees paid by the company to the City. Moss & Barnett conducted a detailed franchise fee review to ensure that payments made by Charter under the franchise were accurately and thoroughly remitted. Moss & Barnett issued its findings and recommendations in its report to the City of Grand Island, dated August 17, 2006.

Community Needs Ascertainment: The City contracted with Ms. Susan Bisno Massel to ascertain the public's future cable-related needs and interests as they relate to PEG programming and facilities, including interviews and site visits with selected community representatives, focus groups and public meetings. Ms. Massel visited the City for this on-site phase on June 15, 2006, and submitted her final report of findings and recommendations for the City of Grand Island on August 17, 2006.

Telephone Survey: A residential needs assessment was conducted in the City which included a telephone survey of randomly selected Charter cable subscribers and non-subscribers. The City also established a phone line and email address to take public comment. The City contracted

with Dr. Constance Ledoux Book to prepare the telephone survey instrument and Issues and Answers, Inc. to perform the calling. Dr. Book reviewed and analyzed the results of the survey and prepared a detailed report for the City, dated September 2006.

Background

The City prepared a draft Cable Television Franchise Agreement ("Franchise"), December 21, 2006, and sent it to Charter requesting a written response no later than January 19, 2007. Charter thereafter contacted the Moss & Barnett requesting until February 2, 2007 to submit its response to the draft Franchise. Charter submitted its written response on March 2, 2007. On March 21, 2007, City staff and I reviewed Charter's written response to the draft Franchise.

In 2008 the City was close to a deal with Charter – then Charter went into bankruptcy and stopped negotiating until they emerged from that process in 2010. The bankruptcy process resulted in a substantial reorganization of the management of Charter. During all of the stops and starts in negotiations the City held firm on the issues of greatest importance but the City experienced a moving target on the issues presented by Charter. In early 2011, Charter brought in a new management team and outside legal counsel to resume negotiations and in mid 2011, the new City Attorney actively participated in franchise negotiations and agreement was reached between the parties on an acceptable franchise document.

Final Results

15 year term

3 PEG Channels, initially Channels 6 and 12.

Live cablecasting capability from City Hall, Grand Island TV studio and College Park (includes Doane College and Central Community College).

PEG Fee = \$.40 per subscriber, per month and payable to the City on a quarterly basis.

Free service provided to the institutions listed in attachment to franchise.

5% franchise fee payable to the City on a quarterly basis.

Strong customer service standards.

~ END OF MEMORANDUM ~

!Unexpected End of Formula

CABLE TELEVISION FRANCHISE AGREEMENT

FOR THE

CITY OF GRAND ISLAND, NEBRASKA

AND

CCVI OPERATING LLC,
D/B/A CHARTER COMMUNICATIONS

August 8, 2012

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AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2012, by and between the City of Grand Island, Nebraska, (hereinafter referred to as the “City”) and CCVI Operating LLC, d/b/a Charter Communications (hereinafter referred to as the “Cable Operator”).

WHEREAS, the City, pursuant to Chapter 9 of the Grand Island City Code, is authorized to grant one (1) or more nonexclusive, revocable, agreements to construct, reconstruct, operate, and maintain a cable communication system within the City; and

WHEREAS, pursuant to Chapter 9 of the Grand Island City Code and in accordance with Section 626 of the Cable Communications Policy Act of 1984, the Cable Operator is agreeable to providing such services to the City and has made application to the City for renewal of its existing agreement; and

WHEREAS, the City finds that the Cable Operator has substantially complied with the material terms of the existing agreement under applicable laws, and that the financial, legal and technical ability of the Cable Operator is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, and

WHEREAS, the City Council wishes to grant to the Cable Operator and the Cable Operator wishes to accept the terms and conditions herein set forth for the use of City owned rights-of-way, of City owned easements, and of rights-of-way and access easements dedicated and accepted for public use by the City in installing and operating a Cable System in the City.

WHEREAS, the City, after public proceedings and due evaluation, has determined that it is in the best interest of the City and its residents to grant a new franchise agreement to the Cable Operator for the term herein provided.

WHEREAS, the City and Cable Operator have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal;

NOW, THEREFORE, IN CONSIDERATION of the renewal of the franchise pursuant to this Agreement, the Cable Operator hereby agrees to comply with the provisions of this Agreement and Chapter 9 of the Grand Island City Code. The City hereby grants a franchise as hereinafter set forth:

I. DEFINITIONS

The following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

A. “Agreement” shall mean the initial authorization or renewal thereof, issued by the

City, whether such authorization is designated as an agreement, permit, license, resolution, contract, certificate, or otherwise, which authorizes the construction or operation of the Cable System.

B. “Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

C. “Basic Cable Service” means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Agreement to be carried on the basic tier in analog and/or digital format. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7).

D. “Cable Act” mean the Cable Communications Policy Act of 1984, as amended, the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto and any future cable television legislation.

E. “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6).

F. “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves Subscribers without using any public Right-of-Way;
- (3) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (4) an open video system that complies with 47 U.S.C. § 573; or
- (5) any facilities of any electric utility used solely for operating its electric utility systems.

Cable System as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(7).

G. “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the FCC. Cable Channel as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(4).

H. “City” means the City of Grand Island, Nebraska or the lawful successor, transferee, or assignee thereof.

I. “Converter” means an electronic device which converts signals to a frequency acceptable to a television receiver of a Subscriber.

J. “Downstream” shall mean signals originating at the Headend or hubs and transmitted to Subscribers.

K. “Drop” means the cable that connects the ground block on the Subscriber’s residence to the nearest feeder cable of the System.

L. “FCC” shall mean the Federal Communications Commission or successor governmental entity thereto.

M. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Cable Operator or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable Subscribers); capital costs which are required by the Agreement to be incurred by Cable Operator for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Agreement, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise Fee defined herein shall be consistent with the definition set forth in 47 U.S.C. § 542(g).

N. “Gross Revenues” means any and all revenue derived by Cable Operator from the operation of its Cable System to provide Cable Service within the City including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees, 3) late fees and returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising revenue, 7) home shopping commissions, 8) equipment rental fees, and 9) guide revenue. The term “Gross Revenue” shall not include bad debts or any taxes or fees on Services furnished by Cable Operator imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support consistent with Applicable Law. City and Cable Operator acknowledge and agree that Cable Operator will maintain its books and

records in accordance with generally accepted accounting principles (GAAP).

O. “Headend” shall mean the facility, including antennas and associated electronics which receives, controls, and switches the electronic information transmitted over the Cable System.

P. “Installation” means any connection of the System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber Converter or other terminal equipment.

Q. “Normal Business Hours” means those hours during which most similar businesses in City are open to serve Subscribers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or some weekend hours.

R. “Normal Operating Conditions” means those Service conditions which are within the control of Cable Operator. Those conditions which are not within the control of Cable Operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Cable Operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System. Normal Operating Conditions as defined herein shall be consistent with the definition set forth in 47 C.F.R. § 76.309.

S. “Other Programming Service” means information that a cable operator makes available to all Subscribers generally. Other Programming Services as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522 (14).

T. “PEG” means public, educational and governmental.

U. “Person” is any Person, firm, partnership, association, corporation, company, limited liability entity, excluding the City, or other legal entity.

V. “Service Area” means the present boundaries of the City, and shall include any additions thereto by annexation or other legal means so that it covers both current and future areas.

W. “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels. Service Interruption as defined herein shall be consistent with the definition set forth in 47 C.F.R. § 76.309.

X. “Standard Installation” means any residential or commercial Installation which can be completed using a Drop of one hundred twenty-five (125) feet or less.

Y. “Street” means the surface of and the space above and below any public Street, road, highway, lane, path, alley, court, sidewalk, boulevard, parkway, drive or other easement now or hereafter held by the City. No reference in this Agreement to a “Street” shall be deemed

to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Cable System, and the Cable Operator shall be deemed to gain only those rights which the City has the undisputed right and power to give.

Z. “Subscriber” means any Person who receives broadcast programming distributed by a Cable System and does not further distribute it. Subscriber as defined herein shall be consistent with the definition set forth in 47 C.F.R. § 76.5(ee).

AA. “Upstream” shall mean the transmission of signals through a Cable System from Subscribers to the Headend or hubs.

BB. “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

II GRANT OF AGREEMENT

A. The City hereby grants to the Cable Operator, subject to the terms and conditions of this Agreement, a nonexclusive agreement which authorizes the Cable Operator to construct, operate and maintain a Cable System and offer Cable Service in, along, among, upon, across, above, over, under, or in any manner connected with Streets within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Street and all extensions thereof and additions thereto, such wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Provided, this grant does not authorize the provision of non-Cable Services without requisite City approval if an ordinance or local law permits or requires same unless City authority is pre-empted by federal or state law or regulation. In the event that at any time pre-emption of City authority ceases, or if City approval is otherwise permitted or required, then City approval will be required if local law permits or requires same.

B. This Agreement is a contract negotiated in good faith by the parties and intended by both parties to govern the relationship between the parties; neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Agreement must be made in writing, signed by the Cable Operator and the City. To the extent consistent with the foregoing, this Agreement is subject to and the Cable Operator agrees to comply with the lawful and non-discriminatory provisions of Grand Island City Code and other ordinances, statutes and regulations now in effect or hereafter made effective. Any conflict between this Agreement and the Multi-Channel Service Providers Regulatory Ordinance codified at Chapter 9 of the City Code as may be amended, shall be resolved in favor of this Agreement. Moreover, the specific terms of this Agreement will govern the parties in all cases where parallel regulation may also exist in Chapter 9 of the City Code. Subject to the foregoing, the Cable Operator acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce lawful and nondiscriminatory ordinances necessary to the health, safety and welfare of the public and

nothing in this Agreement shall be deemed to modify or reduce the City's lawful police powers.

III RIGHT OF CITY TO ISSUE AGREEMENT

The Cable Operator acknowledges and accepts the legal right of the City to issue this Agreement on the date of grant thereof. The Cable Operator agrees that this Agreement was granted pursuant to processes and procedures consistent with Applicable Law.

IV EFFECTIVE DATE OF AGREEMENT

This Agreement shall be effective when approved by the City Council in accordance with Applicable Law and when the Cable Operator files its written acceptance of this Agreement and agreement to be bound by the terms herein with the City Clerk. If such acceptance is not filed within sixty (60) days after adoption by the City Council, this Agreement shall be void and of no force or effect. The grant of this Agreement shall have no effect on the Cable Operator's duty under the prior agreement or any ordinance in effect prior to the effective date of this Agreement to indemnify or insure the City against acts and omissions occurring during the period that the prior agreement was in effect subject to Applicable Law regarding statutes of limitation.

V TERM

The term of this Agreement shall then be for a period of fifteen (15) years from the date of acceptance by the Cable Operator unless sooner terminated as provided in this Agreement.

VI AGREEMENT NONEXCLUSIVE

A. This Agreement shall not be construed as any limitation upon the right of the City to grant to other Persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other Streets, alleys, or other public ways or public places. The City specifically reserves the right to grant at any time during the life of this Agreement or renewal thereof, if any, such additional agreements for a wireline provider of Cable Service or Video Programming, to the extent permissible under Applicable Law, which (i) contain substantially similar terms and conditions which do not provide more favorable terms or conditions than those required of Cable Operator herein, and (ii) the material provisions thereof shall be competitively neutral and nondiscriminatory, in accordance with Applicable Law, and shall be reasonably comparable to those contained herein, in order that one wireline operator not be granted an unfair competitive advantage over another wireline operator as determined by City.

B. Notwithstanding any provision to the contrary, if another wireline operator, legally authorized by state or federal law, makes available for purchase by Subscribers or customers Cable Service or its functional equivalent (including Video Programming under 47 U.S.C. § 571(a)(3) or § 573) within the Service Area without a Franchise or other similar lawful authorization granted by the City and the City has the lawful authority to require a franchise from that wireline operator, the City shall within thirty (30) days of a written request from Cable Operator, modify this Franchise to insure that the obligations applicable to Cable Operator are no

more burdensome than those imposed on the new competing provider. If the City fails or refuses to make modifications consistent with this requirement, Cable Operator, upon ninety (90) days advance written notice to City, shall have the right to terminate this Franchise and secure a replacement franchise, license, consent, certificate or other authorization from any appropriate governmental entity or exercise any other rights the Cable Operator may have under state or federal law. Nothing herein shall in any way limit or reduce Cable Operator's right to provide Cable Service in the City under Applicable Laws, nor the City's right to regulate Cable Operator's provision of Cable Service in the City under Applicable Laws.

VII SERVICE AREA AND LINE EXTENSIONS

A. Cable Operator shall construct and operate its Cable System so as to provide Service to all parts of its Service Area as provided in this Agreement and having a density equivalent of seven (7) residential units per one-quarter (1/4) cable mile of System, as measured from the nearest tap on the Cable System.

B. Where the density is less than that specified above, Cable Operator shall inform Persons requesting Service of the possibility of paying for Installation or a line extension and shall offer to provide them with a free written estimate of the cost, which shall be provided within fifteen (15) working days of such a request. The charge for Installation or extension for each Person requesting Service shall not exceed a pro rata share of the actual cost of extending the Service.

VIII SYSTEM

A. Present System. Cable Operator shall operate and maintain for the term of this Agreement a System providing a minimum of 550 MHz.

B. Character Generator. The Cable Operator shall donate to the City, free of charge, the existing character generator and existing modulating equipment. The character generator shall be located in such public building or other location in the City as may be designated by the City with ability to transmit signals to the Headend. The internal equipment that has previously been installed by the Cable Operator, which permits the character generator to transmit signals to the Headend, if any, shall become the property of the City. All maintenance of said internal equipment shall be the responsibility of the City.

C. Public, Educational and Governmental Access.

(1) At all times throughout the life of this Agreement, the Cable Operator shall provide City, at no cost to the City or users, a maximum of three (3) Channels for non-commercial PEG access unless otherwise mutually agreed upon by the parties thereto. The PEG Channels will be governed by a set of operating rules and procedures that will be established by the City with input from the Cable Operator.

(2) The Cable Operator shall, at no cost to City unless otherwise specified herein, provide a return connection to facilitate the exchange of programming, including

live cablecasting of programming, from the following locations: 1) City Hall, 2) Grand Island Television studio, and 3) College Park (also includes Doane College and Central Community College).

(3) The City shall designate three (3) PEG Channels which shall be transmitted to Subscribers on the Basic Cable Service tier. PEG Channels shall initially be carried on Channels 6 and 12 and may be carried in a digital format on the Basic Cable Service tier consistent with Section VIII.C.6. The Cable Operator shall monitor the PEG Channels for technical quality to ensure that they meet FCC technical standards including those applicable to the carriage of PEG Channels; provided however, that the Cable Operator is not responsible for the production quality of all PEG programming productions. The City, or its designee, shall be responsible for the production and quality of all PEG programming.

(4) The Cable Operator shall provide the PEG Channels as part of the Basic Cable Service. The PEG Channels will be viewable by the Subscriber without the need for additional equipment beyond that required to receive the Basic Cable Service.

(5) PEG Channels shall be accessed by Subscribers through use of standard equipment required to receive Basic Cable Service.

(6) If the PEG Channels are relocated from their present channel locations, they will be located reasonably close in proximity to other broadcast Channels and/or other commercial video Channels on the Basic Cable Service tier. The Cable Operator agrees that PEG Channels located immediately below Channel # 1 are not considered in reasonably close proximity. The Cable Operator agrees not to encrypt the PEG Channels any differently than other commercial Channels available on the System.

(7) Within ninety (90) days of acceptance of this Agreement, the Cable Operator shall initiate a forty cents (\$.40) per Subscriber, per month PEG capital fee, which shall be paid to the City quarterly in the same manner as Franchise Fees, throughout the life of this Agreement, solely to fund PEG access related capital expenditures (hereinafter "Access Fee"). Any and all payments by Cable Operator to City in support of PEG access programming shall not be deemed "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542) provided that the City utilizes the Access Fee solely for PEG access-related capital expenditures.

D. Undergrounding requirements. The Cable Operator shall at all times comply with the City Code regarding undergrounding requirements; provided however, the Grantee may construct or upgrade its facilities aerially where existing utility(ies) are aerial and shall convert such facilities to underground when the existing utility(ies) are being converted on a schedule consistent with that of the other utilities. If public funds are available to any company, excluding the City or its affiliates, using such Street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

IX TECHNICAL STANDARDS

A. The Cable System shall at all times operate so that, at a minimum and in accordance with Applicable Law, it complies with the technical specifications promulgated by the FCC relating to Cable Communications Systems pursuant to the FCC's rules and regulations and found in Title 47, Section 76.01 to 76.617, (as they may be amended from time to time), which regulations are expressly incorporated herein by reference.

B. Cable Operator shall perform all System tests at the intervals required by the FCC, and all other tests reasonably necessary to determine compliance with technical standards required by this Agreement.

C. Written records of all System test results performed by or for Cable Operator shall be maintained, and shall be available for City inspection upon request.

D. Technical Tests. The City may perform technical tests of the Cable System by qualified Persons with proper equipment during reasonable times and in a manner which does not unreasonably interfere with the Normal Operating Conditions of the Cable Operator or the Cable System in order to determine whether or not the Cable Operator is in compliance with FCC Technical Specifications. Such tests may be undertaken only after giving the Cable Operator reasonable notice thereof, and providing a representative of the Cable Operator, an opportunity to be present during such tests. In the event that such testing demonstrates that the Cable Operator has substantially failed to comply with the material provisions of the FCC Technical Specifications, the reasonable costs of such tests shall be borne by the Cable Operator. In the event that such testing demonstrates that the Cable Operator has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the City. Except in emergency circumstances, the City agrees that such testing shall be undertaken no more than one (1) time per calendar year, and that the results thereof shall be made available to the Cable Operator.

E. Notice of shutdown. At least twelve (12) hours before any planned shutdown, the Cable Operator shall give notice to affected Subscribers when possible, of maintenance or major equipment change-outs which require loss of Cable Service to twenty-five (25) or more customers.

X SYSTEM DESIGN AND CAPACITY

A. Buried Drops. A Cable Operator must bury new Drops within a reasonable time period, subject to weather conditions. In the event the ground is frozen, a Cable Operator will be permitted to delay burial until the ground is suitable for burial which in no event must be later than June 1st.

B. All new Drops shall comply with the National Electrical Code and the National Electrical Safety Code, as they relate to cable television Drop installation. In addition, with respect to any existing unburied Drops currently lying on the ground, the Cable Operator shall

bury such Drops within a reasonable period of time, in accordance with the requirements of this paragraph, weather permitting. Prior to burying any Drop that is not located in an existing easement or public right-of-way, the Cable Operator, or its representative, shall provide notice to the occupant of the dwelling unit and shall bury such Drop at a mutually agreed upon location.

C. Local Office.

(1) For a minimum period of eight (8) years after the effective date of this Agreement, Cable Operator shall maintain a location in the City for receiving Subscriber inquiries, bill payments, and equipment transfers. The location must be staffed by a Person capable of receiving inquiries and bill payments and the location shall be open hours that are at the sole discretion of the Cable Operator that are economic and business logical. At such time as the Cable Operator may close the local office in the City (following completion of the first eight (8) years of this Franchise), Cable Operator shall maintain a drop box within the Service Area for receiving Subscriber payments. Subject to the foregoing, in the event another wireline multichannel video program distributor ("MVPD") commences video service in the City and does not have a franchise or contractual obligation to maintain a local office in the City, Cable Operator may elect to close the local office or substantially reduce its functions in its sole discretion.

(2) Payments at Cable Operator's drop box location shall be deemed received on the date such payments are picked up by the Cable Operator if deposited no later than 3 PM of that day. Payments deposited later than 3 PM may be considered to be received in the following business day's processing.

D. Additional Construction Codes.

(1) The Cable Operator shall at all times comply with:

(a) National Electrical Safety Code (National Bureau of Standards);

(b) National Electrical Code (National Bureau of Fire Underwriters);

and

(c) Applicable FCC or other federal, state and local regulations, including such construction, installation, and maintenance operational standards as may be adopted by the City from time to time and good and accepted industry practices as they pertain to the cable television industry.

XI GENERAL PROVISIONS

The following provisions shall be applicable to the Cable System throughout the life of this Agreement.

A. Emergency Alert Capabilities. The Cable Operator shall continue to provide the existing Emergency Alert System ("EAS"). However, if the EAS is not tested at regular intervals by the appropriate civil defense authority, the Cable Operator shall not be liable if such

EAS does not perform at required levels. In the case of any emergency or disaster, the Cable Operator shall, upon request of the City, make available its facilities and personnel to the City to provide technical assistance with the operation of the EAS during the emergency or disaster period. The EAS shall comply with FCC Standards.

B. Parental Control Devices. The Cable Operator shall provide Subscribers the ability to lock out such Channels as they may desire and provide equipment to lock out such Channels.

C. Employee Identification. The Cable Operator shall provide a standard identification document to all employees, including employees of subcontractors, who will be in contact with the public. Such documents shall include a telephone number that can be used to verify identification. In addition, the Cable Operator shall use its best efforts to clearly identify all personnel, vehicles, and other major equipment that are operating under the authority of the Cable Operator.

D. Free Service. Cable Operator shall provide free of charge throughout the term of this Agreement, Installation of one (1) Drop, one (1) cable outlet, and one (1) Converter, if necessary, and Basic Cable Service and expanded basic level of Cable Service or the future equivalent of such tiers of Service ("Free Service"), without charge to the institutions listed in Attachment C to this Agreement which currently receive Free Service, as long as the institutions remain educational institutions or are not leased or sold for private use. Existing Converters provided by Cable Operator to existing additional drops at the institutions listed in Attachment C will be provided at no charge for the term of this Agreement. In the event the City requests a Drop to another public institution or of an institution on Attachment C does not currently receive Free Service, the City shall be responsible for the costs, on a time and material basis, of extension in excess of two hundred twenty-five (225) feet. The Cable Operator shall provide Free Service to such subsequently designated institutions without charge.

(1) The installation of additional Drops and/or outlets and/or Converters in any location will be provided by the Cable Operator at the rate card price then in effect for Grand Island residential Subscribers. Alternatively, said institutions may add additional outlets at their own expense, as long as such Installation meets Cable Operator's technical standards in accordance with Section X (A) of the Agreement. The additional outlets of Cable Service shall not be used to sell Cable Service in or throughout such buildings. Outlets shall not be located in common or public areas.

E. Reporting. In addition to the other reporting requirements provided herein the Cable Operator shall, upon request, submit reports to the City in a mutually agreed upon format consistent with the Cable Operator's existing Systems, and demonstrate the Cable Operator's compliance with the terms and provisions of this Agreement.

F. Annexation by Municipality. It is understood that the annexation by the City of areas in the unincorporated part of the City and which are being served by the Cable Operator shall be governed by the provisions of this Agreement.

XII SUBSCRIBER RIGHTS AND COMPLAINTS

A. The Cable Operator shall comply with the standards and requirements for customer service set forth in Attachment A throughout the term of this Agreement.

B. Subscriber Contracts. Annually, Cable Operator shall provide the City with any standard form residential Subscriber contract utilized by Cable Operator. A list of Cable Operator's current Subscriber rates and charges for Cable Service shall be provided to the City and shall be available for public inspection.

C. Refund Policy. Cable Operator shall maintain a refund policy consistent with 47 U.S.C. §76.309(c)(3). If a Subscriber's Cable Service is interrupted or discontinued, without cause, for twenty-four (24) or more consecutive hours, the Cable Operator shall, upon request by the Subscriber within sixty (60) days of such interruption or discontinuation, credit such Subscriber pro rata for such interruption or discontinuation.

D. Late Fees. Cable Operator shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the Cable Operator imposes upon a Subscriber for late payment of a bill.

E. Disputes. All Subscribers and members of the general public may direct complaints, regarding Cable Operator's Service or performance to the chief administrative officer of the City or the chief administrative officer's designee, which may be a board or commission of the City.

F. Subject to the privacy provisions of 47 U.S.C. § 521 et seq. (1993), Cable Operator shall prepare and maintain written records of all written complaints made to them and the resolution of such complaints, including the date of such resolution. Such written records shall be on file at the office of Cable Operator. Upon request, Cable Operator shall provide City with a summary of such complaints.

XIII EQUAL OPPORTUNITY

The Cable Operator shall comply with Applicable Law regarding equal employment opportunity and the provision of Cable Service in the City.

XIV AGREEMENT RENEWAL

The City and the Cable Operator agree that renewal of this Agreement shall be governed by the requirements of the Cable Act, 47 U.S.C. Section 546, as may from time to time be amended.

XV FRANCHISE FEE

A. The Cable Operator shall pay, as a Franchise Fee, to the City five percent (5%) of the Cable Operator's annual Gross Revenues collected during the period of its operation under

this Agreement in the City. Each payment shall be accompanied by a brief report, certified as true and correct by a financial representative of the Cable Operator, showing the basis for the computation in form and substance substantially the same as Attachment B attached hereto.

B. The Cable Operator shall file with the City, forty-five (45) days after the last day of each quarter, a revenue statement showing the Gross Revenues received by it during the preceding quarter. The Cable Operator shall pay on a quarterly basis (by the 45th day after the end of each quarter) the Franchise Fee to the City for the preceding quarter.

C. The City shall have the right to audit and copy the Cable Operator's revenue records with respect to the Cable System within the City and all relevant records, and to recompute any amounts determined to be payable under this Agreement. If the results of the audit by the City show a discrepancy of more than five percent (5%) in the Franchise Fee that were to be paid to the City, the Cable Operator shall assume all reasonable document out-of-pocket costs of such audit, and pay same upon demand by the City, costs not to exceed Seven Thousand Five Hundred Dollars (\$7,500). This cost reimbursement shall only be permitted, if applicable, two (2) times during the ten (10) year franchise term.

D. In the event that any Franchise Fee payment is not received by the City on or before the applicable due date, the City shall send a written notice to Cable Operator informing the Cable Operator of the past due payment. If Cable Operator fails to remit payment within ten (10) days of receipt of said written notice from City, the Cable Operator shall remit a late payment surcharge of one percent (1.0%) per month of the total amount of the Franchise Fee payment due. The City shall not be entitled to any additional interest or liquidated damages unless the Cable Operator, thirty (30) days following receipt of the above referenced written notice from City has not remitted the applicable Franchise Fee payment and late payment surcharge to the City. Thereafter, the City shall be entitled to any and all available enforcement remedies under the Agreement and Applicable Law. In the event this Agreement is revoked or otherwise terminated prior to its expiration date, the Cable Operator shall file with the City, within ninety (90) days of the date of revocation or termination, a revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Franchise Fee due up to the date of revocation or termination.

E. No acceptance of any payment by the City shall be construed as a release, waiver or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a tax, fee or for the performance of any other obligation of the Cable Operator.

F. In the event federal law is amended to allow Franchise Fees in excess of five percent (5%) of Gross Revenues, the City shall be entitled to raise said Franchise Fees payable by the Cable Operator up to the maximum allowed by federal law, subject to the Cable Operator's prior written agreement.

G. The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the City, the State of Nebraska, or the United States, including without limitation sales and

other taxes, business license fees or other payments.

XVI REGULATION, RATES, AND CHARGES

A. Regulatory Authority. The City may exercise, continue to exercise, assign or delegate appropriate regulatory authority under the provisions of this Agreement or Applicable Law. Regulation may be exercised through any duly designated consortium, duly established state body, or other entity created or appointed to advise or support the City or to handle its regulatory responsibilities subject to Applicable Law.

B. The City and the Cable Operator acknowledge that any rates and charges relating to the provision of Cable Service and equipment under this Agreement shall be governed by Applicable Laws and the rules and regulations of the FCC (as amended). The City does not waive any right they may have under Applicable Law to regulate the rates in the future. The City and the Cable Operator, in evaluating and resolving any matters which arise concerning rates and charges, will adhere to Applicable Laws and FCC rules and regulations.

XVII CONSTRUCTION PROVISIONS

The Cable Operator shall at all times comply with the City Code regarding right-of-way use.

XVIII INSURANCE AND BONDS OR OTHER SURETY PROVISIONS

A. Insurance Requirements.

(1) Cable Operator shall maintain in full force and effect, at its own cost and expenses, during the term of this Agreement, comprehensive general liability insurance in the amount of Two Million and No/100 Dollars (\$2,000,000.00) combined single limit for bodily injury, death and property damage. City, and their capacity as such, City's officers, agents and employees, shall be named as an additional insured on the policy and Cable Operator shall file a Certificate of Insurance with the City Clerk. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage.

(2) Each policy of insurance (including the certificates of insurance evidencing such coverage) shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for non-payment of premium, or otherwise, and whether at the request of Cable Operator or for other reasons, except after thirty (30) calendar days advanced written notice from the insurer to the City Clerk, which may be provided electronically or by US mail.

B. Bonds and Other Surety. At all times hereunder until the Cable Operator has liquidated all of its obligations under the Agreement to the City, the Cable Operator shall furnish a bond or other surety in the amount of Twenty-Five Thousand Dollars (\$25,000), conditioned upon the faithful performance by the Cable Operator of its material obligations under this Agreement. The City may, from year to year and in its sole discretion, reduce the amount of any such bond or other surety. The bond or other surety shall insure the faithful performance by the

Cable Operator of all the provisions of this Agreement, and compliance with all orders, permits and directions of the City and the payment by Cable Operator of any claim, penalties, damages, liens and taxes due the City related thereto or which arise by reason of the construction, operation or maintenance of the Cable System. Any failure by Cable Operator to provide the bond or other surety as required herein shall constitute a breach of this Agreement.

XIX PERFORMANCE GUARANTEE ESCROW; AND LIQUIDATED DAMAGES

A. In the event that the City has reason to believe that the Cable Operator has defaulted in the performance of any material provision of this Agreement, except as excused by force majeure, the City shall notify the Cable Operator in writing, by certified mail, of the provision or provisions of which the City believes Cable Operator to be in default and the details relating thereto ("Alleged Default Notice").

B. Cable Operator shall have thirty (30) days from receipt of the notice described in paragraph (A) above to (a) respond to the City contesting the assertion of non-compliance, or (b) to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the projected date that they will be completed. In such case the City shall establish a reasonable deadline when such cure shall be completed having considered the reasonable input of the Cable Operator.

C. In the event that Cable Operator fails to respond to the notice described in paragraph A above pursuant to the procedures set forth in paragraph B above, the City shall schedule a public meeting to investigate the default. Such public meeting shall be held at the next regularly or specially scheduled meeting of the City. The City shall notify the Cable Operator in writing via certified mail, of the time and place of such meeting at least fourteen (14) days prior to such meeting and provide the Cable Operator with an opportunity to be heard.

D. Subject to the notice and cure requirements of this section, the City shall be authorized to withdraw from the bond or other surety the following penalties:

(1) For failure to provide data, documents, reports or information or to participate with the City during a System review, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150.00) per day.

(2) For failure to comply with any material provisions of this Agreement for which a penalty is not otherwise specifically provided, the penalty shall be One Hundred Fifty and No/100 Dollars (\$150.00) per day.

(3) For failure to test, analyze and report on the performance of the System following a request by the City, the penalty shall be One Hundred and No/100 Dollars (\$100.00) per day.

E. Subject to applicable federal and state law, in the event the City determines that Cable Operator is in default of any provision of the Agreement, the City may:

(1) Foreclose on all or any part of any security provided under this Agreement, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the City reasonably determines is necessary to remedy the default; or

(2) Draw against the bond or other surety all penalties due it, as provided for under this Agreement; or

(3) Commence an action at law for monetary damages or seek other equitable relief; or

(4) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

(5) See termination in accordance with Section XXI.

F. The Cable Operator shall not be relieved of any of its obligations to comply promptly with any provision of the Agreement by reason of any failure of the City to enforce prompt compliance.

XX TERMINATION

A. In addition to all other rights and powers retained by the City under this Agreement, the City reserves the right to terminate this Agreement, and the Cable Operator's rights hereunder, in the event the Cable Operator shall default in the performance of any material term, covenant or agreement of this Agreement. By way of example, and not limitation, the City shall have the right to terminate this Agreement if the Cable Operator shall fail to cure any material default under this Agreement as provided in Section XX.

B. Before the City may terminate this Agreement and the Cable Operator's rights hereunder, the City shall conduct a public hearing, at which time the Cable Operator shall be given an opportunity to attend and present evidence and argument in opposition to the forfeiture or termination of this Agreement. The Cable Operator shall be provided with not less than thirty (30) days notice prior to such public hearing.

C. Any such declaration of forfeiture or termination shall be subject to judicial review as provided by law.

D. Nothing herein contained shall limit or restrict any legal rights that the City or the Cable Operator may have arising from a default in the performance of the terms, conditions and covenants of this Agreement by the Cable Operator.

XXI REMOVAL OF CABLE SYSTEM

A. In the event of termination or forfeiture of the Agreement or abandonment of the System, the City may require the Cable Operator to remove all or any portion of its System from

all rights-of-way and public property within the City; provided, however, that the Cable Operator will not be required to remove those portions of its System required to provide Telecommunications Services to the extent Cable Operator lawfully provides Telecommunications Services over the System.

B. If the Cable Operator has failed to commence removal of its System, or such part thereof as was designated by the City, within one hundred twenty (120) days after written demand for removal is given, or if the Cable Operator has failed to complete such removal within twelve (12) months after written demand for removal is given, the City may apply funds secured by the Agreement toward removal.

XXII TRANSFER OF OWNERSHIP OR CONTROL

Cable Operator's right, title or interest in this Agreement shall not be sold, transferred, assigned or otherwise encumbered, without the prior written consent of the City, such consent not to be unreasonably withheld. No such consent shall be required, however, if the sale, transfer, assignment or encumbrance is to an affiliate of Cable Operator, when said affiliate is a wholly owned subsidiary. Additionally, no such consent shall be required, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Cable Operator in this Agreement or Cable System in order to secure indebtedness.

XXIII PERIODIC REEVALUATION AND RENEGOTIATIONS

A. Since the field of cable communications is rapidly evolving and many technological, regulatory, financial, marketing, legal, competitive, and other changes are likely to occur during the life of this Agreement, a degree of flexibility is needed in order to achieve and maintain a Cable System that adequately serves the public interest. To this end, and subject to Applicable Law, this Agreement may be amended by mutual written agreement of the City and Cable Operator.

B. The City may evaluate the Cable Operator's Cable Service and operations no more than once every five (5) years during the term of this Agreement.

C. The City and the Cable Operator may meet at other times to discuss and negotiate changes to this Agreement which are mutually agreed upon by both parties.

D. During any review and evaluation session, the Cable Operator shall cooperate with the City and shall provide such reasonable information and upon such terms and conditions as the parties shall mutually agree upon.

XXIV RIGHTS OF INDIVIDUALS

As previously set forth, the Cable Operator shall not deny Service, deny access nor otherwise discriminate against Subscribers, Channel users or any Person on the basis of race, creed, color, religion, national origin, sex, ancestry, age or marital status. The Cable Operator shall comply with all Applicable Laws relating to non-discrimination and privacy. Liability for

obscurity, defamation or invasion of privacy on any PEG Channels shall rest with the Person, group of Persons or any organization utilizing said PEG Channels, and no indemnification or liability of the Cable Operator is hereby intended or provided herein. The Cable Operator shall comply with all the privacy provisions pursuant to 47 USC §551 of the Cable Act or other Applicable Laws or regulations.

XXV COOPERATION

The parties recognize that it is in their mutual best interests for the Cable System to be operated as efficiently as possible. To achieve this, the parties agree to cooperate with each other in accordance with the terms and provisions of this Agreement.

XXVI WAIVER

The failure of the City at any time to require performance by the Cable Operator of any provision hereof shall in no way affect the right of the City hereafter to enforce the same. Nor shall the waiver by the City of any breach of any provision hereof or the failure of the City to require or enforce prompt compliance be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision. Nothing herein shall be deemed to waive or modify any statute of limitation or any lawful defense which is available to Cable Operator.

XXVII BOOKS AND RECORDS

A. Throughout the term of this Franchise, the Cable Operator agrees that the City, upon reasonable prior written notice to the Cable Operator, may review such of the Cable Operator's books and records regarding the operation of the Cable System and the provision of Cable Service in the City which are reasonably necessary to monitor and enforce Cable Operator's compliance with the provisions of this Agreement. All such documents pertaining to financial matters that may be the subject of an inspection by the City shall be retained by the Cable Operator for a minimum period required by Applicable Laws. The Cable Operator shall not deny the City access to any of the Cable Operator's records on the basis that the Cable Operator's records are under the control of any parent corporation, affiliated entity or a third party. The Cable Operator agrees that the City may upon ten (10) days written request review and copy such of its books and records, during Normal Business Hours and on a non-disruptive basis in a location not more than twenty (20) miles from the City. The Cable Operator shall maintain sufficient books and records of customer service, customer complaints and billing and maintain other books and records in Grand Island to monitor compliance with the terms hereof.

B. Confidential Information. Cable Operator may choose to provide any confidential books and records that it is obligated to make available to the City pursuant to Section XXVIII A of this Agreement, by allowing the City, or its designated representative(s), to view the books and records at a mutually agreeable location and without City obtaining its own copies of such books and records. Alternatively, confidential or proprietary information may be disclosed pursuant to a reasonable mutually agreeable non-disclosure agreement which shall substantially

be in the same form as attached as Attachment D, subject to modification as specifically required under Applicable Law. The intent of the parties is to work cooperatively to insure that all books and records reasonably necessary for City's monitoring and enforcement of franchise obligations are provided to City. To the extent that Cable Operator does provide books or records directly to the City, City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by Applicable Law and Attachment D. Cable Operator shall be responsible for clearly and conspicuously identifying any confidential or proprietary information so as to prevent inadvertent disclosure.

XXVIII CUMULATIVE RIGHTS

The rights and remedies reserved to the City and Cable Operator by this Agreement are cumulative and shall be in addition to and not in derogation of any other legal or equitable rights or remedies which the City and Cable Operator may have with respect to the subject matter of this Agreement, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time.

XXIX COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

The Cable Operator, its contractors, employees, and agents shall comply with all Applicable Laws, rules, and regulations. Except as otherwise provided for herein, the Cable Operator and the City shall be entitled to all rights and be bound by all changes in local, state, and federal law which occur subsequent to the effective date of this Agreement. In addition to the inherent powers of the City to regulate and control the Cable Operator under this Agreement, and those powers expressly reserved by the City, or agreed to and provided for herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers, subject to Section II.B. herein.

XXX NOTICES

Every notice or response to be served upon the City or the Cable Operator shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid.

The notices or responses to the City shall be addressed as follows:

The City of Grand Island, Nebraska
Attention: City Administrator's Office
100 East First Street, Box 1968
Grand Island, NE 68802

The notices or responses to the Cable Operator shall be addressed as follows:

Charter Communications
Attention: Vice President of Legal Operations
12405 Powerscourt Drive

St. Louis, MO 63131

With a non-binding courtesy copy to:

Charter Communications
Attention: General Manager
809 Central Ave.
Kearney, NE 68847

The City and the Cable Operator may designate such other address or addresses from time to time by giving notice to the other.

XXXI CAPTIONS

The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

XXXII INDEMNIFICATION

Cable Operator hereby agrees to indemnify and hold the City, including its agents, elected and appointed officials and employees, harmless from any claims, actions, liabilities or damages resulting from the actions of Cable Operator in constructing, operating or maintaining the Cable System or arising from the existence of the Cable System in the City. City agrees to give the Cable Operator written notice of its obligation to indemnify City within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Cable Operator shall not be obligated to indemnify City for any damages, liability or claims resulting from the willful misconduct or negligence of City or for the City's use of the Cable System.

XXXIII GOVERNMENTAL IMMUNITY

The City is relying on, and does not waive, or intend to waive, by any provision of this Agreement, any right, immunity, limitation or protection (including complete damage immunity) otherwise available to the City, its officers, employees or agents under federal, state or local law.

XXXIV FORCE MAJEURE

Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to; acts of God, fire, explosion, vandalism or other similar catastrophes; national emergencies; insurrection; strike or organized work slowdown; riots or wars.

XXXV TIME IS OF THE ESSENCE

Whenever this Agreement sets forth any time for any act to be performed by either of the parties, such time shall be deemed to be of the essence of this Agreement.

XXXVI CONSTRUCTION OF AGREEMENT

Except as otherwise provided for herein, this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Nebraska (as amended), the Cable Act as amended, any applicable rules, regulations and orders of the FCC and any other Applicable Laws, rules, regulations, legislation, or orders (as such now exist, are later amended or subsequently adopted).

XXXVII NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

XXXVIII ENTIRE AGREEMENT

This Agreement and all attachments represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof: and supersede all prior oral negotiations between the parties. This Agreement can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this Agreement or to the appropriate attachment and which is signed on behalf of both parties.

XXXIX ACTIONS OF THE CABLE OPERATOR

In any action by the City or the Cable Operator mandated or permitted under the terms hereof, it shall (unless specified otherwise in this Agreement) act in a reasonable, expeditious, and timely manner.

XL SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, unconstitutional or unenforceable, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF GRAND ISLAND, NE

City Clerk

Mayor

ATTEST:

CCVI OPERATING LLC
d/b/a Charter Communications

Secretary

By: President

ATTACHMENT A. CUSTOMER SERVICE STANDARDS

A. Cable System office hours and telephone availability.

- (i) The Cable Operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.
- (ii) Trained company representatives will be available to respond to Subscriber telephone inquiries during Normal Business Hours.
- (iii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
- (iv) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.
- (v) The Cable Operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.
- (vi) Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.
- (vii) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

B. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following four (4) standards will be met no less than ninety five percent (95%) of the time measured on a quarterly basis:

- (i) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.
- (ii) Excluding conditions beyond the control of the Cable Operator, the Cable Operator will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The

Cable Operator must begin actions to correct other Service problems the next business day after notification of the Service problem.

(iii) The “appointment window” alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (The Cable Operator may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the Subscriber.)

(iv) The Cable Operator may not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

(v) If a Cable Operator representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

C. Communications between the Cable Operator and Subscribers

(i.) Notifications to Subscribers.

(1) The Cable Operator shall provide written information on each of the following areas at the time of Installation of Cable Service, at least annually to all Subscribers and the City, and at any time upon request:

- a. Products and Cable Services offered;
- b. Prices and options for programming services and conditions of subscription to programming and other services;
- c. Installation and service maintenance policies;
- d. Instructions on how to use the Cable Service;
- e. Channel positions of programming carried on the Cable System; and
- f. Billing and complaint procedures, including the address and telephone number of the City’s cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the Cable Operator, including the address of the responsible officer of the City.

(2) Customers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing. Notice must be

given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Cable Operator. In addition, the Cable Operator shall notify Subscribers thirty (30) days in advance of any significant changes in the information required by Section (C)(i)1(a)-(f) of this Attachment A.

(3) In addition to the requirement of subparagraph (2) of this section regarding advance notification to Subscribers of any changes in rates, programming services or Channel positions, Cable Operator shall give thirty (30) days' written notice to both Subscribers and the City before implementing any rate or Service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of Channels). When the change involves the addition or deletion of Channels, each Channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the Cable Operator need only identify for Subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(4) To the extent Cable Operator is required to provide notice of Service and rate changes to Subscribers, the Cable Operator may provide such notice using any reasonable written means at its sole discretion.

(5) Notwithstanding any other provision of this section, Cable Operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, Franchise Fee, or any other fee, tax, assessment, or charge of any kind imposed by any federal agency, state, or City on the transaction between the Cable Operator and the Subscriber.

D. Billing.

(i.) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, Basic Cable Service and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(ii.) In case of a billing dispute, the Cable Operator must respond to a written complaint from a Subscriber within thirty (30) days.

E. Refunds. Refund checks will be issued promptly, but no later than either:

(i.) The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(ii.) The return of the equipment supplied by the Cable Operator if service is

terminated.

F. Credits. Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

ATTACHMENT B. FRANCHISE FEE PAYMENT WORKSHEET

TRADE SECRET – CONFIDENTIAL

	Month/Year	Month/Year	Month/Year	Total
Cable Service Revenue				
Installation Charge				
Franchise Fee Revenue				
Advertising Revenue				
Home Shopping Revenue				
Other Revenue				
Equipment rental				
REVENUE				
Fee Calculated				

Fee Factor: 5%

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ATTACHMENT C. FREE SERVICE TO PUBLIC BUILDINGS

ADAMS STREET PROPERTY
BARR JUNIOR HIGH
CENTRAL CATHOLIC
CITY CIVIL DFNS
CITY HALL
CITY OF GRAND ISLAND, (RACQUET CENTER)
CITY OF GRAND ISLAND FIELDHOUSE
CITY STREET DEPT
DODGE ELEMENTARY
EARLY LEARNING CENTER
EDITH ABBOTT LIBRARY
EMERGENCY CENTER
ENGLEMAN SCHOOL
FIRE STATION 1
FIRE STATION 2
FIRE STATION 3
FIRESTATION 4
GIPS KNEALE ADMINISTRATION BUILDING
G I POLICE DEPT
G I SR HIGH
GATES ELEMENTARY
HEARTLAND LUTHERAN
HOWARD ELEMENTARY
JEFFERSON ELEMENTARY
KNICKREHM SCHOOL
LINCOLN ELEMENTARY
LUTHERN CHURCH SCHOOL
NEWELL ELEMENTARY
NORTHWEST HIGH SCHOOL

C-1

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SEEDLING MILE SCHOOL,*
SHOEMAKER ELEMENTARY,*
STARR ELEMENTARY,*
STOLLEY PARK ELEMENTARY,*
SUCCESS ACADEMY
TRINITY LUTHERAN SCHL,*
WALNUT MIDDLE SCHOOL,*
WASMER ELEMENTARY,*
WATER SHOP,CITY
WEST LAWN ELEMENTARY,*
WESTRIDGE ELEMENTARY,*
Island Oasis Water Park, 321 East Fonner Park Road

ATTACHMENT D. NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made as of _____, 2012 between CC VI Operating, LLC (“Charter”) and the City of Grand Island, NE (“Recipient”).

WHEREAS, Charter holds a cable television franchise (“Agreement”) issued by Recipient which requires that Charter make available certain of its books and records to verify Charter’s compliance with the terms and provisions of the Agreement; and

WHEREAS, Charter is making available for inspection by Recipient certain Confidential Material (as defined below) for the sole and exclusive purpose of permitting Recipient to perform an audit of the payments required under the Agreement and to compile a written report based on the audit findings (the “Purpose”); and

WHEREAS, as a condition to making the Confidential Material available, the parties desire to protect the confidential nature of the Confidential Material in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and of the promises contained in this Agreement, Charter and Recipient hereby agree as follows:

1. Confidential Material. For purposes of this Agreement, the term Confidential Material shall include all business, financial, technical and other information concerning Charter’s business, provided in writing or in any other form or media; provided, however, that “Confidential Material” shall not include any information that (a) becomes generally available to the public other than as a result of disclosure, directly or indirectly, by Recipient or its Representatives (as defined below), or (b) was available to Recipient on a non-confidential basis prior to disclosure by Charter, (c) is lawfully obtained from a third party under no obligation of confidentiality, (d) is developed by the Recipient or is generally disclosed by Charter to third parties without an obligation of confidentiality. This Agreement imposes no obligation on Recipient with respect to any portion of the Confidential Material disclosed by Charter, unless such portion is marked “CONFIDENTIAL” prior to submitting such information to Recipient.

2. Restriction on Use and Disclosure. Consistent with Section ____ of the Agreement, Charter shall provide all books and records requested by the City or City’s agent in the following manner: 1) a mutually acceptable physical location within the City; or 2) via mail or electronic communication acceptable to the City and Grantee. Recipient and its Representatives may make such notes with respect to the Confidential Material (“Notes”) as may be necessary for the Purpose, and all such Notes shall be treated as Confidential Material hereunder. Recipient shall use the Confidential Material solely in furtherance of the Purpose, and shall not disclose the Confidential Material or any portion thereof to any person except those of its employees, consultants and advisors who need to know such information in furtherance of the Purpose (the persons to whom such disclosure is permitted being collectively referred to as “Representatives”). Recipient agrees that, before disclosing the Confidential Material or any

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portion thereof to any Representatives, Recipient will inform the Representatives of the confidential nature of the Confidential Material and of the Representatives' duty to treat the Confidential Material in accordance with this Agreement. Without in any way limiting the foregoing, Recipient shall take all steps necessary to prevent disclosure of the Confidential Material under any open records law, including, without limitation, by exercising its discretion not to disclose Confidential Material in response to an open records act request, and taking all necessary actions to defend against such request. If Recipient or any of its Representatives becomes legally compelled to disclose any of the Confidential Material, the compelled party shall provide Charter with prompt notice of such requirement prior to disclosure so that Recipient may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained, the compelled party shall furnish only that portion of the Confidential Material which it is legally required to furnish and shall use its best efforts to assure that confidential treatment will be accorded such Confidential Material. Recipient shall have the right to draft a written report to fulfill the Purpose of the review and Recipient agrees that in drafting said report cause any such audit report to be treated confidentially to the full extent permitted by law. Information shall, to the extent feasible, be provided in an aggregate form and Recipient shall use its best efforts not to communicate confidential information in the report unless necessary to communicate a finding of the audit/review.

3. Equitable Remedies. Recipient acknowledges that, in the event of a breach or threatened breach of this Agreement, there is a substantial likelihood of material, irreparable injury to Charter, and that money damages would not be a sufficient remedy for any such breach or prospective breach by Recipient or its Representatives. Recipient therefore agrees that Charter shall be entitled to specific performance of Recipient's agreements herein, and to injunctive relief to terminate or prevent any breach or prospective breach of this Agreement. No bond or other security shall be necessary with respect to such relief. Charter shall be entitled to receive from Recipient reimbursement of Charter's costs and expenses (including attorneys' fees) incurred in connection with any breach or threatened breach by Recipient or its Representatives, but such reimbursement may only be ordered by a court of competent jurisdiction.

5. Miscellaneous. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, with respect to such matters. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other exercise of any right, power or privilege hereunder. If any part or any provision of this Agreement shall be deemed to be invalid or unenforceable in any respect, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining provisions of this Agreement. No amendment to this Agreement shall be valid unless it is made in writing and signed by both parties. This Agreement shall inure to the benefit of, and be binding upon, the parties, their successors and permitted assigns. This Agreement shall be governed by laws of the State of Nebraska without regard to the choice of law provisions thereof.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on its behalf as of the date set forth above.

CC VI OPERATING, LLC

CITY OF GRAND ISLAND, NE

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

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City of Grand Island

Tuesday, October 2, 2012

Study Session

Item X2

**Discussion Concerning Residency Requirements for City
Department Directors - At the Request of Councilmember Chuck
Haase.**

Staff Contact: Robert J. Sivick, City Attorney

Council Agenda Memo

From: Robert J. Sivick, City Attorney

Meeting: October 2, 2012

Subject: Discussion Concerning Residency Requirements for City Department Directors

Item #'s: 2

Presenter(s): Councilman Chuck Haase

Background

On December 4, 2001 the Grand Island City Council (Council) approved expanding the area where Department Directors could reside to within ten miles of the City of Grand Island (City) zoning jurisdiction. Since the City has zoning jurisdiction for two miles beyond its borders this in effect extended the acceptable area of residency for Directors to twelve miles beyond the City's borders. On December 18, 2001 the Council approved Resolution 2001-314 which among other things incorporated the new residency requirements for Directors into the employee handbook. That requirement is memorialized in the City Personnel Rules and Regulations §3.12.

Discussion

Residency requirements for municipal employees have been the subject of litigation across the country for the last few decades. Generally Courts are prone to strike down residency requirements that lack a legitimate public purpose related to the operation of municipal government. The most obvious example of such a legitimate public purpose would be public safety but would also include public utilities and infrastructure.

The Human Resources Department conducted a survey of residency requirements for Department Directors in other Nebraska cities and compiled the following data:

RESIDENCY REQUIREMENTS FOR DEPARTMENT DIRECTORS

Hastings	No written policy. Strongly recommended
La Vista	Only City Administrator & Police Chief
Bellevue	Only City Administrator & Assistant City Administrator
Kearney	All Directors are required to live within City limits

Lincoln	No residency requirement for Directors
Omaha	No residency requirement for Directors
Norfolk	No residency requirement for Directors - some positions have a response time if in public works or public safety
Fremont	Residency requirement for City Administrator, Police & Fire Chief within 20 minutes of city limits and Utility Mgr. has to live within service area.
Papillion	No residency requirements for Directors
Columbus	No residency requirements for Directors. Police & Fire Chiefs follow the 30 minute rule in place for their department members
North Platte	No residency requirement for Directors

The Human Resources Department compiled the present residency requirements for City employees as listed below:

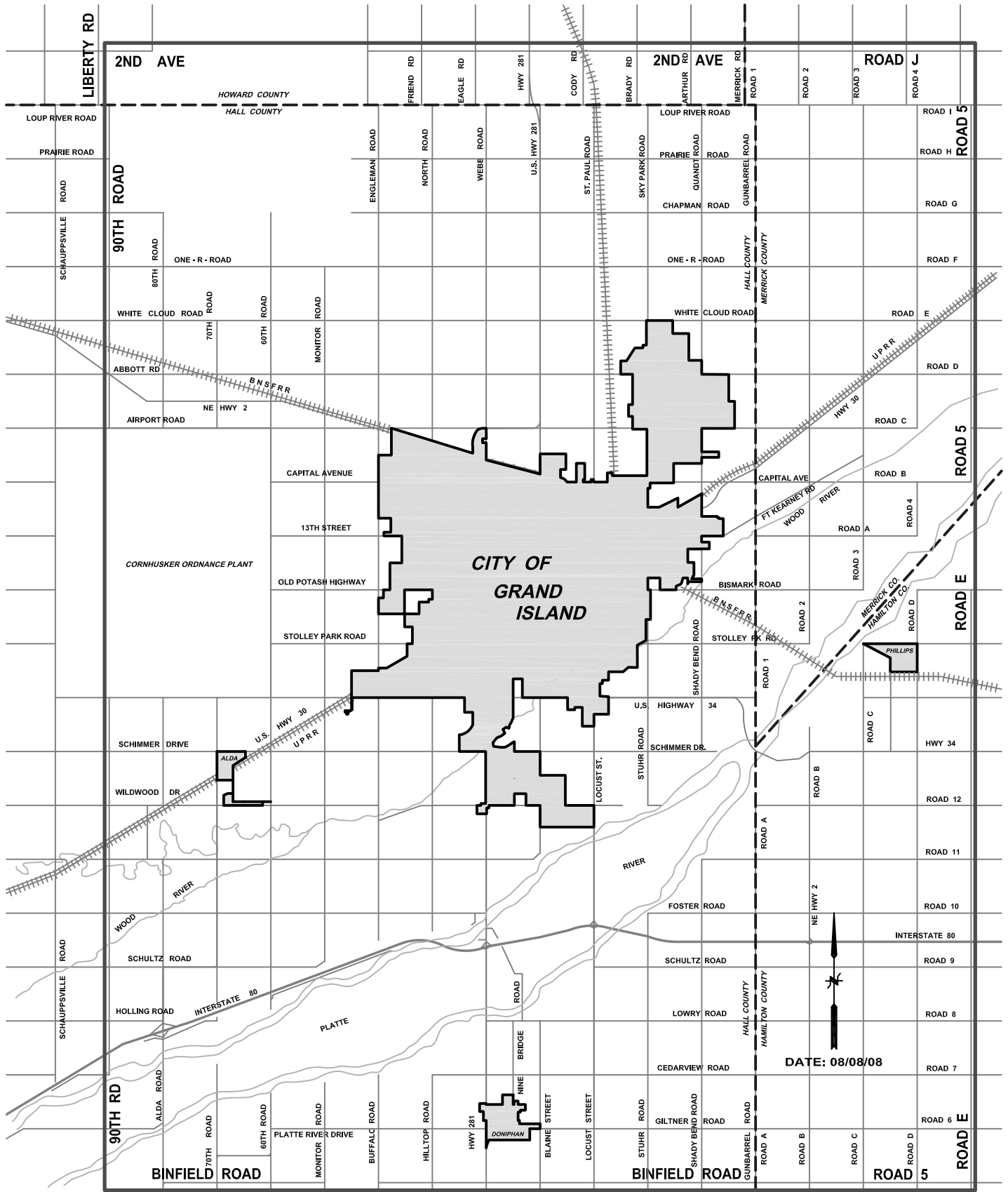
CURRENT RESIDENCY REQUIREMENTS FOR CITY EMPLOYEES

Department Directors:	Within 10 miles of the zoning jurisdiction
Emergency Management Employees:	Within a 25 mile radius of the City limits
Utilities Department Employees:	Residency boundaries of the department
Sworn Police Officers (FOP Contract):	Within 35 miles of city limits
Firefighters (IAFF Contract):	Within a 35 mile radius of the City limits
Parks & Streets (AFSCME Contract):	No residency requirement
IBEW Wastewater:	No residency requirement
IBEW Service/Clerical	No residency requirement
IBEW Utilities & Finance:	Residency Boundaries as established in the contracts
Non-union:	No residency requirement

The Human Resources Department compiled data on the residency of City employees broken down by Department as listed below:

	GI	OTHER	TOTAL	% GI
ADMINISTRATION	4	1	5	80%
BUILDING	9	2	11	82%
EMER MANAGEMENT	17	1	18	94%
FINANCE	28	4	32	88%
FIRE	38	28	66	58%
HUMAN RESOURCES	2	2	4	50%
LEGAL	3	0	3	100%
LIBRARY	26	2	28	93%
PARKS	24	5	29	83%
PLANNING	3	0	3	100%
POLICE	75	18	93	81%

PUBLIC WORKS	61	13	74	82%
UTILITIES	128	6	134	96%
TOTAL	418	82	500	84%



Sec. 3.12 RESIDENCY

All Department Directors are required to reside within ten miles of the zoning jurisdiction. All Emergency Management employees are required to reside within a twenty-five mile radius of the City of Grand Island. All Utilities Department employees are required to reside within the residency boundaries of the department. Residency for police and fire employees are established by contracts.

Employees that drive City vehicles home and senior management personnel need to check their department's Standard Operating Procedures in reference to residency requirements.

Employees will establish residency within six months after the calendar day of the start of employment and will maintain residency during the term of employment. For purposes of these Personnel Rules and Regulations, residency will mean the employee's domicile.



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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CITY CLERK
OMAHA, NEBRASKA

Law Department

Omaha/Douglas Civic Center
1819 Farnam Street, Suite 804
Omaha, Nebraska 68183-0804
(402) 444-5115
Telefax (402) 444-5125

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

3
4 (2) Has a record of such impairment; or

5
6 (3) Is regarded as having such impairment.
7

8 (h) Gender identity: Means the actual or perceived appearance, expression, identity or
9 behavior of a person as being male or female, whether or not that appearance, expression,
10 identity or behavior is different from that traditionally associated with the person's
11 designated sex at birth.
12

13 (i) *Hearing board*: The civil rights hearing board created by this article.
14

15 (j) *Individual*: Includes individuals.
16

17 (k) *Marital status*: The state of being married, single, divorced, separated or widowed or
18 the changing of such state.
19

20 (l) *National origin*: Ancestry, lineage, name, place of birth or any factor indicative of any
21 of these; includes the national origin of an ancestor.
22

23 (m) *Person*: Any individual, association, committee, corporation, joint apprenticeship
24 committee, joint-stock company, labor organization, legal representative, mutual company,
25 partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, and
26 any other legal or commercial entity, the city or any governmental entity or agency, excluding
27 the United States of America and the State of Nebraska, or any agent or representative of any
28 of the foregoing.
29

30 (n) *Religious organization*: A bona fide religious corporation, association, institution or
31 society which does not limit or exclude or discriminate against individuals on the basis of
32 race, color, national origin, sex or disability.
33

34 (o) *Respondent*: Any person against whom a charge has been filed.
35

36 (p) *Sex*: The state of being either male or female.
37

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

39 (r) *Unlawful practice*: A practice or act within the city which is designated as
40 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.

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(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

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

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

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

- (1) The nature and the cost of the accommodation needed under this title;
- (2) The overall financial resources of the facility or facilities involved in the 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.

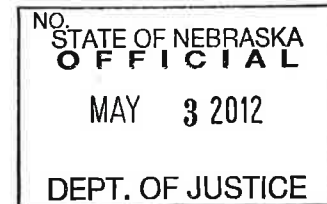
Nebraska Fair Housing Act, see section 20-301.



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JON BRUNING
ATTORNEY GENERAL



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 (5th 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.

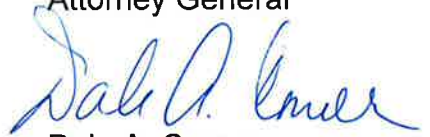
It is also clear that should a political subdivision try to enforce an ordinance beyond the scope of its authority in such a way as to implicate the federal constitutional rights of those subject to enforcement, that action may expose public officers and the political subdivision to liability under 42 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.

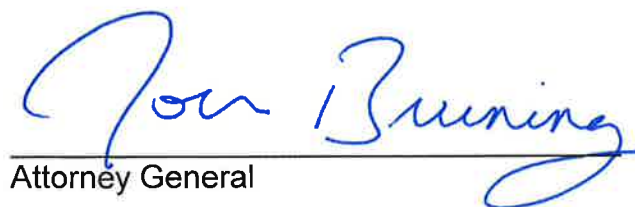
Sincerely,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General

Approved by:



Attorney General

pc. Patrick J. O'Donnell
Clerk of the Nebraska Legislature