ORDINANCE NO. 6475

AN ORDINANCE TO AMEND CHAPTER 1.40 COUNCIL BLUFFS CIVIL RIGHTS COMMISSION OF THE 2020 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING SECTION 1.40.030 "DEFINITIONS-CIVIL RIGHTS COMMISSION"; SECTION 1.40.080 "UNFAIR EMPLOYMENT PRACTICES"; SECTION 1.40.100 "UNFAIR OR DISCRIMINATORY PRACTICES-HOUSING"; SECTION 1.40.110 "UNFAIR CREDIT PRACTICES"; SECTION 1.40.120 "UNFAIR OR DISCRIMINATORY PRACTICES-EDUCATION" AND SECTION 1.40.140 "RETALIATION".

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

SECTION 1. That Chapter 1.40 Council Bluffs Civil Rights Commission of the 2020 Municipal Code of Council Bluffs, Iowa, is hereby amended by amending Section 1.40.030 "Definitions-Civil Rights Commission"; Section 1.40.080 "Unfair Employment Practices"; Section 1.40.100 "Unfair Or Discriminatory Practices-Housing"; Section 1.40.110 "Unfair Credit Practices"; Section 1.40.120 "Unfair Or Discriminatory Practices-Education" and Section 1.40.140 "Retaliation" as follows:

1.40.030 Definitions - Civil Rights Commission

For the purposes of this chapter, the following words, terms and phrases are defined as follows:

Affirmative action: A plan whereby a set of specific result-oriented procedures are established and to which a "person" commits himself or herself to apply every good faith effort to achieve. The objective of those procedures is to ensure equal opportunity in public and private employment, housing, public accommodation, credit transactions and city contracts.

Bona fide occupational qualification (BFOQ): A job-related requirement which bears a demonstrable relationship to the successful performance of the job for which it is used.

Commission: The civil rights commission created by this chapter.

Commissioner: A member of the local civil rights commission.

Complainant: Any person filing a complaint with the commission.

Contract: Any agreement that is awarded, let, procured or entered into with, or on behalf of, the city or any awarding authority thereof.

Contracting authority: Any city department, agency, commission, board or any authorized employee, including any purchasing agent of the city, who makes or enters into any contract agreement for the provision of any goods or services of any kind or nature whatsoever for and on behalf of the city.

Court: The district court in and for the judicial district of the state of Iowa in which the alleged unfair or discriminatory practice occurred, or any judge of the court if the court is not in session at the time.

Director: The city attorney or his or her designee.

Disability: The physical or mental condition of a person which constitutes a substantial disability, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related

complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of “disability” under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases. “Disability" does not include current, illegal use of or addiction to a controlled substance.

Employee: Any person employed by an employer.

Employer: The city of Council Bluffs or any board, commission or department thereof, and every other person or entity employing employees within the state of Iowa.

Employment agency: Any person undertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so.

Familial status: One or more individuals under the age of eighteen (18) domiciled with one of the following:

A. A parent or another person having legal custody of the individual or individuals.
B. The designee of the parent or other person having custody of the individual or individuals, with the written permission of the parent or other person.
C. A person who is pregnant or is in the process of securing legal custody of the individual or individuals.
D. A person who is pregnant or who is in the process of securing legal custody of an individual who has not attained the age of eighteen (18) years.

Gender identity: A gender-related identity of a person, regardless of the person's assigned sex at birth.

Housing for older persons: Any of the following:

A. Housing intended and operated for ninety (90) percent occupancy by at least one person fifty-five (55) years of age or older per unit, and providing significant facilities specifically designed to meet the physical or social needs of such person.
B. Housing intended for and occupied solely by persons sixty-two (62) years of age or older.
C. Housing provided under any state or federal program specifically designated and operated to assist elderly persons (as defined in the state or federal program).

Individual: Any natural person.

Labor organization: Any organization that exists for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection in connection with employment.

Person: One or more individuals, partnerships associates, corporations legal representatives, trustees, receivers, employees or agents, and the city and all of this boards and commissions.

Public accommodation: each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy.

A. “Public accommodation" does not mean any bona fide private club or other place, establishment, or facility which by its nature is distinctly private, except when a distinctly private place, establishment or facility caters or offers services, facilities, or goods to the nonmembers for a fee or charge, or gratuitously, it shall be deemed a public accommodation during such period of use.

B. "Public accommodation" includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants, or goods to the public, gratuitously or otherwise. This definition shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term "public accommodation."

Referral: The process by which the Iowa Civil Rights Commission notifies the local commission that a complainant has been filed with the state commission, and that the same is postponing its investigative activities for a period of sixty (60) days while the local commission investigates and attempts to resolve the matter.

Respondent: That person against whom a complaint has been filed with the commission.

Retaliation: Any act directed at a complainant or other person with the intent of affecting that person unfavorably because of his or her formal or informal efforts to secure or aid in securing compliance with this chapter.

Sexual orientation: Actual or perceived heterosexuality, homosexuality, or bisexuality.

Unfair practice or discriminatory practice: Those practices specified as unfair or discriminatory in this chapter or Chapter 216 of the Iowa Code.

(Ord. 5971 § 1, 2008)

1.40.080 Unfair Employment Practices

A. It shall be an unfair or discriminatory practice for any:

1. Person to refuse to hire, accept, register, classify or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability of such applicant or employee, unless based upon the nature of the occupation. If a person with a disability is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminatory practices prohibited by this subsection.;
2. Labor organization or the employees, agents or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights or benefits of such membership because of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability of such applicant or member;
3. Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion or disability are unwelcome, objectionable, not acceptable or not solicited for employment or membership unless based on the nature of the occupation.

a. If a person with a disability is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminatory practices prohibited by this subsection.

b. An employer, employment agency or their employees, servants or agents may offer employment or advertise for employment to only persons with disabilities, when other applicants have available to them other employment compatible with their ability which would not be available to persons with disabilities because of their disabilities. Any such employment or offer of employment shall not discriminate among persons with disabilities on the basis of race, color, creed, sex, sexual orientation, gender identity, or national origin.

4. Person to solicit or require as a condition of employment of any employee or prospective employee a test for the presence of the antibody to the human immunodeficiency virus or to affect the terms, conditions, or privileges of employment or terminate the employment of any employee solely as a result of the employee obtaining a test for the presence of the antibody to the human immunodeficiency virus. An agreement between an employer, employment agency, labor organization, or their employees, agents, or members and an employee or prospective employee concerning employment, pay, or benefits to an employee or prospective employee in return for taking a test for the presence of the antibody to the human immunodeficiency virus, is prohibited. The prohibitions of this paragraph do not apply if the state epidemiologist determines and the director of public health declares through the utilization of guidelines established by the center for disease control of the United States department of health and human services, that a person with a condition related to acquired immune deficiency syndrome poses a significant risk of transmission of the human immunodeficiency virus to other persons in a specific occupation.

B. Employment policies relating to pregnancy and childbirth shall be governed by the following:

1. A written or unwritten employment policy or practice which excludes from employment applicants or employees because of the employee's pregnancy is a prima facie violation of this chapter.

2. Disabilities caused or contributed to by the employee's pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to the employee's pregnancy or giving birth, on the same terms and conditions as they are applied to other temporary disabilities.

3. Disabilities caused or contributed to by legal abortion and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any

temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

4. An employer shall not terminate the employment of a person disabled by pregnancy because of the employee's pregnancy.
5. Where a leave is not available or a sufficient leave is not available under any health or temporary disability insurance or sick leave plan available in connection with employment, the employer of the pregnant employee shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is less. However, the employee must provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective. Before granting the leave of absence, the employer may require that the employee's disability resulting from pregnancy be verified by medical certification stating that the employee is not able to reasonably perform the duties of employment.

C. This section shall not apply to:

1. Any employer who regularly employs less than four individuals. For the purpose of this paragraph, individuals who are members of the employer's family shall not be counted as employees;
2. The employment of individuals for work within the home of the employer, if the employer or a member of his or her family reside therein during such employment;
3. The employment of individuals to render personal service to the person of the employer or members of his or her family;
4. Any bona fide religious institution or its educational facility, association, corporation or society with respect to any qualifications for employment based upon religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose. A religious qualification for instructional personnel or administrative officer, serving in a supervisory capacity of a bona fide religious educational facility or religious institution, shall be presumed to be a bona fide occupational qualification;
5. This section shall not prohibit discrimination on the basis of age if the person subject to the discrimination is under the age of eighteen (18) years, unless the person is considered by law to be an adult;
6. This section shall not apply to age discrimination in a bona fide apprenticeship employment program if the employee is over forty-five (45) years of age;
7. After a handicapped individual is employed, the employer shall not be required under this chapter to promote or transfer such handicapped person to another job or occupation. Any collective bargaining agreement between an employer and labor organization shall contain this section as a part of such agreement.

(Ord. 5973 § 1, 2008)

1.40.100 Unfair Or Discriminatory Practices - Housing

It is an unfair or discriminatory practice for any person, owner, or person acting for an owner, of rights to housing or rental property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representative by power of attorney or appointment, or any person acting under court order, deed or trust, or will:

A. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion or interest therein to any individual because of the race, creed, color, sex, sexual orientation, gender identity, national origin, religion, disability or familial status of such individual;

B. To discriminate against any individual because of his or her race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability or familial status, in the terms, conditions, and privileges of the sale, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion or interest in the real property or housing accommodation or in the provision of services or facilities in connection with the real property or housing accommodation.;

C. To directly or indirectly advertise, or in any other manner indicate or publicize, that the purchase, rental, lease, assignment or sublease of any real property or housing accommodations or any part, portion or interest therein by individuals of any particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability or familial status is unwelcome, objectionable, not acceptable or not solicited;

D. To discriminate against the lessee or purchaser of any real property or housing accommodation, or part, portion or interest in real property or housing accommodation, or against any prospective lessee or purchaser of the property for accommodation, because of the race, color, creed, religion, sex, sexual orientation, gender identity, disability, or familial status, age or national origin of individuals who may, from time to time, be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives or in any similar capacity;

E. The provisions of paragraphs A through B of this section shall not apply to the following:

1. The rental, leasing or occupancy of dwellings owned or operated by a religious organization, association, or society, or any nonprofit institution operated, supervised, or controlled by a religious organization, association or society, where preference in rental, leasing, or occupancy is given to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin,
2. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or member of the owner's family reside in one of the accommodations,
3. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resident in one of the housing accommodations for which the owner qualifies for the homestead tax credit under Iowa Code § 425.1,
4. The rental or leasing of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation, if the occupant or owner or members of that person's family reside there,
5. Restrictions based on sex on the rental or leasing of housing accommodations by nonprofit corporation,

6. The rental or leasing of a housing accommodation within which residents of both sexes must share a common bathroom facility on the same floor, of the building;

F. The provisions of this section relating to "familial status" shall not apply to housing for older persons, as defined in CBMC 1.40.030 definition Respondent;

G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction on the maximum number of occupants permitted to occupy a dwelling.

(Ord. 5975 § 1, 2008)

1.40.110 Unfair Credit Practices

A. It is an unfair or discriminatory practice for any:

1. Creditor to refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds, because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, or physical disability or familial status;
2. Person authorized or licensed to do business in this state pursuant to Iowa Code Chapters 524, 533, 536, or 536A, to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to individuals of similar economic backgrounds, because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity or physical disability;
3. Creditor to refuse to offer credit, life or health and accident insurance because of color, creed, national origin, race, religion, marital status, age, physical disability or sex, sexual orientation, gender identity or familial status. Refusal by a creditor to offer credit, life or health accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by Title XIII, subtitle 1.

B. The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter.

(Ord. 5976 § 1, 2008)

1.40.120 Unfair Or Discriminatory Practices - Education

A. It is an unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

1. Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;
2. Denial of comparable opportunity in intramural and interscholastic athletic programs;
3. Discrimination among persons in employment and the conditions of employment;
4. On the basis of sex, the application of any rule concerning the actual or potential parental, family, or marital status of a person, or the exclusion of any person from any program or

activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification.

B. For the purpose of this section, "educational institution" includes any preschool, elementary or secondary school, community college, area education agency, or postsecondary college or university and their governing boards. This section does not prohibit an educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes so long as comparable facilities are provided. Nothing in this section shall be construed as prohibiting any bona fide religious institution from imposing qualifications based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose or any institution from admitting students of only one sex.

(Ord. 5655 § 1 (part), 2001)

1.40.140 Retaliation

It is an unfair or discriminatory practice for any person to discriminate or retaliate against another person in any of the rights protected against discrimination by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

(Ord. 5977 § 1, 2008)

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND October 25, 2021.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk

First Consideration: 10-11-21
Second Consideration: 10-25-21
Public Hearing: n/a
Third Consideration: _____