12-45 Introduce: 4-30-12

ORDINANCE NO. 19711

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

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

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

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

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

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

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

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

11.01.010 Definitions.

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

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

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

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

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

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

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

Covered multi-family dwelling shall mean:

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

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

Disability shall mean, with respect to a person:

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

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

(3) Being regarded as having such an impairment.

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

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

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

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

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

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

Equal Opportunity Officer shall mean the duly appointed Equal Opportunity Officer of the 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any public facility owned, operated, or managed by or on behalf of the City of Lincoln or any agency thereof, or any public corporation, and any such facility supported in whole 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.

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

Title shall mean Title 11 of the Lincoln Municipal Code.

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

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

11.01.020 Protection, Preservation, and Perpetuation of Constitutional Rights.

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

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

11.02.040 Commission on Human Rights; Powers and Duties.

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

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

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

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

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

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

(f) Formulate policies to effectuate the purposes of this title and to make recommendations 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.

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

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

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

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

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

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

11.04.010 Full and Equal Enjoyment of Place of Public Accommodation.

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

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

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

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

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

11.04.060 Religious Organization Exempt; Conditions.

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

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The provisions concerning discriminatory practices that relate to sexual orientation and gender identity shall not apply to any place of public accommodation owned by or operated on behalf of a religious organization.

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

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

11.06.020 Unlawful Acts Enumerated.

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

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

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

(c) Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, disability, national origin, familial status, handicap, ancestry, or marital status, or 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, <u>sexual orientation, gender identity,</u> 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, <u>sexual orientation, gender identity,</u> 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 10.5. That Section 11.06.070 of the Lincoln Municipal be amended to read as follows:

11.06.070 Exceptions; Religious or Private Clubs; Private Homes; Housing for Older Persons.

(a) Nothing in this chapter shall prohibit a religious organization, association, or society or any non-profit institutional organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, or national origin. The provisions concerning discriminatory practices that relate to sexual orientation and gender identity shall not apply to any sale, rental or occupancy of a dwelling which is owned, leased or operated by or on behalf of a religious organization, association or society, or any non-profit institutional organization acting in conjunction with a religious organization, association or society.

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(b) Nothing in this chapter shall prohibit a private club not in fact open to the public, which, as an instance to its primary purpose or purposes, provides lodging, which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(c) Nothing in this chapter (except Section 11.06.020(c)) shall prohibit or limit the right of any person or their authorized representative to refuse to rent a room or rooms in such person's own home for any reason, or for no reason, or to change the tenants in such home as often as may be desired; provided, that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or a family within such home.

(d) Nothing in this chapter shall limit the applicability of restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in this chapter regarding familial status shall apply with respect to housing for older persons as defined in Section 11.01.010.

(e) Nothing in this chapter shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by state law.

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:

11.08.030 Exceptions.

This chapter shall not apply to:

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

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

(c) A school, college, university, or other educational institution with respect to the employment of individuals 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 educational 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, or

(~~b~~d) The employment of any individual by:

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

(2) in the domestic service of any person.

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

11.08.040 Unlawful Employment Practices for an Employer.

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:

11.08.100 Standards for Compensation Permitted; When.

(a) Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, for 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, if the employer can show that such differences are not the result of discrimination because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status; nor shall it be unlawful employment practice for an employer to give and to act upon the results of any validated ability tests if the employer can show that such test, its administration, or action upon the result is not designed, intended, or used to discriminate because of race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status and are reasonably related to such employment.

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

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

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

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

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

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

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

It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in, or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, disability, national origin, ancestry, age, or marital status, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex or national origin, when religion, sex, or national origin is a bona fide occupational qualification for 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, 11.06.070, 11.08.010, 11.08.030, 11.08.040, 11.08.050,

Amended 5-14-12

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 Municipal Code as hitherto existing be and the same are hereby repealed.

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

Introduced by:

See further Council Proceedings on next page.

AYES: Carroll, Cook, Emery, Eskridge, Schimek; NAYS: None; ABSTAIN: Camp, Hornung.

Approved as to Form & Legality:

City Attorney

PASSED

MAY 14 2012

BY CITY COUNCIL

Approved this 14th day of May, 2012:

Mayor

5/14/12 Council Proceedings:

ESKRIDGE Moved MTA #1 to amend Bill No. 12-45 in the following manner:

1. On pages 13 and 14, beginning after the period on Page 13, Line 23 through the end of line 4 on Page 14, delete the underlined language and insert in lieu thereof the following:

The provisions concerning discriminatory practices that relate to sexual orientation and gender identity shall not apply to any place of public accommodation owned by or operated on behalf of a religious organization.

2. On page 18, between lines 9 and 10, insert the following:

Section 10.5. That Section 11.06.070 of the Lincoln Municipal be amended to read as follows:

11.06.070 Exceptions; Religious or Private Clubs; Private Homes; Housing for Older Persons.

(a) Nothing in this chapter shall prohibit a religious organization, association, or society or any non-profit institutional organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, or national origin. The provisions concerning discriminatory practices that relate to sexual orientation and gender identity shall not apply to any sale, rental or occupancy of a dwelling which is owned, leased or operated by or on behalf of a religious organization, association or society, or any non-profit institutional organization acting in conjunction with a religious organization, association or society.

(b) Nothing in this chapter shall prohibit a private club not in fact open to the public, which, as an instance to its primary purpose or purposes, provides lodging, which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(c) Nothing in this chapter (except Section 11.06.020(c)) shall prohibit or limit the right of any person or their authorized representative to refuse to rent a room or rooms in such person's own home for any reason, or for no reason, or to change the tenants in such home as often as may be desired; provided, that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or a family within such home.

(d) Nothing in this chapter shall limit the applicability of restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in this chapter regarding familial status shall apply with respect to housing for older persons as defined in Section 11.01.010.

(e) Nothing in this chapter shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by state law.

3. On Page 24, Line 23, between 11.06.065 and 11.08.010, insert "11.06.070,".

Seconded by Carroll & carried by the following vote: AYES: Camp, Carroll, Cook, Emery, Eskridge, Hornung, Schimek; NAYS: None.

#30

12-45

MOTION TO AMEND NO. 1

I hereby move to amend Bill No. 12-45 in the following manner:

1. On pages 13 and 14, beginning after the period on Page 13, Line 23 through the end of line 4 on Page 14, delete the underlined language and insert in lieu thereof the following:

The provisions concerning discriminatory practices that relate to sexual orientation and gender identity shall not apply to any place of public accommodation owned by or operated on behalf of a religious organization.

2. On page 18, between lines 9 and 10, insert the following:

Section 10.5. That Section 11.06.070 of the Lincoln Municipal be amended to read as follows:

11.06.070 Exceptions; Religious or Private Clubs; Private Homes; Housing for Older Persons.

(a) Nothing in this chapter shall prohibit a religious organization, association, or society or any non-profit institutional organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of a dwelling which it owns or operates for other than commercial purposes to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, or national origin. The provisions concerning discriminatory practices that relate to sexual orientation and gender identity shall not apply to any sale, rental or occupancy of a dwelling

which is owned, leased or operated by or on behalf of a religious organization, association or society, or any non-profit institutional organization acting in conjunction with a religious organization, association or society.

(b) Nothing in this chapter shall prohibit a private club not in fact open to the public, which, as an instance to its primary purpose or purposes, provides lodging, which it owns or operates for other than commercial purposes, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(c) Nothing in this chapter (except Section 11.06.020(c)) shall prohibit or limit the right of any person or their authorized representative to refuse to rent a room or rooms in such person's own home for any reason, or for no reason, or to change the tenants in such home as often as may be desired; provided, that this exception shall not apply to any person who makes available for rental or occupancy more than four sleeping rooms to a person or a family within such home.

(d) Nothing in this chapter shall limit the applicability of restrictions regarding the maximum number of occupants permitted to occupy a dwelling, and nothing in this chapter regarding familial status shall apply with respect to housing for older persons as defined in Section 11.01.010.

(e) Nothing in this chapter shall prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined by state law.

3. On Page 24, Line 23, between 11.06.065 and 11.08.010, insert "11.06.070,".

Carl Eskridge

AYES: Camp, Carroll, Cook, Emery, Eskridge, Hornung, Schimek; NAYS: None.

Approved as to Form & Legality:

City Attorney

Requested by: Councilman Carl Eskridge

Reason for Request: To address concerns raised by the Catholic Diocese of Lincoln regarding housing and public accommodations provisions.

ADOPTED

MAY 14 2012

BY CITY COUNCIL

GENERAL FACT SHEET

BILL NUMBER 12-45

BRIEF TITLE	APPROVAL DEADLINE	REASON
Amending Code		

DETAILS		POSITIONS/RECOMMENDATIONS
Amending Title 11 of the Lincoln Municipal Code to prohibit discrimination on the basis of sexual orientation or gender identity.	Sponsor	Carl Eskridge City Council
	Program Departments, or Groups Affected	All
	Applicants/ Proponents	Applicant Carl Eskridge City Department City Council Other
Discussion (Including Relationship to other Council Actions)	Opponents	Groups or Individuals n/a Basis of Opposition
	Staff Recommendations	X☐ For ☐ Against Reason Against
	Board or Commission Recommendation	BY ☐ For ☐ Against ☐ No Action Taken ☐ For with revisions or conditions (See Details column for conditions)
	CITY COUNCIL ACTIONS (For Council Use Only)	☐ Pass ☐ Pass (As Amended) ☐ Council Sub. ☐ Without Recommendation ☐ Hold ☐ Do not Pass

DETAILS	POLICY/PROGRAM IMPACT	
	POLICY OR PROGRAM CHANGE	❑ NO ❑ YES _____ _____ _____
	OPERATIONAL IMPACT ASSESSMENT	_____ _____ _____ __ _____
	FINANCES	
	COST AND REVENUE PROJECTIONS	COST of total project: $ COST of this Ordinance/ Resolution $ 0
		RELATED annual operating Costs $
		INCREASE REVENUE EXPECTED/YEAR $
	SOURCE OF FUNDS	CITY [Approximately] _____$_____%___ _____$_____%___ _____$_____%___ NON CITY [Approximately] _____$_____%___ _____$_____%___ _____$_____%___
	BENEFIT COST ❑ Front Foot ❑ Square Foot	$_____ Average Assessment $_____

APPLICABLE DATES: Intro. 4-30-12; P.H. 5-7-12

FACT SHEET PREPARED BY: Rod Confer, City Attorney

REVIEW BY:

REFERENCE NUMBER

(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:

ORDINANCE NO. 19711

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

Read First Time	April 30, 2012
Read Second Time	MAY 7 - 2012
Read Third Time	MAY 1 4 2012
Passed	MAY 1 4 2012
Published in	Lincoln Journal Star
on	MAY 2 5 2012

CERTIFICATE

State of Nebraska)
) ss
County of Lancaster)

I, the undersigned, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the within ordinance is the original Ordinance No. 19711 as passed by the City Council of said City, as indicated above, and as approved by the Mayor of said City and as the same appears of record in my office and is now in my charge remaining as City Clerk aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska this 14th day of May, 2012

Joan E Ross
City Clerk of Lincoln, Nebraska

CITY OF LINCOLN · FOUNDED JULY 29, 1867 · INCORPORATED APRIL 2, 1869 · SEAL · LANCASTER COUNTY, NEBRASKA