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ORDINANCE

By Glidden, Warsame and Goodman

Amending Title 7, Chapter 139 of the Minneapolis Code of Ordinances relating to Civil Rights: In General.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 139.10 of the above-entitled ordinance be amended to read as follows:

139.10. - Findings, declaration of policy and purpose, effective date.

(a) *Findings.* The council finds that discrimination in employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance or familial status adversely affects the health, welfare, peace and safety of the community. Such discriminatory practices degrade individuals, foster intolerance and hate, and create and intensify unemployment, substandard housing, undereducation, ill health, lawlessness and poverty, thereby injuring the public welfare.

(b) *Declaration of policy and purpose.* It is the public policy of the City of Minneapolis and the purpose of this title:

(1) To recognize and declare that the opportunity to obtain employment, labor union membership, housing accommodations, property rights, education, public accommodations and public services without discrimination based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance or familial status is a civil right.

(2) To prevent and prohibit all discriminatory practices based on race, color, creed, religion, ancestry, national origin, sex, including sexual harassment, sexual orientation, gender identity, disability, age, marital status, or status with regard to public assistance with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations or public services.

(3) To prevent and prohibit all discriminatory practices based on familial status with respect access to real estate and services related to real estate.

(4) To protect all persons from discrimination and from unfounded charges of discriminatory practices.

(5) To eliminate existence and the development of any ghettos in the community.

(6) To effectuate the foregoing policy by means of public information and education, mediation and conciliation, and enforcement.

(c) *Effective date of 2006 amendments.* Each provision in this chapter that was amended in 2006 shall apply to any complaint or charge alleging conduct occurring on or after July 1, 2006, except when such a

provision is superseded through a subsequent amendment. The ordinance as enacted prior to the 2006 amendments shall continue to apply to any complaint or charge alleging conduct arising before July 1, 2006.

(d) Effective date of first quarter 2017 amendments. Each provision in this chapter that was amended in the first quarter of 2017 shall apply to any complaint or charge alleging conduct occurring on or after January 1, 2018, except when such a provision is superseded through a subsequent amendment. The ordinance as enacted prior to the 2017 first quarter amendments shall continue to apply to any complaint or charge alleging conduct arising before January 1, 2018.

Section 2. That Section 139.20 of the above-entitled ordinance be amended to read as follows:

139.20. - Definitions.

Age: Insofar as it refers to any act prohibited by section 139.40(a), (b), (c), or (d) shall be deemed to prohibit using a person's age as a basis for a decision if the person is over the age of majority, which shall be deemed to protect any individual over the age of twenty-five (25) years.

American Indian: For the purpose of meeting any goals required pursuant to section 139.50, "American Indian" shall mean any person who is an enrolled member of an Indian tribe, or who is a descendent in the first or second degree of any such member, or who is recognized as an Indian by the Secretary of the Interior.

Business: Any partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver. Business does not include the city and its departments, agencies, independent boards and commissions, the state and its departments and agencies, or other political subdivisions of the state.

Commission: The Minneapolis Commission on Civil Rights.

Complainant: A person for or on whose behalf a complaint alleging unlawful discrimination has been filed or issued.

Contract: Any contract or agreement entered into by the city for the provision of goods, services, buildings, improvements and other public works or development property in excess of fifty thousand dollars (\$50,000.00).

Department: The Minneapolis Department of Civil Rights.

Development contract: Any contract or agreement entered into by the city pursuant to which the city or MCDA provides direct or indirect financial assistance in excess of fifty thousand dollars (\$50,000.00) to a developer or owner of real property to facilitate construction or rehabilitation.

Development contract shall not include:

- (1) Low income housing tax credits provided pursuant to 26 U.S.C., Section 42.
- (2) Taxable or tax-exempt financing issued for projects located outside of the City of Minneapolis.

(3) Small business loan programs where public dollars are leveraged or supplemented with private dollars of a participating lender that originates, services and collects the public and private loan payments under an agreement with the city.

(4) NRP funds used for the construction or rehabilitation of seven (7) or less residential units and the amount of the assistance is less than one hundred thousand dollars (\$100,000.00).

(5) NRP funds used for the construction or rehabilitation of a commercial or industrial property where the amount of the assistance is less than one hundred thousand dollars (\$100,000.00).

(6) Assistance to an organization that promotes affordable home ownership opportunities through the extensive use of volunteer labor and/or sweat equity components to rehabilitate or construct dwellings.

(7) Land sales for fair market value with no other assistance to the purchaser greater than fifty thousand dollars (\$50,000.00).

(8) Financial assistance used to rehabilitate or construct a single-family dwelling or duplex to be owned and occupied by the recipient of the financial assistance.

Director: The director of the department of civil rights.

Disability: Any condition or characteristic that causes a person to become a person with a disability. A person with a disability is any person who:

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

(2) Has a record of such an impairment; or

(3) Is perceived as having such an impairment.

Discriminate or discrimination: Includes any act, attempted act, policy or practice, which results in the unequal treatment, separation or segregation of or which otherwise adversely affects any person who is a member of a class protected by this title, and for purposes of discrimination based upon sex it includes sexual harassment.

Dwelling: As defined in Title 12, Chapter 244, Article I.

Dwelling unit: As defined in Title 12, Chapter 244, Article I.

Educational institution: A public or private institution located or operating in the City of Minneapolis which performs educational services and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery school system, and a business, nursing, professional, secretarial, technical or vocational school; and further includes any agent or employee of an educational institution.

Elderly person: A person who is at least fifty-five (55) years of age.

Employ: To use or be entitled to the use and benefit of the services of a person as an employee.

Employee: Includes all persons who seek to, apply to, or perform services for any employer for compensation, whether in the form of wages, salaries, commission or otherwise.

Employer: Includes any person within the City of Minneapolis who hires or employs any employee, and any person wherever situated who hires or employs any employee whose services are to be partially or wholly performed in the City of Minneapolis.

Employment: The state of being employed as an employee by an employer.

Employment agency: Any person located or operating in the City of Minneapolis, regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer.

Entity under review: A bidder, responder to a request for proposals, developer, owner or prospective contractor seeking to contract with the City or the Minneapolis Community Development Agency.

Familial status: The condition of one (1) or more minors residing with (1) their parent or parents or the minor's legal guardian or (2) the designed of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.

Gender identity: A person's actual or perceived self-image or identity as expressed through dress, appearance, behavior, speech or similar characteristics, whether or not traditionally associated with the person's physical anatomy, chromosomal sex, or sex at birth.

Hearing committee: A committee of three (3) commissioners, one (1) of whom is a lawyer, who have been designated by the chairperson of the commission to hear a complaint after a determination of probable cause and referral by the director.

Hire: To engage or contract for, or attempt to engage or contract for, the services of any person as an employee.

Housing Choice Vouchers or HCV: Tenant-based assistance under the United States Housing Act of 1937, 42 U.S.C. § 1437f(o) (also known as Section 8).

Housing for elderly persons: Housing:

(1) Provided under any federal, state or local program that the director determines is specifically designed and operated to assist elderly persons, as defined in the federal, state or local program;

(2) Intended for, and solely occupied by, persons sixty-two (62) years of age or older; or

(3) Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per unit, provided that:

a. There are significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of these facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons.

b. At least eighty (80) percent of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit.

c. There is publication of, and adherence to, policies and procedures that demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

Housing does not fail to meet the requirements for "housing for elderly persons" by reason of persons residing in the housing as of the effective date of this subsection who do not meet the age requirements of this subsection if new occupants of the housing meet the age requirements of this subsection. In addition, housing does not fail to meet the requirements by reason of unoccupied units if unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

Labor organization: Includes any person, employee representation committee or plan in which employees participate, or any agent or employee thereof, which operates in the City of Minneapolis or whose members live or are employed in the City of Minneapolis, and which exists wholly or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment and shall include any conference, general committee, joint or system board, or joint council.

Landlord: As defined in Minnesota Statutes, Section 504B.001.

Lawyer: A person duly authorized and licensed by the State of Minnesota or any other state to engage in the practice of law.

Mediation: A forum in which a neutral third party facilitates communication between parties to promote settlement. Mediation focuses more on finding solutions than on determining fault. The mediator does not impose a decision or his or her own views upon the parties but aids them in reaching a mutually acceptable agreement.

National origin: The place of birth of an individual or of any of his lineal ancestors.

Person: Includes one (1) or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, public bodies or public corporations, including but not limited to the City of Minneapolis or any department or unit thereof, any other legal or commercial entity, and any agent or employee of all the foregoing.

Professional organization: Includes, but is not limited to, any person, organization, association, collective, or group which requires for membership any educational, experiential, professional or other credentials and provides services associated with the occupation, trade or profession around which the professional organization was formed to promote and service.

Public accommodations: Includes all services or facilities, other than governmental, of any kind offered or located within the City of Minneapolis which are generally open or offered to the public or which generally solicit public patronage or usage, whether operated for profit or not.

Public Assistance Program: Federal, state or local assistance, including medical assistance, or tenant-based federal, state or local subsidies, including, but not limited to, rental assistance, rent supplements, and Housing Choice Vouchers.

Public services: Includes all activities, services or facilities offered to the public within the City of Minneapolis by any governmental agency or unit of government owned, operated or managed by any local, state or federal government, including, but not limited to, the Minneapolis Community Development Agency and Special School District No. 1.

Qualified person with a disability:

(1) With respect to employment, a person with a disability who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question.

(2) With respect to public services and programs, a person with a disability who, with reasonable accommodation, physical and program access, meets the essential eligibility criteria required of all applicants for the program or service in question.

For the purpose of this chapter, "disability" excludes any condition resulting from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others.

If a respondent contends that the person is not a qualified person with a disability, the burden is on the respondent to prove that it was reasonable to conclude the person with a disability, with reasonable accommodation, could not have met the requirements of the job or that the selected person was demonstrably better able to perform the job.

Real estate broker; real estate salesperson: A real estate broker as defined by Minnesota Statutes, Section 82.17, Subdivision 4, and real estate salesperson as defined by Minnesota Statutes, Section 82.17, Subdivision 5.

Real property: Any right, title, interest in or to the possession, ownership, enjoyment of occupancy of any parcel of land in the City of Minneapolis, any building situated thereon, or any portion of such buildings.

Reasonable accommodation: Steps which must be taken to accommodate the known physical or mental limitations of a qualified person with a disability. "Reasonable accommodation" may include but is not limited to:

(1) Facilities readily accessible to and usable by persons with disabilities;

(2) Restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis;

(3) Access to real property through modifications to the public portions of the real property that renders it accessible to persons with mobility impairments, or other modifications as required to accommodate persons with disabilities; and

(4) A person, who is a person with a disability, to make reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to afford the person with a disability full enjoyment of the premises; provided however, that a landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, excluding reasonable wear and tear.

This definition is not intended to limit the offering of reasonable accommodations only to persons meeting the definition of disability described herein. Employers are encouraged to make accommodations that in their judgment will enhance the work performance of all employees regardless of disability status.

Religious or denominational educational institutions: An educational institution located or operating in the City of Minneapolis which is operated, supervised, controlled or sustained primarily by a religious or denominational organization, or is one (1) which is stated by the parent church body to be and is, in fact, officially related to that church through church representation on the board of the institution and through substantial church financial assistance to the institution, providing the institution has certified, in writing, to the commission that it is a religious or denominational educational institution; and further includes any agent or employee of such an institution.

Reprisal: A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to a person because that person has engaged in the activities listed in subsection 139.40(l)(3) refuse to hire the person; depart from any customary employment practice; transfer or assign the person to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the person has engaged in the activities listed in subsection 139.40(l)(3).

Respondent: A person against whom a complaint alleging unlawful discrimination has been filed or issued.

Review committee: A committee of three (3) commissioners, one (1) of whom is a lawyer, who have been designated by the chair person of the commission to review an appeal by a complainant from a determination of no probable cause by the director.

Sex: The character of being male or female and encompasses, but is not limited to, pregnancy, childbirth, disabilities related to pregnancy or childbirth, and sexual harassment.

Sexual harassment: Includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct, or communication of a sexual nature when:

(1) Submission to the conduct, or communication, is made a term or condition, either explicitly or implicitly, of obtaining the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution, or;

(2) Submission to or rejection of that conduct or communication is used as a factor in decisions affecting that individual in obtaining the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution, or;

(3) That conduct or communication has the purpose or effect of substantially interfering with an individual in regard to, or creating an intimidating, hostile or offensive environment in regard to the services of a labor organization, employment, the services of an employment agency, real estate, the services of a lending institution, public accommodations, public services, or the services of an educational institution.

Sexual orientation: Having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment. Sexual orientation does not include a physical or sexual attachment to children by an adult.

Status with regard to a public assistance program: The condition of being a recipient of or participant in a public assistance program.

Status with regard to public assistance: The condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state or local subsidies, including rental assistance, or rent supplements.

Undue hardship: With respect to section 139.40(e)(1) means a situation requiring significant difficulty or expense when considered in light of a number of factors to be determined on a case-by-case basis. These factors include, but are not limited to:

(1) The nature and net cost of complying with any requirement of a public assistance program, taking into consideration existing property management processes;

(2) The overall financial resources of the landlord, taking into consideration the overall size of the business with respect to the number of its employees, and the number, type, and location of its housing stock; and

(3) The impact of complying with any requirement of a public assistance program upon the business and dwelling.

Section 3. That Section 139.30 of the above-entitled ordinance be amended to read as follows:

139.30. - Exemptions.

(a) *Employment.* The provisions of section 139.40(a), (b) and (c) shall not apply to or prohibit:

(1) The employment of any individual by his or her parent, grandparent, spouse, domestic partner as defined in Chapter 142 of the Minneapolis Code of Ordinances, child or grandchild, or in the domestic service of any person.

(2) Any religious corporation, association or society with respect to the hiring or employment of individuals of a particular religion, when religion shall be a bona fide occupational qualification for employment.

(3) An employer, employment agency or labor organization from requiring or requesting a person to undergo a physical examination which may include a medical history for the purpose of determining the

person's capability to perform available employment provided that all of the following are complied with:

a. An offer of employment has been made on condition that the person meets the physical or mental requirements of the job, except that a law enforcement agency filling a peace officer position or part-time peace officer position may require or request an applicant to undergo psychological evaluation before a job offer is made provided that the psychological evaluation is for those job-related abilities set forth by the Board of Peace Officer Standards and Training for psychological evaluations and is otherwise lawful.

b. The examination tests only for essential job-related abilities.

c. The examination, except for examinations required under Minnesota Statutes, Chapter 176 is required of all persons conditionally offered employment for the same position regardless of disability.

d. That the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid safety personnel may be informed, when appropriate, if the disability might require emergency treatment; government officials investigating compliance with this chapter must be provided relevant information on request; and information may be released for purposes mandated by local, state, or federal law; provided that the results of the examination are used only in accordance with this chapter.

(4) An employer, employment agency or labor organization, with the consent of the employee, after employment has commenced, from obtaining additional medical information for the purposes of assessing continuing ability to perform the job or employee health insurance eligibility; for purposes mandated by local, state, or federal law; or for purposes of assessing the need to reasonably accommodate an employee or other legitimate business reason not otherwise prohibited by law.

(5) An employer, employment agency or labor organization from administering preemployment tests, provided that the tests satisfy all of the following:

a. Measure only essential job-related abilities.

b. Are required of all applicants for the same position regardless of disability except for tests authorized under Minnesota Statutes, Chapter 176.

c. Accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the applicant's impaired sensory, manual, or speaking skills, except when those skills are the factors that the tests purport to measure.

(6) An employer, employment agency or labor organization from limiting receipt of benefits payable under a fringe benefit plan for disabilities to that period of time which a licensed physician reasonably determines a person is unable to work.

(7) An employer, employment agency or labor organization from providing special safety considerations for pregnant women involved in tasks which are potentially hazardous to the health of the unborn child, as determined by medical criteria.

(b) Real estate and public assistance. The provisions of section 139.40(e) relating to tenant-based federal, state or local subsidies, including, but not limited to, rental assistance, rent supplements, and Housing Choice Vouchers, or any requirement of such a program, shall not apply to:

(1) Renting or leasing a room in an owner occupied single family dwelling.

(2) Renting or leasing a single family dwelling, a single dwelling unit, or a single dwelling unit of a condominium, townhouse, or housing cooperative, by the owner of the dwelling or dwelling unit, for no more than 36 months, when such dwelling or dwelling unit is an owner occupied homestead at the start of the 36 month period.

(3) Renting or leasing a dwelling with two dwelling units when a person who owns or has an ownership interest in the dwelling is residing in the other dwelling unit.

(4) Renting or leasing a single family dwelling, a single dwelling unit, or a single dwelling unit of a condominium, townhouse, or housing cooperative, by the owner of the dwelling or dwelling unit, while the owner is on active military duty and when such dwelling or dwelling unit is an owner occupied homestead at the start of the active military duty.

(c) Real estate. The provisions of section 139.40(e) do not prohibit an owner of a dwelling or dwelling unit from:

(1) Abiding by laws restricting the occupancy of a dwelling or dwelling unit to a maximum number of people.

(2) Screening any person who will occupy a dwelling unit based on rental or lease history as allowed by the public assistance program applicable to the rental or lease, or any other non-discriminatory criteria, including but not limited to, past conduct or the ability to pay their applicable portions of the rent or lease.

(3) Abiding by applicable laws, regulations, or this Code, and provisions of Minnesota Statutes, Chapter 504B.

Section 4. That Section 139.40 of the above-entitled ordinance be amended to read as follows:

139.40. - Acts of discrimination specified.

Without limitation, the following are declared to be unfair discriminatory acts:

(a) Discrimination by a labor organization. Except when based on a bona fide occupational qualification, for any labor organization, because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status with regard to a public assistance program:

(1) To deny full and equal membership rights to a person seeking membership or to a member

(2) To expel a member from membership

(3) To discriminate against a person seeking membership or a member with respect to his hiring, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment

(4) To fail to classify properly, or refer for employment or otherwise to discriminate against a person or member

(5) To fail to make reasonable accommodation to the known disability of a qualified person with a disability unless the labor organization can demonstrate that the accommodation would impose an undue hardship on it.

"Reasonable accommodation" means steps which must be taken to accommodate the known physical or mental limitations of a qualified person with a disability. "Reasonable accommodation" may include but is not limited to, nor does it necessarily require:

(i) Making facilities readily accessible to and usable by persons with disabilities.

(ii) Job restructuring, modified work schedules, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.

In determining whether an accommodation would impose an undue hardship on the operation of a labor organization, factors to be considered include:

a. The overall size of the labor organization with respect to number of members and the number and type of facilities in which those members are employed.

b. The type of operation, including the composition and structure of the work force.

c. The nature and cost of the needed accommodation.

d. The reasonable ability to finance the accommodation at each site of business.

e. Documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the person with a disability and with knowledgeable persons with disabilities or disability organizations.

(6) Except when based on a bona fide occupational qualification, it is an unfair employment practice for a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work, including a duty to make reasonable accommodations as provided by 139.40(a)(5).

(b) Discrimination in employment. Except when based on a bona fide occupational qualification, for an employer because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status with regard to a public assistance program:

(1) To fail or refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment.

(2) To discharge an employee.

(3) To discriminate against a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

(4) For an employer with fifteen (15) or more permanent full-time employees to fail to make reasonable accommodation to the known disability of a qualified person with a disability unless it can demonstrate that the accommodation would impose an undue hardship on it.

"Reasonable accommodation" means steps which must be taken to accommodate the known physical or mental limitations of a qualified person with a disability. "Reasonable accommodation" may include but is not limited to, nor does it necessarily require:

(i) Making facilities readily accessible to and usable by persons with disabilities.

(ii) Job restructuring, modified work schedules, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis. A prospective employer need not pay for an accommodation for a job applicant if it is available from an alternative source without cost to the employer or applicant.

In determining whether an accommodation would impose an undue hardship on the operation of an employer, factors to be considered include:

a. The overall size of the employer with respect to number of employees or members and the number and type of facilities.

b. The type of operation, including the composition and structure of the work force.

c. The nature and cost of the needed accommodation.

d. The reasonable ability to finance the accommodation at each site of business.

e. Documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the person with a disability and with knowledgeable persons with disabilities or disability organizations.

(5) Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work, including a duty to make reasonable accommodations as provided by 139.40(b)(4).

(c) Discrimination by an employment agency. Except when based on a bona fide occupational qualification, for an employment agency because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status with regard to a public assistance program:

(1) To refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against a person.

(2) To comply with a request from an employer for referral of applicants for employment if the request indicates directly or indirectly that the employer fails to comply with the provisions of this title.

(3) To fail to make reasonable accommodation to the known disability of a qualified person with a disability unless it can demonstrate that the accommodation would impose an undue hardship on it. "Reasonable accommodation" means steps which must be taken to accommodate the known physical or mental limitations of a qualified person with a disability.

"Reasonable accommodation" may include but is not limited to, nor does it necessarily require:

(i) Making facilities readily accessible to and usable by persons with a disability.

(ii) Job restructuring, modified work schedules, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.

In determining whether an accommodation would impose an undue hardship on the operation of an employment agency, factors to be considered include:

a. The overall size of the agency with respect to number of persons referred for employment and the kind or type of employment to which persons are referred.

b. The nature and cost of the needed accommodation.

c. Documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the person with a disability and with knowledgeable persons with disabilities or disability organizations.

(4) Except when based on a bona fide occupational qualification, it is an unfair employment practice for an employer, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work, including a duty to make reasonable accommodations as provided by 139.40(c)(3).

(d) Discriminatory practices in furnishing employment information and employment advertising. Except when based on a bona fide occupational qualification, for an employer, employment agency, or labor organization, before a person is employed by an employer or admitted to membership in a labor organization:

(1) To require a person to furnish information that pertains to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status with regard to a public assistance program, unless one (1) of the following apply:

a. For the purpose of national security, information pertaining to national origin is required by the United States, this state, or a political subdivision or agency of the United States or this state.

b. For the purpose of compliance with the Public Contracts Act or any rule, regulation or laws of the United States or of this state requiring information pertaining to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status with regard to a public assistance program is required by the United States, this state, or a political subdivision or agency of the United States or this state.

(2) To cause to be printed or published a notice or advertisement that relates to employment or membership and discloses a preference, limitation, specification, or discrimination based on race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, or status with regard to a public assistance program.

(e) *Discrimination in real estate.* For an owner, lessee, sublessee, managing agent of, real estate broker, real estate salesperson or other person having the right to sell, rent or lease any property, or any agent or employee of any of these:

(1) To refuse to sell, rent or lease, to offer for sale, rental or lease, or otherwise deny or withhold any real property to or from any person or group of persons or to refuse to negotiate for the sale, rental or lease of any real property to any person or group of persons because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, ~~status with regard to public assistance or familial status~~ familial status, status with regard to a public assistance program, or any requirement of a public assistance program. It is an affirmative defense if the refusal, denial, or withholding is due to a requirement of a public assistance program and that requirement would impose an undue hardship. The department may promulgate rules or regulations establishing standards for undue hardship determinations.

(2) To represent that real property is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise deny or withhold any real property or any facilities of real property to or from any person or group of persons because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, marital status, ~~status with regard to public assistance or familial status~~ familial status, status with regard to a public assistance program, or any requirement of a public assistance program.

(3) To discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of real property or in the furnishing of facilities or services in connection therewith, including application processes and fees, because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, marital status, ~~status with regard to public assistance or familial status~~ familial status, status with regard to a public assistance program, or any requirement of a public assistance program.

(4) To fail or refuse to make reasonable accommodations in rules, policies, practices or services when necessary to afford a person with a disability an opportunity to use, enjoy or continue to use or enjoy a dwelling.

(5) To print, circulate or post, or cause to be printed, circulated or posted, any advertisement or sign, or use any form of application for the purchase, rental or lease of any real property, or make any record or inquiry verbal or written in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital

status, ~~status with regard to public assistance or familial status~~ familial status, status with regard to a public assistance program, or any requirement of a public assistance program.

(6) To fail to design and construct covered multifamily dwellings available for first occupancy after March 13, 1991, so that:

a. The dwellings have at least one (1) building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual site characteristics; or

b. With respect to dwellings with a building entrance on an accessible route:

1. The public and common use portions are readily accessible to and usable by persons with disabilities.

2. There is an accessible route into and through all dwellings and units.

3. All doors designed to allow passage into, within and through these dwellings and individual units are wide enough for persons with disabilities in wheelchairs.

4. Light switches, electrical switches, electrical outlets, thermostats, and other environmental controls are in accessible locations.

5. Bathroom walls are reinforced to allow later installation of grab bars.

6. Kitchens and bathrooms have space for a person in a wheelchair to maneuver.

For purposes of this subsection, the term "covered multifamily dwellings" means either buildings consisting of four (4) or more units if such buildings have one (1) or more elevators or ground floor units in other buildings consisting of four (4) or more units.

(7) To fail to make reasonable accommodation to the known disability of a disabled person.

(8) To provide services at different fee schedules between a person with a spouse and a person with registered domestic partner, or between a person with a spouse and children and a person with a registered domestic partner and children.

(f) *Discriminatory representation by real estate brokers or real estate salespersons.* For any real estate broker or real estate salesperson, property owner, rental agent, property manager, caretaker or any agent or employee thereof, for the purpose of inducing a real property transaction from which a person, that person's firm, or any of its members may benefit financially, to represent that a change has occurred or will or may occur in the composition with respect to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, status with regard to a public assistance program or familial status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other public facilities.

(g) *Discrimination by professional organizations.* Except when based on a bona fide occupational qualification, for any professional association, because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital status, status with regard to a public assistance program, or familial status:

- (1) To deny full and equal membership rights to a person seeking membership or to a member.
- (2) To expel a member from membership.
- (3) To discriminate against a person seeking membership or a member with respect to the terms and conditions of membership, services and privileges associated with membership, participation in all membership activities and benefits, or any other aspect of membership.
- (4) To fail to properly classify a person seeking membership or a member with regard to the availability of membership services, cost of membership or otherwise discriminate against a person seeking membership or a member.
- (5) To fail to make reasonable accommodation to the known disability of a qualified disabled person unless the professional organization can demonstrate that the accommodation would impose an undue hardship on it.
- (6) To provide services at different fee schedules between a person with a spouse and a person with registered domestic partner, or between a person with a spouse and children and a person with a registered domestic partner and children.

(h) *Discrimination in lending.* For any person, bank, banking organization, mortgage company, insurance company, broker, underwriter or other financial institution or lender, or any agent or employee thereof, to whom application is made for financial assistance:

- (1) To discriminate against any person or group of persons because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to public assistance or familial status in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions or privileges of any such financial assistance or in the extension of services in connection therewith.
- (2) To use any form of application for such financial assistance or make any verbal or written record or inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any preference, limitation, specification or discrimination as to race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to public assistance or familial status or any intent to make any such preference, limitation, specification or discrimination.
- (3) To discriminate against any person or group of persons who desire to purchase, lease, acquire, construct, rehabilitate, repair or maintain real property in a specific urban area because of the social, economic or environmental conditions of the area in the granting, withholding, extending, modifying or renewing, or in the rates, terms, conditions or privileges of any such financial assistance or in the extension of services in connection therewith. All financial institutions shall post the following sign in a conspicuous place: "This institution abides by the federal, state and local laws prohibiting the denial of a mortgage or home improvement loan or the granting of a mortgage or home improvement loan on

different terms, because of the conditions in the neighborhood in which the home is located. If you believe you have been discriminated against, call either of the following agencies for help: State Human Rights Department; City Civil Rights Department."

(i) *Discrimination in public accommodations.* For any person engaged in the provision of public accommodations:

(1) To fail or refuse to provide to any person access to the use of and benefit from the services, privileges, advantages, accommodations and facilities of such public accommodations because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to a public assistance program.

(2) To discriminate against any person with respect to the availability of such services and facilities, the price or other consideration therefor, the scope and quality thereof, or the terms and conditions under which the same are made available, including terms and conditions relating to credit, payment, warranties, delivery, installation and repair because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to a public assistance program.

(3) To provide services at different fee schedules between a person with a spouse and a person with registered domestic partner, or between a person with a spouse and children and a person with a registered domestic partner and children because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to a public assistance program.

(4) To not make reasonable accommodation to the known physical, sensory, or mental disability of a person with a disability in a place of public accommodation. In determining whether an accommodation is reasonable, the factors to be considered may include:

- a. The frequency and predictability with which members of the public will be served by the accommodation at that location.
- b. The size of the business or organization at that location with respect to physical size, annual gross revenues, and the number of employees.
- c. The extent to which persons with disabilities will be further served from the accommodation.
- d. The type of operation.
- e. The nature and amount of both direct costs and legitimate indirect costs of making the accommodation and the reasonableness for that location to finance the accommodation.
- f. The extent to which any persons may be adversely affected by the accommodation.

(5) To subject a person or class of persons on the basis of a disability of that person or class of persons, directly or through contractual, licensing, or other arrangements, to a denial of the opportunity of the person or class of persons to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(6) To afford a person or class of persons, on the basis of the disability of that individual or class of persons, directly or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations that are not equal to those afforded to other persons.

(7) To provide a person or class of persons, on the basis of a disability of that person or class of persons, directly or through contractual, licensing, or other arrangements, with goods, services, facilities, privileges, advantages, or accommodations that are different or separate from those provided to other individuals, unless the action is necessary to provide the individual or class of individuals with goods, services, facilities, privileges, advantages, or accommodations, or other opportunities that are as effective as those provided to others.

(8) To not afford goods, services, facilities, privileges, advantages, and accommodations to a person with a disability in the most integrated setting appropriate to the needs of the person with a disability.

(9) Notwithstanding the existence of separate or different programs or activities provided in accordance with subdivision 139.40(i)(5), to deny a person with a disability the opportunity to participate in the programs or activities that are not separate or different.

(10) To, directly or through contractual or other arrangements, use standards or criteria and methods of administration that either:

a. Have the effect of discriminating on the basis of disability.

b. Perpetuate on the basis of disability the discrimination of others who are subject to common administrative control.

(11) To impose or apply eligibility criteria that screen out or tend to screen out a person with a disability or any class of persons with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless the criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations.

(12) To fail to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford the goods, services, facilities, privileges, advantages, or accommodations to persons with disabilities, unless the entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(13) To fail to take all necessary steps to ensure that no person with a disability is excluded, denied services, segregated, or otherwise treated differently than other persons because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking the steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered and would result in an undue burden;

(14) To fail to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals, not including barriers that can only be removed through the retrofitting of vehicles by the installation of hydraulic or other lifts, if the removal is readily achievable.

(15) If an entity can demonstrate that the removal of a barrier under subdivision 139.40(i)(12) is not readily achievable or cannot be considered a reasonable accommodation, to fail to make the goods, services, facilities, privileges, advantages, or accommodations available through alternative means if the means are readily achievable.

(16) To deny any person with a disability the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce by any of the following:

a. The imposition or application of eligibility criteria that screen out, or tend to screen out, an individual with a disability or a class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless the criteria can be shown to be necessary for the provision of the services being offered.

b. The failure to make reasonable modifications, provide auxiliary aids and services, and remove barriers, consistent with subdivision 139.40(i)(9) through 139.40(i)(13).

c. The purchase or lease of a new vehicle, other than an automobile or van with a seating capacity of fewer than eight (8) passengers, including the driver, or an over-the-road bus, that is to be used to provide specified public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except that a new vehicle need not be readily accessible to and usable by individuals with disabilities if the vehicle is to be used solely in a demand responsive system and if the private entity can demonstrate that the system, when viewed in its entirety, provides a level of services to individuals with disabilities equivalent to the level of service provided to the general public.

d. The purchase or lease a new railroad passenger car that is to be used to provide specified public transportation if the car is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or to manufacture railroad passenger cars or purchase used cars that have been remanufactured so as to extend their usable life by ten (10) years or more, unless the remanufactured car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, except that compliance with this clause is not required to the extent that compliance would significantly alter the historic or antiquated character of historic or antiquated railroad passenger cars or rail stations served exclusively by those cars.

e. The purchase or lease a new, used, or remanufactured vehicle with a seating capacity in excess of sixteen (16) passengers, including the driver, for use on a fixed route public transportation system, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If a private entity that operates a fixed route public transportation system purchases or leases a new, used, or remanufactured vehicle with a seating capacity of sixteen (16) passengers or fewer, including the driver, for use on the system which is not readily accessible to and usable by individuals with disabilities, it is an unfair discriminatory practice for the entity to fail to operate the system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

f. Failing to operate a demand responsive system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs,

equivalent to the level of service provided to individuals without disabilities. It is an unfair discriminatory practice for the entity to purchase or lease for use on a demand responsive system a new, used, or remanufactured vehicle with a seating capacity in excess of sixteen (16) passengers, including the driver, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(17) To construct a new facility or station to be used in the provision of public transportation services, unless the facilities or stations are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(18) To fail to make alterations necessary in order, to the maximum extent feasible, to make the altered portions of facilities or stations currently used for the provision of public transportation services readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. If the private entity is undertaking an alteration that affects or could affect the usability of or access to an area of the facility containing a primary function, the entity shall make the alterations so that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, drinking fountains, and telephones serving the altered area, are readily accessible to and usable by individuals with disabilities if the alterations to the path of travel or to the functions mentioned are not disproportionate to the overall alterations in terms of cost and scope. The entity raising this defense has the burden of proof, and the department shall review these cases on a case-by-case basis.

For purposes of subsections 139.40(i)(5), 139.40(i)(6), and 139.40(i)(7), "person" or "class of persons" means clients or customers of the covered public accommodation that enter into the contractual, licensing, or other arrangement.

State or local building codes control where applicable. Violations of state or local building codes are not violations of this chapter and must be enforced under normal building code procedures.

Nothing in this subsection requires an entity to permit a person with a disability to participate in and benefit from the goods, services, facilities, privileges, advantages, and accommodations of the entity if the person with a disability poses a direct threat to the health or safety of others. "Direct threat" means a significant risk to the health or safety of others that can not be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

(j) *Discrimination in public services.* For any person engaged in the provision of public services, because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to a public assistance program:

(1) To discriminate against any person, in the access to, admission to, full use of or benefit from any public service.

(2) To provide public services at different fee schedules between a person with a spouse and a person with a registered domestic partner, or between a person with a spouse and children and a person with a registered domestic partner and children.

(k) *Discrimination in educational institutions.* For any educational institution, because of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, marital status, or status with regard to a public assistance program:

(1) To discriminate against any person in the full use of or benefit from such institution, or the services rendered thereby to any persons because of protected class status or to fail to ensure physical or program access for disabled persons. For purposes of this paragraph, program access includes but is not limited to providing taped texts, interpreters or other methods of making orally delivered materials available, readers in libraries, adapted classroom equipment, and similar auxiliary aids or services. Program access does not include providing attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(2) To exclude, expel or otherwise discriminate against a person seeking admission as a student, or a person enrolled as a student.

(3) To make or use a written or oral inquiry, or form of application for admission that elicits or attempts to elicit information, or to make or keep a record concerning the protected class status of an applicant, except when maintained as applicant flow data in a file that is not accessible to persons making admission decisions.

(4) To fail to make reasonable accommodations to the known disability of a qualified person with a disability unless it can demonstrate that the accommodation would impose an undue hardship on it. In determining whether an accommodation would impose an undue hardship on the operation of an educational institution, factors to be considered include:

a. The overall size of the educational institution with respect to number of students and the number and type of facilities.

b. The nature and cost of the needed accommodation.

c. The reasonable ability of the educational institution to finance the accommodation.

d. Documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the person with a disability or with knowledgeable persons with disabilities or disability organizations.

(l) *Discrimination in business.* It is an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service:

(1) To refuse to do business with or provide a service to a woman based on her use of her current or former surname.

(2) To impose, as a condition of doing business with or providing a service to a woman, that a woman use her current surname rather than a former surname.

(3) To intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's race, national origin, color, sex, sexual orientation, gender identity, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.

Nothing in this subsection shall prohibit positive action plans.

(m) Aiding, abetting or facilitating discrimination; reprisals related to discrimination; coercion related to housing. For any person:

(1) To conceal or attempt to conceal any discriminatory act forbidden by this title or to aid, abet, compel, coerce, incite or induce, or attempt to induce, another person to discriminate.

(2) To use any trick, artifice, advertisement, sign, form of application, record on inquiry or any device whatsoever to bring about or facilitate discrimination.

(3) To engage in any reprisal, economic or otherwise, because another person opposed a discriminatory act forbidden under this title, has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this title, or has associated with a person or group of persons of a different race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, status with regard to disability, age, marital status, status with regard to a public assistance program or familial status.

(4) To coerce, intimidate, threaten, or interfere with any person in the exercise of or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right with regard to real estate granted or protected by subdivisions (e), (f) or (h) of this section.

Nothing in this subsection shall prohibit positive action plans.