

## NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (“ADA”), the City of Merriam will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities.

**Employment:** The City of Merriam does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

**Effective Communication:** The City of Merriam will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City of Merriam programs, services and activities, including qualified sign language interpreters, and other ways of making information and communications accessible to individuals who have speech, hearing or vision impairments.

Anyone who requires an auxiliary aid or service for effective communication to participate in a program, service or activity of the City of Merriam should contact the City Clerk, Juliana Pinnick, ADA Coordinator at 913-322-5508 or by email [jpinnick@merriam.org](mailto:jpinnick@merriam.org) as soon as possible but no later than 48 hours prior to the scheduled event.

**Modifications to Policies and Procedures:** The City of Merriam will make all reasonable modifications to policies and programs to ensure that individuals with disabilities have an equal opportunity to enjoy all programs, services and activities, so long as it ensures the safety of that individual. Anyone who requires an auxiliary aid or service, or a modification of policies and procedures to participate in a program, service or activity of the City of Merriam should contact the City Clerk, Juliana Pinnick, ADA Coordinator at 913-322-5508 or by email [jpinnick@merriam.org](mailto:jpinnick@merriam.org) one week prior to the beginning of a program, activity or service and indicate what accommodations/modifications are needed.

The ADA does not require the City of Merriam to take any action that would fundamentally alter the nature of its programs or services, or impose undue financial or administrative burden.

The City of Merriam will not place a surcharge on anyone with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policies.

Complaints that a program, service, or activity of the City of Merriam is not accessible to persons with disabilities should be directed to:

Juliana Pinnick, ADA Coordinator  
9001 W. 62<sup>nd</sup> Street  
Merriam, Kansas 66202  
913-322-5508  
[jpinnick@merriam.org](mailto:jpinnick@merriam.org)

**City of Merriam, Kansas  
9001 W. 62<sup>nd</sup> Street  
Merriam, KS 66202**

## **American's with Disabilities Act Transition Plan Update**

### **PURPOSE**

The purpose of the Plan is to ensure all citizens are provided full access to the City's programs, services and activities. In 1992 the City of Merriam developed an American's with Disabilities Act Transition Plan. Title II of the ADA requires public entities that employ 50 or more people to develop a transition plan, which outlines the steps and schedule for making facilities ADA accessible.

Since 1992 the City has made great strides in removing physical barriers to improve accessibility for all citizens throughout the city. The City remodeled and added on to the City Hall facility in 2004 which greatly improved ADA access. The Merriam Police facility was also constructed in 2004 in compliance with current ADA regulations. Portions of the Police facility were remodeled in 2017; construction was completed in compliance with current ADA standards for public facilities. The Merriam Visitors Bureau and Historic Plaza were constructed in 2006 in accordance with current ADA regulations. Other City facilities such as the Irene B. French Community Center, Merriam Aquatic Center, Merriam Marketplace and Merriam Public Works Facility were constructed prior to 2004 and may not meet current ADA standards. The City has nine (9) public parks and the Turkey Creek Streamway Trail System which connects to four (4) of the public parks. When improvements are made to the city's parks and trail in accordance with the City's parks master plan best efforts are made to ensure ADA compliance contingent upon site conditions and topography.

Infrastructure projects involving transportation improvements are designed by a licensed engineer and meet current ADA regulations. Construction of these projects are constructed within the engineering design to meet those regulations.

The City received a Title VI Audit from the Kansas Department of Transportation in July 2011 and June 2016. Title VI of the Civil Rights Act of 1964 relates to the prohibition of discrimination by recipients of federal-aid highway funds; the audit also included a segment regarding the

Americans with Disabilities Act / Section 504. Suggestions made during these audits regarding Title VI and the Americans with Disabilities Act will be reviewed. Any deficiencies discovered during the review process will be corrected within reasonable measures.

### **ACCESSIBILITY**

Title II of the ADA requires that all City services, programs and activities when viewed in their entirety, be readily accessible and useable by individuals with disabilities. The City conducted a self-evaluation in 2012.

The City completed the Americans with Disabilities Act Checklist for Readily Achievable Barrier Removal on the City's existing facilities:

Merriam City Hall	9001 W. 62 <sup>nd</sup> St.
Merriam Police Department	9010 W. 62 <sup>nd</sup> St.
Merriam Historic Plaza and Visitors' Bureau	6304 E. Frontage Rd.
Merriam Marketplace	5740 Merriam Dr.
Merriam Public Works Facility	6901 Knox
Merriam Community Center	6040 Slater

The results of the City's Self-Evaluations found very few compliance issues with the Merriam City Hall, Police Station, Public Works and Visitors' Bureau. Most compliance issues pertained to signage heights and minor upgrades needed to ADA parking spaces which can be easily remedied.

**The results of the Self-Evaluation of Existing Facilities are available upon request.**

A variety of compliance issues were found at the Irene B. French Community Center and Merriam Aquatic Center due to the age of both structures.

In 2012 the city installed an ADA accessible lift at Merriam Aquatic Center pursuant to Department of Justice revised ADA Requirements for Title II and Title III Public Facilities 2010 Standards for Accessible Design.

ADA accessible stairs were installed at the Merriam Aquatic Center in 2012.

In 2019 the Merriam Aquatic Center was decommissioned to make way for the new combined state of the art Community Center which will include indoor and outdoor aquatics.

In 2015 the City completed a Recreation Facilities Study for the Irene B. French Community Center.

The Irene B. French Community Center (IBFCC) has suffered significant age-related repairs over the last five years. To better identify the long-term maintenance costs and future needed repairs, Susan Richards Johnson and Associates (SRJA) was retained to complete a comprehensive facility assessment.

Areas reviewed as part of this assessment included: exterior building conditions, structural conditions, exterior building envelope, interior conditions, ADA accessibility, asphalt paving, site drainage, curbs, walkways, fire protection, storm drains, catch basins, sanitary sewer, traffic circulation, and mechanical, electrical and plumbing systems.

Susan Richards Johnson and Associates was able to inventory and identify immediate and long-term recommended systems improvements to the facility. In addition, SRJA provided treatment options that would enhance the experience of patrons and improve the working environment of the facility. Those recommendations are more intensive and require construction but would ultimately provide the community center with modern amenities.

In April 2014 a facility evaluation was completed by Larkin Aquatics to better understand the aging conditions of the Merriam Aquatic Center. Larkin Aquatics was the contractor for the 1985 rebuild and the 1999 renovation. The final report provides a comprehensive evaluation of the facility, makes recommendations for repair/upgrade, and includes an estimated cost analysis.

The Aquatic Center operates under the jurisdiction of Johnson County Environmental Sanitary Code, Virginia Graeme Baker Pool and Safety Act, International Swimming Pool and Spa Code, The American with Disabilities Act, International Building Code, Uniform Plumbing Code and National Sanitation Foundation. As a result, many recommendations listed in the implementation plan will set off a chain of additional upgrades in order to meet the current code requirements. For example: Improvements made to the bathhouse will trigger ADA improvements that will add additional costs. This is why the estimated costs listed in the report are broad ranges.

In September 2017 the City held a Mail-in ballot initiative which received 67% voter approval for the construction of a new Community and Aquatic Center. The existing Community Center and Aquatic Center contain many ADA deficiencies. These deficiencies were acknowledged as part of the City's public education campaign for the ballot initiative. The construction of the new facility was completed in spring 2020 and was constructed to meet current ADA standards.

In 2019 an ad-hoc committee was appointed to provide a recommendation on the future of the Irene B. French Community Center located at 5701 Merriam Drive. The committee will be tasked with evaluation of the facility and future viability as a public building based on a number of issues

included ADA accessibility challenges. The evaluation of the 5701 site was completed in 2019. Due to the level of non-compliant ADA issues that would be cost prohibitive to correct by a public or private entity, the building was torn down.

In spring 2021 the City installed the first of its kind WeGo Swing in Chatlain Park. The WeGo swing allows for individuals to swing without being removed from a wheelchair or other assistance device.

The City was a robust Capital Improvement Program (CIP) which includes a variety of projects including street rehabilitation. Typical scope of services for street rehabilitation projects includes replacement of curb/gutters, sidewalk and ADA ramps as required.

The CIP includes a Sidewalk Infill Program to install sidewalks in neighborhoods where none currently exist. The Sidewalk Infill program will fill 27,053 linear feet of sidewalk in areas that either have no sidewalk or have partial sidewalks that need to be connected. The program began in 2016 and is expected to be completed in 2021. Sidewalk maintenance will continue to be part of the City's CIP to ensure safety and accessibility of the City's sidewalk system.

All Capital improvement projects include neighborhood meetings which allows the public to provide comments and feedback related to the project. Notices are mailed to affected property owners and notices are posted through various media outlets generally utilized by the City.

### **ADA GRIEVANCE FOR PUBLIC FACILITIES**

Any City employee receiving an ADA complaint shall contact the City Clerk as soon as possible to initiate a timely repair or modification. ADA complaints of a greater magnitude are to be directed to the City Clerk for further action including filing of a grievance if requested.

### **EFFECTIVE COMMUNICATIONS**

ADA Reasonable Accommodation notices and are included on all Public Notices and Parks and Recreation brochures. If reasonable accommodations or auxiliary aids are needed; individuals are asked to contact the City Clerk 24 hours prior to any Public Meeting. Reasonable accommodation requests for Parks and Recreation events, classes etc., requires a one-week notice prior to the beginning of any activity or program. The Police Department utilizes Language Line Telephone interpretation services for all other language needs.

Municipal Court Services has a weekly dedicated docket with an onsite interpreter every Tuesday for Spanish speaking defendants. Propio Language Services provide onsite

interpretation for all other language needs, including qualified sign language interpreters. Propio and Language Line services are available to any person making such a request.

The City Website will continue to post meeting notices and information which, when used with the free Adobe Acrobat Reader function, allows for enlargement. The City completed a new City website in 2021 accessibility information and resources such as links to Adobe Reader Accessibility and supported accessibility technology downloads are available on the new site.

### **NON-DISCRIMINATION**

Notice of Non-discrimination is included on all City registration, rental, and membership forms. The City has included the following language in its Community Center and Merriam Aquatic Center Policies and Parks and Recreation program guide and website: The City of Merriam does not discriminate against anyone on the basis of color, race, national origin, age, religion or disability in the operation of any activity, program or service.

The Merriam Police Department has policies in place to prohibit discriminatory practices. In addition to those policies, training classes are provided to the officers at least on an annual basis that focus on racial profiling and other forms of discriminatory practices.

The following training classes were provided to officers of the Merriam Police Department over the last 5 years:

Fair and Impartial Policing      Racial or Other Biased-based Policing 2017, 2019, 2020

Racial Profiling and other Biased Based Policing

Hate Crime Symposium

Ferguson: Lessons Learned      Bias-Free Policing 2020

Cultural Diversity

Basic Spanish for Law Enforcement      Vanguard Training 2020

Additionally, the officers are tested daily on various policy questions from our Lexipol policy manual.

### **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Per Title VI review conducted by KDOT in July 2011, several updates need to occur as they relate to hiring consultants and contractors for city projects

6/7/12

Drexel Technologies Plan Room services utilized by the City for Bid letting does notify minority and women owned businesses who sign up for notifications. Self-reporting is utilized through their sign-up process.

In 2019 the City implemented a standard contract procedure to ensure all equal opportunities for all consultants, contractors and vendors to secure city contracts. All contracts contain anti-discrimination clauses that must be agreed to by contractors. The City maintains a City-Wide Bid List that allows consultants, contractors and vendors to submit contact information for the City-wide Bid List to be notified of bid opportunities that relate to their scope of services. Minority and women owned entities can self-report on this bid list. The City's Occupational License application provides check boxes for women and minority owned businesses to self-report and indicate if they are certified.

### **FAIR HOUSING**

Chapter 35 of the Merriam Code of Ordinances, *Human Resources and Social Services*, encompasses Fair Housing and outlines the procedure for filing a complaint.

The City does not provide public housing and complaints are to be filed with the U.S. Department of Housing and Urban Development. The City will provide the following assistance to any resident who believes they have suffered from discrimination in housing.

Front Office Staff and the City's Rental Housing Inspector have access to the Kansas Human Rights Commission Housing Intake forms. The Rental Housing Inspector also provides tenants with a copy of the Kansas Tenants Rights Handbook, if requested.

City Council Policy No. 131 provides guidelines for reasonable accommodations under the Fair Housing Act, approved March 12, 2018.

In 2019 the City adopted Ordinance No. 1794 which extended the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity giving these characteristics the same protection state and federal law already consistently provide with respect to age, race, religion, color, sex, national origin or ancestry, disability, military status, genetic information, marital status and familial status. The ordinance provides a complaint and enforcement process to effectuate such protection.

### **GRIEVANCE FOR DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATION BASED ON SEXUAL ORIENTATION AND/OR GENDER IDENTITY**

Any individual who desires to file a complaint on discrimination in employment, housing or public accommodation within the City of Merriam shall contact the City Clerk to obtain a Complaint Form. The form must be submitted within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination.

### **EEOC**

The city welcomes all qualified applicants without regard to their race, color, religion, gender, national origin, age, marital status, medical condition, or disability.

The City has expanded employment recruitment ads to include advertisements in the KC Hispanic News, National Minority Update and KC Globe publications in an effort to increase diversity in city staffing levels.

The City has completed a legal review by an employment attorney to ensure our Employee Handbook complies with EEOC regulations.

Appendix 1	ADA Grievance Complaint Form
Appendix 2	Discrimination Complaint Form
Appendix 3	Ordinance No. 1794
Appendix 4	City Council Policy 9.0 Guidelines for Reasonable Accommodations under the Fair Housing Act Policy
Appendix 5	DEI Statement

# **City of Merriam, Kansas**

## **Grievance Procedure under**

### **The Americans with Disabilities Act**

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the **City of Merriam**. The City of Merriam's Personnel Policy governs employment-related complaints of disability discrimination.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

**Juliana Pinnick**  
**ADA Coordinator**  
**9001 W. 62<sup>nd</sup> Street, Merriam, KS 66202**

Within 15 calendar days after receipt of the complaint, **Juliana Pinnick, "ADA Coordinator"** or designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, **ADA Coordinator** or her designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the **City of Merriam** and offer options for substantive resolution of the complaint.

If the response by the **ADA Coordinator** or her designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the **City Administrator** or his designee.

Within 15 calendar days after receipt of the appeal, the **City Administrator** or his designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the **City Administrator** or his designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the ADA Coordinator or designee, appeals to the City Administrator his designee, and responses from these two offices will be retained by the City of Merriam for at least three years.



### Grievance Form Public Accommodations

This form shall be used by anyone wishing to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs or benefits by the City of Merriam. This form must be submitted no later than **60 calendar days** after the alleged violation to:

Juliana Pinnick, City Clerk  
9001 W. 62<sup>nd</sup> Street, Merriam, Kansas 66202

Alternate means of filing complaints will be made available upon request. Within 15 calendar days after receipt of the complaint the ADA Coordinator will meet with the complainant to discuss a possible resolution. A written response will be provided to the complainant with 15 days of meeting.

**PLEASE TYPE OR PRINT**

Today's Date: \_\_\_\_\_

Your Name: \_\_\_\_\_

Address: \_\_\_\_\_ Apt No: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

Please provide to following information regarding your complaint:

Location of Public Accommodation where alleged violation occurred:

\_\_\_\_\_

Basis of discrimination: Check all that apply

\_\_\_\_\_ Race      \_\_\_\_\_ Color      \_\_\_\_\_ Sex      \_\_\_\_\_ National Origin

\_\_\_\_\_ Religion      \_\_\_\_\_ Disability (specify your disability) \_\_\_\_\_

List all dates you feel you were discriminated against starting with the most recent date and provide an explanation of what occurred on that date. (please use additional sheets of paper if needed)

Date: \_\_\_\_\_

What Happened:

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Date: \_\_\_\_\_

What Happened:

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List of any witnesses who can provide addition information or evidence relating to this complaint.

Name:

Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Name:

Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Name:

Address: \_\_\_\_\_

Phone Number: ( ) \_\_\_\_\_ Email: \_\_\_\_\_

Affirmation: The information provided in this form is true and accurate to the best of my knowledge.

Signature: \_\_\_\_\_



## Discrimination Complaint Form

This form shall be used by anyone wishing to file a complaint alleging discrimination in employment, housing, or public accommodations on the basis of an individual's sexual orientation or gender identity in the City of Merriam (the "City") as prohibited by Ordinance No. 1794. This form must be submitted within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within 60 days of the last act of discrimination to:  
**Merriam City Clerk, 9001 W. 62<sup>nd</sup> Street, Merriam, Kansas 66202**

### PLEASE TYPE OR PRINT

1. Name of individual filing this complaint:

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

2. Name of individual discriminated against (if other than the individual filing). If the individual discriminated against is age 18 or older, the City will need that individual's initials on provisions 8, 9, and 10 and the individual's signature on this complaint form before it will investigate the complaint. If the individual is a minor child/ward, the parent or legal guardian must initial provisions 8,9,10 and sign this complaint form before the City will investigate the complaint.

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

3. The City investigates discrimination complaints against individuals, entities, and establishments within the city limits who employ four or more employees, who sell real property or rent real property with more than four dwelling units, or who offers goods, services, facilities, or accommodations to the public. The City will attempt to refer you to the appropriate agency if it cannot accept your complaint.

Name of individual, entity, or establishment: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

4. The Merriam Code prohibits discrimination in employment, housing, and public accommodations on the basis of sexual orientation and gender identity. Please indicate the basis of your complaint. Check all that apply:

Sexual Orientation

Gender Identity

5. Please describe each alleged discriminatory act starting with the most recent. For each action, please include the date(s) the discriminatory act occurred, the name(s) of the individual(s) involved, and why you believe the discrimination was because of sexual orientation and/or gender identity. (Please use additional sheets of paper if needed.)

Date: \_\_\_\_\_

What Happened:

Date: \_\_\_\_\_

What Happened:

Date: \_\_\_\_\_

What Happened:

List any witnesses who can provide additional information or evidence relating to this complaint.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone \_\_\_\_\_ Email: \_\_\_\_\_

6. Have you attempted to resolve these allegations with the individual, entity, or establishment through an internal grievance procedure or in some other manner?

Yes (*see below*)

No

**If you marked yes**, please describe how you attempted to resolve the allegations. If possible, please provide a copy of your grievance or complaint and, if applicable, the decision in the matter.

7. What remedy are you seeking?

8. To properly investigate this complaint, the City may share your name and other personal information with the individual, entity, or establishment that allegedly discriminated against you and any witnesses to the discrimination. By initialing below and signing this form, you consent to the City sharing your name and other personal information to investigate this complaint. The City will not investigate your complaint without this consent. (The individual alleging discrimination must initial this section. If the complaint is filed on behalf of a minor child/ward, this section must be initialed by a parent or legal guardian of that individual.)

\_\_\_\_\_ **(INITIAL HERE)** I give the City my consent to reveal my name and other personal information (and that of my minor child/ward on whose behalf the complaint is filed) to others to investigate my complaint.

9. The City is a Kansas municipality governed by the Kansas Open Records Act (KORA), K.S.A. 45-215 *et seq.* By submitting a complaint, I acknowledge that the complaint is presumed to be an open record under the KORA. The City cannot guarantee the confidentiality of the information I provide in the complaint. By initialing below and signing this form, I specifically waive any claims against the City related to the disclosure of any material if made pursuant to a public records request. The City will not investigate your complaint without this acknowledgement and waiver. (The individual alleging discrimination must initial this section. If the complaint is filed on behalf of a minor child/ward, this section must be initialed by a parent or legal guardian of that individual.)

\_\_\_\_\_ **(INITIAL HERE)** I acknowledge that this complaint is presumed to be an open record under KORA and that the City cannot guarantee the confidentiality of the information I provide. I specifically waive any claims (and those of my minor child/ward on whose behalf the complaint is filed) against the City related to the disclosure of any material if made pursuant to a public records request.

10. Section 5 in Ordinance No. 1794 (Section 35-53 of the Merriam Code) provides a process for assessing fees charged by the investigator and/or hearing officer. By initialing below and signing this form, you acknowledge that you have read Section 5 in Ordinance No. 1794 (Section 35-53 of the Merriam Code) and agree to pay any fees assessed by the investigator and/or hearing officer. The City will not investigate your complaint without this acknowledgement. (The individual alleging discrimination must initial this section. If the complaint is filed on behalf of a minor child/ward, this section must be initialed by a parent or legal guardian of that individual.)

\_\_\_\_\_ **(INITIAL HERE)** I acknowledge that I have read Section 5 in Ordinance No. 1794 (Section 35-53 of the Merriam Code) and agree to pay any fees (and those of my minor child/ward on whose behalf the complaint is filed) assessed by the investigator and/or hearing officer.

**Affirmation: The information provided in this form is true and accurate to the best of my knowledge.**

Individual Filing Complaint (From Section 1)

Individual being discriminated against, if other than the individual filing (From Section 2)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Return this form to:**

**Merriam City Clerk  
9001 W. 62<sup>nd</sup> Street  
Merriam, Kansas 66202**

This form must be submitted within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within 60 days of the last act of discrimination to.

ORDINANCE NO. 1794

**AN ORDINANCE CONCERNING DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS; AMENDING CHAPTER 35 OF THE CODE OF ORDINANCES OF THE CITY OF MERRIAM, KANSAS CONCERNING HUMAN RESOURCES AND SOCIAL SERVICES BY ADDING ARTICLE III – DISCRIMINATION IN EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS PROHIBITED AND SECTIONS 35-50, 35-51, 35-52, AND 35-53.**

**WHEREAS**, The City of Merriam is a community that respects and actively seeks to welcome and protect all those who reside, visit, or do business in our community; and

**WHEREAS**, the governing body finds that providing protection against wrongful discrimination contributes to the creation of a diverse, welcoming community that promotes harmony and mutual respect, and otherwise promotes the health, safety, and welfare of the citizens of Merriam; and

**WHEREAS**, the governing body finds that discrimination based on age, race, religion, color, sex, sexual orientation, national origin or ancestry, gender identity, disability, military status, genetic information, marital status, or familial status is wrongful discrimination and inconsistent with the community's goals and values; and

**WHEREAS**, local, state, and federal laws provide protection against discrimination against certain classes of individuals in housing and state and federal laws provide protection against discrimination against certain classes of individuals in employment and public accommodations, and such laws provide a complaint and enforcement process for parties who allege discrimination in violation of local, state, or federal law; and

**WHEREAS**, in some instances, current state and federal employment, housing, and public accommodation laws have been interpreted to exclude protection against discrimination and retaliation on the basis of sexual orientation and gender identity, thereby precluding the use of the complaint and enforcement process outlined therein; and

**WHEREAS**, The City of Merriam desires to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity, giving these characteristics the same protection state and federal law already consistently provide with respect to age, race, religion, color, sex, national origin or ancestry, disability, military status, genetic information, marital status, and familial status, and to provide a complaint and enforcement process to effectuate such protection.

**NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MERRIAM, KANSAS:**

**SECTION 1.** That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding Chapter 35, Article III to be named, "Discrimination in Employment, Housing, and Public Accommodations Prohibited."

**SECTION 2.** That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-50, which the section reads as follows:

Sec. 35-50. – Definitions.

Except to the extent they are in conflict with the definitions below, the definitions contained within the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and the Discrimination Against Military Personnel Act, K.S.A. 44-1125 et seq., and amendments thereto, shall be applicable under this article. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

- (a) **Days** means calendar days. If a deadline falls on a day city hall is not open (*i.e.* a weekend, a holiday recognized by the city, emergency closure) the deadline will be extended to the day city hall is open.
- (b) **Employee** means any individual employed by an employer, but does not include any individual employed by such individual's parents, spouse, or child or in the domestic service of any individual. Employee also does not include an independent contractor.
- (c) **Employer** means any individual or entity (*i.e.* corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, unincorporated organization) employing four or more employees, the city (including all departments, boards, agencies), and any city contractor. For purposes of this article, no religious organization or non-profit fraternal or social association/corporation shall be considered to be an employer.
- (d) **Gender identity** means the actual or perceived gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.
- (e) **Hearing officer** means an individual appointed by the mayor, with the consent of the city council, who is charged with determining the validity of alleged violations of this article, and upon determining that a violation has occurred, assessing appropriate damages, penalties, and/or costs, as provided in this article.
- (f) **Investigator** means an individual(s) appointed by the mayor, with the consent of the city council, who shall be charged with investigating alleged violations of this article.
- (g) **Nonprofit fraternal or social association/corporation** means an association or corporation that meets all of the following requirements: (1) it is organized in good faith

for social or fraternal purposes; (2) membership entails the payment of bona fide initiation fees or regular dues; (3) there exists a regularly established means of self-government by the members; (4) there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and (5) it is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

- (h) **Place of public accommodation** shall include every establishment within the city that is open to the public and offers any product, service, or facility. The term "place of public accommodation" shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with more than four tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. The term "place of public accommodation" shall not, however, include: (1) a religious organization; (2) any hotel, motel, restaurant or theater operated by a nonprofit fraternal or social association/corporation that restricts its facilities and services to the members of such association/corporation and their guests; or (3) any nonprofit fraternal or social association/corporation, or bona fide civic, political, or religious organization, when the profits of such association/corporation or organization, above reasonable and necessary expenses, are solely for its benefit or mission.
- (i) **Religious organization** means a church, mosque, synagogue, temple, nondenominational ministry, interdenominational and ecumenical organization, mission organization, faith-based social agency, or other entity principally devoted to the study, practice, or advancement of religion.
- (j) **Rent** means to lease, to sublease, to let, or otherwise to grant for a consideration the right to occupy a premises not owned by the occupant.
- (k) **Rental housing** means any real property, consisting of more than four dwelling units, which is required to obtain a license or permit pursuant to the provisions of Chapter 14 of the Merriam Code.
- (l) **Respondent** means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the city.
- (m) **Sexual orientation** means an individual's perceived or actual emotional, romantic, or sexual attraction to other people. It can be described as, but not limited to, heterosexual, homosexual, bisexual, or asexual.

**SECTION 3.** That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-51, which the section reads as follows:

Sec. 35-51. – Declaration of Policy.

- (a) The right of an otherwise qualified individual to be free from discrimination because of that individual's age, race, religion, color, sex, sexual orientation, national origin or ancestry, gender identity, disability, military status, genetic information, marital status, or

familial status is hereby recognized. This right shall include, but not be limited to, any of the following:

1. The right to pursue and hold employment and the benefits associated therewith without wrongful discrimination.
  2. The right to the full enjoyment of any of the services, advantages, or privileges of any place of public accommodation without wrongful discrimination.
  3. The right to engage in property transactions, including obtaining housing for rent or sale and credit therefor, without wrongful discrimination.
  4. The right to exercise any right granted under this ordinance without retaliation.
- (b) To protect these rights, it is hereby declared to be the purpose of this article to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity and to provide a local process for the acceptance, investigation, and resolution of complaints of discrimination and retaliation relating to sexual orientation and/or gender identity arising hereunder.

**SECTION 4.** That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-52, which the section reads as follows:

**Sec. 35-52. – Unlawful Practices.**

(a) **Employment.** It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of any individual to refuse to hire or employ such individual, to bar or discharge such individual from employment, or to otherwise discriminate against such person in compensation or in terms, conditions, or privileges of employment; to limit, segregate, separate, classify, or make any distinction in regards to employees; or to follow any employment procedure or practice which, in fact, results in discrimination, or segregation without a valid business necessity.

(b) **Housing.** It shall be an unlawful discriminatory practice for an individual or entity to discriminate against any individual in the terms, conditions, or privileges of sale or lease of real property or lease of rental housing, or in the provision of services or facilities in connection therewith, because of sexual orientation or gender identity or to discriminate against any individual in such individual's use or occupancy of rental housing because of the sexual orientation or gender identity with whom such individual associates.

(c) **Public Accommodation.** It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent, or employee of any place of public accommodation to refuse, deny, or make a distinction, directly or indirectly, in offering its goods, services, facilities, privileges, advantages, and accommodations to any individual because of sexual orientation or gender identity.

(d) Nothing in this article shall:

- (1) prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of federal, state, or local law.

(2) prohibit a religious organization from limiting the sale, rental, or occupancy of real property which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons. Nor shall anything in this article prohibit a nonprofit fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodgings that it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(3) be construed to prohibit an employer from requiring all of its employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace. The fact that an employer requires an employee to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this article. However, an employee may simultaneously file a complaint with the city as provided in this ordinance; completion of the employer's procedures is not a pre-requisite to filing a complaint with the city.

(4) be construed to require any entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.

(5) be construed to make it lawful to discriminate or retaliate against individuals on the basis of age, race, religion, color, sex, national origin or ancestry, disability, military status, genetic information, marital status, or familial status. Such discrimination and retaliation are not addressed in this article because federal and state law consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide a complaint, investigation, and enforcement process for such discrimination and retaliation.

**SECTION 5.** That the Code of Ordinances, City of Merriam, Kansas, is hereby amended by adding a section to be numbered 35-53, which the section reads as follows:

**Sec. 35-53. – Enforcement.**

(a) An aggrieved individual may file a written complaint with the city clerk that the individual has been, or is being, subject to an alleged unlawful discriminatory practice set forth in this article personally or through an attorney (or if a minor, through the minor's parent, legal guardian or attorney) by completing and signing the form provided by the city. The complaint form shall state the names and contact information of the aggrieved individual, the individual(s) and/or entity/entities alleged to have committed the unlawful discriminatory practice(s), a description of the alleged unlawful conduct and all other information as may be required by the form provided the city. The city will provide the complaint form without charge.

(b) The complaint form shall be submitted to the investigator and shall be considered complete if all information required by the city's form has been provided to the extent such requested information is reasonably available to the aggrieved individual.

(c) A completed complaint form must be filed within 60 days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within 60 days of the last act of discrimination.

(d) Upon receipt of a completed complaint, the investigator shall notify the respondent(s) of the complaint, providing sufficient details related to the complaint so that the respondent(s) may respond. The investigator shall give the respondent(s) 30 days to file a written answer to the complaint and provide any documentation or evidence related to the complaint. The investigator may, at the request of the respondent(s), extend the answer period for an additional 30 days. If the respondent(s) charged with violating the provisions of this article is the city, the city will engage an independent investigator who shall not otherwise be an employee, agent, or contractor of the city and shall not have any association with the complainant or the respondent(s).

(e) Following the conclusion of the answer period, the investigator may initiate an investigation period, requesting that the complainant and/or respondent(s) provide additional information, documentation, or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be completed within a reasonable period of time following the submission of additional information, documentation, or testimony.

(f) Upon the conclusion of the investigation period, the investigator will review all evidence received during the investigation and make a determination whether probable cause exists that the respondent(s) committed an unlawful discriminatory practice.

(g) If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and respondent(s) and no further action shall be taken by the city. The complainant may appeal the investigator's determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of notice of the appeal pursuant to K.S.A. 60-2101(d), or within further time allowed by the court or by other provision of law, the city shall transmit to the court a certified copy of the investigator's written determination and a certified copy of all evidence received by the investigator during the investigation.

(h) If the investigator finds that probable cause exists that an unlawful discriminatory practice was committed by respondent(s), the investigator shall notify the complainant and respondent(s) and request conciliation and settlement. If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within 60 days of the date of the finding of probable cause, the matter shall be referred to the hearing officer for a hearing. The investigator may extend the time for signing a settlement agreement for good cause and with written notice to the parties. Any fees charged by the investigator for investigating alleged violations of this article shall be split equally between the parties, unless the investigator determines that the circumstances warrant assessing the costs in some other manner.

(i) Upon referral to the hearing officer, the hearing officer shall schedule a hearing on the complaint. The parties shall be given at least ten days' written notice via certified mail of the date, time, and place of the hearing. At such hearing, the parties and the investigator shall

be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer, but the rules of evidence used in courts of law need not be strictly enforced. Following the conclusion of the hearing, the hearing officer may announce a determination or may take the matter under advisement for determination at a later date.

(j) Any determination of the hearing officer shall be in writing, shall be based upon the preponderance of the evidence, and shall set forth the essential elements of the determination. If the hearing officer finds that a violation of this article has occurred, the hearing officer may award to the complainant actual damages, or a civil penalty in the amount of \$1,000.00, whichever is greater, for each violation. Each party is to bear their own attorneys' fees, if any. The investigator's fees for participating in the hearing and the hearing officer's fees, if any, shall be assessed to the non-prevailing party unless the hearing officer determines that the circumstances warrant assessing the costs in some other manner.

(k) Any person aggrieved by a determination of the hearing officer under this section may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60-2101(d), and amendments thereto. Within 30 days of service of the notice of appeal pursuant to K.S.A. 60-2101(d), or within further time allowed by the court or by other provision of law, the city shall transmit to the court a certified copy of the written determination of the hearing officer and a certified copy of all the evidence presented at the hearing. On appeal, the district court may enter such order or judgment as justice shall require, and may award court costs and reasonable attorney fees incurred to prosecute or defend the appeal to the prevailing party.

(l) The filing of a complaint for an alleged violation of this article shall in no way preclude any individual from seeking other relief under state or federal law.

**SECTION 6. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance and the Governing Body hereby declares that it would have passed the remaining portions of this Ordinance if it would have known that such part or parts thereof would be declared invalid.

**SECTION 7. Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval, and publication as provided by law.

PASSED AND APPROVED by the City Council this 14<sup>th</sup> day of January, 2019.

APPROVED by the Mayor this 14<sup>th</sup> day of January, 2019.

  
Ken Sissom, Mayor

ATTEST:

Juliana Pinnick

Juliana Pinnick, City Clerk



APPROVED BY:

N. Proulx Aiken

Nicole Proulx Aiken, City Attorney

## **9.0 Guidelines for Requests for Reasonable Accommodations under the Fair Housing Act Policy**

The Fair Housing Act (42 U.S.C. §§ 3601-3619, the “Act”) prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status, and disability. The purpose of these guidelines is to provide a procedure for a person with a disability to request a reasonable accommodation with respect to a rule, policy, practice, or service under the Merriam Code or a policy regulating housing, when such accommodation may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B).

**Definitions** All applicable terms shall have the meanings set forth in the Act and the applicable City Codes. In the event of any conflict, the terms of the Act shall take precedence.

### **Requesting a Reasonable Accommodation**

- a. A request for a reasonable accommodation is made whenever a person makes it clear that the person is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of the person’s disability. The person must explain what type of accommodation is being requested, and, if the need for accommodation is not readily apparent or not known to the City, explain the relationship between the requested accommodation and the person’s disability. The request should be made in writing to the City Clerk.
- b. A person with a disability need not personally make the reasonable accommodation request. The person’s request may be made by a family member or someone else who is acting on the person’s behalf. The City may require that a request being made by someone on behalf of a disabled person, be accompanied by evidence of consent on the part of the disabled person or other legal authority to act on behalf of the disabled person.
- c. There is no requirement that a request be made on any particular form or at any particular time.
- d. There is no fee for requesting a reasonable accommodation.
- e. A person is not entitled to receive a reasonable accommodation unless the person or someone on the person’s behalf requests one.

## Review of Requests for Reasonable Accommodation

- a. Hearing Officials. The Community Development Director, Police Chief, and Fire Chief (or their respective designees) are designated as hearing officials to make determinations on requests for reasonable accommodation.
- b. Review and Hearing. Upon a request for reasonable accommodation, the City shall schedule a hearing before the hearing officials; provided, the applicant may request a decision to be made without a hearing. The review and hearing will be conducted in an informal fashion, but will be thorough. The person making the request will be given a full opportunity to present relevant information and evidence for consideration by the hearing officials.
- c. Additional Information. The hearing officials may request additional information to evaluate if a requested reasonable accommodation is necessary because of a disability. Provided, the requests should not conflict with the Act and privacy rights of the person with the disability. (For example, questions as to why the requested accommodation is necessary or what, if any, land use impact would result from granting the accommodation are within the legal scope of inquiry under the Act. The City may not ordinarily inquire as to the nature and severity of a disability; however, in response to a request for a reasonable accommodation, the hearing officials may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability, (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation.) If additional information is requested, the hearing date may be continued as necessary. This procedure is intended to expedite the information gathering process and facilitate the issuance of a timely decision by the hearing officials. It is in the best interest of the applicant seeking accommodation to provide the requested information as soon as possible to obtain a speedy decision.
- d. Conditions of Approval. In granting a reasonable accommodation, the hearing officials may impose any conditions of approval deemed reasonable and necessary.
- e. Alternative Reasonable Accommodations. If appropriate, the hearing officials may consider and discuss any alternative reasonable accommodation with the person making the request.
- f. Decision. The hearing officials will issue a written decision on the request for reasonable accommodation within 30 days of the hearing, unless additional time is required and the requesting party is notified of the projected time necessary to render a decision. The written decision shall be sent by certified mail unless an

alternative manner of notification is agreed upon by the requesting party. The written decision shall describe the request, any relevant facts relied upon, the hearing officials' decision, and any applicable conditions of approval, if any.

### **Factors for Considering Requests for Reasonable Accommodation**

- a. Whether the housing that is the subject of the request will be used by a person protected under the Act (i.e., the person has a disability as defined by the Act).
- b. Whether the request for reasonable accommodation is necessary to make specific housing available to a person protected under the Act.
- c. Whether the requested accommodation would impose undue financial or administrative burdens on the City or would require a fundamental alteration in the nature of the City's regulation thereby making the request not reasonable.
- d. Whether any conditions of approval for the reasonable accommodation are deemed reasonable and necessary.
- e. Whether alternative reasonable accommodations should be approved to afford the necessary benefit under the Fair Housing Act.

**Review** A person denied a reasonable accommodation request or otherwise unsatisfied with the hearing officials' decision may request a review by the City Administrator. The request for review shall be in writing and must be filed with the city clerk within ten (10) days of the date of the decision. The person should state the reasons for dissatisfaction and include specific reasons they believe the decision should be altered. The City Administrator shall review the case and make a written decision, which will be forwarded to all applicable parties in the same manner as the hearing officials' decision.