

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is made and entered into effective as of _____ (the "Effective Date"), by and between the City of Kansas City, a Missouri constitutional chartered municipal corporation with its address at 414 East 12th Street, Kansas City, Missouri 64106 ("Lessor"), and Martin Marietta Materials Real Estate Investments, Inc., with its principal office at 4123 Parklake Avenue, Raleigh, North Carolina 27612 ("Martin Marietta"), as follows:

1. **AGREEMENT.** In consideration of the mutual covenants provided herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor leases the property described below to Martin Marietta, and Martin Marietta leases such property from Lessor, in accordance with the terms and conditions set forth herein.

2. **PROPERTY.** The property that is the subject of this Agreement is a tract of land containing approximately Eighteen (18) acres owned by Lessor in Platte County, Missouri, as well as all rights and privileges that are appurtenant thereto (the "Property") but the surface rights of which are specifically excluded from the Property except as specifically included in Sections 21, 22 and 23 of this Agreement. A more complete description of the Property is set forth on ~~Exhibit A~~ Exhibit B is leased subject only to those restrictions and other encumbrances that are identified on Exhibit B (the "Permitted Exceptions"). As used in this Agreement, all references to "on the Property" shall be deemed to refer to "on or under the Property" unless the context clearly refers to other use.

3. **TERM.** The initial period of this Agreement will begin on the Effective Date and terminate at 5:00 PM (local time where the Property is located) on the fifth (5th) anniversary of the Effective Date (the "Initial Term"), unless earlier terminated as provided herein. The Initial Term will be extended automatically for eleven (11) additional periods of five (5) years each (the "Renewal Terms") unless Martin Marietta notifies Lessor not less than sixty (60) days prior to the expiration of the Initial Term or a Renewal Term, as the case may be that Martin Marietta does not desire to extend the Agreement (the Initial Term and the Renewal Terms are collectively the "Term").

4. **LESSOR REPRESENTATIONS AND WARRANTIES.** Lessor represents and warrants to Martin Marietta, with the understanding that Martin Marietta will reasonably and justifiably rely upon such representations, each and every one of the following:

a. **VALID EXISTENCE.** Lessor is a municipal corporation, validly existing and in good standing pursuant to the laws of the State of Missouri.

b. **POWER AND AUTHORITY.** Lessor has full power and authority to enter into and perform this Agreement in accordance with its terms without the consent of any other individuals or third parties, other than those executing this Agreement.

c. **DUE AUTHORIZATION.** Pursuant to Ordinance No._____, the individual(s) executing this Agreement and all documents contemplated by this Agreement on behalf of Lessor is/are authorized to do so and, upon execution hereof, this Agreement and the related documents shall be binding and enforceable upon Lessor.

d. **TITLE TO MATERIALS AND PROPERTY.** Lessor is now, and during the duration of this Agreement shall continue to have good and marketable title in fee simple to all of the Materials, the Property and/or the mineral rights lying in and/or under the Property, including the rights to the Materials situated upon, under or in the Property, and such interest is not subject to any encumbrances.

e. **QUIET ENJOYMENT.** Lessor has and during the duration of this Agreement shall continue to have good and marketable title in fee simple to Property and such interest is not subject to any encumbrances which will interfere with the rights granted to Martin Marietta hereunder. Martin Marietta shall peaceably have, hold and enjoy the Property for the term of this Agreement and any extensions thereof. Lessor further warrants the terms and conditions of this Agreement shall remain effective until expiration of the Term and any extensions thereof if the Property is hereafter sold or transferred to another party.

f. **ABSENCE OF OPTIONS, FIRST RIGHTS OF REFUSAL.** Neither the Property nor any part thereof is subject to any purchase options, rights of first offer, rights of first refusal or other similar rights in favor of any other person or business entity of any type or nature.

g. **ABSENCE OF CERTAIN CLAIMS AND ACTIONS.** There are no pending or to Lessor's actual knowledge threatened claims, actions, suits, litigation, governmental investigations, or judicial or administrative proceedings involving Lessor or the Property, or which might impede the consummation of the transaction contemplated by this Agreement, or which would interfere with Martin Marietta's intended use of the Property following the Effective Date.

h. **NO UNRECORDED ENCUMBRANCES.** There are no unrecorded liens, encumbrances, leases or easements which affect the Property.

i. **HAZARDOUS SUBSTANCES.** There has been no production, generation, treatment, collection, disposal, discharge or storage on the Property or in any groundwater or aquifer below the surface of the Property by Lessor, or to Lessor's knowledge, by any prior owner, lessee, occupant or user of the Property or, to Lessor's knowledge, by any other person, of any Hazardous Substance, as defined in Exhibit C, in violation of any applicable environmental and safety laws. Lessor has not received any notices from any governmental authority or other third party regarding the existence of any Hazardous Substance on the Property requiring the removal, clean up or remediation of any environmental condition relating to the Property.

j. **PAYMENT OF TAXES.** Lessor has filed all federal, state, municipal, county and local tax returns and reports required by law, and has paid all taxes and other charges due and payable relating to the Property, or the use and operation thereof.

k. **THIS AGREEMENT NOT IN CONFLICT.** Neither this Agreement nor the consummation of the transaction contemplated by this Agreement will result in a breach of or constitute a default under any lease, contract, other agreement, commitment or obligation entered into or assumed by Lessor, nor will it violate any laws or any authorization applicable to Lessor or the Property.

l. **COMPLIANCE WITH LAWS.** The Property is in compliance with all applicable laws, rules, regulations, codes, ordinances and orders of all governmental authorities as to its current use. Lessor has all federal, state, local and other governmental consents, licenses, permits, approvals, certificates and other authorizations required for the operation of the Property in its state (collectively, "Authorizations"). There is no action, case or proceeding pending or, to Lessor's knowledge, threatened by any governmental authority with respect to (i) any alleged violation by Lessor of any applicable law, or (ii) any alleged failure by Lessor to have any Authorizations in connection with the operation of the Property. Lessor has received no notification of the suspension or cancellation of any such Authorizations. Lessor shall remain, after the Effective Date, in compliance with all applicable laws, rules, regulations, codes, ordinances and orders of all governmental authorities.

5. **PURPOSES.** Martin Marietta (including its employees, agents, and contractors) shall have the exclusive right to enter the Property at any time during the Term for surveying and then, after the Mining Use Date (as defined below), for the purpose of underground mining, quarrying, extracting, processing, storing, transporting, and selling all rock, limestone, granite, construction aggregate, crushed stone, sand, gravel, caliche, clay, dirt, or other similar material or substances that may be located on, in, or under the Property ("Material") and using, at no cost, all water that may be accessible under the Property in compliance with local, state, and federal laws. In furtherance of such purpose, and at any time after the Mining Use Date and from time to time during the Term, Martin Marietta (a) may drill, blast, and remove Material from the Property; (b) may carry out all other related activities on the Property that are not otherwise prohibited by the terms hereof; and (c) may use the Property for any other lawful purpose ancillary thereto, including using the Property to process and store, distribute or, transport aggregate materials from other lands owned, leased, or subleased by Martin Marietta, provided that the entrance to such mine for such mining operations shall be on property other than the Property leased hereby and so long as any such activities are carried out according to local, state, and federal laws. **Martin Marietta acknowledges and agrees that it may not access the Property for mining, quarrying, extracting, processing, storing, transporting, or selling any Material unless or until the earlier of (1) City's structures located on the surface of the Property have been demolished, as evidenced by a "Notice to Proceed" sent by the City to Martin Marietta, or (2) five (5) years after the Effective Date (in either case, the "Mining Use Date").** The only surface use rights with Martin Marietta is granted under this Lease are those granted in Paragraph 21 hereof.

6. **CONSIDERATION.** In lieu of rent or any other payment, Lessor hereby leases to Martin Marietta the mineral rights (including but not limited to the Material) in and under the Property in exchange for its release of its leasehold interest on the property generally located at NW 144th Street and NW Interurban Road., as authorized in Ordinance No. _____.

7. **NO DUTY TO MINE.** Notwithstanding any other terms hereof, Martin Marietta shall have no obligation to develop, quarry, mine, remove, or sell any Material from the Property and, if such activities are begun, nothing herein shall require Martin Marietta to continue to develop, quarry, mine, remove, or sell Material if, in the sole discretion of Martin Marietta, it is not commercially reasonable to do so.

8. [RESERVED]

9. [RESERVED]

10. [RESERVED]

11. **INSPECTION BY LESSOR.** Lessor shall be entitled, at Lessor's sole expense, to enter upon the Property from time to time at reasonable intervals and during regular business hours of Martin Marietta, upon reasonable advance notice to Martin Marietta, in order to carry out such inspections as Lessor may deem reasonably appropriate to ensure compliance with the terms hereof, including, without limitation, the right to review and make copies of any mining plans and permits otherwise required to be submitted to the Lessor as part of a permitting process. All information obtained by Lessor under this Section relating to the business of Martin Marietta will be kept strictly confidential and will not be disclosed to any other party unless otherwise required by law. Lessor acknowledges and agrees that the requirements of applicable laws (including the Mine Safety Health Act) prohibit Martin Marietta from allowing persons not employed by Martin Marietta to inspect the portion of the Property used in Martin Marietta's operations unaccompanied and that Lessor will have to schedule with Martin Marietta any inspection of Martin Marietta's operations on the Property.

12. [RESERVED]

13. **LAWFUL CONDUCT.** All of the activities that are conducted on the Property by Martin Marietta shall be carried out in all material respects in accordance with all applicable laws. In this regard, Martin Marietta, at its expense, will comply in all material respects with all applicable laws that may affect its personnel, equipment, mining, or distribution activities on the Property, including, without limitation, all applicable laws as may now or hereafter be in force relating to public health, mine safety, explosives, and blasting.

14. **PERMITS.** Lessor agrees to assign to Martin Marietta all existing permits, if any, in its possession or constructive possession that are assignable and that relate to the mining operation on the Property. Lessor also agrees to take such actions, at Martin Marietta's sole expense, as Martin Marietta may reasonably request in order to assist Martin Marietta in obtaining any additional zoning, non-conforming use rights, or permits required for an aggregates operation or a related industry on the Property. Martin Marietta will obtain at its sole expense all permits

required by governmental authorities with jurisdiction over the mining operations on the Property and will operate in substantial compliance in all material respects with such permits.

15. **ENVIRONMENTAL.** Lessor makes those representations and warranties regarding the Property that are set forth on Exhibit C. For its part, Martin Marietta represents and warrants that its assets and its business on the Property will be located, operated, and maintained in a manner that complies in all material respects with all applicable Environmental Laws (as defined in Exhibit C) and permit conditions. Without limiting the rights of Lessor, Martin Marietta shall promptly correct or satisfy any non-compliance resulting from its operations upon written notice of the same from any governmental authority or Lessor. Martin Marietta will not be responsible for environmental conditions created by Lessor, any predecessor-in-interest to Lessor, or any other person.

16. **AD VALOREM TAXES.** Martin Marietta shall pay all ad valorem taxes and other similar charges that may be assessed against its equipment, plants, machinery, stockpiles, tracks, and other property located on the Property and erected by or belonging to Martin Marietta, while Lessor shall pay such taxes and charges that are assessed against its underlying land and all existing buildings and improvements, if any. The payment of all applicable taxes and charges as provided for herein shall be made promptly by the respective parties before the final authorized date for such payment unless such taxes or charges are contested in good faith by the responsible party in accordance with applicable tax procedures.

17. **UTILITIES.** Martin Marietta will pay for all utilities that it uses in connection with its operations on the Property, including, but not limited to, electricity, gas, and water. In this regard, Martin Marietta shall have the right to drill wells and to bring onto the Property, or capture, and use water and such other utilities as it deems appropriate for its operations, and Lessor will take such action and execute such easements and other documents as may be reasonably requested by Martin Marietta in order to bring any needed utilities onto the Property. The parties will cooperate to obtain, to the greatest extent reasonably possible, separate meters for utilities used by Martin Marietta.

18. **REPAIRS.** Lessor shall not be required to make any repairs to the land or any improvements located on the Property, except as otherwise expressly provided herein. Martin Marietta shall have the sole right and responsibility during the Term, at its expense, to make all tests and inspections as well as all improvements, or repairs, that it deems necessary or appropriate with respect to the Property or its equipment. Any alterations, additions, or improvements made to the facilities of Martin Marietta shall belong exclusively to Martin Marietta and shall remain the exclusive property of Martin Marietta upon the expiration or termination of this Agreement.

19. **MAINTENANCE OF PROPERTY; WASTE.** Martin Marietta will not allow trash or debris to accumulate in an excessive amount on the Property; provided, however, that it may extract and place on the Property at any location it deems appropriate Waste or other matter that it may remove in order to carry out the activities permitted hereunder. Waste may be removed from the mineral deposit, leveled, rearranged, or removed for building or plant sites, roads, dams, canals, stockpile areas, or for other reasons that, in Martin Marietta's sole discretion, are necessary to facilitate the activities permitted hereunder. Martin Marietta may make any use that it desires

of such Waste or other matter, including, without limitation, using it on the Property, stockpiling it on the Property, removing it from the Property, transferring it to a third party (by gift, donation, sale, or otherwise), or improving adjacent property owned or used by Martin Marietta, all without liability, so long as such uses are allowed under local, state, and federal law.

20. **RIGHTS OF LESSOR REGARDING USE.** During the Term, Lessor may continue to use portions of the surface of the Property for growing crops, pasture, grazing, or other agricultural purposes, to the extent, and only to the extent, such activities do not interfere with the use and occupancy of the Property by Martin Marietta. If Lessor permits livestock to pasture on the Property, Lessor shall exclusively assume all responsibilities and liabilities for the fencing and containment of its livestock. Under no circumstances will gates be placed on the Property by Lessor that in any way adversely affect the ability of Martin Marietta or its employees, agents, contractors, customers, or invitees to enter or exit the Property. Lessor shall at all times during its use of the Property comply in all material respects with all applicable laws relating to its activities on the Property, in addition to any safety or other rules and regulations which Martin Marietta may, but shall not be obligated to, prescribe from time to time for persons with activities on the Property.

21. **CORE DRILLING.** If necessary, Martin Marietta may core drill the Property and conduct such tests using such equipment and personnel as Martin Marietta, in its sole discretion, deems necessary to determine the extent and quality of the mineral resources under the Property. Lessor acknowledges that multiple holes may be drilled into the Property as a part of such testing. Martin Marietta agrees to coordinate with Lessor in good faith to identify mutually agreeable location(s) of such activity in order to minimize disturbance to the surface of the Property. Martin Marietta shall seal all core holes with bentonite, grout, or other similar material. In the event such drilling activity results in any crop damage to Lessor or any farm tenant, Martin Marietta shall reimburse Lessor or tenant for such loss.

22. **INDEMNITY.** Martin Marietta shall indemnify, defend, and hold Lessor, and its officers, officials, representatives, directors, agents, and employees harmless from any and all costs, expenses, losses, or damages (including but not limited to reasonable attorneys', engineering and expert witness fees), arising from or in connection with (i) any injury sustained directly by such party or (ii) any demand, claim, cause of action, or other proceeding brought against them, that is related to (x) any negligent or wrongful act or omission of Martin Marietta, whether occurring on or off the Property, or (xx) any breach by Martin Marietta of any provision of this Agreement.

Notwithstanding the foregoing, Lessor acknowledges that by conducting a mining operation on and in the Property, Martin Marietta may substantially alter the subsurface of the Property to the extent that the Property will not be returned to its prior existing state. Lessor, for itself and its heirs, personal representatives, successors, and assigns, hereby releases Martin Marietta from liability for claims for physical damage to the Property that may naturally occur as a result of the mining operations contemplated herein.

The obligations of the parties under this Section shall apply regardless of whether it is alleged or determined that the indemnified party was partially responsible for the loss. To the

extent that both Martin Marietta and Lessor are jointly responsible for an indemnifiable loss, they shall each share such responsibility on the same proportional basis that their respective acts and omissions caused such loss. Further, the obligations contained in this Section will survive expiration or termination of this Agreement, regardless of the reason for termination, for a period of three (3) years.

23. **LIABILITY INSURANCE.** At all times during the Term of this Agreement, Lessee shall obtain, pay all premiums for and furnish certificates to the Lessor for insurance as specified herein. **Delivery of such certificates to Lessor shall be a condition precedent to Lessee's right to go upon the Property.** All such insurance contracts shall name the Lessor and Lessee as their interests appear and shall inure to the benefit of Lessee and Lessor and their officers, agents, elected officials, representatives or employees. Such insurance contracts shall be with companies acceptable to the Lessor and they shall require ten (10) days prior written notice to both parties hereto of any reduction in coverage or cancellation.

(a) Martin Marietta shall procure and maintain in effect throughout the duration of this Lease insurance coverage not less than the types and amounts specified in this section. In the event that additional Insurance, not specified herein, is required during the term of this Lease, Martin Marietta shall supply such insurance at City's cost. Policies containing a Self-Insured Retention will be unacceptable to City.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an occurrence basis. The policy shall be written or endorsed to include the following provisions:
 - A. Severability of Interests Coverage applying to Additional Insureds
 - B. Contractual Liability
 - C. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - D. No Contractual Liability Limitation Endorsement
 - E. Additional Insured Endorsement, ISO form, current edition, or its equivalent (we carry U-GL-2116-A CW (01/17 on our policy)
2. Workers' Compensation / Statutory Employers Liability with limits of:
 - A. \$100,000 per accident
 - B. \$500,000 disease, policy limit
 - C. \$100,000 disease, each employee
3. Martin Marietta agrees to carry property insurance for leased portion of Property and shall be on a replacement cost basis. Martin Marietta is responsible for carrying its own personal property insurance.

24. **TERMINATION BY LESSOR.** Lessor may terminate this Agreement at any time if Martin Marietta (i) fails to perform any of its other obligations hereunder and such failure continues for a period of sixty (60) days after notice specifying such failure. If through no fault of Martin Marietta the applicable failure is impracticable to correct within such sixty (60) day period, Lessor shall not terminate this Agreement if Martin Marietta commences with good faith and with due diligence to correct such failure within the sixty (60) day period and diligently prosecutes the correction of such failure until cured. Notwithstanding the foregoing, if there is a bona fide dispute between the parties as to the payment or performance obligation or the amount due, then the time deadline will be tolled pending resolution of the dispute.

25. **TERMINATION BY MARTIN MARIETTA.** Martin Marietta may terminate this Agreement at any time if Lessor fails to perform any of its obligations hereunder, and such failure continues for a period of sixty (60) days after notice from Martin Marietta of such failure. If, through no fault of Lessor, such failure is impracticable to correct within such sixty (60) day period, Martin Marietta shall not terminate this Agreement if Lessor commences with good faith and with due diligence to correct such failure within the sixty (60) day period and diligently prosecutes the correction of such failure until cured. Notwithstanding the foregoing, if there is a bona fide dispute between the parties as to the performance obligation, then the time deadline will be tolled pending resolution of the dispute. In addition, Martin Marietta may terminate this Agreement at any time for any reason whatsoever, upon one hundred and eighty (180) days' prior written notice to Lessor.

26. **CONDEMNATION.** If any portion of the Property which materially affects Martin Marietta is taken by any competent authority, whether such taking is by actual dispossession, regulation of use, or otherwise, and without regard to whether such action is legally cognizable as a compensable taking by such authority, Martin Marietta, in its sole discretion, may terminate this Agreement; provided, however, any such termination shall be without prejudice to the rights of either Martin Marietta or Lessor to recover from the condemner compensation or damages caused by the condemnation, apportioned in accordance with their respective interests.

27. **SURVIVAL.** Other than as set forth in Sections 15, 22, 28, 29, 30, 31, 32, 41, 44, 45, 46, and 49 upon expiration or termination of this Agreement, all the rights and obligations of the parties herein stated shall cease, except any right or obligation which accrued prior to the effective date of such termination, and either party may exercise any lawful remedy in law or in equity to enforce such right or obligation. The remedies of a party provided herein are cumulative and do not exclude any other remedies to which any party may be lawfully entitled, under this Agreement or applicable law, and the exercise of a remedy shall not be deemed an election excluding any other remedy.

28. **WINDING-UP.** Following expiration or termination of this Agreement, Martin Marietta will have the right for a period of eighteen (18) months (the "Winding-Up Period") to remain and wind-up its affairs on the Property. During the Winding-Up Period Martin Marietta can remove or sell Material from any stockpiles that remain on the Property at the date of expiration or termination of this Agreement, but shall not engage in any mining or extraction activities during the Winding-Up Period. All of the obligations of the parties hereunder shall continue during the Winding-Up Period,. Martin Marietta shall be allowed reasonable access to

stockpile and scale areas as needed for loading and weighing during the Winding-Up Period, after which any Material remaining on the Property shall become the property of Lessor. By the end of the Winding-Up Period, Martin Marietta shall remove from the Property all of its plants, buildings, equipment, and other property and complete the actions described in the Section on “Duty to Restore; Reclaim” below; provided, however, in no event shall Martin Marietta be required to remove the foundation or footer of any improvement, and all paved or improved roads and access ways shall remain. Martin Marietta will also cause a reputable company to conduct a Phase I environmental survey of the Property and will provide a copy thereof to Lessor.

29. **MARTIN MARIETTA PROPERTY.** All structures, plants, fixtures, improvements, machinery, equipment, and personal property of Martin Marietta of whatever kind and nature placed or kept on or in the Property shall be and remain the property of Martin Marietta, provided that such items are removed from the Property by the end of the Winding-Up Period. If Martin Marietta fails to so remove its property, it shall be deemed to have abandoned such property and Lessor may (i) claim and hold such property as its own, or (ii) cause such property to be removed from the Property and disposed of, at the expense of Martin Marietta. All Material removed from the Property, or removed from its existing location in, on, or under the Property for processing, storing, distribution, or sale, shall be the sole property of Martin Marietta, free and clear of all claims and interests of Lessor and of any party claiming by, through, or under Lessor, except as provided in the Section on “Winding-Up” above at the end of the Winding-Up Period. Lessor waives any lien, statutory or otherwise, it may have with respect to the personal property of Martin Marietta, and agrees, upon the request of Martin Marietta, to confirm the absence of any such lien for the benefit of any lender, vendor, or customer of Martin Marietta.

30. **DUTY TO RESTORE; RECLAIM.** In addition to its other obligations, by the end of the Winding-Up Period, Martin Marietta will, at its sole expense, reclaim and refurbish the Property to the extent required by any applicable mining laws providing for reclamation activities generally applicable to aggregates mining, processing, and distribution operations similar to Martin Marietta’s operations on the Property in the state in which the Property is located. If required by applicable law, prior to conducting any mining operation, Martin Marietta will file a land reclamation plan with the state in which the Property is located. Compliance by Martin Marietta with the state reclamation plan shall be deemed compliance with the reclamation requirements of this Agreement. In no event shall Martin Marietta be responsible for, or have any reclamation obligation with respect to, any defective, improper, or insufficient land reclamation, restoration, leveling, or seeding that has been performed prior to the Effective Date.

31. **LESSOR’S TITLE TO PROPERTY.** Lessor hereby warrants and agrees to defend title to the Property and the Materials extracted therefrom hereunder unto Martin Marietta and its successors and assigns. Lessor shall pay when due all principal and interest due on any mortgages on the Property or other indebtedness secured by the Property and included within the Permitted Exceptions. If Lessor fails to make such payments, then Martin Marietta may, but shall not be required to, pay off and/or satisfy any and all mortgages or liens against the Property as it deems appropriate. Such payments made on any mortgage or lien by Martin Marietta for the account of Lessor may be deducted from any amounts that might be owed to Lessor under the terms of this Agreement. Lessor will notify Martin Marietta of any action that may be taken to foreclose on the Property due to any mortgage or lien. Upon the request of Martin Marietta, Lessor

shall cause its mortgagee to confirm that the tenancy of Martin Marietta under this Agreement shall not be disturbed, notwithstanding any foreclosure or deed in lieu of foreclosure with respect to the Property, so long as Martin Marietta complies with its obligations under this Agreement. Martin Marietta shall not be obligated to subordinate its interest in this Lease to any mortgage or deed of trust currently existing or granted by Lessor in the future, and Lessor shall obtain Martin Marietta's consent before granting any mortgage or deed of trust in the future.

32. **RIGHT OF FIRST REFUSAL.** If during the Term Lessor receives a bona fide offer to purchase all or any part of the Property or all or any part of Lessor's property adjacent to the Property, which Lessor intends to accept, or Lessor makes a bona fide offer to sell all or any part of the Property or all or any part of Lessor's property adjacent to the Property, which offer a third party intends to accept, Lessor shall first offer in writing to sell to Martin Marietta the Property or adjacent property, or portion thereof (as the case may be), that is the subject of the offer, at the same price, terms, and conditions as set forth in the offer, so long as such sale conforms with City Charter requirements. Martin Marietta shall have sixty (60) days from receipt of the bona fide offer in which to exercise this right of first refusal. This right of first refusal shall also continue to exist subsequent to a failure to exercise by Martin Marietta unless and until Lessor actually closes on the sale of the Property or adjacent property or part thereof pursuant to, and in strict compliance with, the offer submitted to Martin Marietta. Even if Martin Marietta determines not to exercise its right of first refusal, this Agreement shall be binding on any person acquiring the Property (or any part thereof) during the Term of this Agreement.

33. **ASSIGNMENT AND SUBLEASE BY MARTIN MARIETTA.** Martin Marietta may assign this Agreement or sublease all or a portion of the Property, without the prior written consent of Lessor, to (i) any corporate affiliate, (ii) any third party that acquires directly or indirectly all or substantially all the operating assets of the mining operation on the Property, (iii) any customers of Martin Marietta that desire to establish concrete or asphalt plants or other similar installations on the Property, or (iv) any other industries that, in Martin Marietta's sole opinion, would facilitate or increase the sale of Materials, so long as notice is provided to the Lessor. All other assignments or subleases shall require the prior written consent of Lessor, which shall not be unreasonably withheld or delayed. Despite any permitted assignment or sublease, Martin Marietta will remain responsible to Lessor for the performance of all applicable obligations set forth herein. Notwithstanding the foregoing, Martin Marietta may employ or engage an independent contractor or other person or persons to mine, remove, or haul Materials from the Property on behalf of Martin Marietta, or carry out for Martin Marietta any other task or thing that Martin Marietta is permitted to do or perform hereunder.

34. **ASSIGNMENT BY LESSOR.** This Agreement runs with the land. No change in Lessor's ownership of the Property or Lessor's rights in this Lease shall have the effect of reducing the rights or enlarging the obligations of Martin Marietta hereunder, and no change in ownership shall be binding on Martin Marietta until 60 days after Martin Marietta has been furnished with the original or certified or duly authenticated copies of the documents effecting the change in ownership to the satisfaction of Martin Marietta. If the Property is now or hereafter owned in severalty or in separate tracts, the Property, nevertheless, may be developed and operated as an entirety, and Production Royalty and Advance Minimum Royalty shall be apportioned among any

35. **NOTICES.** Whenever any notice is required or permitted hereunder, such notice shall be in writing and shall be deemed given if delivered personally or sent by facsimile or email (with confirmation of receipt), by registered or certified mail, postage prepaid, or by recognized courier service, to the addresses set forth below or such other addresses as are specified by written notice delivered in accordance herewith. Notices shall be deemed received when actually received by Seller or Buyer, as applicable; provided, however, that notices will be deemed received upon transmission of such notice if delivery cannot be accomplished because of a change of address by one party, but only if such party did not notify the other party of such change of address, or because of refusal of a party to accept delivery of any such notice.

with a copy to: Martin Marietta Materials, Inc.
4123 Parklane Avenue
Raleigh, North Carolina 27612
Attn: Vice President and General Counsel
Fax: (919) 783-4535
Email : roselyn.bar@martinmarietta.com

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“Memorandum of Lease”), to be duly recorded in the appropriate real estate records of the County in which the Property is located. Upon the conclusion of this Agreement, Martin Marietta will promptly file another document in such real estate records to evidence the fact that this Agreement has been terminated and is no longer in effect.

37. **AMENDMENTS.** This Agreement constitutes the entire understanding of the parties regarding the subject matter hereof and may be amended, changed, altered, or otherwise modified or expanded only by a written amendment or addendum signed after the date hereof by an authorized representative of each party.

38. **SEVERABILITY.** If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby.

39. **FORCE MAJEURE.** If the performance of any party hereunder, other than with respect to payments, is rendered commercially impracticable as a result of weather, strikes, wars, governmental orders, court action, transportation problems, mechanical difficulties, acts of God, fire, or other events beyond such party's reasonable control, then performance will be suspended during the period of such commercial impracticability. Martin Marietta shall not be required to pay any Advance Minimum Royalty during any such period of commercial impracticability.

40. **WAIVER.** The waiver by either party of any default in any of the terms and conditions stated herein shall not be deemed a waiver of any subsequent default of the same or any other term or condition hereof.

41. **GOVERNING LAW.** This Agreement shall be controlled, construed, and enforced in accordance with the laws of the state in which the Property is located, considered without regard to its choice of law rules.

42. **BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

43. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date first above written.

44. **PERFORMANCE AND SET-OFF.** Martin Marietta shall have the right (but not the obligation) to pay or perform any obligation of Lessor under this Agreement not timely paid or performed by Lessor. Martin Marietta shall have the right to set-off against the Production Royalty, Advance Minimum Royalty, and any other payment due Lessor hereunder any amounts owed by Lessor to Martin Marietta, whether pursuant to this Agreement (including without limitation the foregoing sentence) or otherwise. Martin Marietta's right to set off shall survive expiration or termination of this Agreement.

45. **STATUTE OF LIMITATIONS.** Notwithstanding any contrary provisions established under applicable law, neither party shall institute or commence any action with respect to any claim that any payment due under this Agreement or any weight of Material was improperly calculated or determined unless brought on or before December 31 of the year following the year in which such alleged improper calculation or determination occurred.

46. **PERPETUITIES.** To the extent applicable, if any of the provisions of this Agreement might be unlawful, void, or voidable for violation of the rule of law known as the rule against perpetuities, then any such provision shall continue only until the expiration of twenty (20) years following the date of death of the last of the lineal descendants, living on the date of this Agreement, of any of the following Presidents of the United States: George W. Bush, William Jefferson Clinton, George Herbert Walker Bush, Ronald Reagan, Jimmy Carter, Richard M. Nixon, Gerald R. Ford, Lyndon B. Johnson, John F. Kennedy, and Dwight D. Eisenhower.

47. **CAPTIONS, EXHIBITS, AND GENDER.** The captions appearing herein are used only as a matter of convenience and in no way define, limit, construe, affect, or describe the scope or intent of that or any other paragraph of this Agreement. All exhibits hereto and all other documents and instruments referred to herein or in any exhibit hereto are hereby incorporated herein by reference. Any gender used herein shall be deemed to refer to any other gender more grammatically applicable to the party or parties to whom it relates, and the use of the singular shall where appropriate be deemed to include the plural or the plural to include the singular.

48. **CERTAIN DEFINITIONS.** The parties agree: (i) that “applicable law” means all provisions of any constitution, statute, law, rule, regulation, decision, order, decree, judgment, release, license, permit, stipulation, or other official pronouncement enacted, promulgated, or issued by any governmental authority or arbitrator or arbitration panel; (ii) “governmental authority” means any legislative, executive, judicial, quasi-judicial, administrative, or other public authority, agency, department, bureau, division, unit, court, or other public body, person, or entity; (iii) an “affiliate” of, or person “affiliated” with a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified, (iv) “control” (including the term “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise; (v) “including” and other words or phrases of inclusion, if any, shall not be construed as terms of limitation, so that references to “included” matters shall be regarded as non-exclusive, non-characterizing illustrations; and (vi) “stripping” means materials that cannot be processed or sold for specification aggregates, such as dirt, shell, clay-contaminated limestone, pinnacles and non-specification sandstone.

49. **DEFAULT; DISPUTE RESOLUTION.**

(a) **MUTUAL NEGOTIATIONS.** The parties shall attempt in good faith to resolve through negotiation any dispute, claim, or controversy arising out of, relating to, or in connection with this Agreement, whether regarding the formation or terms of this Agreement, the performance of the parties hereunder, or otherwise (collectively a “Dispute”). Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the

subject of the Dispute and the relief requested. The recipient of such notice shall respond in writing within fifteen (15) days with a statement of its position on and recommended solution to the Dispute. If the Dispute is not resolved by this exchange of correspondence, then a representative of each party, with full settlement authority, shall meet at a mutually agreeable time and place within thirty (30) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the Dispute.

(b) **MEDIATION OR ARBITRATION.** If the parties are unable to resolve the Dispute by negotiation, pursuant to Subsection (a) above, they shall discuss the desirability of submitting the Dispute to mediation or binding arbitration before a single mediator or arbitrator who has had at least ten (10) years' relevant industry experience in the field that is the subject matter of the Dispute. This discussion shall take place prior to either party commencing an action in a court of competent jurisdiction in accordance with subsection (c) below. If any Dispute is submitted to binding arbitration, the arbitrator may not through the award compromise any difference between the positions of the parties. Instead, the parties shall each submit to the arbitrator a proposed award at least three (3) days before any arbitration is scheduled to commence. The arbitrator shall endorse as the final award either the award proposed by one party or the other. No other award may be made. Each party shall pay its own costs regardless of the outcome.

(c) **LITIGATION.** If within fifteen (15) days after the meeting described in Subsection (a) above, the parties have not reached agreement on resolution of the Dispute, or on the submission of the Dispute to mediation or binding arbitration, then the Dispute may be settled by litigation in accordance with the following provisions. Any litigation by the parties over any Dispute under this Agreement shall be brought in federal district court, if jurisdiction and venue are otherwise proper in such court. **Each party hereby irrevocably submits to personal jurisdiction in the Western District Court in the State of Missouri and waives any and all objections as to venue, inconvenient forum, and the like, and further waives any right to trial by jury that might otherwise be available to the party.** The decision of such court of competent jurisdiction that is either not subject to appeal or not appealed within ninety (90) days of any judgment or, if sooner, the period in which an appeal may be filed under applicable law, shall be final and binding on the parties as to any matter submitted under this Agreement. Each party shall pay its own costs regardless of the outcome.

49. **SIGNS AND ADVERTISEMENTS.** Martin Marietta shall not put upon or permit to be put upon any part of the Property any signs, billboards, or advertising whatsoever, without written consent of Lessor.

50. **RECYCLING.** It is the established policy of the City to promote environmentally sound business practices. The Martin Marietta agrees, where reasonable and practicable to incorporate similar practices in his operation on the Property including, but not limited to encourage consumer recycling.

51. **AMERICANS WITH DISABILITIES ACT.** Martin Marietta agrees to comply with all provisions, where applicable, of the Americans with Disabilities Act as amended from time to time during the course of this lease.

52. **CIVIL RIGHTS AND WAGE ASSURANCES.** Martin Marietta agrees to comply with the terms set forth in the Civil Rights and Equal Opportunity Department's Civil Rights and Wage Assurances attached hereto as Exhibit E and incorporated herein by reference. Martin Marietta shall be referred to as "Contractor" within said Exhibit E.

53. **PUBLIC REQUIREMENTS.** Martin Marietta shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Property or the use thereof, and save Lessor harmless from expense or damage resulting from failure to do so. Without limiting the foregoing, Martin Marietta shall comply with Chapter 38 of the Kansas City, Missouri Code of Ordinances, attached hereto as Exhibit F and incorporated herein by reference.

54. **COVENANTS TO RUN WITH THE PROPERTY.** The covenants herein contained shall run with the Property hereby let and bind the heirs, executors, administrators, assigns and successors of the Lessor and Martin Marietta respectively and consent of Lessor to assignment, and acceptance of rent from assignee of Martin Marietta shall not release Martin Marietta from its obligation under this Lease.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each on the day indicated below, effective as of the Effective Date.

Date of Execution:

LESSOR:

City of Kansas City

By: _____

Name:

Title:

Approved as to form:

Assistant City Attorney

Date of Execution:

MARTIN MARIETTA:

**Martin Marietta Materials Real Estate
Investments, Inc.**

By: _____

Name: Todd Clock

Title: Authorized Signatory

EXHIBIT A
PROPERTY DESCRIPTION

<Insert legal description from deed>

Abbreviated legal: That portion of the NW 1/4 of the NE 1/4 of Section 1, Township 52 North, Range 34 West of the X P.M., Platte County, Missouri further described as follows: Beginning at the NW Corner, thence East 990 feet, thence South 874.5 feet, thence West 330 feet, thence North 66 feet, thence West 660 feet to the West line, thence North 808.5 feet to the point of beginning. Excluding all surface rights thereof [include depth of surface rights].

EXHIBIT B
PERMITTED EXCEPTIONS

EXHIBIT C
ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES

1. Definitions.

(a) The term “Environmental Laws” shall mean all federal, state, local, and foreign (as may be applicable) laws, statutes, or ordinances relating to pollution or protection of the environment and any regulation, code, rule, plan, license, approval, permit, order, decree, judgment, or injunction related thereto.

(b) The term “Contamination” and any derivative thereof means any release, spill, leak, discharge, disposal, deposit, pumping, pouring, emitting, emptying, or injection of a Hazardous Substance into the environment.

(c) The term “Hazardous Substance” shall mean asbestos, polychlorinated biphenyls, petroleum products and distillates, and any other substances, materials, and wastes which are or become regulated or controlled by any Environmental Law, including, without limitation, those within the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” “solid waste,” “pollutants,” “contaminants,” or “nuclear or byproduct material” in any such Environmental Law.

2. To the best of its knowledge, Lessor represents and warrants that, except as set forth on Schedule A attached hereto:

(a) There are no waste dumps or disposal, treatment, or storage sites located on the Property, and the Property has not been used for the treatment, storage, or disposal of any Hazardous Substance;

(b) The Property has not been contaminated with any Hazardous Substance so as to constitute a violation of any Environmental Laws or so to trigger any corrective or remedial action under any Environmental Laws;

(c) There are no transformers, capacitors, or other equipment located on the Property which contain polychlorinated biphenyls (“PCBs”);

(d) No portion of the Property is reasonably believed by Lessor to be a wetland as defined in 33 CFR § 328.3;

(e) There have not been and there currently are no underground storage tanks located on or under the Property;

(f) All uses of the Property and all activities conducted on the Property have been in compliance with all Environmental Laws;

(g) Lessor and the Property are in compliance with all Environmental Laws and all permits obtained pursuant thereof;

(h) There are no past or present events, conditions, circumstances, or activities which may interfere with or prevent continued compliance with the Environmental Laws, or which may give rise to any common law or legal liability, or otherwise form the basis of any claim or action, proceeding, hearing, study, or investigation, based on or related to the manufacture, processing, use, storage, disposal, or handling, or the release or threatened release into the environment, of any Hazardous Substance with regard to the Property;

(i) There is no pending or, to the knowledge of Lessor, threatened civil or criminal litigation, assessment, notice of violation, or administrative proceeding relating in any way to the Environmental Laws involving the Property or Lessor, and, to the knowledge of Lessor, there is no basis for any such litigation, assessment, notice, or proceeding that could have a material adverse effect on the Property;

(j) All sampling reports of surface water, groundwater, soil and subsoil, air and vegetation, which Lessor has in its possession or of which it is aware, that concern the environmental condition of the Property (or any lands within a one-mile radius thereof) have been delivered to or made known to Martin Marietta; and

(k) There has not been and there currently is no asbestos-containing material in use upon, stored upon, or disposed of upon the Property.

EXHIBIT D
MEMORANDUM OF LEASE

After recording return to:
Martin Marietta
7381 W 133rd Street, Suite 100
Overland Park, KS 66213

MEMORANDUM OF LEASE

This Memorandum of Lease is filed to record in Platte County, Missouri, to provide notice that Martin Marietta Materials Real Estate Investments, Inc. ("Lessee"), having an address at 4123 Parklake Avenue, Raleigh, North Carolina 27612, has entered into a lease agreement with the City of Kansas City ("Lessor"), having an address at 414 East 12th Street, Kansas City, Missouri 64106, covering a tract of land and any improvements thereon in Platte County, Missouri, more fully described on Exhibit A attached hereto and incorporated herein (the "Property"). The lease agreement may extend through January 1, 2085. There also exists a right of first refusal to purchase the Property, in favor of Lessee, during the term of the lease agreement. The terms and conditions of such right of first refusal are contained in the lease agreement, the terms and conditions of which are hereby incorporated into this Memorandum of Lease. Upon termination of the lease agreement, Lessee will file notice of such termination wherever this Memorandum of Lease is filed.

Lessor:

City of Kansas City

By: _____

Name:

Title:

Lessee:

Martin Marietta Materials Real Estate Investments,
Inc.

By: _____

Name: Todd Clock

Title: Authorized Signatory

STATE OF MISSOURI
COUNTY OF JACKSON

This instrument was acknowledged before me by _____, the
_____ of the City of Kansas City, on this the ____ day of _____,
_____.

Notary Public

(PERSONALIZED SEAL)

STATE OF IOWA
COUNTY OF POLK

This instrument was acknowledged before me by Todd Clock, the Authorized Signatory of
Martin Marietta Materials Real Estate Investments, Inc., on this the ____ day of
_____, _____.

Notary Public

(PERSONALIZED SEAL)

EXHIBIT E
CIVIL RIGHTS AND WAGE ASSURANCES

Civil Rights and Equal Opportunity Department

Civil Rights and Wage Assurances

Non-discrimination in Employment. Contractor shall not discriminate against any employee or candidate for employment on the basis of an individual's race, hair texture or hair style associated with an individual's race, color, sex, religion, national origin, or ancestry, disability, sexual orientation, gender identity, age, or in any other manner prohibited by Chapter 38 of the City Code. Contractor shall not engage in any discrimination as prohibited by Chapter 3 of the City Code.

Ban the Box in Hiring and Promotion.

(a) Pursuant to Section 38-104, City Code Ordinances, Contractor shall not base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

(b) Notwithstanding subsection (a), Contractor may inquire about an applicant's criminal history after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Any such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.

(c) This provision shall not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 requires that no person in the United States shall, on the grounds of race, color, or national or origin (including limited English proficient individuals), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. The City of Kansas City, Missouri requires compliance with the requirements of Title VI in all of its programs and activities regardless of the funding source.

Contractor shall not discriminate on the grounds of race, color, or national or origin (including limited English proficient individuals).

Quality Services Assurance Act. If this Contract exceeds \$160,000.00, Contractor certifies Contractor will pay all employees who will work on this Contract in the city limits of Kansas City, Missouri at least \$15.00 per hour in compliance with the City's Quality Services Assurance Act,

Civil Rights and Equal Opportunity Department

Civil Rights and Wage Assurances

Section 3-66, Code of Ordinances or City has granted Contractor an exemption pursuant to the Quality Services Assurance Act.

Anti-Discrimination Against Israel. If this Contract exceeds \$100,000.00 and Contractor employs at least ten employees, pursuant to Section 34.600, RSMo., by executing this Contract, Contractor certifies it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Affirmative Action. If this Contract exceeds \$300,000.00 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- (a) Execute and submit the City of Kansas City, Missouri CREO Affirmative Action Program Affidavit warranting that the Contractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract.
- (b) Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Civil Rights and Equal Opportunity Department (CREO) prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to CREO prior to receiving the first payment under the Contract, unless a copy has already been submitted to CREO at any point within the previous two (2) calendar years.
- (c) Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- (d) Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or

Civil Rights and Equal Opportunity Department

Civil Rights and Wage Assurances

electronic format, to CREO within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to CREO within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Civil Rights and Equal Opportunity Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Compliance with Laws. Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Contractor shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

Prevailing Wage. If the Agreement exceeds \$75,000.00 and any of the Services performed by Contractor includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair, that is subject to the Missouri Prevailing Wage Law (Section 290.210, RSMo – 290.340, RSMo), Contractor shall immediately notify the City prior to performing Services so the parties can execute an agreement that incorporates, the appropriate Wage Order. Contractor shall comply with all requirements of Section 290.210, RSMo – 290.340, RSMo even if Contractor fails to notify the City.

EXHIBIT F

Chapter 38 CIVIL RIGHTS¹

ARTICLE I. IN GENERAL

DIVISION 1. DEFINITIONS

Sec. 38-1. Definitions.

- (a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning or an alternative definition has been provided:
- (1) *Age* means an age of 40 or more years, except that it shall not be an unlawful employment practice for an employer to require the compulsory retirement of any person who has attained the age of 85 and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least \$344,000.00.
 - (2) *City* means the City of Kansas City, Missouri.
 - (3) *Commission* means the city human rights commission.
 - (4) *Complainant* means any person claiming injury by the alleged violation of RSMo ch. 213, or of this chapter, including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur.

¹Editor's note(s)—Ord. No. 130041, § 5, adopted March 21, 2013, amended the Code by repealing former ch. 38, §§ 38-1—38-4, 38-31—38-38, 38-61, 38-62, 38-82.1—38-82.11, 38-83.1—38-99, 38-100.1—38-103, 38-131—38-137, and adding a new ch. 38. Former ch. 38 pertained to similar subject matter, and derived from the Code of Gen. Ords. of 1967, §§ 26.202—26.217, and 26.311—26.313; Ord. No. 920812, adopted August 6, 1992; Ord. No. 930612, adopted June 3, 1993; Ord. No. 930916, adopted August 12, 1993; Ord. No. 960063, adopted March 7, 1996; Ord. No. 961353, adopted November 7, 1996; Ord. No. 970179, adopted February 24, 1997; Ord. No. 971501, adopted October 23, 1997; Ord. No. 980041, adopted January 29, 1998; Ord. No. 970828, adopted August 27, 1998; Ord. No. 991187, adopted September 23, 1999; Ord. No. 030449, adopted April 3, 2003; Ord. No. 030287, adopted July 31, 2003; Ord. No. 040811, adopted July 28, 2004; Ord. No. 050821, adopted July 28, 2005; Ord. No. 070504, adopted April 26, 2007; Ord. No. 070829, adopted August 9, 2007; Ord. No. 071067, adopted November 1, 2007; Ord. No. 080311, adopted April 3, 2008; Ord. No. 090108, adopted April 2, 2009; Ord. No. 100802, adopted October 14, 2010; Ord. No. 110970, adopted January 19, 2012; and Ord. No. 120008, adopted January 26, 2012. Subsequently, Ord. No. 210645, § 5, adopted August 12, 2021, amended the Code by changing the title of ch. 38.

Cross reference(s)—Civil rights and equal opportunity department, § 2-551 et seq.; equal employment opportunity program for employment with city, § 2-1901 et seq.; tax incentive payment for hiring handicapped persons, § 68-511 et seq.

- (5) *Complaint* means a verified written statement of facts and circumstances, including dates, times, places and names of persons involved in any alleged violation of any provision of RSMo ch. 213, or of this chapter.
- (6) *Contract* means any contract to which the city shall be a contracting party, except the following:
 - a. Personal services contracts.
 - b. Emergency requisitions for goods, supplies or services.
 - c. Impressed accounts in the nature of petty cash funds.
 - d. Contract or lease, the cost of which will not exceed \$300,000.00.
- (7) *Covered multifamily dwelling* means a building consisting of four or more units if the building has one or more elevators or a ground floor unit in a building consisting of four or more units.
- (8) *Department* means the department of civil rights and equal opportunity.
- (9) *Director* means the director of the civil rights and equal opportunity department or their delegate.
- (10) *Disability* means, with respect to employment, a person who is otherwise qualified and who, with reasonable accommodation, can perform the essential functions of the job in question. Generally, a person with a disability is any person who:
 - a. Has a physical or mental impairment which substantially limits one or more major life activities;
 - b. Has a record of having such impairment; or
 - c. Is regarded as having such an impairment.
- (11) *Dwelling* means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
- (12) *Employee* means any individual employed by an employer, but does not include an individual employed by his parents, spouse or child or any individual employed to render services as a domestic in the home of the employer.
- (13) *Employer* includes any person employing six or more employees.
- (14) *Employment agency* means any person, agency or organization, regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.
- (15) *Familial status* means one or more individuals, who have not attained the age of 18 years, being domiciled with:
 - a. A parent or another person having legal custody of such individual or individuals; or
 - b. The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. No provision in this chapter regarding familial status shall apply to housing for older persons, as defined in section 3607 of title 42 of the United States Code Annotated.
- (16) *Family* includes a single individual.
- (17) *Franchise holder* means any individual, partnership, corporation, association or other entity, or any combination of such entities, holding a franchise hereafter granted or renewed by the city.

- (18) *Gender identity* means the actual or perceived appearance, expression, identity or behavior of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth.
- (19) *Labor organization* means any organization which exists for the purpose in whole or in part of collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.
- (20) *Performance of work* means the furnishing of any personal service, labor, materials or equipment used in the fulfillment of a contractor's obligation under a city contract.
- (21) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other organizations; except the term "person" does not include any local, state or federal governmental entity.
- (22) *Prohibited dress code* means a set of rules governing, prohibiting or limiting access to a place or business, or portion thereof, defined herein as a "public accommodation" because of any of the following:
- a. The wearing of jewelry, the manner in which jewelry is worn or the combination of items of jewelry worn,
 - b. The wearing of a garment or headdress which is generally associated with specific religions, national origins or ancestry,
 - c. The length of the sleeve of a shirt or the leg of a pair of pants or shorts is too long, except that nothing herein shall be construed to prohibit a dress code that requires the wearing of a shirt,
 - d. The style, cut or length of a hair style,
 - e. The colors of the garments,
 - f. In conjunction with a major Kansas City sporting event the wearing of athletic apparel which displays either a number, a professional or college team name or the name of a player;
 - g. The wearing of tee-shirts, except that nothing herein shall be construed to prohibit a dress code that requires such tee-shirts to have sleeves, or to prohibit a dress code that does not allow undershirts, undergarments, or tee-shirts of an inappropriate length. Designer tee-shirts, which are fitted and neat, cannot be banned.
- (23) *Public accommodation* means any place or business offering or holding out to the general public goods, services, privileges, facilities, advantages or accommodations for the peace, comfort, health, welfare and safety of the general public, or providing food, drink, shelter, recreation or amusement, including but not limited to:
- a. Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence.
 - b. Any restaurant, tavern, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including but not limited to any such facility located on the premises of any retail establishment.
 - c. Any gasoline station, including all facilities located on the premises of such gasoline station and made available to the patrons thereof.
 - d. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment.

- e. Any public facility owned, operated or managed by or on behalf of this city or any agency or subdivision thereof, or any public corporation; and any such facility supported in whole or in part by public funds.
 - f. Any establishment which is physically located within the premises of any establishment otherwise covered by this definition or within the premises in which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.
 - g. Any institution, association, club or other entity that has over 250 members, provides regular meal service, and regularly receives payment for meals, beverages, dues, fees, the use of its facilities or services directly or indirectly from or on behalf of nonmembers in furtherance of trade or business.
- (24) *Redevelopment area* means a tax increment redevelopment area as defined in RSMo § 99.805 (11); a planned industrial expansion project area as defined in RSMo § 100.300 et seq.; an urban renewal project area or land clearance project area as defined in RSMo § 99.300 et seq.; any area under the control of the port authority of Kansas City, Missouri, or subject to a contract, lease or other instrument to which the port authority is a party; or an area determined by the city to be blighted pursuant to RSMo chapter 353.
- (25) *Rent* means to lease, sublease, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.
- (26) *Respondent* means any person against whom it shall be alleged by complaint or identified during the course of an investigation that such person has violated, is violating or is about to violate any provision of RSMo chapter 213, or this chapter.
- (27) *Sex* shall include sexual harassment.
- (28) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (29) *Subcontractor* means any individual, partnership, corporation, association or other entity, or other combination of such entities, which shall undertake, by virtue of a separate contract with a contractor, to fulfill all or any part of any contractor's obligation under a contract with the city, or who shall exercise any right granted to a franchise holder, and who has 50 or more employees exclusive of the parents, spouse or children or such subcontractor.
- (30) *Unlawful discriminatory practice* means any discriminatory practice as defined and prohibited by sections 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113.
- (Ord. No. 130041, § 5, 3-21-13; Ord. No. 180034, § 1, 2-1-18; Ord. No. 180724, § 1, 2-7-19; Ord. No. 190380, § 1, 5-23-19; Ord. No. 200837, § 1, 10-1-20; Ord. No. 210645, § 5, 8-12-21)

Secs. 38-2—38-20. Reserved.

ARTICLE II. ADMINISTRATION

DIVISION 1. ENFORCEMENT

Sec. 38-21. Powers and duties of director.

The director is hereby charged with administration and enforcement of all sections of this chapter and is hereby authorized and empowered to do the following:

- (1) *Rules and regulations.* To adopt, amend and enforce rules and regulations relating to any matter or thing pertaining to the administration of this chapter.
- (2) *Complaint investigation.* To receive, investigate and, upon finding probable cause on any complaint of violation of RSMo ch. 213, to bring such complaint before the human rights commission. If the director finds probable cause to believe that a violation of this chapter has occurred, he or she may refer the matter to the city counselor's office for prosecution in municipal court. Any staff assigned to assist the commission shall be supervised by the director of civil rights and equal opportunity. The director shall not have the power to process complaints of discrimination brought against the city and shall defer any such complaints to the state commission on human rights or any appropriate federal agency for processing.
- (3) *Authority regarding discrimination within city administration.* To investigate and recommend to the city manager any policy changes or specific actions that the director determines are necessary to ensure that the city administration is in compliance with the provisions of this chapter or with state and federal discrimination laws.
- (4) *Initiation of complaints.* Whenever the director has reasonable cause to believe that an unlawful discriminatory practice has occurred, he or she may initiate a complaint alleging violation of any section RSMo ch. 213, or of this chapter.
- (5) *Compliance investigation.* To investigate, survey and review any and all affirmative action programs, city contracts and franchises which are subject to this chapter and to take such action with respect thereto as shall ensure compliance with this chapter.
- (6) *Conciliation.* To attempt to eliminate any unlawful discriminatory practice or any other violation of the terms of this chapter by means of conference, conciliation, persuasion and negotiation and to enter into conciliation agreements.
- (7) *Authority to dismiss complaints.* To dismiss any complaint upon finding such complaint to be frivolous or without merit on its face or upon a finding that the allegedly unlawful discriminatory practice has been eliminated through conciliation.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 210645, § 5, 8-12-21)

Sec. 38-22. Reserved.

Sec. 38-23. Complaint procedure.

- (a) *Filing of complaint.*
 - (1) Any person claiming injury by an allegedly unlawful discriminatory practice may, by himself or by his attorney, make, sign and file a verified written complaint with the director on forms provided by the director, which shall state the name and address of the person alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information as may be required by the director for the investigation of the complaint.
 - (2) Any complaint filed pursuant to RSMo ch. 213, or this chapter must be filed within 180 days after the alleged unlawful discriminatory practice was committed.
- (b) *Investigation.* After the filing of any complaint, the director shall:
 - (1) During the period beginning with the filing of such complaint and ending with the notice of public hearing before the commission, to the extent possible, engage in conciliation with respect to such complaint. Any agreement reached during these conciliation efforts shall conform to the requirements of subsection (d) of this section.

- (2) Promptly serve notice upon the complainant acknowledging and advising the complainant of the time limits and choice of forums provided under RSMo ch. 213, and this chapter.
 - (3) Promptly serve notice on the respondent or the person charged with a discriminatory practice advising of his or her procedural rights and obligations under this chapter, together with a copy of the complaint.
 - (4) Commence investigation of the complaint within 30 days of the receipt of the complaint.
 - (5) For housing and public accommodation complaints, complete the investigation of the complaint within 100 days unless it is impracticable. If the director is unable to complete the investigation within 100 days, the director shall notify the complainant and the respondent in writing of the reasons for not doing so.
 - (6) Make final administrative disposition of a housing or public accommodations complaint within one year of the date of receipt of a complaint unless it is impracticable to do so, in which case the director shall notify the complainant and respondent in writing of the reasons for not doing so.
- (c) *No probable cause finding.* If it shall be determined after such investigation that no probable cause exists for crediting the allegations of the complaint, the director shall cause to be issued and served upon all parties written notice of such determination.
- (d) *Probable cause finding; conciliation.*
- (1) If it shall be determined after such investigation that probable cause exists for crediting the allegations of the complaint, the director shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of such allegedly unlawful discriminatory practice in the future and may contain such further provisions as may be agreed upon by the complainant and the respondent subject to the approval of the director. The director shall not disclose what has transpired in the course of such endeavors and shall not make or maintain a public record of such endeavors as the term "public record" is defined in RSMo ch. 610.
 - (2) If the respondent, the complainant and the director agree upon conciliation terms, the director shall compile the terms of the conciliation agreement for the signature of the complainant, respondent and director. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the director determines that disclosure is not legally required and is not required to further the purposes of this chapter.
- (e) *Failure to conciliate; hearing or prosecution.* If the director believes that he has failed to eliminate an allegedly unlawful discriminatory practice through conciliation, he shall cause to be issued and served a written notice thereof. If the complaint alleges a discriminatory practice prohibited by this chapter, the director may refer the matter to the city counselor for possible prosecution in municipal court. If the complaint alleges a discriminatory practice prohibited by RSMo ch. 213, the director shall refer the matter to the commission for hearing.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-24. Reserved.

Sec. 38-25. Hearing or civil action.

- (a) *Hearing notice.* Upon referral from the director of a matter to be set for hearing, the commission shall set a date upon which a hearing shall be held by a hearing examiner appointed by the city and shall notify all parties of the date thereof. The notice shall be served upon the parties at least 20 days prior to the date of the hearing. A copy of the complaint shall be attached to each such notice.

(b) *Election to file civil action in housing cases.*

- (1) When a written notice of hearing on a complaint of housing discrimination is issued, a complainant or respondent may elect to have the claims asserted in that complaint decided in a civil action, in accordance with RSMo § 213.076. Written notice of an election made under this subsection shall be filed with the commission with notice to all parties within 20 days of the date on which the notice of hearing was mailed.
 - (2) If such an election is made, the director shall request that the city counselor file suit on behalf of the city and the complainant unless the complainant chooses to bring an action through his or her own private counsel. Within 30 days of the election, the city counselor shall commence, maintain and pay the costs of a civil action in the name of the city and any complainant not represented by private counsel seeking relief as authorized by RSMo ch. 213; however, before such suit is filed by the city on behalf of any complainant, the complainant will agree in writing that any costs or attorneys' fees recovered in such an action will be remitted to the city. The complainant shall have no liability to the city for costs and attorneys' fees except to the extent that such costs and attorneys' fees are awarded by the court to the complainant and paid by a respondent (defendant). Should the city counselor prevail in such suit, he is hereby authorized and directed to seek and recover costs and attorneys' fees. Any attorneys' fees or costs recovered by the city or by a complainant and remitted to the city shall be paid into the general fund of the city.
- (c) *Record of proceedings.* The hearing examiner shall cause all proceedings before it to be either tape recorded or held before a certified court reporter.
- (d) *Hearing procedure.* The hearing shall be conducted in accordance with RSMo ch. 536, and with rules adopted by the commission. The commission or the hearing examiner appointed to hear a matter may subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books, papers or other materials relating to any matter under investigation or in question before the commission.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-26. Reserved.

Sec. 38-27. Discovery.

In any case which is before the commission, any party may obtain discovery in the same manner, upon and under the same conditions and upon the same notice and other requirements as is or may hereafter be provided for with respect to discovery in civil actions by rule of the supreme court of the state for use in circuit court. The designated hearing examiner for the human rights commission shall have the same responsibilities and authority with respect to discovery as is vested in circuit judges by supreme court rule. Enforcement of discovery shall be by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court; except that no order issued pursuant to such rule which requires a physical or mental examination, permits entrance upon land or inspection of property without permission of the owner, or purports to hold any person in contempt shall be enforceable except upon order of the circuit court after notice and hearing. The hearing examiner may limit discovery as is appropriate in each case.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-28. Reserved.

Sec. 38-29. Penalty for refusal or failure to obey subpoena.

If any person fails, neglects or refuses to obey all the terms of any subpoena or subpoena duces tecum issued by the human rights commission or its designated hearing examiner, such failure shall be dealt with as provided by the applicable section of RSMo. ch. 536.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-30. Reserved.**Sec. 38-31. Decision and order by commission.**

- (a) The hearing examiner shall make findings of fact and conclusions of law and shall recommend to the commission an order granting any relief that is necessary to remedy any discrimination found and which is consistent with RSMo § 213.075, or dismissing the complainant as to the respondent, in accordance with such findings. The commission or a panel of at least three members of the commission shall review the record, findings and recommended order of the hearing examiner. The commission or panel shall thereafter accept or amend the recommended order, which shall become the order of the commission. All orders shall be served on the complainant and respondent and such other public officers as the commission deems proper.
- (b) The order of the commission shall not become final for appeal purposes until it is filed with and approved by the state commission on human rights, in accordance with the procedures set forth in RSMo § 213.135.
- (c) After rendition of the commission's decision on a contract compliance or affirmative action matter, the contracting officer shall serve upon the respondent a copy of such order and decision. The respondent shall have 30 days after delivery of the order and decision to demonstrate to the director willingness to comply with the terms and conditions of such order, failing which the contracting officer shall proceed to cancel, terminate or suspend the contract, or declare the contractor ineligible to receive any city contract or franchise for a period of one year, as such order may require. Willingness of the contractor to comply with such order may be evidenced by his or her written agreement to comply with the terms and conditions set forth in the order.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-32. Reserved.**Sec. 38-33. Confidentiality of statements and documents.**

No documents which have been submitted nor anything which has been said or done during the course of a conciliation endeavor or as a result of an affirmative action program submission shall be made public or used as evidence in any subsequent proceedings without the written consent of the parties concerned, except as such statements or documents are public records as defined by state law or except when such statements or documents are used as evidence before a hearing examiner for the human rights commission.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-34. Reserved.

Sec. 38-35. Suspension or revocation of business license.

Upon the final determination of any violation of this chapter, the license of such violator to do business in this city may be suspended for up to 30 days; and, upon a third final determination of any violation of this chapter within five years, the license of such person to do business in this city shall be revoked.

(Ord. No. 130041, § 5, 3-21-13)

Secs. 38-36—38-40. Reserved.

DIVISION 2. HUMAN RIGHTS COMMISSION²

Sec. 38-41. Establishment; membership.

- (a) There shall be a human rights commission, formerly known as the civil rights board, which shall be an agency as such term is defined in RSMo § 536.010. Such commission shall comprise seven members, including a chairperson, to be appointed by the mayor. The commission shall be a local commission as authorized by RSMo §§ 213.020 and 213.135, and as such shall have the power and authority to hear complaints of violations of RSMo ch. 213, in accordance with procedures set forth in RSMo ch. 213, and in this chapter.
- (b) All members shall serve without compensation and shall serve initial staggered terms at the discretion of the council and mayor of three years for three members, two years for three members, and one year for one member; provided that all members shall continue in office until their respective successors shall have been appointed and qualified. In the event of death or resignation of any appointee, a successor shall be appointed by the original appointing authority to serve during the unexpired portion of his or her term.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-42. Reserved.

Sec. 38-43. Powers and duties.

- (a) The commission may adopt rules of procedure consistent with RSMo chs. 213 and 536, and this chapter.
- (b) The commission shall prepare an annual report to be presented to the mayor and council concerning the conditions of minority groups in the city, with special reference to discrimination, civil rights, human relations, hate group activity, bias crimes and bias practices and attitudes among institutions and individuals in the community. The report may also include other social and economic factors that influence conditions of minority groups, as well as the causes of these conditions and the effects and implications to minority groups and the entire city. In preparation for the report the commission may conduct hearings and conduct whatever other research is necessary. The report shall include appropriate recommendations to the mayor and the council.
- (c) The commission shall form task forces as follows:
 - (1) The commission shall form task forces including: youth, business, media, education, law enforcement, religion, labor, gay and lesbian issues, metropolitan area cooperation, and others as may be deemed appropriate.

²Cross reference(s)—Kansas City Lesbian, Gay, Bisexual, Trans and Queer Commission (LGBTQC), § 2-970.60 et seq.

- (2) One member of each task force may be appointed from each councilmanic district, that member to be agreed upon jointly by the councilmembers from that district. Councilmembers may recommend additional members as appropriate.
- (3) Except as provided in subsection (c)(2) of this section, the chairperson of the commission shall appoint the chairs and members of the task forces.
- (4) The task forces shall consist of no more than 15 members except where the commission chairperson specifically approves additional members.
- (5) The task forces will assist the commission in the preparation of the commission's annual report to the mayor and council.
- (d) The commission is empowered to investigate hate group activity and incidents of bias crimes and work with law enforcement agencies and others to implement programs and activities to combat hate group activity and bias crimes.
- (e) The commission may seek information from any and all persons, agencies and businesses, in both the public and private sectors, to identify and investigate problems of discrimination and bias as they affect the citizens of the city either directly or indirectly.
- (f) The commission may cooperate with public and private educational institutions at primary, secondary and post-secondary levels to foster better human relations among the citizens of the city and within the metropolitan Kansas City area.
- (g) The commission may work with civil rights organizations, community organizations, law enforcement agencies, school districts and others to collect and review data relating to patterns of discrimination, bias crimes, hate group activity, and general issues of civil and human rights.
- (h) The commission may conduct studies, assemble pertinent data, implement educational programs and organize training materials for use by the commission to assist civil and human rights agencies, neighborhood organizations, educational institutions, law enforcement agencies, labor unions and businesses and others to prevent discrimination.
- (i) The commission may serve as an advocate to prevent discrimination and bias crimes.
- (j) The commission chairperson may appoint such committees from its membership or other citizens to fully effectuate the purpose of this chapter.
- (k) The commission is empowered to hold hearings regarding issues of general or specific civil and human rights affecting the citizens of the city, to review decisions of hearing examiners appointed by the city to hear charges of violations of RSMo ch. 213, to administer oaths, and to take the testimony of any person under oath.
- (l) Based upon its hearings or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that a respondent has engaged in an unlawful discriminatory practice as defined in RSMo ch. 213, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of Chapter 213, RSMo, including but not limited to the assessment of civil penalties, reinstatement, back pay, making available the dwelling or public accommodation, actual damages, or any other relief that is deemed appropriate and which is consistent with Chapter 213, RSMo.
- (m) Should the respondent also be a city contractor, upon complaint by the civil rights and equal opportunity department and after hearing duly held, the commission shall make findings of fact and conclusions of law; and when it finds a breach of conditions of any contract or franchise wherein compliance with this chapter is assured, it shall make an order specifying the terms and conditions under which any contract or franchise will be continued in force, or in the alternative shall order the cancellation, termination or suspension of such

contract or franchise, or order that such contractor or franchise holder be ineligible to receive any city contract or franchise for a period of one year.

- (n) The chairperson may appoint hearing review panels composed of not less three persons to review hearings conducted by a hearing examiner regarding violations of RSMo ch. 213. Panels shall be appointed on a rotating basis to ensure that all commission members have an opportunity to review recommended findings of the hearing examiner. Any member of the commission who has a conflict of interest or the appearance of a conflict of interest regarding an issue to be heard by the commission will not participate in the proceedings regarding that issue.
- (o) The commission is empowered to hold hearings, upon complaint of an aggrieved party or upon an investigation by the director to determine whether the owner, operator, agent or an employee of a business or facility within a redevelopment area is using a prohibited dress code. Based upon its hearings, or those held by its hearing examiners, the commission shall issue such findings as it deems appropriate under the circumstances. If the commission finds that the owner, operator or employee of such a business or facility has used, or is using, a prohibited dress code, and, therefore, has engaged in an unlawful discriminatory practice as defined in RSMo ch. 213, or in section 38-113, the commission shall issue and cause to be served on the owner, operator, agent or employee an order requiring the owner, operator or employee to cease and desist from the use of the prohibited dress code. The order may also require the owner, operator, agent or employee to take further affirmative action or award such relief as in the commission's judgment will implement the purposes of this chapter and of RSMo ch. 213, including but not limited to the assessment of civil penalties, making access available to those individuals denied access to the public accommodation because of the use of a prohibited dress code, actual damages, or any other relief that is deemed appropriate and which is consistent with RSMo ch. 213, and chapter 38, Code of Ordinances.
- (p) The commission shall study, advise and make other recommendations for legislation, policies, procedures and practices of the city, other businesses entities, and other public entities as are consistent with the purposes of this chapter.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 210645 , § 5, 8-12-21)

Secs. 38-44—38-60. Reserved.

DIVISION 3. BIAS OFFENSE REPORTING

Sec. 38-61. Reporting responsibility.

- (a) The police department of the city shall collect and maintain information relating to alleged crimes and ordinance violations occurring within the city in which the evidence of the offense indicates it was motivated by bigotry or bias related to the race, religion, sexual orientation or ethnicity of individuals or groups. For purposes of this section the following crimes and ordinance violations contained in the Code of Ordinances are included:
 - (1) Section 1-17(d) General penalty; continuing violations;
 - (2) Section 50-9, Stalking;
 - (3) Section 50-102, Trespass generally;
 - (4) Section 50-124, Institutional vandalism;
 - (5) Section 50-125, Defacing property with aerosol paint and like materials;
 - (6) Section 50-159, Harassment;
 - (7) Section 50-164, Disorderly conduct;

- (8) Section 50-167, Disturbing the peace;
- (9) Section 50-168, Bodily injury—Attempting;
- (10) Section 50-169, Same—Inflicting;
- (11) Section 50-170, Assault on persons or on route to or from school premises; disturbing school activities;
- (12) Section 50-171, Aggravated trespass;
- (13) Section 50-261, Unlawful use of weapons—generally;
- (14) Section 64-11, Throwing missiles;
- (15) Section 64-12, Throwing objects from buildings.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-62. Reserved.

Sec. 38-63. Reporting system.

The police department of the city shall develop a system by which the required reporting shall be accomplished. The reporting system shall include monthly distribution of the information collected to the civil rights and equal opportunity department of the city, and to the United States Department of Justice, Community Relations Service, Central Region.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 210645 , § 5, 8-12-21)

Sec. 38-64. Reserved.

Sec. 38-65. Incident reports.

- (a) Whenever any police officer has identified a victim of an alleged bias crime or city ordinance violation, the police department of the city shall, to the extent known, supply the name, address and telephone number of the victim to the director of the civil rights and equal opportunity department, acting for the human rights commission, together with other relevant information concerning the victim. Whenever any police officer has identified an incident that does not constitute a crime or city ordinance violation the officer will refer the victim to the civil rights and equal opportunity department. The director of civil rights and equal opportunity shall establish a telephone line for citizens to call to report incidents of possible bias incidents that are not crimes or city ordinance violations.
- (b) The purposes of this reporting are to permit the director of civil rights and equal opportunity, or other designated party appointed by the director, acting for the human rights commission, to:
 - (1) Contact the victim for the purpose of offering to help the victim deal with the police department, prosecutors and other interested agencies, and to help secure any other support which may be available to the victim; and
 - (2) Determine whether the incident is related to a pattern of discrimination, or if, due to bias-related tensions in the area where the incident occurred, further incidents are likely to occur if remedial action is not taken.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 210645 , § 5, 8-12-21)

Secs. 38-66—38-100. Reserved.

ARTICLE III. DISCRIMINATORY PRACTICES

DIVISION 1. IN GENERAL

Sec. 38-101. Prohibited.

- (a) Discriminatory practices, as defined in sections 38-102, 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113, are prohibited. Any person who engages in a prohibited discriminatory practice shall be guilty of an ordinance violation, punishable by a fine of not more than \$500.00, by imprisonment of not more than 180 days, or by such fine and imprisonment.
- (b) Nothing in sections 38-102, 38-103, 38-105, 38-107, 38-109, 38-111 and 38-113 shall be read or interpreted to require the imposition of quotas or any form of affirmative action to remedy any past practices.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 190380, § 1, 5-23-19)

Sec. 38-102. Salary history.

- (a) Except as otherwise provided in in this section, it shall be unlawful for an employer or agent to:
 - (1) Inquire about the salary history of an applicant for employment; or
 - (2) Screen job applicants based on their current or prior wages, benefits, or other compensation, or salary histories, including requiring that an applicant's prior wages, benefits, other compensation or salary history satisfy minimum or maximum criteria; or
 - (3) Rely on the salary history of an applicant in deciding whether to offer employment to an applicant, or in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of an employment contract; or
 - (4) Refuse to hire or otherwise disfavor, injure or retaliate against an applicant for not disclosing his or her salary history to an employer.
- (b) Notwithstanding paragraph (a) of this section, an employer or its agent may, without inquiring about salary history, engage in discussion with the applicant about the expectations with respect to salary, benefits, and other compensation, including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer.
- (c) The prohibitions in paragraph (a) of this section shall not apply to:
 - (1) Applicants for internal transfer or promotion with their current employer;
 - (2) A voluntary and unprompted disclosure of salary history information by an applicant;
 - (3) Any attempt by an employer to verify an applicant's disclosure of non-salary related information or conduct a background check, provided that if such verification or background check discloses the applicant's salary history, such disclosure shall not be relied upon for purposes of determining the salary, benefits, or other compensation of such applicant during the hiring process, including the negotiation of a contract;
 - (4) Employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining; and
 - (5) Applicants who are re-hired by the employer within five years of the applicant's most recent date of termination from employment by the employer, provided that the employer already has past salary history data regarding the applicant from the previous employment of applicant.

Sec. 38-103. Employment.

- (a) It shall be unlawful for any employer, employment agency or labor organization to commit any of the following discriminatory employment practices:
 - (1) For any employer to fail or refuse to hire or promote, or to discharge, any individual or otherwise to rule or act against any individual with respect to compensation, tenure, conditions or privileges because of such individual's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
 - (2) For any employer to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
 - (3) For any employer, labor organization or employment agency or any joint labor-management committee controlling apprenticeship training programs to deny or withhold from any person the right to be admitted to or participate in a guidance program or an apprenticeship training program because of race, color, sex, religion, national origin or ancestry, disability sexual orientation or gender identity.
 - (4) For any employer or employment agency to fail or refuse to refer any individual for an employment interview or to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or preference, because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
 - (5) For any employer to substantially confine or limit recruitment or hiring of employees to any employment agency, employment services, labor organization, training school, training center or any other employee-referring source which excludes persons because of their race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
 - (6) For any labor organization to in any way deprive or limit any person in his or her employment opportunities or otherwise adversely affect his status as an applicant for employment or as an employee, with regard to tenure, compensation, promotion, discharge or any other terms, conditions or privileges directly or indirectly related to employment, because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age.
 - (7) For any employer, employment agency or labor organization to discharge, expel, demote, fail to promote or otherwise rule against any person because he or she has filed a complaint, testified or assisted in any manner in any investigation or proceedings under this chapter.
 - (8) For any person, whether or not an employer, employment agency or labor organization, to aid, abet, incite, compel, coerce or participate in the doing of any act declared to be a discriminatory practice under this chapter, or to obstruct or prevent any person from enforcing or complying with the provisions of this chapter, or to attempt to commit any act declared by this chapter to be a discriminatory practice.
- (b) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system.
- (c) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for a religious organization, association or society, or any nonprofit institution or organization operated,

supervised or controlled by or in conjunction with a religious organization, association or society, to discriminate in its employment decisions on the basis of religion, sexual orientation or gender identity.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-104. Criminal records in employment.

- (a) Except as provided in subsection (b), it should be unlawful:
 - (1) For an employer to base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.
 - (2) For an employer to inquire about an applicant's criminal history until after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position. Such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.
- (b) The requirements set forth in subsection (a) of this section do not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

(Ord. No. 180034 , § 1, 2-1-18)

Sec. 38-105. Housing.

- (a) It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the corporate limits of the city.
- (b) Within this section "protected trait" shall mean actual or perceived race, color, religion, national origin, sex, mental or physical disability, marital status, familial status, age sexual orientation or gender identity, gender expression, ethnic background, or being a victim of domestic violence, sexual assault or stalking.
- (c) If the director finds probable cause of a violation of this section, the director shall notify the director of health of the violation and assist the director of health in any related investigation, in addition to pursuing any enforcement authorized by chapter 213 RSMo.
- (d) The following discriminatory housing practices shall be unlawful:
 - (1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of property offered for sale or rental, or otherwise make unavailable or deny a dwelling to any person, because of a protected trait.
 - (2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of a protected trait.
 - (3) To make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference or limitation based on a protected trait or an intention to make any such preference, limitation, or discrimination.
 - (4) To represent to any person, because of a protected trait, that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
 - (5) To induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of persons of a particular protected trait.

- (6) For a person in the business of insuring against hazards to refuse to enter into or discriminate in the terms, conditions or privileges of a contract of insurance against hazards to a dwelling because of a protected trait pertaining to persons owning or residing in or near the dwelling.
- (7) To discriminate in the sale or rental or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:
 - a. That buyer or renter;
 - b. A person residing in or intending to reside in that dwelling after it is sold, rented or made available; or
 - c. Any person associated with that buyer or renter.
- (8) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:
 - a. That person;
 - b. A person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or
 - c. Any person associated with that person.
- (9) To sexually harass a property owner or tenant;
- (10) To refuse to rent or to make any distinction or restriction for the rental of a dwelling unit solely because of the type of reasonably verifiable and lawful source of income. As used in this section, lawful source of income shall mean the lawful manner by which an individual supports themselves or their dependents, including but not limited to pay, child support payments, and rental assistance from a federal, state, local or nonprofit-administered benefit or subsidy program. In no event shall an owner be compelled to participate in an otherwise voluntary benefit or subsidy program.
- (e) While a person may examine a criminal background check or rental history in reviewing an application for rental housing, the person shall review additional information provided by the rental applicant, including, but not limited to, personal references, recency and severity of any convictions, recency and status of any evictions, and any actions taken by the rental applicant to resolve past evictions.
- (f) For purposes of this section, the term "discrimination" includes:
 - (1) A refusal to permit at the expense of the disabled person reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
 - (2) A refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or
 - (3) In connection with the design and construction of covered multifamily dwellings for first occupancy, a failure to design and construct those dwellings in a manner that:
 - a. The public and common use portions of such dwellings are readily accessible to and usable by disabled persons. This shall include at least one building entrance on an accessible route unless it is impracticable to do so because of the terrain or unusual characteristics of the site;
 - b. All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and
 - c. All premises within such dwellings contain the following features of adaptive design:

1. An accessible route into and through the dwelling;
2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
3. Reinforcements in bathroom walls to allow later installation of grab bars; and
4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically disabled persons, commonly cited as ANSI A117.1, suffices to satisfy that the requirements of subsection (b)(3)a of this section are met.

- (4) For purposes of subsections (a)(7) and (8) of this section, discrimination includes any act that would be discrimination under 42 USC 3604(f)(3) through (9).
- (g) Nothing in this section shall apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains or occupies one of such living quarters as the owner's residence, and if the dwelling contains any rooms, except hallways, which are shared by the families or the owner.
- (h) Nothing in this section shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from discriminating in the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose on the basis of religion, sexual orientation or gender identity, or from giving preference to persons on those bases.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 180034 , § 1, 2-1-18; Ord. No. 180724 , § 1, 2-7-19; Ord. No. 190935 , § 4, 12-12-19)

Sec. 38-106. Reserved.

Sec. 38-107. Discrimination in commercial real estate loans.

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance because of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, handicap or familial status to a person applying therefor for the purpose of purchasing, construction, improving, repairing or maintaining a dwelling, or to discriminate against him in fixing of the amount, interest rate, duration or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, handicap or familial status of such person or of any person associated with him in connection with such loan or other financial assistance, or of the present or prospective owners, lessees, tenants or occupants, of the dwellings in relation to which such loan or other financial assistance is to be made or given.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-108. Reserved.

Sec. 38-109. Discrimination in the provision of brokerage services.

It shall be unlawful for any person to deny any other person right to membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in terms or conditions of such access,

membership or participation, on account of race, color, religion, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-110. Reserved.

Sec. 38-111. Additional unlawful practices.

- (a) It shall be an unlawful discriminatory practice to:
 - (1) Aid, abet, incite, compel or coerce the commission of acts prohibited under this chapter or to attempt to do so.
 - (2) Retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this chapter.
 - (3) Discriminate in any manner against any other person because of such person's association with any person protected by this chapter.

(Ord. No. 130041, § 5, 3-21-13)

Sec. 38-112. Reserved.

Sec. 38-113. Discriminatory accommodation practices.

- (a) It shall be a discriminatory accommodation practice for any owner, agent or employee of any place of public accommodation, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person, or directly or indirectly to publish, circulate or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of public accommodation will be refused, withheld from or denied to any person on account of race, religion, color, ancestry, national origin, sex, disability, marital status, familial status, sexual orientation or gender identity, or that, for such reasons, the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place.
- (b) It shall be a discriminatory accommodation practice for any owner, agent, operator or employee of a business or facility within a redevelopment area to use a prohibited dress code as defined in section 38-1, directly or indirectly, to refuse, withhold from or deny to any person any of the accommodations mentioned in this chapter or to discriminate against any person in the furnishing thereof on account of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity of such person. Any dress code enforced in a redevelopment area or in any establishment with such area must be posted in accordance with the requirements of section 10-331(d), and must contain the phone number of the city's civil rights and equal opportunity department and a phone number of a representative of the establishment who is available to respond to complaints regarding the enforcement of the dress code during all hours when the establishment is open or such dress code is in effect. Any such dress code shall list all prohibited items of dress. Notwithstanding the foregoing, nothing herein shall be construed as prohibiting:
 - (1) Any owner or operator of a business or facility within a redevelopment area from establishing an employee dress code or requiring that an employee abide by the employee dress code while at work.

- (2) Any owner, agent, operator or employee of a business or facility within a redevelopment area from affirmatively requiring the wearing of specified articles of clothing, which may include collared shirts and ties, sports jackets, business suits, business casual, formal clothing or smart casual clothing in keeping with the ambiance and quality of the particular business or facility and formal footwear, so long as the requirements are enforced with regard to each and every patron, regardless of race, religion, color, ancestry, national origin, sex, marital status, familial status, disability, sexual orientation or gender identity.

(Ord. No. 130041, § 5, 3-21-13; Ord. No. 210645 , § 5, 8-12-21)

Secs. 38-114—38-199. Reserved.

ARTICLE IV. LIVING WAGE³

Sec. 38-200. Authority.

This article is enacted pursuant to its general police powers and the authority to provide for the general health and welfare of its citizens as established by the Missouri Constitution, article VI, section 19(a), giving a charter city all powers which are consistent with the Missouri Constitution and that are not limited or denied by the city Charter or by statute.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-201. Definitions.

Apprentice means a person bound to serve another for a specified time in order to learn some art, trade, profession, or business.

Base wage means the minimum hourly rate of compensation that an employee who customarily and regularly receives more than \$30.00 a month in tips shall be paid pursuant to this article;

Commission means a payment based on a percentage of the value of sales or other business done;

Living wage means the minimum hourly rate of compensation that an employee shall be paid; and

Tip means a gratuity earned by an employee for providing good service.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-202. Applicability.

- (a) This article shall be effective within the corporate limits of the city, established by article 1, section 101 of the Kansas City, Missouri Charter.
- (b) Employees of the city shall be paid the living wage established by section 38-204 of this article. However, the provisions of this subsection are expressly limited by and subject to collective bargaining agreements between the city and any bargaining unit.

³Editor's note(s)—Ord. No. 170391 , § 6, adopted May 18, 2017, and approved by voters on August 8, 2017, amended the Code by, in effect, repealing former art. IV, §§ 38-201—38-207, and adding a new art. IV. Former art. IV pertained to the city minimum wage, and derived from Ord. No. 170193 , adopted March 9, 2017.

- (c) As of the effective date of this article, contracts entered into by the city for services, including construction services, shall require the contractor to pay the living wage established by this article.
- (d) Businesses required by the city to have a business license from the city shall pay the living wage established by this article.
- (e) For purposes of identifying who shall be paid the living wage established by this article, all individuals employed in the corporate limits of the city, whether on a part-time, full-time or temporary basis, shall be considered to be an employee for purposes of this article. Also considered an employee for purposes of this article are contingent or contracted workers, and persons working through a temporary service, staffing or employment agency or similar entity. However, the following shall not be considered employees entitled to the living wage established by this article:
 - (1) An individual employed by the United States, the state or any political subdivision of the state other than by the city;
 - (2) An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis;
 - (3) Apprentices in a registered apprentice program recognized by the state or the Federal Bureau of Apprenticeship and Training, as well as any apprentice participating in an apprenticeship program providing significant instructional and practical experience and offered by the city of Kansas City, Missouri.
 - (4) Temporary employees of an educational, charitable or religious youth camp or retreat where room and board are provided to the employee, or if a day camp, where board only is provided. To qualify under this exemption the employer must hold a valid certificate issued annually by the director of the state department of labor pertaining to exemption of seasonal employees;
 - (5) Any employee that is the parent, spouse, child or other member of the employer's immediate family; for purposes of this subsection, the employer shall include the principal stockholder of a family corporation;
 - (6) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university; and
 - (7) Persons working for a business in connection with a court-ordered community service program.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-203. Findings.

- (a) The city council finds that the public welfare, health, safety and prosperity of citizens of the city requires that citizens be paid a living wage sufficient to ensure a decent and healthy life;
- (b) The city council finds that establishing a mandatory minimum hourly wage will promote the public welfare, health, safety and prosperity by ensuring that citizens can better support and care for their families through their own efforts;
- (c) The city council finds that when businesses do not pay adequate wages, the community bears the cost in the form of increased demand for taxpayer-funded social services;
- (d) The city council finds that it is in the public interest to require that employers benefiting from the opportunity to do business in the city pay employees a living wage that is adequate to meet the basic needs of living in the city.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-204. Living wage payment requirements.

- (a) Except as provided in subsection (b), the living wage paid to an employee not excluded as set forth above, shall be \$10.00 per hour, effective August 24, 2017. Beginning September 1, 2019, the living wage shall be increased by \$1.25 each year thereafter for the next four years. The city shall post the living wage established by this article on its website after this article becomes effective and at least 90 days prior to each adjustment of the living wage.
- (b) An employee who customarily and regularly receives more than \$30.00 a month in tips and/or commissions shall be paid at least a base wage equivalent to 60 percent of the living wage established by this article. Initially the base wage rate shall be \$6.00. That wage will increase simultaneously and proportionately with each living wage increase. The employer may consider tips and commissions as part of wages, but the tips and commissions combined with the employer's payment of wages to the employee shall not equal less than the living wage as provided in subsection (a) of this section. In the event an employee earns insufficient tips and/or commissions combined with the base wage to receive a wage at least equal to the living wage established by this article, the employer shall pay the employee the difference to ensure the employee receives a wage equal to the living wage established by this article. All tips received by such employee shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees. Where employees practice tip pooling or splitting (as where staff give a portion of their tips to bus persons), only the amount actually retained by each employee shall be considered part of that employee's wages.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-205. Prohibition against retaliation and circumvention.

It shall be unlawful for any employer or employer's agent or representative to discharge, demote, deny promotion to or in any way discriminate against an employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to this article or assisting another person to do so.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-206. Remedies and penalties.

- (a) A person violating this article shall be subject to a fine of \$500.00. Any person violating any of the requirements of this article shall be guilty of a separate offense for each day or portion thereof and for each worker or person as to which any such violation has occurred.
- (b) The city, any individual aggrieved by a violation of this article, or any entity whose members have been aggrieved by a violation of this article, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this article and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due, an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.
- (c) The remedies provided in this article are not exclusive, and nothing in this article shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-207. Prospective application.

Nothing in this article shall be deemed to nor shall be applied in such a manner so as to have a constitutionally prohibited effect as an ex post facto law or impairment of an existing contract within the meaning of the Missouri Constitution, article I, section 13.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-208. Severability.

The requirements and provisions of this article are severable. In the event that any requirement, provision, part, subpart or clause of this article, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the council that the remainder of this article be enforced to the maximum extent possible consistent with the objective of ensuring a living wage.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-209. Notice posting.

Any holder of a city business license shall, as a condition of obtaining or holding a business license, post and display in a prominent location next to its business license a notice that the business is in compliance with the provisions of this article and shall include the text of sections 38-202 and 38-204 of this article. Failure to comply with this section shall be construed as a violation of this article and, in addition, shall be considered grounds for suspension, revocation, or termination of the business license.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-210. Procedure.

A complaint form for use in reporting violations of this article shall be available on the city webpage for use in reporting violations.

(Ord. No. 170391 , § 6, 5-18-17)

Sec. 38-211. Effective date.

This article shall become effective August 24, 2017, contingent upon voter approval at an election to be held on August 8, 2017.

(Ord. No. 170391 , § 6, 5-18-17)