

CITY of ALBUQUERQUE

TWENTY SIXTH COUNCIL

COUNCIL BILL NO. C/S O-24-5 ENACTMENT NO. _____

SPONSORED BY: Tammy Fiebelkorn

1 **ORDINANCE**

2 **AMENDING §11-3 THE HUMAN RIGHTS ORDINANCE**

3 **WHEREAS, the City of Albuquerque Human Rights Ordinance (HRO)**
4 **prohibits discrimination on the basis of race, color, religion, sex, national**
5 **origin or ancestry, age, physical handicap, or source of income; and**

6 **WHEREAS, incorporating new definitions and accurate language into the**
7 **HRO is crucial to clarifying the scope and applicability of protections,**
8 **providing clear guidance for citizens, businesses, and organizations to**
9 **promote compliance and understanding; and**

10 **WHEREAS, there is a need to address gaps in the current HRO, recognizing**
11 **that adding new definitions and using accurate language will enhance the**
12 **ordinance’s effectiveness in protecting the rights of all residents; and**

13 **WHEREAS, updating the City of Albuquerque’s HRO will help to align the**
14 **city’s policies with state policies, helping to ensure consistency and**
15 **coherence that safeguards the rights and liberties of individuals within**
16 **Albuquerque; and**

17 **WHEREAS, an updated human rights ordinance will serve as a testament to**
18 **the city’s commitment to creating an environment that actively opposes**
19 **discrimination, promoting the principles of equality, justice, and human**
20 **dignity for all residents.**

21 **BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF**
22 **ALBUQUERQUE:**

23 **§11-3 THE HUMAN RIGHTS ORDINANCE is amended as described in Sections**
24 **1 through 3 below.**

25 **SECTION 1. TERMINOLOGY**

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- 1 1. In §11-3-3 replace the definition “PHYSICALLY HANDICAPPED” with
2 “PHYSICAL OR MENTAL DISABILITY” as follows:
3 ~~[PHYSICALLY HANDICAPPED. Any person who, because of accident, illness,~~
4 ~~congenital condition or other condition of health, experiences any impairment~~
5 ~~in sight, hearing, touch, taste, smell, motor skills or appearance.]~~
6 [PHYSICAL OR MENTAL DISABILITY. A physical or mental impairment that
7 substantially limits one or more of a person's major life activities. A person is
8 also considered to have a mental or physical disability if the person has a
9 record of a physical or mental disability or is regarded as having a physical or
10 mental disability.]
- 11 2. Add the following definitions to §11-3-3 in appropriate alphabetical order:
12 [SEX. A person's categorization as male, female or intersex based on biology,
13 physiology and physical characteristics.
- 14 GENDER. An individual or societal expectation or perception of a person as
15 masculine or feminine based on appearance, behavior or physical
16 characteristics.
- 17 GENDER IDENTITY. A person's self-perception, based on the person's
18 appearance, behavior or physical characteristics, that the person exhibits
19 more masculinity or femininity or the absence of masculinity or femininity
20 whether or not it matches the person's gender or sex assigned at birth.
- 21 SEXUAL ORIENTATION. A person's physical, romantic or emotional attraction
22 to persons of the same or a different gender or the absence of any such
23 attraction
- 24 PREGNANCY. The condition of being pregnant, including the state of carrying
25 a developing embryo or fetus within the body, beginning from conception
26 through childbirth.
- 27 CHILDBIRTH OR CONDITION RELATED TO CHILDBIRTH OR PREGNANCY.
28 The act or process of giving birth to a child, including labor and delivery. Any
29 medical condition or complication that arises during pregnancy, childbirth, or
30 the postpartum period, or is exacerbated by pregnancy or childbirth.
- 31 SEX ASSIGNED AT BIRTH. The classification of an individual as male, female,
32 or intersex based on physical characteristics typically associated with
33 biological sex observed at the time of birth, including but not limited to

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1 genitalia, chromosomes, and reproductive anatomy, as recorded on the
2 individual's birth certificate or other official documentation at birth.
3 PUBLIC CONTRACTOR. A person, company, or organization who receives
4 public funds as a result of contracting with a governmental entity.

5 SECTION 2. Amend §11-3-2, §11-3-5, §11-3-7, and §11-3-12 as follows:
6 § 11-3-2 DECLARATION OF POLICY.

7 Pursuant to Article VIII of The Albuquerque City Charter, in order to
8 assure the public safety, public health and general welfare, to:

9 (A) Preserve, protect, and promote human rights and human dignity;

10 (B) Promote and encourage the recognition and exercise of human
11 responsibility;

12 (C) Protect and promote equality of access to public goods and
13 services; and

14 (D) Prohibit discrimination on the basis of race, color, religion, sex,
15 national origin or ancestry, age, physical ~~handicap~~ [or mental disability],
16 [sex assigned at birth, pregnancy, childbirth or condition related to
17 childbirth or pregnancy, sexual orientation, gender, or gender identity,] or

18 source of income, including, but not limited to the following area:

- 19 (1) in places of public accommodations;
- 20 (2) In housing accommodations; and
- 21 (3) In commercial space.

22 § 11-3-5 POWERS AND DUTIES.

23 The Board shall:

24 (A) Set such rules and regulations as are necessary for the operation of the
25 Board.

26 (B) Conduct public hearings upon the request of the City Council or Mayor
27 upon such matters as the City Council or Mayor may from time to time direct.

28 (C) Receive complaints alleging an unlawful discriminatory practice as
29 defined in this article. The staff director (as described in § 11-3-9(A)) of the
30 Human Rights Board shall advise the complainant of the resources available
31 to the complainant for resolution of his or her problem including but not
32 limited to the State Human Rights Commission, the Federal Equal Employment
33 Opportunity Commission, the Albuquerque Municipal Courts and such other

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1 agencies and entities as may be available. In addition, the staff director shall
2 be responsible for:

3 (1) Following the progress of the individual complaints to insure that the
4 agency to whom the complainant was referred acts on the referral;

5 (2) Observing complaints for trends that may indicate a need for
6 changes in policies, ordinances or other practices; and

7 (3) Making recommendations to the Human Rights Board that it
8 consider holding public hearings under this article.

9 (D) Not receive a complaint, where a similar complaint, based on the same
10 facts, has been filed by the complainant with another agency.

11 (E) Use its best efforts to:

12 (1) Promote mutual trust, understanding and respect among the citizens
13 of the Albuquerque community and between the citizens and their
14 governmental agencies.

15 (2) Endeavor that all citizens may enjoy their rights and pursue their
16 opportunities on an equal basis without discrimination as to race, color,
17 religion, sex, national origin or ancestry, age, ~~or~~ physical ~~handicap~~ or
18 mental disability, [sex assigned at birth, pregnancy, childbirth or condition
19 related to childbirth or pregnancy, sexual orientation, gender, or gender
20 identity].

21 § 11-3-7 UNLAWFUL DISCRIMINATORY PRACTICE. It is unlawful
22 discriminatory practice and a violation of this article for:

23 (A) An employer, unless based on a bona fide occupational qualification, to
24 refuse to hire, to discharge, to promote or demote or to discriminate in
25 compensation or terms and conditions of employment, against any person
26 otherwise qualified, because of race, color, religion, sex, national origin or
27 ancestry, age, race related hairstyle, the use of a cultural headdress, ~~or~~
28 physical ~~handicap~~ [or mental disability], [sex assigned at birth, pregnancy,
29 childbirth or condition related to childbirth or pregnancy, sexual orientation,
30 gender, or gender identity].

31 (B) A labor organization to exclude an individual or to expel or otherwise
32 discriminate against any of its members or against any employer or employee
33 because of race, color, religion, sex, national origin or ancestry, age, race

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1 related hairstyle, the use of a cultural headdress, ~~[or]~~ physical ~~[handicap]~~ [or
2 mental disability], [sex assigned at birth, pregnancy, childbirth or condition
3 related to childbirth or pregnancy, sexual orientation, gender, or gender
4 identity].

5 (C) Any employer, labor organization, or any other person to refuse to
6 admit or employ any individual in any program established to provide an
7 apprenticeship or other training or retraining because of race, color, religion,
8 sex, national origin or ancestry, age, race related hairstyle, the use of a
9 cultural headdress, ~~[or]~~ physical [or mental disability] ~~[handicap]~~ [, sex
10 assigned at birth, pregnancy, childbirth or condition related to childbirth or
11 pregnancy, sexual orientation, gender, or gender identity].

12 (D) Any employer, labor organization, or any other person to print or
13 circulate or cause to be printed or circulated any statement, advertisement, or
14 publication or to use any form of application for employment or membership,
15 or to make any inquiry regarding prospective employment or membership
16 which expresses, directly or indirectly, any limitation, specification, or
17 discrimination as to race, color, religion, sex, national origin or ancestry, age,
18 race related hairstyle, the use of a cultural headdress, ~~[or]~~ physical [or mental
19 disability] ~~[handicap]~~ [, sex assigned at birth, pregnancy, childbirth or
20 condition related to childbirth or pregnancy, sexual orientation, gender, or
21 gender identity] unless based on a bona fide occupational qualification.

22 (E) An employment agency to refuse to list and properly classify for
23 employment or to refer an individual for employment in a known available job
24 for which the individual is otherwise qualified because of race, religion, color,
25 national origin, ancestry, age, sex, race related hairstyle, the use of a cultural
26 headdress, or any physical or mental [disability] ~~[handicap]~~ [, sex assigned at
27 birth, pregnancy, childbirth or condition related to childbirth or pregnancy,
28 sexual orientation, gender, or gender identity] unless based on a bona fide
29 occupational qualification; or to comply with a request from an employer for
30 referral of applicants for employment if the request indicates either directly or
31 indirectly that the employer discriminates in employment on the basis of race,
32 religion, color, national origin, ancestry, sex, race related hairstyle, the use of
33 a cultural headdress, or physical or mental ~~[handicap]~~ [disability, sex

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1 assigned at birth, pregnancy, childbirth or condition related to childbirth or
2 pregnancy, sexual orientation, gender, or gender identity] unless based on a
3 bona fide occupational qualification.

4 (F) Any person who provides any public accommodation to make a
5 distinction, directly or indirectly, in offering or refusing to offer its services,
6 facilities, accommodations or goods to any individual because of race, color,
7 religion, sex, race related hairstyle, the use of a cultural headdress, national
8 origin or ancestry, ~~[or]~~ physical [or mental disability] ~~[handicap]~~ [, sex
9 assigned at birth, pregnancy, childbirth or condition related to childbirth or
10 pregnancy, sexual orientation, gender, or gender identity].

11 (G) Any person to:

12 (1) Refuse to sell, rent, assign, lease or sublease, or offer for sale, rental,
13 lease or sublease, or assignment, any housing accommodation, commercial
14 space or real property to any individual, or discriminate against any person in
15 the terms, conditions, or privileges of the sale, rental, lease or sublease, or
16 assignment of any housing accommodation, commercial space, or real
17 property, or to refuse to negotiate for the sale, rental, lease, assignment or
18 sublease of any housing accommodation, commercial space or real property,
19 or in the provision of facilities or services in connection therewith, because of
20 race, color, religion, sex, race related hairstyle, the use of a cultural
21 headdress, national origin or ancestry, source of income or the requirements
22 of any program providing the source of income, ~~[or]~~ physical [or mental
23 disability] ~~[handicap]~~ [, sex assigned at birth, pregnancy, childbirth or
24 condition related to childbirth or pregnancy, sexual orientation, gender, or
25 gender identity].

26 (2) Print, circulate, display or mail, or cause to be printed, circulated,
27 displayed or mailed, any statement, advertisement, publication or sign or use
28 any form of application for the purchase, rental, lease, assignment or sublease
29 of any housing accommodation, commercial space or real property, or to
30 make any record or inquiry regarding the prospective purchase, rental, lease,
31 assignment or sublease of any housing accommodation, commercial space or
32 real property which expresses any preference, limitation or discrimination as
33 to race, color, religion, sex, race related hairstyle, the use of a cultural

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1 headdress, national origin or ancestry, source of income, ~~[or]~~ physical [or
2 mental disability] ~~[handicap]~~ [, sex assigned at birth, pregnancy, childbirth or
3 condition related to childbirth or pregnancy, sexual orientation, gender, or
4 gender identity].

5 (3) Represent to any person, because of race, color, religion, sex, race
6 related hairstyle, the use of a cultural headdress, national origin or ancestry,
7 source of income or because of the requirements of any program providing
8 the source of income, ~~[or]~~ physical [or mental disability] ~~[handicap]~~ [, sex
9 assigned at birth, pregnancy, childbirth or condition related to childbirth or
10 pregnancy, sexual orientation, gender, or gender identity], that any dwelling is
11 not available for inspection, sale, or rental when the dwelling is available;

12 (4) In determining whether the prospective tenant meets minimum income
13 requirements, exclude from the calculation any lawful and verifiable source of
14 income received by the applicant; or

15 (5) Impose additional requirements on a tenant or a prospective tenant
16 whose rent is to be subsidized by a third party not imposed on other tenants,
17 such as, but not limited to, additional security deposits or requirements to
18 maintain renter's insurance; provided that nothing in this section shall be
19 construed as a prohibition against a property owner or manager conducting
20 an income or credit inquiry on a prospective tenant or from performing other
21 vetting techniques, such as a background or rental history checks, provided
22 these techniques are used for all tenants, regardless of their source of
23 income.

24 (a) Nothing in this legislation shall be construed as requiring a landlord
25 to show preferential treatment to a prospective tenant who has a non-
26 traditional source of income.

27 (b) Nothing in this legislation shall be construed as requiring a landlord
28 to set a rent rate at or under Fair Market Rent as defined by the U.S.
29 Department of Urban Housing and Development.

30 (c) Nothing in this legislation shall be construed to mean a landlord
31 cannot change the terms of a lease after the agreed-upon lease expires.

32 (d) Nothing in this legislation shall be construed to prevent a landlord
33 from evicting a tenant for any lawful reason.

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1 (6) In determining whether the prospective tenant meets minimum income
2 requirements, include in the calculation of rent any amounts that will be paid,
3 credited, or attributed by the tenant or on the tenant's behalf from federal,
4 state, or local housing assistance payment programs. In other words, the
5 calculation of minimum income requirements shall be based on the portion of
6 rent that a tenant is personally responsible for paying, not the portion of rent
7 that will be paid by a housing assistance payment program.

8 (H) Any person to whom application is made for financial assistance for the
9 acquisition, construction, rehabilitation, repair or maintenance of any housing
10 accommodation, commercial space or real property, to:

11 (1) Consider race, color, religion, sex, race related hairstyle, the use of a
12 cultural headdress, national origin or ancestry ~~[or]~~ physical [or mental
13 disability] ~~[handicap]~~ [, sex assigned at birth, pregnancy, childbirth or
14 condition related to childbirth or pregnancy, sexual orientation, gender, or
15 gender identity] in the granting, withholding, extending, modifying or
16 renewing, or in the fixing of the rates, terms, conditions or provisions of any
17 financial assistance, or in the extension of services in connection with the
18 request for financial assistance; and

19 (2) Use any form of application for financial assistance or to make any
20 record or inquiry in connection with applications for financial assistance
21 which expresses, directly or indirectly, any limitation, specification or
22 discrimination as to race, color, religion, sex, race related hairstyle, the use of
23 a cultural headdress, national origin or ancestry ~~[or]~~ physical [or mental
24 disability] ~~[handicap]~~ [, sex assigned at birth, pregnancy, childbirth or
25 condition related to childbirth or pregnancy, sexual orientation, gender, or
26 gender identity].

27 (I) Any person or employer to:

28 (1) Aid, abet, incite, compel or coerce the doing of any unlawful
29 discriminatory practice or to attempt to do so.

30 (2) Engage in any form of threats, reprisals or discrimination against
31 any person who has opposed unlawful discriminatory practices or has filed a
32 complaint, testified or participated in any proceeding under this article.

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1 (3) Willfully obstruct or prevent any person from complying with the
2 provisions of this article or to resist, prevent, impede or interface with the
3 Board or any of its members, staff or representatives in the performance of
4 their duties under this article.

5 [(J) a governmental entity or a public contractor to refuse or otherwise limit
6 or put conditions on services to a person because of race, age, religion, color,
7 national origin, ancestry, sex, sexual orientation, gender, gender identity,
8 pregnancy, childbirth or condition related to pregnancy or childbirth, physical
9 or mental disability.]

10 § 11-3-12 EXEMPTIONS.

11 Nothing in this article shall:

12 (A) Bar any religious or denominational institution or organization which is
13 operated or supervised or controlled by or is operated in connection with a
14 religious or denominational organization from limiting admission to or giving
15 preference to persons of the same religion or denomination, or from making
16 selections of buyers, leasees or tenants as are calculated by the organization
17 or denomination to promote the religious or denominational principles for
18 which it is established or maintained unless membership in the religious or
19 denominational organization is restricted on account of race, color, sex,
20 national origin, ancestry, age, ~~{or}~~ physical [or mental disability] ~~{handicap}~~ [,
21 sex assigned at birth, pregnancy, childbirth or condition related to childbirth
22 or pregnancy, sexual orientation, gender, or gender identity].

23 SECTION 3. EXEMPTIONS

24 Add a new subsection (F) to §11-3-12 as follows:

25 [(F) Be construed to require a governmental entity or a public contractor to
26 provide services or programs beyond services or programs to the specific
27 populations that the governmental entity or public contractor is tasked with
28 serving.]

29 SECTION 4. SEVERABILITY CLAUSE.

30 If any section, paragraph, sentence, clause, word or phrase of this ordinance
31 is for any reason held to be invalid or unenforceable by any court of
32 competent jurisdiction, such decision shall not affect the validity of the
33 remaining provisions of this ordinance. The Council hereby declares that it

1 would have passed this ordinance and each section, paragraph, sentence,
2 clause, word or phrase thereof irrespective of any provision being declared
3 unconstitutional or otherwise invalid.

4 **SECTION 5. COMPILATION.**

5 Sections 1 through 3 of this ordinance shall be incorporated in and made part
6 of the Revised Ordinances of Albuquerque, New Mexico, 1994.

7 **SECTION 6. EFFECTIVE DATE.**

8 This ordinance shall take effect five days after publication by title and general
9 summary.

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