

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. C/S O-22-16 ENACTMENT NO. _____

SPONSORED BY: Pat Davis, Brook Bassan

1 ORDINANCE
2 AMENDING THE ALBUQUERQUE HUMAN RIGHTS ORDINANCE TO
3 PROHIBIT DISCRIMINATION BASED ON SOURCE OF INCOME; MAKING
4 APPROPRIATIONS FOR A STUDY, TO DEVELOP AND DISTRIBUTE
5 EDUCATIONAL MATERIALS, AND TO SUPPORT HOUSING AGENCIES
6 COMPLETING HOUSING INSPECTIONS

7 WHEREAS, “Source of income discrimination” refers to the practice of
8 refusing to rent to a housing applicant because of that person’s lawful form of
9 income; and

10 WHEREAS, A growing number of states and localities have enacted laws,
11 known as “source of income protection laws” that prohibit discrimination
12 based on lawful income sources such as social security, pension, alimony,
13 child support, foster care subsidies, housing vouchers, and others; and

14 WHEREAS, The New Mexico Human Rights Act, NMSA 1978, Chapter 28,
15 Article 1, prohibits housing discrimination based on race, religion, color,
16 national origin, ancestry, sex, sexual orientation, gender identity, pregnancy,
17 childbirth or condition related to pregnancy or childbirth, spousal affiliation or
18 physical or mental handicap; and

19 WHEREAS, The City of Albuquerque Human Rights Ordinance, Chapter 28,
20 Article 4 ROA 1994, likewise prohibits discriminatory practices in housing; and

21 WHEREAS, These protections for applicants seeking housing do not
22 currently extend to prohibit discrimination related to applicants’ legal sources
23 of income; and

24 WHEREAS, Implementing amendments to the Human Rights Ordinance
25 that prohibit owners from discriminating against tenants based on lawful

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1 sources of income will promote a general welfare of the City and its residents;
2 and

3 WHEREAS, The availability of safe and affordable housing is an essential
4 component of individual and community well-being; and

5 WHEREAS, Because applicants for housing are regularly asked to disclose
6 their source of income in consideration of their ability to meet income
7 requirements, this prohibition would also ensure that applicants with
8 supplemental income are not denied access to housing opportunities; and

9 WHEREAS, The City of Albuquerque is currently facing a housing crisis
10 and participants of the Section 8 Housing Choice Voucher program are
11 routinely unable to find housing despite eligibility for the program, and;

12 WHEREAS, Prohibiting source of income discrimination will help expand
13 the housing choices available to voucher holders and increase equitable
14 access to housing opportunities for renters in our City.

15 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
16 ALBUQUERQUE:

17 SECTION 1. Section 11-3-2, the “Declaration of Policy” Section of the
18 Human Rights Ordinance, is hereby amended as follows:

19 “§ 11-3-2 DECLARATION OF POLICY.

20 Pursuant to Article VIII of the Albuquerque City Charter, in order to assure
21 the public safety, public health and general welfare, to

- 22 (A) Preserve, protect, and promote human rights and human dignity;
- 23 (B) Promote and encourage the recognition and exercise of human
24 responsibility;
- 25 (C) Protect and promote equality of access to public goods and services; and
- 26 (D) Prohibit discrimination on the basis of race, color, religion, sex, national
27 origin or ancestry, age~~[, or]~~ physical handicap, [or source of income,]
28 including, but not limited to the following area:

- 29 (1) In places of public accommodations;
- 30 (2) In housing accommodations; and
- 31 (3) In commercial space.”

32 Section 2. 11-3-3, the “Definitions” Section of the Human Rights Ordinance, is
33 hereby amended as follows:

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1 **“§ 11-3-3 DEFINITIONS.**

2 For the purpose of this article, the following definitions shall apply
3 unless the context clearly indicates or requires a different meaning.

4 **BOARD.** The Human Rights Board.

5 **COMMERCIAL SPACE.** Any space in a building, structure, or portion
6 thereof, which is used or occupied or intended to be occupied for the
7 manufacture, sale, resale, processing, reprocessing, displaying, storing,
8 handling, garaging, or distribution of personal property; and any space which
9 is used or occupied as a separate business or professional unit or office in
10 any building, structure, or portion thereof.

11 **CULTURAL HEADDRESS.** Includes, but is not limited to, burkas,
12 hijabs, head wraps, head scarves, or other headdresses used as part of an
13 individual's personal cultural or religious beliefs.

14 **EMPLOYEE.** Any person in the employ of an employer.

15 **EMPLOYER.** Any person employing one or more persons acting for
16 an employer.

17 **EMPLOYMENT AGENCY.** Any person regularly undertaking with or
18 without compensation to procure opportunities to work or to procure, recruit,
19 or refer employees.

20 **HOUSING ACCOMMODATION.** Any building or portion of a building
21 which is constructed or to be constructed, which is used or intended for use
22 as the residence or sleeping place of any individual.

23 **LABOR ORGANIZATION.** Any organization which exists for the
24 purpose in whole or in part of collective bargaining or of dealing with
25 employers concerning grievances, terms or conditions of employment or of
26 other mutual aid or protection in connection with employment.

27 **[MINIMUM INCOME REQUIREMENT. A requirement set by an owner**
28 **relating to the amount of income a prospective tenant must receive in a**
29 **prescribed period of time and used to determine the prospective tenant's**
30 **ability to pay rent.]**

31 **PERSON.** One or more individuals, a partnership, association,
32 **[company,]** organization, corporation, joint venture, legal representative,
33 trustee, receiver, cooperative, or the city and any governmental unit created

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1 and/or sponsored by the city. Where any reference to the masculine is
2 present, he or she, her or him, his or her or person (as in chairperson vs.
3 chairman) should be in its place.

4 **PHYSICALLY HANDICAPPED.** Any person who, because of accident,
5 illness, congenital condition or other condition of health, experiences any
6 impairment in sight, hearing, touch, taste, smell, motor skills or appearance.

7 **PUBLIC ACCOMMODATION.** Any establishment that provides or
8 offers its services, facilities, accommodations or goods to the public, but does
9 not include a bona fide private club or other place or establishment which is
10 by its nature and use distinctly private.

11 **RACE.** Includes, but is not limited to, traits historically and
12 commonly associated with race or ethnicity, including hair types, hair texture,
13 volume of hair, length of hair, protective hairstyles, or cultural headdresses.

14 **RACE RELATED HAIRSTYLE.** Includes, but is not limited to, those
15 hairstyles necessitated by, or resulting from, the characteristics of a hair
16 texture associated with race, such as braids, locs, afros, tight coils or curls,
17 bantu knots, and twists.

18 **REAL PROPERTY.** Lands, leaseholds and tenements.

19 **[SOURCE OF INCOME. Any lawful and verifiable source of money**
20 **and program requirements of such funding, paid directly to or on behalf of a**
21 **renter or buyer of housing, including, but not limited to:**

- 22 **(1) Income from a lawful profession, occupation, or job;**
- 23 **(2) Income derived from social security or any form of**
24 **federal, state, or local public assistance or housing assistance, including a**
25 **housing choice voucher issued pursuant to Section 8 of the United States**
26 **Housing Act of 1937, or any other form of housing assistance payment or**
27 **credit, whether or not such income or credit is paid or attributed directly to a**
28 **landlord and even if such income includes additional federal, state, or local**
29 **requirements including but not limited to required inspections and contracting**
30 **with the agency administering the public assistance program; or**

31 **(3) A pension, annuity, alimony, child support, foster care**
32 **subsidies, or any other recurring, lawful, and verifiable monetary**
33 **consideration or benefit.]**

1 UNLAWFUL DISCRIMINATORY PRACTICE. Those unlawful practices
2 and acts as specified in § 11-3-7.”

3 SECTION 3. Section 11-3-7, the “Unlawful Discriminatory Practice” Section
4 of the Human Rights Ordinance, is hereby amended as follows:

5 “§ 11-3-7 UNLAWFUL DISCRIMINATORY PRACTICE.

6 It is unlawful discriminatory practice and a violation of this article
7 for:

8 (A) An employer, unless based on a bona fide occupational
9 qualification, to refuse to hire, to discharge, to promote or demote or to
10 discriminate in compensation or terms and conditions of employment, against
11 any person otherwise qualified, because of race, color, religion, sex, national
12 origin or ancestry, age, race related hairstyle, the use of a cultural headdress,
13 or physical handicap.

14 (B) A labor organization to exclude an individual or to expel or
15 otherwise discriminate against any of its members or against any employer or
16 employee because of race, color, religion, sex, national origin or ancestry,
17 age, race related hairstyle, the use of a cultural headdress, or physical
18 handicap.

19 (C) Any employer, labor organization, or any other person to
20 refuse to admit or employ any individual in any program established to
21 provide an apprenticeship or other training or retraining because of race,
22 color, religion, sex, national origin or ancestry, age, race related hairstyle, the
23 use of a cultural headdress, or physical handicap.

24 (D) Any employer, labor organization, or any other person to print
25 or circulate or cause to be printed or circulated any statement, advertisement,
26 or publication or to use any form of application for employment or
27 membership, or to make any inquiry regarding prospective employment or
28 membership which expresses, directly or indirectly, any limitation,
29 specification, or discrimination as to race, color, religion, sex, national origin
30 or ancestry, age, race related hairstyle, the use of a cultural headdress, or
31 physical handicap, unless based on a bona fide occupational qualification.

32 (E) An employment agency to refuse to list and properly classify
33 for employment or to refer an individual for employment in a known available

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1 job for which the individual is otherwise qualified because of race, religion,
2 color, national origin, ancestry, age, sex, race related hairstyle, the use of a
3 cultural headdress, or any physical or mental handicap unless based on a
4 bona fide occupational qualification; or to comply with a request from an
5 employer for referral of applicants for employment if the request indicates
6 either directly or indirectly that the employer discriminates in employment on
7 the basis of race, religion, color, national origin, ancestry, sex, race related
8 hairstyle, the use of a cultural headdress, or physical or mental handicap
9 unless based on a bona fide occupational qualification.

10 (F) Any person who provides any public accommodation to make
11 a distinction, directly or indirectly, in offering or refusing to offer its services,
12 facilities, accommodations or goods to any individual because of race, color,
13 religion, sex, race related hairstyle, the use of a cultural headdress, national
14 origin or ancestry, or physical handicap.

15 (G) Any person to:

16 (1) Refuse to sell, rent, assign, lease or sublease, or offer
17 for sale, rental, lease or sublease, or assignment, any housing
18 accommodation, commercial space or real property to any individual, or
19 discriminate against any person in the terms, conditions, or privileges of the
20 sale, rental, lease or sublease, or assignment of any housing accommodation,
21 commercial space, or real property, or] to refuse to negotiate for the sale,
22 rental, lease, assignment or sublease of any housing accommodation,
23 commercial space or real property, or in the provision of facilities or services
24 in connection therewith, because of race, color, religion, sex, race related
25 hairstyle, the use of a cultural headdress, national origin or ancestry, source
26 of income or the requirements of any program providing the source of
27 income, or physical handicap.

28 (2) Print, circulate, display or mail, or cause to be printed,
29 circulated, displayed or mailed, any statement, advertisement, publication or
30 sign or use any form of application for the purchase, rental, lease, assignment
31 or sublease of any housing accommodation, commercial space or real
32 property, or to make any record or inquiry regarding the prospective
33 purchase, rental, lease, assignment or sublease of any housing

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1 accommodation, commercial space or real property which expresses any
2 preference, limitation or discrimination as to race, color, religion, sex, race
3 related hairstyle, the use of a cultural headdress, national origin or ancestry,
4 [source of income,] or physical handicap.

5 [(3) Represent to any person, because of race, color,
6 religion, sex, race related hairstyle, the use of a cultural headdress, national
7 origin or ancestry, source of income or because of the requirements of any
8 program providing the source of income, or physical handicap, that any
9 dwelling is not available for inspection, sale, or rental when the dwelling is
10 available;

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

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

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

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

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

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

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

5 (1) Consider race, color, religion, sex, race related hairstyle,
6 the use of a cultural headdress, national origin or ancestry or physical
7 handicap in the granting, withholding, extending, modifying or renewing, or in
8 the fixing of the rates, terms, conditions or provisions of any financial
9 assistance, or in the extension of services in connection with the request for
10 financial assistance; and

11 (2) Use any form of application for financial assistance or to
12 make any record or inquiry in connection with applications for financial
13 assistance which expresses, directly or indirectly, any limitation, specification
14 or discrimination as to race, color, religion, sex, race related hairstyle, the use
15 of a cultural headdress, national origin or ancestry or physical handicap.

16 (I) Any person or employer to:

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

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

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

27 SECTION 4. Section 11-3-12, the “Exemptions” Section of the Human
28 Rights Ordinance, is hereby amended as follows:

29 “§ 11-3-12 EXEMPTIONS.

30 Nothing in this article shall:

31 (A) Bar any religious or denominational institution or organization which
32 is operated or supervised or controlled by or is operated in connection with a
33 religious or denominational organization from limiting admission to or giving

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1 preference to persons of the same religion or denomination, or from making
2 selections of buyers, leasees or tenants as are calculated by the organization
3 or denomination to promote the religious or denominational principles for
4 which it is established or maintained unless in the religious or denominational
5 organization is restricted on account of race, color, sex, national origin,
6 ancestry, age, or physical handicap.

7 (B) Apply to rooms or units in dwellings containing living quarters
8 occupied or intended to be occupied by no more than four families living
9 independently of each other, if the owner actually maintains and occupies one
10 of the living quarters as his or her residence.

11 (C) Apply to public rest rooms, public showers, public dressing facilities
12 or sleeping quarters in public institutions where the preference or limitation is
13 based on sex; and

14 (D) Apply to private living quarters where the preference or limitation is
15 based on sex.

16 [(E) Bar a landlord from moving on to a different applicant if an agency
17 providing housing support requiring a Housing Quality Standards (“HQS”)
18 inspection fails to complete the initial inspection within five (5) business days
19 after notification that a prospective tenant has selected a unit; or if re-
20 inspection is required, fails to complete the re-inspection within five (5)
21 business days of receiving notification that repairs have been completed,
22 provided the landlord makes a good faith effort to schedule the inspection
23 with the agency.]

24 SECTION 5.

25 1. It is the intent of the Council to study and develop options that may
26 help incentive landlords to accept of housing vouchers, bring properties into
27 compliance with housing standards, and other incentives as may be
28 appropriate. Upon completion, the study and its recommendations shall be
29 submitted as an Other Communication to the Council for its receipt.

30 2. The Administration is directed to develop educational materials for
31 residents and landlords and distribute this information.

32 SECTION 6. The following appropriation is made from available fund
33 balance program from Fiscal Year 2022:

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1	GENERAL FUND – 110	
2	Council Services	150,000
3	Landlord Incentive Program Development	
4	& Housing Discrimination Study	
5	Legal Department (Office of Civil Rights)	50,000
6	Develop and distribute educational materials and provide technical	
7	assistance to tenants and landlords.	
8	Family & Community Services Department	100,000
9	Provide support to agencies in completing HQS inspections in FY23	

10 **SECTION 7. SEVERABILITY. If any section, paragraph, sentence, clause,**
11 **word or phrase of this Ordinance is for any reason held to be invalid or**
12 **unenforceable by any court of competent jurisdiction, such decision shall not**
13 **affect the validity of the remaining provisions of this Ordinance. The Council**
14 **hereby declares that it would have passed this Ordinance and each section,**
15 **paragraph, sentence, clause, word or phrase thereof irrespective of any**
16 **provision being declared unconstitutional or otherwise invalid.**

17 **SECTION 8. COMPILATION. Sections 1 and 2 of this Ordinance shall**
18 **amend, be incorporated in and complied as part of the Revised Ordinances of**
19 **Albuquerque, New Mexico, 1994.**

20 **SECTION 9. EFFECTIVE DATE. This ordinance will become effective 90**
21 **days after publication by title and general summary.**
22