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Title: C/S Amending § 11-3 The Human Rights Ordinance (Fiebelkorn, Rogers and Baca, by request)

Sponsors: Tammy Fiebelkorn (By Request), Nichole Rogers (By Request), Joaquin Baca (By Request)

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5/9/2024	2	City Council	Sent to Mayor for Signature	
5/6/2024	2	City Council	Amended	Pass
5/6/2024	2	City Council	Passed as Amended	Pass
4/15/2024	2	City Council	Accepted with a recommendation Do Pass, As Substituted	
4/8/2024	1	Finance & Government Operations Committee	Substituted	Pass
4/8/2024	1	Finance & Government Operations Committee	Sent to Council with a recommendation of Do Pass, as Substituted	Pass
3/11/2024	1	Finance & Government Operations Committee	Postponed	Pass
2/21/2024	1	President	Referred	
2/21/2024	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTY SIXTH COUNCIL

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

SPONSORED BY: Tammy Fiebelkorn, Nichole Rogers and Joaquín Baca, by request

ORDINANCE

C/S Amending § 11-3 The Human Rights Ordinance (Fiebelkorn, Rogers and Baca, by request)

AMENDING § 11-3 THE HUMAN RIGHTS ORDINANCE.

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

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

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

WHEREAS, updating the City of Albuquerque's HRO will help to align the City's policies with state policies, helping to ensure consistency and coherence that safeguards the rights and liberties of individuals within Albuquerque; and

WHEREAS, an updated human rights ordinance will serve as a testament to the City's commitment to creating an environment that actively opposes discrimination, promoting the principles of equality, justice, and human dignity for all residents.

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

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

SECTION 1. TERMINOLOGY.

1. In § 11-3-3 replace the definition "PHYSICALLY HANDICAPPED" with "PHYSICAL OR MENTAL DISABILITY" as follows:

PHYSICAL OR MENTAL DISABILITY. A physical or mental impairment that substantially limits one or more of a person's major life activities. A person is also considered to have a mental or physical disability if the person has a record of a physical or mental disability or is regarded as having a physical or mental disability.

2. Add the following definitions to § 11-3-3 in appropriate alphabetical order:

SEX. A person's categorization as male, female or intersex based on biology, physiology and physical characteristics.

GENDER. An individual or societal expectation or perception of a person as masculine or feminine based on appearance, behavior or physical characteristics.

GENDER IDENTITY. A person's self-perception, based on the person's appearance, behavior or physical characteristics, that the person exhibits more masculinity or femininity or the absence of masculinity or femininity whether or not it matches the person's gender or sex assigned at birth.

SEXUAL ORIENTATION. A person's physical, romantic or emotional attraction to persons of the same or a different gender or the absence of any such attraction.

PREGNANCY. The condition of being pregnant, including the state of carrying a developing embryo or fetus within the body, beginning from conception through childbirth.

CHILDBIRTH OR CONDITION RELATED TO CHILDBIRTH OR PREGNANCY. The act or process of giving birth to a child, including labor and delivery. Any medical condition or complication that arises during pregnancy, childbirth, or the postpartum period, or is exacerbated by pregnancy or childbirth.

PUBLIC CONTRACTOR. A person, company, or organization who receives public funds as a result of contracting with a governmental entity.

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

§ 11-3-2 DECLARATION OF POLICY.

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

- (A) Preserve, protect, and promote human rights and human dignity;
- (B) Promote and encourage the recognition and exercise of human responsibility;
- (C) Protect and promote equality of access to public goods and services; and
- (D) Prohibit discrimination on the basis of race, color, religion, sex, national origin or ancestry, age, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity, or source of income, including, but not limited to the following area:

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

§ 11-3-5 POWERS AND DUTIES.

The Board shall:

- (A) Set such rules and regulations as are necessary for the operation of the Board.
- (B) Conduct public hearings upon the request of the City Council or Mayor upon such matters as the City Council or Mayor may from time to time direct.

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

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

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

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

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

(E) Use its best efforts to:

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

(2) Endeavor that all citizens may enjoy their rights and pursue their opportunities on an equal basis without discrimination as to race, color, religion, sex, national origin or ancestry, age, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

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

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

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

mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

(C) Any employer, labor organization, or any other person to refuse to admit or employ any individual in any program established to provide an apprenticeship or other training or retraining because of race, color, religion, sex, national origin or ancestry, age, race related hairstyle, the use of a cultural headdress, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

(D) Any employer, labor organization, or any other person 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 membership, or to make any inquiry regarding prospective employment or membership which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, religion, sex, national origin or ancestry, age, race related hairstyle, the use of a cultural headdress, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity unless based on a bona fide occupational qualification.

(E) An employment agency to refuse to list and properly classify for employment or to refer an individual for employment in a known available job for which the individual is otherwise qualified because of race, religion, color, national origin, ancestry, age, sex, race related hairstyle, the use of a cultural headdress, or any physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity unless based on a bona fide occupational qualification; or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex, race related hairstyle, the use of a cultural headdress, or physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity unless based on a bona fide occupational qualification.

(F) Any person who provides any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of race, color, religion, sex, race related hairstyle, the use of a cultural headdress, national origin or ancestry, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

(G) Any person to:

(1) Refuse to sell, rent, assign, lease or sublease, or offer for sale, rental, lease or sublease, or assignment, any housing accommodation, commercial space or real property to any individual, or discriminate against any person in the terms, conditions, or privileges of the sale, rental, lease or sublease, or assignment of any housing accommodation, commercial space, or real property, or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation, commercial space or real property, or in the provision of facilities or services in connection therewith, because of race, color, religion, sex, race related hairstyle, the use of a cultural headdress, national origin or ancestry, source of income or the requirements of any program providing the source of income, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

(2) Print, circulate, display or mail, or cause to be printed, circulated, displayed or mailed, any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation, commercial space or real property, or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any housing accommodation, commercial space or real property which expresses any preference, limitation or discrimination as to race, color, religion, sex, race related hairstyle, the use of a cultural headdress, national origin or ancestry, source of income, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

(3) Represent to any person, because of race, color, religion, sex, race related hairstyle, the use of a cultural headdress, national origin or ancestry, source of income or because of the requirements of any program providing the source of income, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity, that any dwelling is not available for inspection, sale, or rental when the dwelling is available.

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

(5) Impose additional requirements on a tenant or a prospective tenant whose rent is to be subsidized by a third party not imposed on other tenants, such as, but not limited to, additional security deposits or requirements to maintain renter's insurance; provided that nothing in this section shall be construed as a prohibition against a property owner or manager conducting an

income or credit inquiry on a prospective tenant or from performing other vetting techniques, such as a background or rental history checks, provided these techniques are used for all tenants, regardless of their source of income.

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

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

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

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

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

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

(1) Consider race, color, religion, sex, race related hairstyle, the use of a cultural headdress, national origin or ancestry, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions or provisions of any financial assistance, or in the extension of services in connection with the request for financial assistance; and

(2) Use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, sex, race related hairstyle, the use of a cultural headdress, national origin or ancestry, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender

identity.

(I) Any person or employer to:

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

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

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

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

§ 11-3-12 EXEMPTIONS.

Nothing in this article shall:

(A) Bar any religious or denominational institution or organization which is operated or supervised or controlled by or is operated in connection with a religious or denominational organization from limiting admission to or giving preference to persons of the same religion or denomination, or from making selections of buyers, leasees or tenants as are calculated by the organization or denomination to promote the religious or denominational principles for which it is established or maintained unless membership in the religious or denominational organization is restricted on account of race, color, sex, national origin, ancestry, age, physical or mental disability, pregnancy, childbirth or condition related to childbirth or pregnancy, sexual orientation, gender, or gender identity.

SECTION 3. EXEMPTIONS.

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

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

SECTION 4. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of

competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

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

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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