

ORDINANCE

C/S Amending The Albuquerque Human Rights Ordinance To Prohibit Discrimination Based On Source Of Income; Making Appropriations For A Study, To Develop And Distribute Educational Materials, And To Support Housing Agencies Completing Housing Inspections (Davis, Bassan)

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

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

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

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

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

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

WHEREAS, Implementing amendments to the Human Rights Ordinance that prohibit owners from discriminating against tenants based on lawful sources of income will promote a general welfare of the City and its residents; and

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

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

WHEREAS, The City of Albuquerque is currently facing a housing crisis and participants of the

Section 8 Housing Choice Voucher program are routinely unable to find housing despite eligibility for the program; and

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

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

SECTION 1. Section 11-3-2, the “Declaration of Policy” Section of the Human Rights Ordinance, is hereby amended 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 handicap, 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.”

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

“§ 11-3-3 DEFINITIONS.

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

BOARD. The Human Rights Board.

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

CULTURAL HEADDRESS. Includes, but is not limited to, burkas, hijabs, head wraps, head

scarves, or other headdresses used as part of an individual's personal cultural or religious beliefs.

EMPLOYEE. Any person in the employ of an employer.

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

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

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

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

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

PERSON. One or more individuals, a partnership, association, company, organization, corporation, joint venture, legal representative, trustee, receiver, cooperative, or the city and any governmental unit created and/or sponsored by the city. Where any reference to the masculine is present, he or she, her or him, his or her or person (as in chairperson vs. chairman) should be in its place.

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

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

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

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

REAL PROPERTY. Lands, leaseholds and tenements.

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

- (1) Income from a lawful profession, occupation, or job;
- (2) Income derived from social security or any form of federal, state, or local public assistance or housing assistance, including a housing choice voucher issued pursuant to Section 8 of the United States Housing Act of 1937, or any other form of housing assistance payment or credit, whether or not such income or credit is paid or attributed directly to a landlord and even if such income includes additional federal, state, or local requirements including but not limited to required inspections and contracting with the agency administering the public assistance program; or
- (3) A pension, annuity, alimony, child support, foster care subsidies, or any other recurring, lawful, and verifiable monetary consideration or benefit.

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

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

“§ 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, or physical handicap.
- (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, or physical handicap.
- (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, or physical handicap.

(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, or physical handicap, 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 handicap 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 handicap 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, or physical handicap.

(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, or physical handicap.

(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, or physical handicap.

(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, or physical handicap, 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; or

(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 or physical handicap 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 or physical handicap.

(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.”

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

“§ 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 in the religious or denominational organization is restricted on account of race, color, sex, national origin, ancestry, age, or physical handicap.

(B) 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 and occupies one of the living quarters as his or her residence.

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

(D) Apply to private living quarters where the preference or limitation is based on sex; and

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

SECTION 5.

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

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

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

GENERAL FUND - 110

Council Services 150,000

Landlord Incentive Program Development
& Housing Discrimination Study

Legal Department (Office of Civil Rights) 50,000

Develop and distribute educational materials and provide technical assistance to tenants and landlords.

Family & Community Services Department

100,000

Provide support to agencies in completing HQS inspections in FY23

SECTION 7. SEVERABILITY. 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 8. COMPILATION. Sections 1, 2, 3, and 4 of this Ordinance shall amend, be incorporated in and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

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

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