CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-16 ENACTMENT NO. ________________

SPONSORED BY: Pat Davis, Brook Bassan

ORDINANCE

AMENDING THE ALBUQUERQUE HUMAN RIGHTS ORDINANCE TO
PROHIBIT DISCRIMINATION BASED ON SOURCE OF INCOME; MAKING AN
APPROPRIATION FOR A STUDY AND TO DEVELOP AND DISTRIBUTE
EDUCATIONAL MATERIALS.

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 11-3-3, 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 gift, inheritance, pension, annuity, alimony, child support, foster care subsidies, or any other consideration or benefit.]

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

SECTION 2. 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 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.

(E) 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.

(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.]
(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 3. 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 4. COMPILATION. Sections 1 and 2 of this Ordinance shall amend, be incorporated in and complied as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 5. EFFECTIVE DATE. This ordinance will become effective five days after publication by title and general summary.

SECTION 6.

1. It is the intent of the Council to complete a study and develop a process geared at establishing a landlord incentive program aimed at encouraging acceptance of housing vouchers, assisting to bring properties into compliance with housing standards, and other incentives as may be appropriate at the completion of a study and development process. 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 7. The following appropriation is made from available fund balance program from Fiscal Year 2022:

GENERAL FUND – 110
Council Services
Landlord Incentive Program Development & Housing Discrimination Study 150,000
Legal Department
Develop and distribute educational materials 50,000