

Source of Income Discrimination

New Amendment to the Albuquerque Human Rights Ordinance:

Effective September 21, 2022

Albuquerque Human Rights Ordinance

- Compliments State of New Mexico Human Rights Act
- First enacted 1974
- Amended multiple times since then
- Protects designated classes of people from discrimination in housing, employment, public accommodations
- Protected classes (specific to housing): 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/mental disabilities

- Source of income newest protected class
- City council passed this amendment June 6, 2022 by 5-4 vote
- Mayor signed into law June 23, 2022
- Effective 90 days after signing: September 21, 2022



§ 11-3-7 UNLAWFUL DISCRIMINATORY PRACTICE.

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

(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.

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

(G) Any person to:

(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.

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

(G) Any person to:

(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;

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

(G) Any person to:

(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

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

(G) Any person to:

(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.

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

(G) Any person to:

(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.

(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.

§ 11-3-12 EXEMPTIONS.

Nothing in this article shall:

(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.

(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 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 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.

Lawful, verifiable sources of income may include:

- Income from a job
- Social security or disability income
- Any federal, state, or local public assistance, including housing choice vouchers
- A pension
- Child support
- Alimony
- Any other lawful, recurring income or benefit

Identifying discrimination

Discrimination can be identified through one of the following:

- Direct evidence
 - Examples:
 - **Preferential Advertising** - A housing provider advertises available homes, using terms such as “must be employed” or “no vouchers”
 - Statement
 - Admission
 - Refusal to Rent - “No Section 8” policy
 - Charging special/extra fees only to people with non-traditional income
- Indirect evidence and unequal treatment
- Discriminatory Impact

“Otherwise qualified tenant”

- Landlords may still maintain standards for prospective tenants as long as those standards are the same for every tenant
 - Criminal background/history
 - Credit scores
 - Eviction history
 - Application fees/deposits

Complaint process

- Anyone who believes they have been discriminated against in violation of the HRO can file a complaint with the Office of Civil Rights
- OCR is a neutral fact-finding agency
- Phone: (505) 768-4595 or dial 311 (505-768-2000)
- Email: civilrights@cabq.gov
- Website: <https://www.cabq.gov/civilrights>
- Address: One Civic Plaza NW 4th floor Suite 4072, by appointment

Penalties : § 1-1-99

- fine not exceeding \$500 or
- imprisonment not exceeding 90 days
- or both
- Each separate violation shall constitute a separate offense and, upon conviction, each day of violation shall constitute a separate offense.