

1 **BY AUTHORITY**

2 ORDINANCE NO. _____

COUNCIL BILL NO. CB18-0788

3 SERIES OF 2018

COMMITTEE OF REFERENCE:

4 SAFETY, HOUSING, EDUCATION, AND HOMELESSNESS

5 **A BILL**

6 **For an ordinance amending Title 28, Article IV of the Revised Municipal Code of**
7 **the City and County of Denver regarding the prohibition of discriminatory**
8 **practices in purchase and rental housing transactions on the basis of source of**
9 **income.**

10
11 WHEREAS, since 1990, the City of Denver has sought to ensure that residents have equal
12 opportunity to participate fully in the life of the city and to have an equal opportunity to participate in
13 all aspects of life, including but not limited to housing; and
14

15 WHEREAS, the City of Denver, like cities throughout Colorado and the United States, has
16 long treated the promotion and provision of affordable housing for persons of low- and moderate-
17 incomes as an important and essential public service, and as a part of the city's fundamental mission
18 to promote the health, safety, and general welfare; and
19

20 WHEREAS, the City of Denver and our partners, including the Denver Housing Authority and
21 the United States Department of Housing and Urban Development, utilize housing vouchers and
22 other forms of housing assistance to expand access to affordable housing for low- and moderate-
23 income families; and
24

25 WHEREAS, housing vouchers provide access to housing in an array of neighborhoods where
26 affordable housing may not otherwise be found, including those with access to jobs, good schools
27 or other amenities that further the health and well-being of families; and
28

29 WHEREAS, access to housing in a wide array of neighborhoods furthers the intent and
30 purposes of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) to promote housing
31 integration; and
32

33 WHEREAS, Denver residents also receive a wide array of other legal forms of verifiable
34 income or payments that they may rely upon to pay for housing, including, but not limited to monies
35 from any occupation or activity, from any contract, agreement, loan or settlement, from any court-
36 ordered payments such as child support, gifts, bequests, annuities or life insurance policies, or from
37 federal, state or local payments, including disability benefits; and
38

39 WHEREAS, the City of Denver's economic interests are adversely affected if employees are
40 unable to find housing in the city, thereby reducing the supply of available labor, if families are unable
41 to find housing near schools resulting in classroom and educational disruption when children must

1 change schools, or if households become homeless due to a gap in housing and require additional
2 social services; and

3
4 WHEREAS, the inability to utilize legal sources of income or payments to rent or buy a home
5 is a barrier to finding housing in the City of Denver; and

6
7 WHEREAS, a recent survey of Denver residents conducted as part of a Denver-Aurora-
8 Boulder Regional Assessment of Fair Housing (AFH) found that 10% of respondents experienced
9 discrimination on the basis of a housing voucher, and that having a voucher was among the top five
10 reasons why African American and Hispanic households and those earning less than \$25,000 were
11 turned away from housing; and

12
13 WHEREAS, the AFH Survey also found that having disability income was among the top five
14 reasons why Native Americans, those with a disability, and households earning less than \$25,000
15 were turned away from housing; and

16
17 WHEREAS, home buyers have reported being refused the opportunity to submit a bid to
18 purchase a home based on otherwise legal and approved sources of payment, such as Veteran's
19 Administration (VA) or Federal Housing Administration (FHA) loans; and

20
21 WHEREAS, refusing to rent or sell a home based solely on a legal source of income or
22 payment is a form of discrimination; and

23
24 WHEREAS, like fourteen other states and over a dozen cities, the City of Denver has an
25 interest in protecting residents from discrimination in housing based on otherwise legal and verifiable
26 sources of income or payments, along with their related program requirements.

27
28 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
29 **DENVER:**

30 **Section 1.** That Section 28-91 of the Denver Revised Municipal Code ("D.R.M.C.") shall be
31 amended by adding the underscored language, as follows:

32 Sec. 28-91. - Intent of council.

33 (a) It is the intent of the council that every individual shall have an equal opportunity to
34 participate fully in the economic, cultural, and intellectual life of the city and to have an equal
35 opportunity to participate in all aspects of life, including, but not limited to, employment, housing and
36 commercial space, public accommodations, education, and health and welfare services.

37 (b) It is the intent of the council in enacting this article to eliminate within the city
38 discrimination by reason of race, color, religion, national origin, gender, age, sexual orientation,
39 gender variance, marital status, source of income, military status, or physical or mental disability.
40 Discriminatory practices as defined in this article may be subject to investigation, conciliation,
41 administrative hearings and orders or other enforcement procedures.

42 (c) Except where specifically provided, the provisions of section 1-13 do not apply to this
43 article.

Section 2. That Section 28-92 of the D.R.M.C. shall be amended by adding the underscored language, as follows:

Sec. 28-92. - Definitions.

The following words and terms when used in this article shall have the following meanings:

Age: A chronological age of at least forty (40) years.

Agency: The agency for human rights and community relations.

Director: The duly appointed executive director of the agency for human rights and community relations.

Educational institution: Any private educational institution, including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university and a business, nursing, professional, secretarial, technical or vocational school and includes an agent of an educational institution.

Employee: Any individual employed by or applying for employment with an employer.

Employer: Any person, excluding governmental entities and political subdivisions but including any agent of such entity or subdivision where the agency relationship is created by a written contract, engaged in an industry affecting commerce who has twenty (20) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year; the term shall also mean any agent of such a person.

Employment agency: Any person regularly undertaking or attempting with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

Gender identity: A person's various individual attributes, actual or perceived, that may be in accord with, or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.

Gender variance: A persistent sense that a person's gender identity is incongruent with the person's biological sex, excluding the element of persistence for persons under age twenty-one and including, without limitation, transitioned transsexuals.

Genital reassignment surgery: Surgery to alter a person's genitals, in order to complete a program of sex reassignment treatment.

Labor organization: Any organization, agency, employee representation committee, group, association or plan in which employees participate directly or indirectly and which exists for the purpose, in whole or in part, of dealing with employers or any agent thereof concerning grievances, labor disputes, wages, rates of pay, hours or other terms, conditions or privileges of employment

1 and any conference, general committee, joint or system board or joint council which is subordinate
2 to a national or international labor organization.

3 *Marital status:* The state of being married, single, divorced, separated or widowed and the
4 usual conditions associated therewith, including parenthood.

5 *Military status:* Being or having been in the service of the military.

6 *Physical or mental disability:* A physical or mental impairment of an individual which
7 substantially limits one (1) or more major life activities and includes a record of such impairment or
8 being regarded as having such impairment; however, such term does not include any individual who
9 is an alcoholic whose current use of alcohol prevents such individual from performing the duties of
10 a job or whose current alcohol abuse would constitute a direct threat to property or the safety of
11 others; and in the areas of public accommodations or real estate transactions, such term does not
12 include any individual who is an alcoholic and whose unreasonable conduct as a result of use of
13 alcohol is the basis on which a covered entity acts; and such term does not include an individual who
14 is currently engaged in the illegal use of drugs when a covered entity acts on the basis of such use.

15 *Place of public accommodation:*

16 (1) As defined by section 59-2 of this Code: All hostels; hotels; motels; rental rooms;
17 rooming and/or boardinghouses; eating places; shops and stores dealing with goods or services of
18 any kind; hospitals; recreational facilities, public parks; theaters of all kinds and any establishments
19 licensed under chapter 7 (Amusements) of this Code.

20 (2) Any establishment licensed under the Colorado Liquor Code or the Colorado Beer Code;
21 all banks, credit information services and all other financial institutions; insurance companies and
22 establishments of insurance brokers; clinics, dental or medical; clubs and lodges; bathhouses and
23 swimming pools; commercial or public garages, public transportation as well as the stations or
24 terminals thereof; any establishment offering travel or tour services; and public areas and public
25 elevators of buildings and structures.

26 *Real estate broker or salesperson:* Any person licensed as such in accordance with the
27 provisions of the Colorado Real Estate Commission.

28 *Religious organizations or associations:* Any organization affiliated with a church, synagogue,
29 congregation, parish, brotherhood, religious corporation or any religious society engaging in the
30 works of education, benevolence, charity or missions.

31 *Sex:* Biological sex, the sum of a person's physical characteristics.

32 *Sex reassignment treatment:* Treatment to change a person's sex, based on medically
33 recognized treatment protocols such as that published by the Harry Benjamin International Gender
34 Dysphoria Association.

1 **Source of income: Any lawful, verifiable source of income or housing assistance paid**
2 **to or on behalf of a renter or buyer including, but not limited to monies from any occupation**
3 **or activity, from any contract, agreement, loan or settlement, from any court-ordered**
4 **payments such as child support, from payments received as gifts, bequests, annuities or life**
5 **insurance policies, or from federal, state or local payments, including disability benefits and**
6 **housing choice vouchers or any other rent subsidy or rent assistance program and related**
7 **program requirements.**

8 *Transaction in real property:* Exhibiting, listing, advertising, negotiating, agreeing to transfer
9 or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, any interest
10 in real property or improvements thereon.

11 *Transitioning transsexual:* A person experiencing gender variance who is undergoing sex
12 reassignment treatment.

13 *Transitioned transsexual:* A person who has completed genital reassignment surgery.

14 **Section 3.** That Section 28-95 of the D.R.M.C. shall be amended by deleting the stricken
15 language and adding the underscored language, as follows:

16 Sec. 28-95. - Discriminatory practices in real estate transactions.

17 (a) *Generally.* It shall be a discriminatory practice to do any of the following acts based upon
18 the race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital
19 status, **source of income,** military status or physical or mental disability of any individual:

20 (1) To interrupt or terminate or refuse to initiate or conduct any transaction in real
21 property or to require different terms for such transaction or to represent falsely that an interest
22 in real property is not available for transaction;

23 (2) To include in the terms or conditions of a transaction in real property any clause,
24 condition or restriction prohibited by this article;

25 (3) To refuse to lend money, guarantee a loan, accept a deed of trust or mortgage
26 or otherwise refuse to make funds available for the purchase, acquisition, construction,
27 alteration, rehabilitation, repair or maintenance of real property or impose different conditions
28 on such financing or refuse to provide title or other insurance, relating to the ownership or use
29 of any interest in real property;

30 (4) To refuse or restrict facilities, service, repairs or improvements for a tenant or
31 lessee;

32 (5) To communicate, make, print or publish or cause to be communicated, made,
33 printed or published any notice, statement or advertisement with respect to a transaction or
34 proposed transaction in real property or financing related thereto, which notice, statement or

advertisement indicates or attempts to indicate any preference, limitation or discrimination based on race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, **source of income**, military status, family status or physical or mental disability of any individual;

(6) To discriminate in any financial transaction involving real property on account of the location of residence or business, i.e., to red-line; ~~or~~

(7) To restrict or attempt to restrict housing choices or to engage in any conduct relating to the sale or rental of a dwelling that otherwise denies the rental or sale or makes it unavailable; or

(8) To refuse to consider any source of income in the same manner as ordinary wage income in connection with an application for rental housing.

(b) *Exceptions.*

(1) It shall not be a discriminatory practice for a person to act in conformity with chapter 59 (Zoning) of this Code, and nothing in this chapter of the Code shall supersede any provisions of chapter 59 (Zoning) of this Code.

(2) This section shall not apply to multiple-unit dwellings of not more than two (2) dwelling units where at least one (1) of the units is owner-occupied.

(3) Nothing in this section shall prohibit group homes, self-care elderly homes, special-care homes or other facilities whose use is restricted to the elderly or to individuals with physical or mental disabilities.

(4) This article shall not apply to religious organizations or associations.

(5) The prohibition on discrimination on the basis of source of income set forth in this section shall become effective on January 1, 2019, and shall not apply where the use of a particular type of assistance is prohibited by any applicable federal, state or city law or regulation or pre-existing program requirement.

Section 4. That Chapter 28 of the Denver Revised Municipal Code shall be amended by adding a new Section 28-115.5, to read as follows:

Sec. 28-115.5 - Complaint, Investigation, Hearing and Decision – Source of Income Discrimination

This Section 28-115.5 shall apply only to matters involving discrimination on the basis of source of income and shall apply in lieu of sections 28-107 through 28-114 above, which, notwithstanding anything to the contrary above, shall not be available to parties whose complaint involves only source of income discrimination claims. The

1 hearing process in this section is intended to be a simplified and scalable process to
2 enhance the just, speedy, and efficient determination of complaints.

3 (a) Any person may file with the agency a complaint alleging a violation of the
4 provisions of this article prohibiting source of income discrimination. The complaint
5 shall state, to the extent known, the name and address of the person or entity alleged
6 to have committed the violation, who shall be called the respondent, the address of the
7 housing unit or complex alleged to have been involved, the name and address of any
8 other individuals involved in the discriminatory practice, and the date(s) on which the
9 alleged violation(s) occurred or were discovered. The complaint shall further set forth
10 the substance of the alleged violation and such other information as may be required
11 by the agency. Any complaint under this article shall be filed with the agency within
12 one hundred eighty (180) days of the occurrence of the discriminatory practice.

13 (b) Complaints filed with the agency under this section may be voluntarily
14 withdrawn at the request of the complainant at any time prior to the completion of the
15 agency's investigation and findings as specified in section 28-108, except that the
16 circumstances accompanying said withdrawal may be fully investigated by the agency.

17 (c) Upon receipt of the complaint, the agency shall provide a copy of the
18 complaint to the respondent and shall arrange for prompt investigation. Respondent
19 shall have thirty (30) days from the date on which the copy of the complaint was mailed
20 to provide the agency with its response and any supporting materials and to request
21 an informal administrative hearing before the agency, if desired.

22 (d) After receipt of respondent's response or the expiration of the response
23 period provided for in subsection (c) above, whichever comes first, the agency shall
24 have a maximum of sixty (60) days to conduct its investigation and, if requested, an
25 informal administrative hearing, and to issue its findings and decision in writing,
26 copies of which shall promptly be provided to the complainant and the respondent. If
27 the agency finds that the respondent has engaged or is engaging in a discriminatory
28 practice involving source of income, the agency's written notice to respondent shall
29 include a directive to the respondent to remediate such discrimination within thirty (30)
30 days after receipt of such notice. Such remediation directive may include, without
31 limitation, an order: (a) to make the unit at issue or a comparable unit available to the
32 complainant, or (b) to cease advertising that references a discriminatory practice.
33 Where the agency or hearing officer has determined that a respondent denied sale or
34 rental to the complainant on a discriminatory basis and the unit or a comparable unit

1 are unavailable to be sold or rented to the complainant as a remedy, or where the
2 respondent fails to comply with an agency directive, the agency may impose a fine not
3 to exceed \$5,000. The agency may direct the respondent to pay all or a portion of such
4 fine to the complainant to compensate complainant for any actual, verifiable damages
5 suffered by complainant as a result of the discrimination.

6 (e) No person may file a civil action in county court or state district court
7 based on an alleged source of income discriminatory practice prohibited by this
8 ordinance without first exhausting the proceedings and remedies available to that
9 person under this ordinance

10 (f) Any person suffering a legal wrong or adversely affected by a decision of
11 the agency pursuant to the provisions of this section is entitled to a judicial review
12 thereof in accordance with Colorado Rule of Civil Procedure 106 upon filing in the
13 appropriate court a written complaint for such review.
14

15 COMMITTEE APPROVAL DATE: July 18, 2018

16 MAYOR-COUNCIL DATE: July 24, 2018

17 INTRODUCED BY: Robin Kniech, Councilmember At-Large

18 PASSED BY THE COUNCIL: _____

19 _____ - PRESIDENT

20 APPROVED: _____ - MAYOR _____

21 ATTEST: _____ - CLERK AND RECORDER,
22 EX-OFFICIO CLERK OF THE
23 CITY AND COUNTY OF DENVER

24 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

25 PREPARED BY: Troy Bratton, Assistant City Attorney DATE: July 24, 2018

26 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
27 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
28 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
29 § 3.2.6 of the Charter.

30
31 Kristin M. Bronson, Denver City Attorney

32
33 BY: _____, Assistant City Attorney DATE: _____