BY AUTHORITY

ORDINANCE NO. __________ COUNCIL BILL NO. CB_______ SERIES OF 2019 COMMITTEE OF REFERENCE:

A BILL

For an ordinance amending Articles II and IV of Chapter 28 of the Revised Municipal Code concerning, respectively, the Agency for Human Rights and Community Partnerships and the Prohibition of Discrimination in Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions, and Health and Welfare Services.

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section I. That Section 28-91 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below in subsection (b) and by adding a new subsection (d), to read as follows:

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

(b) It is the intent of the council in enacting this article to eliminate discrimination in the city by reason of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, or disability. Discriminatory practices as defined in this article may be subject to investigation, conciliation, administrative hearings and orders or other enforcement procedures.

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(d) Any provision of this article that prohibits discrimination based on citizenship or immigration status, shall not apply when any federal, state, or city law imposes citizenship or lawful immigration status as a requirement or condition for receiving any employment, contract, benefit or service."

Section II. That Section 28-92 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below, to read as follows:

"Sec. 28-92. - Definitions."

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

(a) Age: A chronological age of at least forty (40) years.
(b) **Agency:** The agency for human rights and community partnerships.

(c) **Director:** The agency’s duly appointed executive director

(d) **Disability:** has the same meaning as set forth in the federal “Americans with Disabilities Act of 1990”, 42 U.S.C. sec. 1201 et seq., and its related amendments and implementing regulations.

(e) **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.

(f) **Employee:** Any individual employed by or applying for employment with an employer.

(g) **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 ten (10) or more employees for each working day in each of ten (10) or more calendar weeks in the current or preceding calendar year; the term shall also mean any agent of such a person.

(h) **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.

(i) **Gender:** The attitudes, feelings and behaviors that a given culture associates with a person’s sex assigned at birth. One’s gender may be man, woman, genderqueer, androgynous, or other. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.

(j) **Gender expression:** A person's expression of gender identity through appearance and behavior including how an individual believes that he or she is perceived by others.

(k) **Gender identity:** A person’s sense of oneself as a man, woman, or something else. When a person’s gender identity or gender expression and sex assigned at birth are not congruent, the individual may identify along the transgender spectrum.

(l) **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 and any conference, general committee, joint or system board or joint council which is subordinate to a national or international labor organization.
(m) **Marital status**: The state of being married, single, divorced, separated or widowed and the usual conditions associated therewith, including parenthood.

(n) **Military status**: Being or having been in the service of the military.

(o) **Place of public accommodation**:  
(1) As presented in the Denver Zoning Code: All lodging accommodations including without limitation bed and breakfast lodging, extended stay hotels, hotels, hostels, motels, single room occupancy (SRO) hotels, rooming or boarding houses; short-term rentals including without limitation vacation rentals and other short-term rental places or establishments; eating and drinking establishments; shops, stores, and other kinds of business establishments dealing with goods or services of any kind; hospitals and group living facilities including assisted living facilities, nursing homes, hospices, and residences for older adults; shelters; recreational facilities, public parks; theaters of all kinds, and any establishments licensed under chapter 7 (Amusements) of this Code.  
(2) Any establishment licensed under the Colorado Liquor Code or the Colorado Beer Code; all banks, credit information services and all other financial institutions; insurance companies and establishments of insurance brokers; clinics, dental or medical; clubs and lodges; bathhouses and swimming pools; commercial or public garages, public transportation as well as the stations or terminals thereof; any establishment offering travel or tour services; public areas and public elevators of buildings and structures, any place of business, services, or other kinds of establishments providing health and welfare services in accordance with Section 28-97; and any place of business, services, or other kinds of establishments engaged in or offering sales, services, facilities, privileges, advantages, or accommodations to the public that receives or is otherwise supported by money raised by taxation or public borrowing.

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

(q) **Religious entity**: A church, synagogue, mosque, temple, congregation, or other place that is principally used for religious purposes.
(r) **Religious organization:** A religious corporation, religious institution, religious society, congregation, or other organization or association that is: not organized for private profit, not supported in whole or in part by money raised by taxation or public borrowing, controlled by a religious entity, and engages in the study or advancement of religion or engages in the works of education, benevolence, charity, or missions.

(s) **Sexual orientation:** A component of identity that includes a person’s sexual and emotional attraction to another person and the behavior and/or social affiliation that may result from this attraction. A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities. Individuals may identify as lesbian, gay, heterosexual, bisexual, queer, pansexual, or asexual, among others.

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

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

**Section III.** That Section 28-93 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below, to read as follows:

“Sec. 28-93. - Discriminatory practices in employment.

(a) **Generally.** It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, military status or disability of any individual who is otherwise qualified:

(1) **By an employer:** To fail or refuse to hire an applicant or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, including promotion; or to limit, segregate or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect status as an employee. With regard to a disability, it is not a discriminatory or an unfair employment practice for an employer to act as provided in this paragraph (a) if there is no reasonable accommodation that can
(2) By an employment agency: To fail or refuse to refer or classify for employment any individual or to otherwise discriminate against any individual. With regard to a disability, it is not discriminatory or an unfair employment practice for an employment agency to refuse to list and properly classify for employment or to refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that can be made with regard to the disability, the disability disqualifies the applicant from the job, and the disability has a significant impact on the job;

(3) By a labor organization: To exclude or remove from its membership, limit, segregate, or classify its membership, fail or refuse to refer or classify for employment any individual, or to otherwise discriminate against any individual in any way that would deprive, limit, or adversely affect such individual of employment opportunities; or

(4) By an employer, employment agency, apprenticeship program, labor organization or joint labor/management council:

a. To discriminate against any individual in admission to or employment in any program established to provide apprenticeship, training, or retraining, including an on-the-job training program. With regard to a disability, it is not a discriminatory or an unfair employment practice to deny or withhold admission or participation in any such program if no reasonable accommodation can be made with regard to the disability, the disability disqualifies the applicant from the program, and the disability has a significant impact on participation in the program; and

b. To communicate, print or publish or cause to be communicated, printed or published any notice or advertisement or use any publication form relating to employment by such employer or to membership in or any classification or referral for employment by such a labor organization or to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification or distinction based on the race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, military status or disability of any individual.

(b) Prohibition of discrimination – pregnancy, childbirth, and related conditions.
Discrimination on the basis of gender shall include but not be limited to discrimination on the basis of pregnancy, childbirth or related medical conditions. An employer, employment agency, apprenticeship program, labor organization, or a joint labor/management council shall not:

1. Treat disabilities caused or contributed to by pregnancy, miscarriage, childbirth or recovery therefrom, differently than other temporary disabilities under any health or temporary disability insurance, or sick leave plan available in connection with employment. An employer, employment agency, apprenticeship program, labor organization, or a joint labor/management council must afford pay, tenure, benefits, seniority, and re-instatement for medically necessary pregnancy-related absences in the same manner as they are for other medically necessary absences;

2. Refuse to reasonably accommodate an existing or prospective employee's condition related to pregnancy, childbirth, or a related medical condition, including, but not limited to, the need to express breast milk for a nursing child; unless the employer can demonstrate that the accommodation presents an undue hardship on a program, enterprise, or business;

3. Require an employee to take leave if another reasonable accommodation can be provided for the employee’s condition related to pregnancy, childbirth, or a related medical condition; or

4. Deny employment opportunities to an existing or prospective employee, if such denial is based on the employer’s refusal to reasonably accommodate a current or prospective employee’s condition related to pregnancy, childbirth, or a related medical condition.

(3) For the purposes of section 28-93(b):

1. The term “reasonably accommodate” shall mean providing reasonable accommodations, including, but not limited to: additional or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, private non-bathroom space for expressing breast milk, assistance with manual labor, or modified work schedules, provided that:

   i. no employer, employment agency, apprenticeship program, labor organization, or joint labor/management council is required by this
subsection to create additional employment that would not have been created otherwise, unless the entity or program creates or would have created additional employment for other classes of employees who need accommodation, such as those individuals who are injured on-the-job or those with disabilities and;

ii. the employer, employment agency, apprenticeship program, labor organization, or joint labor/management council is not required to discharge or transfer any employee with more seniority, or promote any employee who is unqualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees in need, such as those who are injured on-the-job or those with disabilities.

b. Nothing in this section requires individuals with needs related to pregnancy, childbirth, or related medical conditions to accept any accommodation.

c. The term “related conditions” includes, but is not limited to, lactation or the need to express breast milk for a nursing child.

d. The term “undue hardship” means an action requiring significant difficulty or expense, when considered in light of the factors set forth in Section 28-93(b)(3)a.

e. The employer, employment agency, apprenticeship program, labor organization, or joint labor/management council must prove undue hardship. The factors that may be considered to determine undue hardship include without limitation:

i. the nature and cost of the accommodation;

ii. the overall financial resources of the employer, employment agency, apprenticeship program, labor organization, or joint labor/management council; the overall size of the entity or program by number of employees; and the number, type, and location of its facilities; and

iii. the effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer, employment agency, apprenticeship program, labor organization, or joint labor/management council.
f. The fact that the employer, employment agency, apprenticeship program, labor organization, or joint labor/management council provides or is required to provide a similar accommodation to other classes of employees in need, such as those who are injured on-the-job or those with disabilities, shall create a rebuttable presumption that the accommodation does not impose an undue hardship on a program, enterprise, or business.

(4) Notice of rights. An employer, employment agency, apprenticeship program, labor organization, or joint labor/management council shall provide written notice of the right to be free from discrimination based on pregnancy, childbirth, and related medical conditions pursuant to Sec. 28-93 (a), (b), and (c) to new employees at the commencement of employment, and to existing employees within one hundred twenty days after the effective date of this ordinance. Such notice may also be posted at the entity’s or program’s place of business in a visible area that is accessible to employees.

(5) Section 28-93 (a), (b), and (c) shall not be construed to affect any other provision of law relating to gender discrimination or pregnancy, or to preempt, limit, diminish or otherwise affect any other law that provides greater protection or specific benefits related to pregnancy, childbirth, or a related medical condition.

(c) Exceptions.

(1) Seniority system. It shall not be considered a discriminatory practice for an employer to observe the conditions of a bona fide hiring, seniority, or employee benefit system, such as retirement, pension or insurance plans that is not a subterfuge to evade the purposes of this act, except that no such employee seniority system or benefit plan shall excuse the failure to hire any individual because of the age of such individual.

(2) Older adults or person with a disability. It shall not be discriminatory for employment to be limited to an older adult or to a person with a disability provided that such employment shall not discriminate among persons based on age or with disabilities on the basis of other discriminatory criteria set forth in subsection (a) hereof.

(3) Bona fide occupational classifications. Any bona fide occupational qualifications or differentiation based on factors reasonably necessary to the particular employer’s normal operations shall not be deemed discriminatory.
(4) Religious organizations or entities. Section 28-93 shall not apply to employment or hiring by a religious organization or religious entity. Nothing in this Section 28-93 prevents a religious organization or religious entity from the employment or hiring of individuals of a particular religion to perform work connected with the carrying on of the organization’s religious activities.

(5) Individualized agreements. Nothing in this section shall prohibit any employer from making individualized agreements with respect to compensation or the terms, conditions or privileges of employment for persons suffering a disability if such individualized agreement is part of a therapeutic or job-training program that is no longer than twenty (20) hours per week and lasting no more than eighteen (18) months.

(6) Certain age and position. It shall not be discriminatory to compel the retirement of any employee who is sixty-five (65) years of age or older who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policy-making position if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan or any combination of such plans of the employer of such employee and if such plan equals in the aggregate at least forty-four thousand dollars ($44,000.00).

Section IV. That Section 28-94 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below, to read as follows:

“Sec. 28-94. - Discriminatory practices in educational institutions.

(a) Generally. It is a discriminatory practice for an educational institution to deny or restrict or to abridge or condition the use of or access to any of its facilities and services to any person otherwise qualified or to discriminate based on the race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, military status or disability of any individual.

(b) Exceptions. It shall not be a discriminatory practice for admissions to be limited to persons with physical or mental disabilities, or of specific religions or genders; except that when an educational institution offers a course nowhere else available in the city, opportunity for admission to that course must be open to students of all genders who otherwise meet the lawful requirements for admission.”
Section V. That Section 28-95 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below, to read as follows:

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

(a) Generally. It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, source of income, military status or disability of any individual:

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

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

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

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

(5) To communicate, make, print or publish or cause to be communicated, made, printed or published any notice, statement or advertisement with respect to a transaction or 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, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, source of income, military status, family status or 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;

(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 homes for older adults, special-care homes, or other facilities whose use is restricted to older adults or to persons with disabilities.

(4) Nothing contained in Section 28-95 shall be construed to bar a religious organization or religious entity from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(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 a person owns and makes available for renting, subrenting, leasing, or subleasing only a single unit or 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 VI.** That Section 28-96 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below, to read as follows:

“Sec. 28-96. - Discriminatory practices in places of public accommodation.

(a) **Generally.** It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, military status or disability of any individual:

(1) To directly or indirectly deny, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation.
(2) To communicate, print, circulate, post or mail or otherwise cause, directly or indirectly, to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodation will be refused, withheld from or denied an individual or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable or undesirable.

(b) Breastfeeding. A person may breast-feed in any place that a person has a right to be.

(c) 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 homes for older adults, special-care homes, or other facilities whose use is restricted to older adults or to persons with disabilities.

(4) Section 28-96 shall not apply to religious entities.

(5) Section 28-96 shall not apply to insurance risk classification.

Section VII. That Section 28-97 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken and adding the language underlined below, to read as follows:

“Sec. 28-97. - Discriminatory practices in health and welfare services.

(a) Generally. It shall be a discriminatory practice to do any of the following acts based upon the race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender expression, gender identity, marital status, military status or disability, of any individual:

(1) To communicate, publish, advertise or represent or cause to be communicated, published, advertised or represented by any health and welfare agency or owner, supervisor, staff person, director, manager or officer thereof, excluding governmental entities and political subdivisions, that any of the services, programs, benefits, facilities or privileges of any health or welfare agency are withheld from or denied to any person;
(2) For any health and welfare agency or worker, supervisor, staff person, director, manager or officer thereof, excluding governmental entities and political subdivisions, to deny or refuse to provide access to any of the services, programs, benefits, facilities, or privileges of any health or welfare agency.

(b) **Exceptions.**

(1) Section 28-97 shall not apply to religious entities.

(2) Section 28-97 shall not apply to insurance risk classification.

**Section VIII.** That Section 28-97.5 of the Denver Revised Municipal Code is hereby amended by deleting the language stricken below, as follows:

**Sec. 28-97.5. – Reserved.**

**Section IX.** That Section 28-17(7) of the Denver Revised Municipal Code is hereby amended by adding the language underlined below, to read as follows:

“(7) To exercise powers provided to the agency under article IV and IX of this chapter.”

COMMITTEE APPROVAL DATE:

MAYOR-COUNCIL DATE:

PASSED BY THE COUNCIL: ______________________________, 2019

_____________________________ - PRESIDENT

APPROVED: ______________________________ - MAYOR ______________________________, 2019

ATTEST: ______________________________ - CLERK AND RECORDER,

EX-OFFICIO CLERK OF THE

CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: ____________, 2019; ____________, 2019

PREPARED BY: Victoria Ortega, Assistant City Attorney DATE: ______________________________, 2019

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

Kristin M. Bronson, Denver City Attorney

BY: ______________________________, Assistant City Attorney DATE: ______________________________, 2019