

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018

COUNCIL BILL NO. CB18-XXXX
COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A BILL

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

WHEREAS, [RECITALS TO BE INSERTED];

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

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

Sec. 28-91. - Intent of council.

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

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

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

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

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

3 *Agency:* The agency for human rights and community relations.

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

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

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

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

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

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

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

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

27 *Labor organization:* Any organization, agency, employee representation committee, group,
28 association or plan in which employees participate directly or indirectly and which exists for the

1 purpose, in whole or in part, of dealing with employers or any agent thereof concerning grievances,
2 labor disputes, wages, rates of pay, hours or other terms, conditions or privileges of employment
3 and any conference, general committee, joint or system board or joint council which is subordinate
4 to a national or international labor organization.

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

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

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

17 *Place of public accommodation:*

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

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

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

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

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

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

10 **Source of income: Any lawful, verifiable source of income or rental assistance paid to**
11 **or for the benefit of a renter including, but not limited to, money from any occupation or**
12 **activity; contract; agreement; loan; settlement; court-ordered payments such as child**
13 **support; payments received as gifts, bequests, annuities, or life insurance policies; federal,**
14 **state, or local payments, including disability benefits and Section 8; or any other rent subsidy**
15 **or rent assistance program and related program requirements.**

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

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

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

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

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

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

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

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

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

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

13 (5) To communicate, make, print or publish or cause to be communicated, made,
14 printed or published any notice, statement or advertisement with respect to a transaction or
15 proposed transaction in real property or financing related thereto, which notice, statement or
16 advertisement indicates or attempts to indicate any preference, limitation or discrimination
17 based on race, color, religion, national origin, gender, age, sexual orientation, gender
18 variance, marital status, **source of income**, military status, family status or physical or mental
19 disability of any individual;

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

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

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

27 (b) *Exceptions.*

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

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

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

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

10 **(5) The prohibition on source-of-income discrimination contained in this**
11 **section is effective on [proposed: three months from date of passage], 2018, applies**
12 **exclusively to transactions involving the rental of dwellings in the City and County of**
13 **Denver, and does not apply if the use of a particular type of assistance is prohibited by**
14 **federal, state, or city law or regulation or pre-existing program requirement.**

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

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

19 **This Section 28-115.5 applies only to matters involving source-of-income**
20 **discrimination in lieu of sections 28-107 through 28-114 above, which, are not available to**
21 **parties whose only complaint involves source of income discrimination . The hearing process**
22 **in this section is intended to be a simplified and scalable process to enhance the just, speedy,**
23 **and efficient determination of complaints.**

24 **(a) Any aggrieved person may file with the agency a complaint alleging a**
25 **violation of the provisions of this article. The complaint must state, to the extent**
26 **known, the name and address of the person or entity alleged to have committed the**
27 **violation, who shall be called the respondent, the address of the housing unit or**
28 **complex involved, the name and address of any other individuals involved, and the**

1 dates on which the alleged violation occurred or were discovered. The complaint must
2 state the substance of the alleged violation and other information as may be required
3 by the agency. Any complaint under this article must be filed within thirty (30) days of
4 the occurrence or discovery of the discriminatory practice.

5 (b) A complainant may voluntarily withdraw a complaint at any time before
6 the completion of the agency's investigation and findings as specified in section 28-
7 108. The circumstances surrounding the withdrawal may be fully investigated by the
8 agency.

9 (c) Upon receipt of the complaint, the agency shall give notice of the
10 complaint to the respondent and promptly investigate. Respondent has thirty (30) days
11 from the date of the notice to respond and to request an informal administrative
12 hearing, if desired.

13 (d) Upon receipt of the response or at the end of the response period, the
14 agency has sixty (60) days to investigate, conduct any requested hearing, and issue a
15 decision. If the agency or hearing officer finds that the respondent has engaged or is
16 engaging in source-of-income discrimination, they may order the respondent to
17 remediate such discrimination within thirty (30) days. The agency or hearing officer
18 may order actions deemed necessary to remedy the discrimination, including, but not
19 limited to, ordering the respondent to cease his or her discriminatory advertising,
20 behavior, or practices, or ordering the respondent to make the unit at issue or a similar
21 unit available to the person discriminated against. If the agency determines that the
22 respondent denied rental to the complainant on a discriminatory basis and the unit or
23 a comparable unit are unavailable to be rented as a remedy, or if the respondent fails
24 to otherwise comply with an order, the agency may impose a fine up to \$5,000 and may
25 order the respondent to pay actual, verifiable damages to the person who was
26 discriminated against. The agency's final decision is appealable to the district court.

27 (e) No person may file a civil action in county court or state district court
28 based on an alleged source of income discriminatory practice prohibited by this

1 **ordinance without first exhausting the proceedings and remedies available to that**
2 **person under this ordinance**

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

7
8 COMMITTEE APPROVAL DATE:

9 MAYOR-COUNCIL DATE:

10 INTRODUCED BY: Robin Kniech, Councilmember At-Large

11 PASSED BY THE COUNCIL: _____

12 _____ - PRESIDENT

13 APPROVED: _____ - MAYOR _____

14 ATTEST: _____ - CLERK AND RECORDER,
15 EX-OFFICIO CLERK OF THE
16 CITY AND COUNTY OF DENVER

17 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

18 PREPARED BY: _____ DATE: _____

19 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
20 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
21 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
22 § 3.2.6 of the Charter.

23
24 Kristin M. Bronson, Denver City Attorney

25
26 BY: _____, Assistant City Attorney DATE: _____