

1 **CITY OF SANTA FE, NEW MEXICO**

2 **ORDINANCE NO. 2024-5**

3 **INTRODUCED BY:**

4
5 Councilor Jamie Cassutt

6 Councilor Alma Castro

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9
10 **AN ORDINANCE**

11 **RELATING TO HOUSING DISCRIMINATION; DEFINING “SOURCE OF INCOME”**
12 **AND PROHIBITING DISCRIMINATION BASED ON SOURCE OF INCOME**
13 **EFFECTIVE AUGUST 1, 2025; INCLUDING “SEX” IN ADDITION TO “GENDER” AS A**
14 **PROTECTED CLASS; DEFINING “OWNER”; AND MAKING TECHNICAL**
15 **CORRECTIONS.**

16
17 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

18 **Section 1. Amending Section 26-4.2 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

19 **to read:**

20 **26-4.2 – Purpose.**

21 The purpose of this section is to protect the health, safety and general welfare of all the
22 inhabitants of the city by promoting and enforcing housing access through prohibiting
23 discrimination in housing based upon race, color, sex, religion, gender, sexual orientation,
24 national origin, familial status, disability, or source of income.

25 **Section 2. Amending Section 26-4.3 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

1 **to read:**

2 **26-4.3 - Definitions.**

3 As used in this section

4 A. *Disability* (does not include the current illegal use of, or addiction to, a controlled
5 substance as defined in Section 102 of the Federal Controlled Substance Act) means
6 one or more of the following:

- 7 (1) A physical or mental impairment that substantially limits one (1) or more
8 of the major life activities of such individual;
9 (2) A record of such an impairment; or
10 (3) Being regarded as having such impairment.

11 B. *Dwelling* means one of the following:

12 (1) Any building, structure, or part of a building or structure that is occupied as, or
13 designed or intended for occupancy as, a residence by one (1) or more families; or

14 (2) Any vacant land that is offered for sale or lease for the construction or location
15 of a building, structure or part of a building or structure as described in subsection 1 above.

16 C. *Familial status* means the status resulting from one (1) or more persons who are
17 under the age of eighteen (18) years being domiciled with an individual who is one or
18 more of the following:

- 19 (1) The parent of the persons under age eighteen (18)
20 (2) The legal guardian of the persons under age eighteen (18);
21 (3) The designee (with written authorization) of the parent or legal guardian
22 or custodian of the persons under age eighteen (18);
23 (4) The status resulting from being pregnant; or
24 (5) The status resulting from being in the process of securing legal custody of
25 any person who is under the age of eighteen (18).

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- D. *Family* means one of the following:
 - (1) An individual;
 - (2) Two (2) or more persons related by blood, marriage, legal guardianship or adoption, plus resident domestic assistants; or
 - (3) Any group of not more than five (5) persons living together in a dwelling unit.

- E. *Housing for older persons* means housing that falls into one of the following categories:
 - (1) Specifically designed and operated to assist elderly persons under a federal or state program;
 - (2) Intended for, and solely occupied by persons sixty-two (62) years of age or older; or
 - (3) Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older in at least eighty percent (80%) of the occupied units and adheres to a policy that demonstrates an intent to house persons who are fifty-five (55) years or older.

- F. *Owner* means one (1) or more persons, jointly or severally, in whom is vested one or both of the following:
 - (1) all or part of the legal title to a property, other than a person who is limited partner in an association regulated under the Uniform Limited Partnership Act;
or
 - (2) all or part of the beneficial ownership and a right to present use and enjoyment of a premises and agents thereof and includes a mortgagee in possession and the lessors, but shall not include a person or persons, jointly or severally, who as owner leases the entire premises to a lessee of vacant land for apartment

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use.

G. *Person* means one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

H. *Source of income* means any lawful and verifiable source of money, paid directly to or on behalf of a renter or buyer of housing, including, but not limited to, the following sources or any combination of the following sources:

- (1) Income from a lawful profession, occupation, or job;
- (2) Income derived from social security or any form of federal, state, or local public 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 governmental 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 requires additional federal, state, or local compliance, including, but not limited to, inspections or contracting with the agency administering the assistance program; or
- (3) A pension, annuity, distribution payment, alimony, child support, foster care subsidies, or any other lawful, and verifiable monetary consideration or benefit.

I. *To rent* includes to lease, sublease, to let, or to otherwise grant for a consideration of the right to occupy premises not owned by the occupant.

**Section 3. Amending Section 26-4.4 of SFCC 1987 (being Ordinance No. 2008-1, § 28) to read:
26-4.4 - Certain sales and rental exemptions.**

1 A. Pursuant to paragraph B below, subsections 26-4.8 through 26-4.14 SFCC 1987 do
2 not apply to the following:

3 (1) The sale or rental of a single-family house sold or rented by an owner if the
4 following sales or rental circumstances are met:

5 (a) The owner does not meet the following ownership circumstances:

6 (i) Own more than three (3) single-family houses at any one (1)
7 time; or

8 (ii) Own any interest in, nor is there owned or reserved on the
9 owner's behalf, under any express or voluntary agreement,
10 title or any right to any part of the proceeds from the sale or
11 rental of more than three (3) single-family houses at any one
12 (1) time; and

13 (b) The house was sold or rented without the following sales or rental
14 circumstances:

15 (i) The use of the sales or rental facilities or services of a real
16 estate broker, agent, or salesperson licensed under the Real
17 Estate License Act or an employee or agent of a licensed
18 broker, agent, or salesperson, or the facilities or services of
19 the owner of a dwelling designed or intended for occupancy
20 by five (5) or more families; or

21 (ii) The publication, posting, or mailing of a notice, statement or
22 advertisement prohibited by subsection 26-4.9 SFCC 1987; or

23 (2) The sale or rental of rooms or units in a dwelling containing living quarters
24 occupied, or intended to be occupied, by no more than four (4) families living
25 independently of each other if the owner maintains and occupies one (1) of the

1 living quarters as the owner's residence.

2 B. The exemption in paragraph A of this section applies only to one (1) sale or rental over
3 a twenty-four-month period if the owner did not reside in the house at the time of sale
4 or rental or was not the most recent resident of the house prior to the sale or rental.

5 C. Nothing in this Ordinance shall bar a landlord from renting to a different prospective
6 tenant if the agency providing housing support fails to complete a required initial
7 inspection within five (5) business days after notification that a prospective tenant has
8 selected a unit; or, if re-inspection is required, fails to complete the re-inspection within
9 five (5) business days of receiving notification that repairs have been completed,
10 provided the landlord makes a good faith effort to schedule the inspections within the
11 agency.

12 **Section 4. Sections 26-4.5 and 26-4.6 of SFCC 1987 (being Ordinance No. 2008-1 § 28)**
13 **are included for context without proposed amendments:**

14 **26-4.5 - Religious organization and private club exemption.**

15 A. This section does not prohibit a religious organization, association, or society, or a
16 nonprofit institution or organization operated, supervised, or controlled by, or in
17 conjunction with, a religious organization, association, or society, from the following:

18 (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates
19 for other than a commercial purpose to persons of the same religion unless
20 membership in the religion is restricted because of race, color or national
21 origin; or

22 (2) Giving preference for such dwellings to persons of the same religion.

23 B. This section does not prohibit a private club not in fact open to the public that, as an
24 incident to its primary purpose, provides lodging that it owns or operates for other than
25 a commercial purpose from limiting the rental or occupancy of that lodging to its

1 members or from giving preference to its members.

2 **26-4.6 - Housing for the elderly exempted.**

3 The provisions of this section relating to familial status do not apply to "housing for older persons"
4 as defined.

5 **Section 5. Amending Section 26-4.7 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

6 **to read:**

7 **26-4.7 - Appraisal exemption.**

8 This section does not prohibit a person engaged in the business of furnishing appraisals of
9 residential real property from taking into consideration factors other than race, color, religion, sex,
10 gender, sexual orientation, disability, familial status, national origin, or source of income.

11 **Section 6. Amending Section 26-4.8 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

12 **to read:**

13 **26-4.8 - Discrimination in sales or rental of housing.**

- 14 A. A person may not refuse to sell or rent a dwelling to a person who has made a bona fide
15 offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make
16 unavailable or deny a dwelling to any person because of race, color, religion, sex,
17 gender, sexual orientation, familial status, national origin, or source of income.
- 18 B. A person may not discriminate against any person in the terms, conditions, or privileges
19 of sale or rental of a dwelling or providing services or facilities in connection with the
20 sale or rental because of race, color, religion, sex, gender, sexual orientation, familial
21 status, national origin, or source of income.
- 22 C. A person shall only assess a prospective tenant's or buyer's income in relation to the
23 payment for which the tenant or buyer is personally responsible and not in relation to
24 the portion of the payment that a housing assistance program, or other entity, will pay.
- 25 D. This section does not prohibit discrimination against a person because the person has

1 been convicted under federal law or the law of any state of the illegal manufacture or
2 distribution of a controlled substance as defined in Section 102 of the Federal Controlled
3 Substance Act.

4 **Section 7. Amending Section 26-4.9 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

5 **to read:**

6 **26-4.9 - Publication indicating discrimination.**

7 A person may not make, print, or publish or cause to be made, printed, or published any notice,
8 statement, or advertisement with respect to the sale or rental of a dwelling that indicates any
9 preference, limitation, or discrimination based on race, color, religion, sex, gender, sexual
10 orientation, disability, familial status, national origin, or source of income or an intention to make
11 such a preference, limitation, or discrimination.

12 **Section 8. Amending Section 26-4.10 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

13 **to read as follows:**

14 **26-4.10 - Availability for inspection.**

15 A person may not represent to any person because of race, color, religion, sex, gender, sexual
16 orientation, disability, familial status, national origin, or source of income that a dwelling is not
17 available for inspection, sale, or rental when the dwelling is available.

18 **Section 9. Amending Section 26-4.11 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

19 **to read as follows:**

20 **26-4.11 - Entry into neighborhood.**

21 A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by
22 representations regarding the entry or prospective entry into a neighborhood of a person of a
23 particular race, color, religion, sex, gender, sexual orientation, familial status, national origin,
24 disability, or source of income.

25 **Section 10. Section 26-4.12 of SFCC 1987 (being Ordinance No. 2008-1, § 28) is**

1 **included for context, without amendments:**

2 **26-4.12 - Disability.**

3 A. A person may not discriminate in the sale or rental or otherwise make unavailable or deny
4 a dwelling to a buyer or renter because of a disability of:

5 (1) A buyer or renter;

6 (2) A person residing in, or intending to reside in, that dwelling after it is sold, rented,
7 or made available; or

8 (3) Any person associated with a buyer or renter.

9 B. A person may not discriminate against any person in the terms, conditions, or privileges of
10 sale or rental of a dwelling or in the provision of services or facilities in connection with
11 the dwelling because of a disability of:

12 (1) A buyer or renter;

13 (2) A person residing in, or intending to reside in, that dwelling after it is sold, rented,
14 or made available; or

15 (3) Any person associated with that person.

16 C. For purposes of this section only, discrimination includes the following:

17 (1) Refusing to permit, at the expense of the person with the disability, reasonable
18 modifications of existing premises occupied or to be occupied by the person if the
19 modifications may be necessary to afford the person full enjoyment of the premises
20 of a dwelling, provided that, in the case of a rental, a landlord may:

21 (a) Reasonably condition permission for modifications upon the renter's
22 agreement to restore the interior of the premises to its premodification
23 condition, reasonable wear and tear excepted, and

24 (b) Reasonably condition such permission on the renter providing a
25 reasonable description of the proposed modifications and reasonable

1 assurances that all work will be done in a workpersonlike manner and
2 that all required permits will be obtained.

3 (2) Increasing for persons with a disability any customarily required security deposit
4 except that to ensure available funds for restorations, if any, a landlord may
5 negotiate an agreement that the renter deposit into an interest-bearing escrow
6 account, over a reasonable period, a reasonable amount not to exceed the cost of
7 restorations where it is necessary in order to ensure with reasonable certainty that
8 funds will be available to pay for the restoration. All interest shall accrue to the
9 renter's benefit.

10 (3) Refusing to make reasonable accommodations in rules, policies, practices, or
11 services, when the accommodations may be necessary to afford a person with a
12 disability equal opportunity to use and enjoy a dwelling, including public and
13 common use areas.

14 (4) Failing to design or construct covered multi-family dwellings for first occupancy
15 after March 13, 1991, in a manner that:

16 (a) The public use and common use portions of the dwellings are readily
17 accessible to, and usable by, persons with a disability;

18 (b) All the doors designed to allow passage into and within all premises
19 within the dwellings are sufficiently wide to allow passage by persons
20 in wheelchairs; and

21 (c) All premises within the dwellings contain the following features of
22 adaptive design:

23 (i) An accessible route into and through the dwelling;

24 (ii) Light switches, electrical outlets, thermostats, and other
25 environmental controls in accessible locations;

1 (iii) Reinforcements in bathroom walls to allow later installations of grab
2 bars; and

3 (iv) Usable kitchens and bathrooms so that an individual in a wheelchair
4 can maneuver about the space; or

5 (5) Making any inquiry to determine whether an applicant for a dwelling, a person
6 intending to reside in that dwelling or any person associated with that person, has
7 a disability or to determine the nature or severity of any disability, except that the
8 following inquiries may be made if these inquiries are made of all applicants,
9 regardless of disability:

10 (a) Inquiry into an applicant's ability to meet the requirements of
11 ownership or tenancy;

12 (b) Inquiry to determine whether an applicant is qualified for a
13 dwelling available only to persons with disabilities or to persons
14 with a particular type of disability;

15 (c) Inquiry to determine whether an applicant for a dwelling is
16 qualified for a priority available to persons with disabilities or to
17 persons with a particular type of disability;

18 (d) Inquiring whether an applicant for a dwelling is a current illegal
19 user or addict of a controlled substance;

20 (e) Inquiring whether an applicant has been convicted of the illegal
21 manufacture or distribution of a controlled substance.

22 D. Compliance with the appropriate requirements of the American National Standard for
23 buildings and facilities providing accessibility and usability for person with physical
24 disabilities, commonly cited as "ANSI A 117.1," suffices to satisfy the requirements of
25 paragraph C(4)(c) above.

1 E. As used in this section, the term "covered multi-family dwellings" means:

2 (1) Buildings consisting of four (4) or more units if the buildings have one (1) or more
3 elevators; and

4 (2) Ground-floor units in other buildings consisting of four (4) or more units.

5 F. Nothing in this section requires that a dwelling be made available to an individual whose
6 tenancy would constitute a direct threat to the health or safety of other individuals or whose
7 tenancy would result in substantial physical damage to the property of others.

8 **Section 11. Amending Section 26-4.13 of SFCC 1987 (being Ord. No. 2008-1, § 28)**

9 **to read as follows:**

10 **26-4.13 - Residential real estate-related transactions.**

11 A. A person whose business includes engaging in residential real estate-related transactions
12 may not discriminate against a person in making a real estate-related transaction available
13 or in the terms or conditions of a real estate-related transaction because of race, color,
14 religion, sex, gender, sexual orientation, disability, familial status, national origin, or
15 source of income.

16 B. In this section, "residential real estate-related transaction" means the following:

17 (1) Making or purchasing loans or providing other financial assistance:

18 (a) To purchase, construct, improve, repair, or maintain a dwelling; or

19 (b) Secured by residential real estate; or

20 (2) Selling, brokering, or appraising residential real property.

21 **Section 12. Amending Section 26-4.14 of SFCC 1987 (being Ordinance No. 2008-**
22 **1, § 28) to read as follows:**

23 **26-4.14 - Restrictive covenants.**

24 A. Any restrictive covenant restricting occupancy or ownership of property on the basis of
25 race, color, religion, sex, national origin, gender, sexual orientation, familial status,

1 disability, or source of income, whether included in an instrument affecting the title to real
2 or leasehold property, is declared to be null, void and of no effect, and contrary to the public
3 policy.

4 B. Any person who is asked to accept a document affecting title to real or leasehold property
5 may decline to accept the same if it includes such a covenant until the covenant has been
6 removed from the document. Refusal to accept delivery of an instrument for this reason
7 shall not be deemed a breach of contract to purchase, lease, mortgage or otherwise deal
8 with such property.

9 **Section 13. Amending Section 26-4.15 of SFCC 1987 (being Ord. 2008-1, § 28) to**
10 **read as follows:**

11 **26-4.15 - Brokerage service.**

12 A person may not deny any person access to, or membership or participation in, a multiple-listing
13 service, real estate brokers' organizations or other service, organization, or facility relating to the
14 business of selling or renting dwellings, or discriminate against a person in the terms of conditions
15 of access, membership, or participation in such an organization, service, or facility because of race,
16 color, religion, sex, gender, sexual orientation, disability, familial status, national origin, or source
17 of income.

18 **Section 14. Amending Section 26-4.16 of SFCC 1987 (being Ord. 2008-1, § 28) to**
19 **read as follows:**

20 **26-4.16 – Administration.**

21 A. The department as designated by the city manager, or its delegate, shall be responsible for
22 the administration of this section. The city's designated administrator shall conduct the
23 following activities:

- 24 (1) Provide a copy of the complaint to the city attorney;
- 25 (2) With regards to complaints of discrimination that may also violate the

1 federal Fair Housing Act, advise the person filing a complaint to
2 simultaneously file a housing discrimination complaint with the U.S.
3 department of housing and urban development and provide information
4 regarding how to file the complaint;

- 5 (3) Investigate complaints of violations of this section;
6 (4) Notify the person against whom the complaint is made and identify the
7 aggrieved person who filed the complaint;
8 (5) Dismiss the complaint if, after investigation, the designated administrator
9 cannot verify the complaint; and
10 (6) Endeavor to eliminate the alleged discriminatory practice by conference and
11 conciliation if, after investigation, the designated administrator finds that
12 there is merit in the complaint.

13 B. The city may adopt administrative procedures to follow in the administration of this
14 section.

15 **Section 15. Amending Section 26-4.17 of SFCC 1987 (being Ord. 2008-1, § 28) to**
16 **read:**

17 **26-4.17- Enforcement.**

18 A. If conference and conciliation do not eliminate alleged discriminatory practice, the city
19 shall refer the complaint to the secretary of the U.S. Department of Housing and Urban
20 Development, to the extent the discrimination is an alleged discriminatory housing practice
21 under the Federal Fair Housing Act.

22 B. The city may file a complaint in municipal court if conference and conciliation do not
23 eliminate the alleged discriminatory practice, seeking penalties for noncompliance with
24 this section. Persons found in noncompliance with this section are subject to fines and
25 imprisonment as set forth in Section 1-3 SFCC 1987.

1 C. The city may also pursue other enforcement remedies as may be authorized by law.

2 **Section 16. Amending Section 26-4.18 of SFCC 1987 (being Ord. 2008-1, § 28) to**
3 **read as follows:**

4 **26-4.18 –Effect.**

5 Nothing contained in this section shall be deemed to repeal any other ordinance of the city relating
6 to discrimination because of race, color, religion, sex, national origin, gender, sexual orientation,
7 familial status, disability, or source of income; but all such ordinances and portions thereof in
8 conflict herewith are repealed to the extent of such conflict.

9 **Section 17. Creating Section 26-4.19 of SFCC 1987 (regarding Separability and**
10 **being Ord. 2008-1, § 28) to read as follows:**

11 **26-4.19 – Separability.**

12 The provisions of this section are separable and the invalidity of any part of this section shall not
13 affect the validity of the rest of the section.

14 **Section 18. [NEW MATERIAL] Creating Section 26-4.20 of SFCC 1987 to read**
15 **as follows:**

16 **26-4.20 – Effective Date.**

17 The source of income discrimination prohibitions in this Ordinance are effective August 1, 2025.

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19 PASSED, APPROVED, and ADOPTED this 31st day of August, 2024.

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Alan Webber (Aug 5, 2024 20:06 EDT)

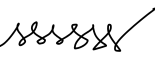
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ALAN WEBBER, MAYOR

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1 ATTEST:

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4 GERALYN F. CARDENAS, INTERIM CITY CLERK

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6 APPROVED AS TO FORM:

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8 Erin McSherry (Aug 5, 2024 17:46 MDT)

9 ERIN K. McSHERRY, CITY ATTORNEY

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24 *Bill No. 2024-3*

25 *Legislation/2024/Ordinaces/2024-5(O)/Amending Santa Fe Fair Housing Ordinance*