

ORDINANCE NO 2020-29

**TO AMEND CHAPTER 511 OF THE CODIFIED ORDINANCES
TO PROHIBIT DISCRIMINATION ON THE BASIS OF SOURCE OF INCOME
IN RENTAL AND LEASING OF HOUSING ACCOMMODATIONS**

WHEREAS, In November 2019, the City adopted Chapter 511 “Unlawful Discrimination,” to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression,; and

WHEREAS, Section 511.03 of the Codified Ordinances prohibits unlawful discriminatory housing practices; and

WHEREAS, prospective tenants with sources of income including veterans’ benefits, housing vouchers, Social Security payments, investment income, and other similar sources, may face discrimination obtaining housing accommodations; and

WHEREAS, the City desires to amend Chapter 511 to prohibit discrimination on the basis of source of income in the renting and leasing of housing accommodations.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTERVILLE, OHIO:

Section 1. That Section 511.01 “Definitions” of the Codified Ordinances be and hereby is amended to read as follows:

“511.01 DEFINITIONS.

As used in this chapter:

- (a) "Age" means at least forty years old, except as otherwise provided in this chapter.
- (b) "Aggrieved individual" means an individual who claims to have been injured by an unlawful discriminatory act or practice described in this chapter.
- (c) "Burial lot" means any lot for the burial of deceased individuals within any public burial ground or cemetery, including, but not limited to, cemeteries owned and operated by companies or associations incorporated for cemetery purposes.
- (d) "Commission" means the Columbus Community Relations Commission and its agents and subcontractors or such comparable agency as Council may approve.
- (e) "Common use areas" means rooms, spaces, or elements inside or outside a building that are made available for the use of residents of the building or their guests, and

includes, but is not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas, and passageways among and between buildings.

(f) "Complainant" means an aggrieved individual who, pursuant to the provisions of this chapter, files with the Clerk of Council a written complaint alleging an unlawful discriminatory act or practice.

(g) "Controlled substance" has the same meaning as in R.C. § 3719.01.

(h) "Covered multifamily dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.

(i) "Disability" or "disabled" with respect to an individual means a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment. "Disability" does not include any physiological disorder or condition, mental or psychological disorder, or disease or condition caused by an illegal use of any controlled substance by an employee, applicant, or other individual, if an employer, employment agency, personnel placement service, labor organization, or joint labor-management committee acts on the basis of that illegal use.

(j) "Disabled tenant" means a tenant or prospective tenant who is an individual with a disability.

(k) "Discriminate" means to differentiate and treat differently, including to segregate or separate.

(l) "Discriminatory restrictive covenant" means any specification in a deed, land contract, or lease limiting the transfer, rental, lease, or other use of any housing accommodations because of race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression, as a condition of affiliation or approval.

(m) "Dwelling unit" means a single unit of residence for a family of one or more individuals.

(n) "Employee" means an individual employed by any employer but does not include any individual employed in the domestic service of any person.

(o) "Employer" includes any person who regularly employs for compensation four or more individuals, excluding the employer's parents, spouse, and children, including any person acting directly or indirectly in the interest of an employer, provided "employer" does not include a public school system, or an agency of government other than the City.

(p) "Employment agency" includes any person regularly undertaking, with or without compensation, to procure opportunities for employment or to procure, recruit, refer, or place employees.

(q) "Familial status" means having either of the following family characteristics, where "family" also includes an individual:

(1) One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian;

(2) Any individual who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.

(r) "Gender expression" means external manifestations of gender, expressed through one's behavior or appearance, that may or may not be those traditionally associated with the individual's assigned sex at birth.

(s) "Gender identity" means an individual's sense of having, or being perceived as having, a gender that may or may not be traditionally associated with the individual's assigned sex at birth.

(t) "Hearing Officer" means a neutral independent contractor, hired by the City, who conducts an administrative hearing based on a complaint filed pursuant to the provisions of this chapter.

(u) "Housing accommodations" includes any building or structure, or portion of a building or structure, that is used or occupied or is intended, arranged, or designed to be used or occupied as the home residence, dwelling, dwelling unit, or sleeping place of one or more individuals, groups, or families whether or not living independently of each other; and any vacant land offered for sale or lease. "Housing accommodations" also includes any housing accommodations held or offered for sale or rent by a real estate broker, salesperson, or agent, by any other person pursuant to authorization of the owner, by the owner, or by the owner's legal representative. "Housing accommodations" does not include any housing accommodations owned or operated by a religious organization when they are owned or operated for other than a commercial purpose and offered to individuals of the same religion.

(v) "Labor organization" includes any organization that exists, in whole or in part, for the purpose of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in relation to employment.

(w) "Law Director" means the individual appointed by Council, pursuant to Article V Section 2 of the Westerville Charter, as "Director of Law" or the designee of such individual.

(x) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of individuals. "Person" also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesperson, appraiser, agent, employee, or lending institution.

(y) "Physical or mental impairment."

(1) "Physical or mental impairment" means any of the following except as provided in division (y) (2) of this section:

A. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine;

B. Any mental or psychological disorder, including, but not limited to, intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

C. Diseases, blood disorders and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction, and alcoholism.

(2) "Physical or mental impairment" does not mean any of the following:

A. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders;

B. Compulsive gambling, kleptomania, or pyromania;

C. Psychoactive substance use disorders resulting from the current illegal use of a controlled substance.

(z) "Place of public accommodation" means any inn, restaurant, eating house, hotel, motel, bank or other financial services institution, barbershop, public conveyance by air, land, or water, theater, store, other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodations, advantages, facilities, or privileges are available to the public, provided it shall not apply to accommodations of a public education system, or an agency of government other than the City.

(aa) "Protected class" means a classification of individuals based on one or more of the following characteristics: race, color, religion, sex, national origin, age, familial status, disability, pregnancy, sexual orientation, gender identity, or gender expression.

(bb) "Public use areas" means interior or exterior rooms or spaces of a privately owned building that are made available to the general public.

(cc) "Religious organization" means a not for profit church or integrated auxiliary of a church, as those terms are used by the United States Internal Revenue Service and includes any school that incorporates substantial religious teachings or religious practices of that church in that school. Religious organization does not include any hospital or medical facility that offers medical services to the general public.

(dd) "Respondent" means the person who is alleged to have committed or is alleged to be committing unlawful discriminatory act(s) or practices and who is identified in a written complaint filed by a complainant.

(ee) "Senior citizen" means an individual at least sixty years old.

(ff) "Service animal" means a dog individually trained to do work or perform tasks for the benefit of an individual with a disability and includes an "assistance dog" as provided in R.C. § 955.011. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

(gg) "Sex" means the biological sex of either male or female assigned at the birth of each individual.

(hh) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

(ii) **"Source of Income" means a lawful financial resource or form of assistance which the recipient appropriately discloses, and which can be verified and substantiated as derived from wages, investments, trusts, child support, spousal support, grant or loan program, and all forms of federal, state, or local assistance payments, benefits, or subsidy programs including but not limited to vouchers for rent or housing, foster child assistance, public assistance, emergency rental assistance, veterans benefits, social security, supplemental security income or other retirement programs, or programs administered by any federal, state, or local government, or a nonprofit entity.**

(jj) "Unlawful discriminatory practice" means any act or practice prohibited by this chapter.

Section 2. That Section 511.03 "Unlawful Discriminatory Housing Practices" of the Codified Ordinances be and hereby is amended to read as follows:

"511.03 UNLAWFUL DISCRIMINATORY HOUSING PRACTICES.

(a) Subject to the limitations, exceptions, and qualifications provided in R.C. § 4112.024, it shall be an unlawful discriminatory housing practice for any person to do any of the following:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of an individual being in a protected class;

(2) Represent to any individual that housing accommodations are not available for inspection, sale, or rental, when in fact they are available, and the representation of unavailability is based on the individual seeking such housing accommodations being in a protected class;

(3) Discriminate against any individual in the making or purchasing of loans or the provision of other financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations, or any individual in the making or purchasing of loans or the provision of other financial assistance that is secured by residential real estate, because of that individual being in a protected class, or because the neighborhood in which the housing accommodations are located is composed of one or more protected classes, provided that the person, whether an individual, corporation, or association of any type, lends money as one of the principal aspects or incident to the person's principal business and not only as a part of the purchase price of an owner-occupied residence the person is selling nor merely casually or occasionally to a relative or friend;

(4) Discriminate against any individual in the terms or conditions of selling, transferring, assigning, renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations, including the sale of fire, extended coverage, or homeowners insurance, because the individual is in a protected class, or because of the composition, in terms of protected class, of the neighborhood in which the housing accommodations are located;

(5) Discriminate against any individual in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations because of the individual being in a protected class, or because of the composition, in terms of protected class, of the neighborhood in which the housing accommodations are located;

(6) Refuse to consider without prejudice the combined income of both lawfully-married spouses for the purpose of extending mortgage credit to a married couple or either member of a married couple

(7) Except as otherwise provided in this section, make any inquiry, elicit any information, or use any form of application containing questions or entries concerning an individual's protected class status in connection with the sale or lease of any housing accommodations or the loan of any money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of housing accommodations. Any person may make inquiries, and make and keep records, concerning an individual's protected class status for the purpose of monitoring compliance with this chapter.

(8) Include in any deed, land contract, transfer, rental, or lease of housing accommodations any discriminatory restrictive covenant, or honor or exercise, or attempt to honor or exercise, any discriminatory restrictive covenant;

(9) Induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that a change has occurred or may occur with respect to the protected class composition of the block, neighborhood, or other area in which the housing accommodations are located, or

induce or solicit, or attempt to induce or solicit, a housing accommodations listing, sale, or transaction by representing that the presence or anticipated presence of individuals of any protected class in the block, neighborhood, or other area will or may have results including, but not limited to, the following:

- A. The lowering of property values;
- B. A change in the composition, in terms of a protected class, of the block, neighborhood, or other area;
- C. An increase in criminal or antisocial behavior in the block, neighborhood, or other area;
- D. A decline in the quality of the schools serving the block, neighborhood, or other area.

(10) Discourage or attempt to discourage the purchase by a prospective purchaser of housing accommodations, by representing that any block, neighborhood, or other area has undergone or might undergo a change in composition with respect to a protected class;

(11) Deny any individual access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting housing accommodations, or discriminate against any individual in the terms or conditions of that access, membership, or participation, because of the individual being in a protected class;

(12) Discriminate in any manner against any individual because that individual has opposed any unlawful practice defined in this chapter, or because that individual has made a charge, testified, assisted, or participated in any manner, in any investigation, proceeding, or hearing under the provisions of this chapter;

(13) Refuse to sell, transfer, assign, rent, lease, sublease, or finance, or otherwise deny or withhold, a burial lot from any individual because of that individual being in a protected class, or because of any prospective owner or user of the lot being in a protected class;

(14) Discriminate in the sale or rental of, or otherwise make unavailable or deny, housing accommodations to any buyer or renter because of the protected class status of any of the following:

- A. The buyer or renter;
- B. An individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;
- C. Any individual associated with the individual described in this section.

(15) Discriminate in the terms, conditions, or privileges of the sale or rental of housing accommodations to any individual or in the provision of services or

facilities to any individual in connection with the housing accommodations because of the protected class status of any of the following:

- A. That individual;
- B. An individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available;
- C. Any individual associated with the individual described in division (a)(15)A. or (a)(15)B. of this section.

(16) Except as otherwise provided in this section, make an inquiry of an applicant to determine the protected class status of the applicant for the sale or rental of housing accommodations, an individual residing in or intending to reside in the housing accommodations after they are sold, rented, or made available, or any individual associated with such individuals. The following inquiries may be made of all applicants for the sale or rental of housing accommodations, regardless of the applicant's protected class:

- A. An inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
- B. An inquiry to determine whether an applicant is qualified for housing accommodations available only to individuals with disabilities or individuals with a particular type of disability;
- C. An inquiry to determine whether an applicant is qualified for a priority available to individuals with disabilities or individuals with a particular type of disability;
- D. An inquiry to determine whether an applicant currently uses a controlled substance in violation of R.C. § 2925.11 or a substantively comparable municipal ordinance;
- E. An inquiry to determine whether an applicant at any time has been convicted of or pleaded guilty to any offense, an element of which is the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.

(17) Refuse to permit, at the expense of an individual with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the individual with a disability, if the modifications may be necessary to afford the individual with a disability full enjoyment of the housing accommodations. This division does not preclude a landlord of housing accommodations that are rented or to be rented to a disabled tenant from conditioning permission for a proposed modification upon the disabled tenant's doing one or more of the following:

- A. Providing a reasonable description of the proposed modification and reasonable assurances that the proposed modification will be made in a

workerlike manner and that any required building permits will be obtained prior to the commencement of the proposed modification;

B. Agreeing to restore at the end of the tenancy the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if it is reasonable for the landlord to condition permission for the proposed modification upon the agreement;

C. Paying into an interest-bearing escrow account that is in the landlord's name, over a reasonable period of time, a reasonable amount of money not to exceed the projected costs at the end of the tenancy of the restoration of the interior of the housing accommodations to the condition they were in prior to the proposed modification, but subject to reasonable wear and tear during the period of occupancy, if the landlord finds the account reasonably necessary to ensure the availability of funds for the restoration work. The interest earned in connection with an escrow account described in this division shall accrue to the benefit of the disabled tenant who makes payments into the account.

(18) Condition permission for a proposed modification of a dwelling unit upon a disabled tenant's payment of a security deposit that exceeds the customarily required security deposit of all tenants of the particular housing accommodations.

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;

(20) Fail to comply with the standards and rules adopted under division (A) of R.C. § 3781.111;

(21) Discriminate against any individual in the selling, brokering, or appraising of real property because of the individual being in a protected class;

(22) Fail to design and construct covered multifamily dwellings for first occupancy in accordance with the following conditions:

A. The dwellings shall have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.

B. With respect to dwellings that have a building entrance on an accessible route, all of the following apply:

1. The public use areas and common use areas of the dwellings shall be readily accessible to and usable by an individual with a disability.

2. All the doors designed to allow passage into and within all premises shall be sufficiently wide to allow passage by an individual with a disability who is in a wheelchair.

3. All premises within covered multifamily dwelling units shall contain an accessible route into and through the dwelling; all light switches, electrical outlets, thermostats, and other environmental controls within such units shall be in accessible locations; the bathroom walls within such units shall contain reinforcements to allow later installation of grab bars; and the kitchens and bathrooms within such units shall be designed and constructed in a manner that enables an individual in a wheelchair to maneuver about such rooms.

(23) Refuse to rent or lease a housing accommodation, or serve a notice of termination of tenancy, commence a forcible entry and detainer action on grounds not authorized by Ohio law, or otherwise deny to or withhold from any person or persons, the rental or leasing of a housing accommodation on the basis of an income amount that fails to include any Source of Income, as such is defined in this Chapter.

(24) Refuse to rent or lease a housing accommodation, or serve a notice of termination of tenancy, commence a forcible entry and detainer action on grounds not authorized by Ohio law, or otherwise deny to or withhold from any person or persons, the rental or leasing of a housing accommodation on the basis of the landlord's ~~expected or actual~~ increased in administrative obligations or additional expenses incurred by the landlord due to the tenant's Source of Income, ~~where such increased obligations or expenses including include~~ but are not limited to inspection requirements of, or necessity to verify, participate in, or receive payment from, programs administered by any federal, state, or local government, or a nonprofit entity. Notwithstanding this prohibition, a landlord may require a tenant or prospective tenant to do the following at the tenant's expense ~~or from some other lawful Source of Income:~~

A. Complete background screening inquiries or lawful criteria established prior to tenant's application and requested of all prospective tenants

B. ~~Pass a Review~~ review and verification of tenant's prior rental history, criminal background, credit report, and utility payment history.

C. Pay a security deposit.

D. Pay the market rental rate for a housing accommodation.

(25) Rent or lease a housing accommodation upon different terms or conditions to a tenant on the basis of the tenant's Source of Income, including but not limited to charging an additional or increased amount of security deposit, increased rental rate or fees, or limiting, restricting, or prohibiting a tenant's privileges, access to or use of common facilities or areas in a manner that is not otherwise applicable to all tenants. Nothing herein prevents a landlord from charging a different security deposit, rental rate, or fee if that difference is directly ~~and proportionally~~ related to ~~physical differences in the~~ housing accommodations or the prospective tenant's proposed use ~~and occupancy~~ thereof.

(26) Represent to any person, on the basis of an income amount that fails to include any Source of Income, as such is defined in this Chapter, that a housing accommodation is not available for inspection or rental, when such housing accommodation is in fact available for inspection or rental.

(27)(24) For any person to discriminate in any manner against any individual because that individual has opposed any unlawful discriminatory practice defined in this section or because that individual has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under this chapter or R.C. §§ 4112.01 to 4112.07.

(28)(25) For any person to knowingly aid or abet the doing of any act declared by this section to be an unlawful discriminatory practice, to knowingly obstruct or prevent any person from complying with this chapter or any order issued under it, or to knowingly attempt directly or indirectly to commit any act declared by this section to be an unlawful discriminatory practice.

(b) Nothing in this chapter shall bar any bona fide private or fraternal organization that, incidental to its primary purpose, owns or operates lodgings for other than a commercial purpose, from limiting the rental or occupancy of the lodgings to its members or from giving preference to its members.

(c) Nothing in this chapter limits the applicability of any reasonable local, state, or Federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(d) Nothing in this chapter prohibits the owners or managers of housing accommodations from implementing reasonable occupancy standards based on the number and size of sleeping areas or bedrooms and the overall size of a dwelling unit, provided that the standards are not implemented to circumvent the purposes of this chapter and are formulated, implemented, and interpreted in a manner consistent with this chapter and any applicable local, state, or Federal restrictions regarding the maximum number of occupants permitted to occupy housing accommodations.

(e) Nothing in this chapter requires that housing accommodations be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(f) Nothing in this chapter pertaining to unlawful discriminatory housing practice shall be construed to apply to "housing for older persons" as defined and provided in section 42 U.S.C. 3607 (b)(2), as amended.

(g) Nothing in this chapter shall be construed to require any person selling or renting property to modify the property in any way or to exercise a higher degree of care for an individual with a disability, to relieve any individual with a disability of any obligation generally imposed on all individuals regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to

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fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract.

(h) Whoever violates this section is guilty of unlawful discrimination in housing accommodations.

Section 3. That this Ordinance shall be in full force and effect at the earliest date permitted by law.

PASSED: _____

Michael Heyeck
Chairman of Council

Bruce E. Bailey
Director of Law

Mary J. Johnston, MMC
Clerk of Council