

CITY OF KALAMAZOO, MICHIGAN

ORDINANCE NO. _____

**AN ORDINANCE ADDING CHAPTER 18A “FAIR HOUSING” TO THE
CITY CODE OF ORDINANCES DEFINING PROHIBITED
DISCRIMINATORY HOUSING PRACTICES**

THE CITY OF KALAMAZOO ORDAINS:

Section 1. The Kalamazoo City Code of Ordinances is amended by the addition of Chapter 18A “Fair Housing” to read as follows:

**“Article I
General Provisions**

§18A-1 Policy

- A. It is the policy of the City of Kalamazoo in the exercise of its municipal authority for the protection of the public health, safety, and general welfare, that all residents be assured of an equal opportunity to live in adequate housing facilities and prohibit unlawful discriminatory practices in housing and real estate transactions.
- B. The prohibitions against discrimination provided for in this Chapter do not preempt Federal or State law, but are intended to supplement existing State and Federal civil rights law to prohibit discrimination and practices in the area of housing not addressed at State or Federal law, especially in regards to actions taken because of an individual’s source of income, status as a victim of domestic violence, prior arrests, or conviction record; provided, however, this Chapter shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

§18A-2 Definitions

- A. Any term used in this Chapter shall have the definition as provided in Chapter 18, “Non-Discrimination”.
- B. As used in this chapter the following words and phrases have the following meanings:

ACTUAL EVICTION

The completed legal process of a landlord removing a tenant from a rental property.

ADVERSE ACTION

To evict an individual, fail or refuse to rent or lease real property to an individual, or fail or refuse to continue to rent or lease real property to an individual, or fail or refuse to add a household member to an existing lease, or reduce any tenant subsidy. The adverse action must relate to property located in the City of Kalamazoo.

AGENT

A person acting on behalf of a housing facility entity.

APPLICANT

An individual applying to rent or lease a housing facility and an individual applying to be added to an existing housing facility lease.

BLANKET POLICY

A policy or practice that generally treats an individual as a member of group based on a particular characteristic as opposed to singularly.

DIRECTLY-RELATED CONVICTION

The conduct for which the person was convicted or that is the subject of an unresolved arrest that has a direct and specific negative bearing on the health, safety, or right to peaceful enjoyment of the premises by persons and includes one or more of the following offenses:

- A. Any conviction where State or Federal law prohibits the applicant from being eligible for public housing; or
- B. Any conviction that leads to the applicant becoming a lifetime registered sex offender.

EVICITION FILING

A legal filing intended to start the process in which a landlord removes a tenant from a rental property.

EVIDENCE OF REHABILITATION

Includes but is not limited to, a person's satisfactory compliance with all terms and conditions of parole or probation (however, an inability to pay fines, fees and restitution due to indigence shall not be considered regarding compliance with terms and conditions of parole or probation or both); employer recommendations, especially concerning a person's post-conviction employment; educational attainment or vocational or professional training since a conviction, including training received while incarcerated; completion or active participation in rehabilitative treatment, such as alcohol or drug treatment; letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or probation or per parole officers who have observed the applicant since their conviction; and the length of time since conviction or release from incarceration. Successful completion of parole, probation, mandatory supervision, or post-release community supervision shall create a presumption of rehabilitation.

HOUSING FACILITY

Any dwelling unit or facility used or intended or designed to be used as the home, domicile or residence of one or more persons, including, but not limited to, a house, apartment,

rooming house, housing cooperative, homeless shelter, hotel, motel, tourist home, retirement home or nursing home.

LANDLORD

Any owner, lessor, sublessor, managing agent, or company, or any other person that rents, leases, approves the rental or lease of a housing facility, or makes tenancy decisions.

PUBLIC HOUSING

Rental housing facilities developed with federal, state, or local government (City or county) funding or which pays an annual service charge in lieu of taxes and is intended for eligible low-income individuals and families, the elderly, and persons with disabilities.

REAL ESTATE TRANSACTION

The sale, exchange, rental or lease of real property.

RENTAL APPLICATION FEE

Any fee paid by an applicant to a landlord to permit a background check of the applicant before or after a leasehold contract is created.

SOURCE OF INCOME

Lawful verifiable income derived from wages, salaries or other compensation for employment, money derived from a gift or bequest, contract (including insurance proceeds), loan, or the settlement or award for a claim for personal injury. It also includes but is not limited to social security benefits, supplemental security income, unemployment benefits, retirement income, alimony, child support, Federal Housing Choice Voucher, Local Housing Assistant Fund Millage, or any other housing subsidy.

SURVIVOR OF DOMESTIC VIOLENCE

An individual against whom any of the following acts were perpetrated by a person that was not an act of self-defense:

- A. Causing or attempting to cause physical or mental harm to a family or household member;
- B. Placing a family or household member in fear of physical or mental harm;
- C. Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress; or
- D. Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, threatened, harassed, or molested.
- E. Conduct constituting sexual assault as described in MCL 750.520a to 750.520I

- F. Conduct constituting stalking as defined at MCL 750.411h and 750.411i.

Article II

Fair Housing Standards

§ 18A-3 Discriminatory housing practices.

Except as otherwise provided in this Chapter:

- A. No person shall discriminate in leasing, selling or otherwise making available any housing facilities.
- B. No person shall discriminate in the terms, conditions, maintenance or repair in providing any housing facility.
- C. No person shall refuse to lend money for the purchase or repair of any real property or insure any real property solely because of the location in the City of such real property.
- D. No person shall promote real estate transactions by representing that changes are occurring or will occur in an area with respect to any protected classification.
- E. No person shall place a sign or other display on any real property which indicates that the property is for sale or has been sold when it is not for sale or has not recently been sold.
- F. Landlords must carefully consider the reason for and length of time since an actual eviction of, or eviction filing against a rental applicant. No landlord shall have or enforce a blanket policy that prohibits renting to a person based on eviction filings or actual evictions, or outright bans prospective tenants with prior actual evictions or eviction filings.
- G. No person is permitted to establish a blanket policy banning any aspect of housing because of a conviction record except when mandated by Federal or State law.
- H. A landlord may not refuse or base an adverse action, in whole or in part on either an applicant or tenant with the status as a victim of domestic violence or having an early lease termination under MCL 554.601b.
- I. No person shall fail to account for any tenant or prospective tenant's entire source of income when using a financial income standard for entering into or renewing a tenancy or lease for a housing facility.
- J. A landlord may not require an individual who receives housing assistance of dedicated rent via voucher or any other housing subsidies to earn any more than what is needed to pay for utilities as a requirement for tenancy.

§18A-4 Rental housing-prohibition on criminal record inquiries

- A. No person shall use any criminal history information, other than convictions contained in a conviction record, to deny an individual any aspect of housing. An individual's conviction

record may only be used to deny the individual housing if the landlord considers an applicant's conviction record taking into account such factors as evidence of rehabilitation, the length of time since conviction, the severity of a criminal conviction, the relevance of the conviction to housing, and any circumstances surrounding the conviction relating to disability or domestic violence. This provision shall not bar a landlord from considering criminal conduct occurring on the premises of the landlord's property, regardless of whether that conduct resulted in conviction.

B. It is the responsibility of a landlord to ensure that its employees and agents comply with this Section.

C. Regarding applicants and their household members, a landlord may base an adverse action in whole or in part on directly-related convictions that have a direct and specific negative bearing on the safety of persons or real property, given the nature of the housing, and includes one or more of the following:

(1) Any conviction where State or Federal law prohibits the applicant from being eligible for public housing; or

(2) Any conviction that leads to the applicant becoming a lifetime registered sex offender.

D. The landlord shall promptly notify the applicant of any final adverse action based upon their conviction history or contents of the criminal background check.

E. It shall be unlawful for any landlord to engage in a communication, including the production or dissemination of advertisements, related to held housing that expresses, directly or indirectly, that any person with an arrest record or conviction record will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by local, State or Federal law. For purposes of this subsection, "engage in a communication" includes, but is not limited to, making a verbal statement or producing or disseminating any solicitation, advertisement or signage.

F. A landlord shall state in all solicitations or advertisements for the rental or lease of eligible housing, or made on their behalf, that a landlord will consider qualified applicants consistent with this Chapter. This language shall include, at a minimum, the following statement:

"The rental or lease of this property must comply with the City of Kalamazoo ordinance regulating the use of criminal background checks as part of the tenant screening process to provide individuals with criminal backgrounds a fair opportunity. For additional information please contact the City of Kalamazoo Civil Rights Board."

§18A-5 Rental application fees

A. A rental application fee may not exceed the actual cost of the background check process which may include national, state and local criminal histories, credit reports, rental history records, reference checks, eviction records and employment verification obtained by a landlord to screen an applicant. An application fee shall not include administrative fees, except for actual reasonable costs necessarily incurred to check the rental history and employment verification of an applicant. Landlords must provide applicants an itemized

explanation of an application fee. A landlord must provide an applicant with any reports or correspondence generated as a result of the screening process to the extent permitted or required by State and Federal law.

- B. Before receiving a rental application fee, a landlord must provide a written notice to the applicant setting forth the criteria on which the application will be judged and the amount of the application fee that will be charged. The amount received shall not exceed the amount disclosed.
- C. Landlords shall only advertise housing facilities, receive applications, screen applicants and accept rental application fees for properties that are readily available for rent and occupancy unless an applicant consents in writing to being added to a waiting list. A housing facility is no longer considered readily available if a different applicant has been offered the housing facility and accepted and has placed a deposit on the housing facility. For purposes of this section, a housing facility will be considered readily available if a tenant of the unit has declared they will not be renewing the lease. Landlords shall document the date and time that deposits are placed housing facilities.
- D. A landlord may collect and hold an application fee for an available housing facility for up to 30 calendar days so long as the landlord provides a written receipt to the applicant. If a housing facility becomes no longer available after applications and application fees are received but before some applications have undergone screening process, all application fees associated with unscreened applications must be returned to the respective applicants within 14 calendar days from the date the housing facility is no longer available for rent.
- E. In all cases where an applicant is not offered the housing facility applied for, the landlord shall provide the applicant with a written statement explaining the reason or reasons that the housing facility was not offered to the applicant. The explanation must provide the applicant with a clear statement of the reason or reasons that the housing facility was not offered along with any documentation substantiating the reason or reasons.
- F. If an applicant believes the application fee exceeds the actual cost of the screening process or believes that the reasons for denial deviate from the disclosed criteria for evaluating the application, or believes that the landlord has violated any other requirement of this section, the applicant or their representative may, within 30 days of receipt of the denial, file a written complaint with the City Manager or the City Manager's designee. For purposes of this section, a denial means any circumstances which the applicant is not offered the housing facility.
- G. If it is determined that a landlord has violated this section, in addition to any fines imposed as a result of a municipal civil infraction, the rental property owner must refund the entire application fee to the applicant including, but not limited to, situations in which the screening process has not occurred or has not been documented sufficiently prior to denial.

§18A-6 Exercise of rights protected; retaliation prohibited

- A. It shall be unlawful for a landlord or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this Chapter.
- B. It shall be unlawful for a landlord to interrupt, terminate, or fail to refuse to initiate or conduct a transaction involving the rental or lease of eligible housing, including falsely representing

that such property is not available for rental or lease, or otherwise take adverse action against a person in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to:

(1) the right to file a complaint or inform any person about a landlord's alleged violation of this Chapter;

(2) the right to inform the administering agency about a landlord's alleged violation of this Chapter;

(3) the right to cooperate with the administering or enforcing agencies or other persons in the investigation or prosecution of any alleged violation of this Chapter; or

(4) the right to inform any person of their rights under this Chapter.

C. Protections of this section shall apply to persons who mistakenly but in good faith allege violations of this Chapter

D. Taking adverse action against a person within 90 days of the exercise of one or more than rights described in this section shall create a rebuttable presumption in the administering agency's investigation of such adverse action was taken in retaliation for the exercise of those rights.

§18A-8 Exceptions

The following practices are not violations of this chapter:

A. For a religious organization to restrict the occupancy of any of its housing facilities or accommodations which are operated as a direct part of its religious activities to persons who are members of the denomination involved or who agree to conform to the moral tenets of that religious organization. This exception does not include housing facilities or homeless shelters that are generally made available to the public at large as part of the religious organization's mission, proselytizing, or religious activities.

B. For the owner of an owner-occupied, one-family or two-family dwelling, or a housing facility or public accommodation facility, respectively, devoted entirely to the housing and accommodation of individuals of one sex, to restrict occupancy and use based on sex.

C. To limit occupancy in a housing project or to provide public accommodations or employment privileges or assistance to persons of low income, persons over 50 years of age or disabled persons.

D. To discriminate in any arrangement for the shared ownership, lease or residency of a housing facility

E. In the rental of housing facilities in a building which contains dwelling units for not more than two families living independently of each other if the owner of the building or a member of the owner's family resides in one of the dwelling units, or to the rental of a room or rooms in a single-family dwelling by an individual if the lessor or a member of the lessor's family resides in the dwelling.

§18A-9 Landlord records

- A. Unless prohibited by Federal or State law, a landlord shall maintain and retain records of tenant application forms, and other pertinent data and records required in this Chapter, for a minimum of one year from the date of application, and shall allow the administering or enforcing agencies to access such records, with appropriate notice and at a mutually agreeable time, to monitor or verify compliance with the requirements of this Chapter.
- B. At no time shall the administering or enforcing agencies require a landlord to provide any information or documents the disclosure of which would violate local, State or Federal law.
- C. Anytime a landlord does not maintain or provide adequate records documenting compliance with this Chapter or does not allow reasonable access to such records, the Office of the Chief Financial Officer or other City department or agency shall have the authority to provide all nonfinancial information necessary to fulfill the administering or enforcing agencies responsibilities under this Chapter subject to applicable Federal and State confidentially laws.

Article III

Enforcement

§18A-10 Notices

The City Manager or his or her designee shall publish on the City website and make available to landlords, in all languages spoken by more than 5% of the City population, a notice suitable for posting that informs housing applicants of their rights under this Chapter. This notice shall be updated on or before December 1 of any year in which there is a change in the language is spoken by more than 5% of the City population.

§18A-11 Remedies

The provisions of this Chapter are to be enforced through any of the mechanisms provided at Article III of Chapter 18, Sections 18-9 through 18-13.

§18A-11 Commencement of Enforcement

No complaints seeking the enforcement of the provisions of this Chapter may be filed with the City prior to November 30, 2020.”

Section 2. Other Ordinances.

This ordinance shall be of no effect unless and until an ordinance amending and renaming Chapter 18 “Non-Discrimination” to the City Code of Ordinances is adopted by the City Commission on or before October 5, 2020.

Section 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance

is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 4. Effective Date.

Pursuant to Section 13(a) of the City Charter, this ordinance shall take effect from and after 10 days from the date of its passage.

CERTIFICATE

The foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Kalamazoo at a regular meeting held on _____, 2020. Public notice was given and the meeting was conducted in full compliance with the Open Meetings Act, (PA 267,1976). Minutes of the meeting will be available as required by the Act, and the ordinance was duly recorded, posted and authenticated by the Mayor and City Clerk as required by the Charter of said City.

David F. Anderson, Mayor

Scott A. Borling, City Clerk

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