

TITLE 12

HUMAN RIGHTS

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TITLE 12

Human Rights

Chapter 1

Prohibition of Discrimination in Housing, Employment and Public Accommodations¹

12-1-1. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly requires otherwise:

Age means age between forty and sixty-five years.

Employer means any person employing any person in any capacity.

Employment agency means any person undertaking, with or without compensation, to procure employees or opportunities to work for any person or holding itself out as equipped to do so.

Gender identity means a person's various individual attributes, actual or perceived, that may be in accord with, or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia or sex assigned at birth.

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

Genetic characteristics means all characteristics of an individual that can be transmitted through the person's chromosomes.

Genital reassignment surgery means surgery to alter a person's genitals, in order to complete a program of sex reassignment treatment.

Housing means any building, structure, vacant land or part thereof during the period it is advertised, listed or offered for sale, lease, rent or transfer of ownership, but does not include transfer of property by will or gift.²

Labor organization means any organization, or committee or part thereof, that exists for the purpose in whole or in part of collective bargaining, dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.³

Marital status means both the individual status of being single, divorced, separated or widowed and the relational status of cohabitating and being married or unmarried.

Minor child means a person under eighteen years of age.

Person or individual means any individual, group, association, cooperation, joint apprenticeship committee, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trustee and unincorporated organization and other legal, commercial or governmental entity.

Physical or mental disability means a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. The term excludes current use of alcohol or drugs or other disabilities that prevent a person from acquiring, renting or maintaining property, that would constitute a direct threat to the property or safety of others, or that would prevent performance of job responsibilities.

¹ Adopted by Ordinance No. 4571. Amended by Ordinance Nos. 4574, 4646, 7264. Derived from Ordinance No. 3824.

² § 24-34-501(2), C.R.S.

³ § 24-34-401(6), C.R.S.

Place of accommodation means any place of business engaged in any sales to the general public and any place that offers services, facilities, privileges or advantages to the general public or that receives financial support through solicitation of the general public or through governmental subsidy of any kind.

Sex means biological sex, the sum of a person's physical characteristics.

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

Sexual orientation means the choice of sexual partners, i.e., bisexual, homosexual or heterosexual.

Transitioning transsexual means a person experiencing gender variance who is undergoing sex reassignment treatment.

Transitioned transsexual means a person who has completed genital reassignment surgery.

Ordinance Nos. 4969 (1986); 5061 (1987); 7040 (2000)

12-1-2. Discrimination in Housing Prohibited.¹

- (a) It is an unfair housing practice, and no person:
 - (1) Who has the right of ownership or possession or the right of transfer, sale, rental or lease of any housing or any agent of such person shall:
 - (A) Refuse to show, sell, transfer, rent or lease or refuse to receive and transmit any bona fide offer to buy, sell, rent or lease or otherwise to deny to or withhold from any individual such housing because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of that individual or such individual's friends or associates;
 - (B) Discriminate against any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the individual or such individual's friends or associates in the terms, conditions or privileges pertaining to any facilities or services in connection with a transfer, sale, rental or lease of housing; or
 - (C) Cause to be made any written or oral inquiry or record concerning the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of an individual seeking to purchase, rent or lease any housing or of such individual's friends or associates, but nothing in this section prohibits using a form or making a record or inquiry for the purpose of required government reporting or for a program to provide opportunities for persons who have been traditional targets of discrimination on the bases here prohibited;
 - (2) To whom application is made for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing shall:
 - (A) Make or cause to be made any written or oral inquiry concerning the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of an individual seeking such financial assistance, such individual's friends or associates, or prospective occupants or tenants of such housing, or
 - (B) Discriminate against any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood,

¹ See 42 U.S.C. §§ 3604—3606.

custody of a minor child, or mental or physical disability of such individual, such individual's friends or associates, or prospective occupants or tenants in the term, conditions or privileges relating to obtaining or use of any such financial assistance;

- (3) Shall include in any transfer, sale, rental or lease of housing any restrictive covenant limiting the use of housing on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability or shall honor or exercise or attempt to honor or exercise any such restrictive covenant pertaining to housing;¹
- (4) Shall print or cause to be printed or published any notice or advertising relating to the transfer, sale, rental or lease of any housing that indicates any preference, limitation, specification or discrimination based on race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability;
- (5) Shall aid, abet, incite, compel or coerce the doing of any act prohibited by this section or obstruct or prevent any person from complying with the provisions of this section or attempt either directly or indirectly to commit any act prohibited by this section;²
- (6) For the purpose of promoting housing sales, rentals or leases in a geographic area, shall initiate, instigate or participate in any representation, advertisement or contract, directly or indirectly, within such geographic area that changes have occurred, will occur or may occur in the composition of the geographic area with respect to race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of the owners or occupants or that such changes will or may result in lowering property values, in increased criminal or antisocial behavior, or in declining quality of schools in the geographic area;
- (7) Shall discharge, demote or discriminate in matters of compensation against any employee or agent because of said employee's or agent's obedience to the provisions of this section;
- (8) Shall:
 - (A) Offer, solicit, accept, use or retain a listing of housing with the understanding that an individual may be discriminated against in the purchase, lease or rental thereof on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual or such individual's friends or associates;
 - (B) Deny any individual access to 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; or
 - (C) Discriminate against such individual on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, pregnancy, parenthood, custody of a minor child, or mental or physical disability of such individual or such individual's friends or associates;
- (9) Shall establish unreasonable rules or conditions of occupancy that have the effect of excluding pregnant women, parents or households with minor children.
 - (b) The provisions of subsection (a) of this section do not apply to prohibit:
 - (1) Any religious or denominational institution or organization that is operated, supervised or controlled by a religious or denominational organization from limiting admission or giving preference to persons of the same religion or denomination or from making such selection of buyers, lessees or tenants as will promote a bona fide religious or denominational purpose.

¹ § 24-34-502(1)(c), C.R.S.

² § 24-34-502(1)(e), C.R.S.

- (2) Owner.
 - (A) An owner or lessee from limiting occupancy of a single dwelling unit occupied by such owner or lessee as his or her residence.
 - (B) An owner from limiting occupancy of rooms or dwelling units in buildings occupied by no more than two families living independently of each other if the owner actually maintains and occupies one of such rooms or dwelling units as his or her residence.
 - (C) An owner or lessor of a housing facility devoted entirely to housing individuals of one sex from limiting lessees or tenants to persons of that sex.
- (3) The transfer, sale, rental, lease or development of housing designed or intended for the use of the physically or mentally disabled, but this exclusion does not permit discrimination on the basis of race, creed, color, sexual orientation, gender variance, genetic characteristics, marital status, religion, ancestry or national origin.
- (4) Compliance with any provisions of section 9-8-5, "Occupancy of Dwelling Units," or chapter 10-2, "Property Maintenance Code," B.R.C. 1981, concerning permitted occupancy of dwelling units.
- (5) Discrimination on the basis of pregnancy, parenthood or custody of a minor child in:
 - (A) Any owner-occupied lot containing four or fewer dwelling units;
 - (B) Any residential building in which the owner or lessor publicly establishes and implements a policy of renting or selling exclusively to persons fifty-five years of age or older, but only as long as such policy remains in effect;
 - (C) Any residential institution, as defined in section 9-16-1, "General Definitions," B.R.C. 1981;
 - (D) Any dwelling unit rented, leased or subleased for no more than eighteen months while the owner or lessee is temporarily absent, when the owner or lessee leaves a substantial amount of personal possessions on the premises;
 - (E) Any residential building located on real estate whose title was, as of November 17, 1981, encumbered by a restrictive covenant limiting or prohibiting the residence of minor children on such property, but only so long as such covenant remains in effect; and
 - (F) Up to one-third of the buildings in a housing complex consisting of three or more buildings; for purposes of this subparagraph, *housing complex* means a group of buildings each containing five or more units on a contiguous parcel of land owned by the same person or persons.

(c) The provisions of subsection (a) of this section shall not be construed to require an owner or lessor of property to make any improvement to a housing facility beyond minimal building code standards applicable to the housing facility in question and approved by a state or local agency with responsibility to approve building plans and designs.

Ordinance Nos. 4803 (1984); 5061 (1987); 5117 (1988); 7040 (2000); 7724 (2010)

12-1-3. Discrimination in Employment Practices Prohibited.¹

- (a) It is a discriminatory or unfair employment practice, and no person:
 - (1) Shall fail or refuse to hire, shall discharge, shall promote or demote, or shall discriminate in matters of compensation, terms, conditions or privileges of employment against any individual otherwise qualified or to limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability of such individual or such

¹ See 42 U.S.C. § 2000e.

individual's friends or associates; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as provided in this paragraph if there is no reasonable accommodation that such person can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;

- (2) Shall refuse to list and properly classify for employment or refer an individual for employment in a known available job for which such individual is otherwise qualified because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability of such individual or such individual's friends or associates or to comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for an employment agency to refuse to list and properly classify for employment or refuse to refer an individual for employment in a known available job for which such individual is otherwise qualified if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job;
- (3) Shall exclude or expel any individual otherwise qualified from full membership rights in a labor organization, otherwise discriminate against any members of such labor organization in the full enjoyment of work opportunity, or limit, segregate or classify its membership or applicants for membership, or classify or fail or refuse to refer for employment such individual in any way that deprives such individual of employment opportunities, limits employment opportunities or otherwise adversely affects such individual's status as an employee or applicant for employment because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability of such individual or such individual's friends or associates;
- (4) Shall print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or membership, or to make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly, any limitation, specification or discrimination on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability or intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification;
- (5) Shall establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, opportunities for employment or membership in a group on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability;
- (6) Shall aid, abet, incite, compel or coerce the doing of any act defined in this section to be a discriminatory or unfair employment practice, obstruct or prevent any person from complying with the provisions of this section, or attempt, either directly or indirectly, to commit any act defined in this section to be a discriminatory or unfair employment practice;
- (7) That is an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs shall discriminate against any individual on the basis of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability of such individual or such individual's friends or associates in admission to or employment in any program established to provide apprenticeship or other training; but with regard to mental or physical disability, it is not a discriminatory or unfair employment practice to withhold the right to be admitted to or to participate in any such program if there is no reasonable accommodation that can be made with regard to the disability, the disability actually disqualifies the individual from the program, and the disability has a significant impact on participation in the program;
- (8) Shall use in the recruitment or hiring of individuals any employment agency, placement service, training school or center, labor organization or any other employee referral source known by such person to discrimi-

nate on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability;

- (9) Shall use in recruitment, hiring, upgrading or promoting any test that such person knows or has reason to know tends to discriminate on the basis of race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability; but it is not a discriminatory or unfair employment practice to provide employment opportunities for classes of individuals that have been the traditional targets of discrimination or to use a form or make a record or inquiry for the purpose of required government reporting, and with regard to mental or physical disability, it is not a discriminatory or unfair employment practice for a person to act as prohibited in this subsection if there is no reasonable accommodation that the employer can make with regard to the disability, the disability actually disqualifies the individual from the job, and the disability has a significant impact on the job; and
- (10) Seeking employment, shall publish or cause to be published an advertisement with a specification or limitation based upon race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry, age or mental or physical disability, unless based upon a bona fide occupational qualification.

(b) The provisions of subsection (a) of this section do not apply to prohibit a religious organization or institution from restricting employment opportunities to persons of the religious denomination or persons of other defined characteristics and advertising such restriction if a bona fide religious purpose exists for the restriction.

(c) The provisions of subsection (a) of this section concerning discrimination based on marital status do not apply to the provision of employee health or disability insurance.

(d) Notwithstanding any other provision of this chapter, a workplace supervisor may require that a worker not change gender presentation in the workplace more than three times in any eighteen-month period.

Ordinance Nos. 5061 (1987); 5468 (1992); 7040 (2000)

12-1-4. Discrimination in Public Accommodations Prohibited.¹

- (a) It is a discriminatory practice, and no person shall:
 - (1) Refuse, withhold from or deny to any individual because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry or mental or physical disability of such individual or such individual's friends or associates, the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation;² or
 - (2) Publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement that indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation will be refused, withheld from or denied an individual or that such individual's patronage or presence at a place of public accommodation is unwelcome, objectionable, unacceptable or undesirable because of the race, creed, color, sex, sexual orientation, gender variance, genetic characteristics, marital status, religion, national origin, ancestry or mental or physical disability of such individual or such individual's friends or associates.
- (b) The provisions of subsection (a) of this section do not apply to prohibit:
 - (1) Persons from restricting admission to a place of public accommodation to individuals of one sex if such restriction bears a bona fide relationship to the goods, services, facilities, privileges, advantages or accommodations of such place of public accommodation;³ or

¹ See 42 U.S.C. § 2000a.

² § 24-34-601(1), C.R.S.

³ § 24-34-601(3), C.R.S.

- (2) Any religious or denominational institution that is operated, supervised or controlled by a religious or denominational organization from limiting admission to persons of the same religion or denomination as will promote a bona fide religious or denominational purpose.

(c) Notwithstanding any other provision of this chapter, transitioned transsexuals may use the locker rooms and shower facilities of their new sex and shall be protected by section 12-1-4, "Discrimination in Public Accommodations Prohibited," B.R.C. 1981, from any discrimination in their use of such locker rooms and shower rooms.

(d) Notwithstanding any other provision of this chapter, transitioning transsexuals shall be granted reasonable accommodation in access to locker rooms and shower facilities.

Ordinance Nos. 5061 (1987); 7040 (2000)

12-1-5. Prohibition on Retaliation for and Obstruction of Compliance With Chapter.

(a) No person shall use a threat, communicated by physical, oral or written means, of harm or injury to another person, such other person's reputation or such person's property, or discriminate against any person because such person has entered into a conciliation agreement under this chapter, because the final or any other ruling in any proceeding brought under this chapter has been in such other person's favor, because such other person has opposed a discriminatory practice, or because such other person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing before a person charged with the duty to investigate or hear complaints relating to problems of discrimination, but this section does not apply when the threat involves knowingly placing or attempting to place a person in fear of imminent bodily injury by use of a deadly weapon;

(b) No person shall willfully obstruct, hinder or interfere with the performance or the proper exercise of a duty, obligation, right or power of the city manager, the municipal court or other official or body charged with a duty, obligation, right or power under this chapter.

12-1-6. Provisions of This Chapter Supplement Other Code Sections.

Anything to the contrary notwithstanding, the substantive terms of this chapter and the remedies herein provided supplement those terms and remedies contained in this code and other ordinances of the city.

12-1-7. City Manager May Appoint Person to Assist in Enforcement.

The city manager may appoint a person to carry out any or all of the duties, obligations, rights or powers under the provisions of this chapter, who may have such job title as the manager designates.

12-1-8. Administration and Enforcement of Chapter.

(a) Any person claiming to be aggrieved by a violation of this chapter may file a written complaint under oath with the city manager:

- (1) Within one year of any alleged violation of section 12-1-2, "Discrimination in Housing Prohibited," B.R.C. 1981; within one hundred eighty days of any alleged violation of section 12-1-3, "Discrimination in Employment Practices Prohibited," B.R.C. 1981; or within sixty days of any alleged violation of section 12-1-4, "Discrimination in Public Accommodations Prohibited," B.R.C. 1981; and
- (2) The complaint shall state:
 - (A) The name of the alleged violator, or facts sufficient to identify such person;
 - (B) An outline of the material facts upon which the complaint is based;
 - (C) The date of the alleged violation;
 - (D) That any conduct of the complainant was for the purpose of obtaining the housing, employment or public accommodation in question and not for the purpose of harassment or entrapment of the person against whom the complaint is made; and

(E) That a complaint concerning this same matter has not been filed with another agency or that any complaint concerning this matter filed with another agency has been dismissed by such agency without a final judgment on the merits.

(b) The city manager shall furnish a copy of the complaint to the person against whom the complaint is made.

(c) Before conducting a full investigation of the complaint, the city manager may attempt to negotiate a settlement of the dispute between the parties, if the manager deems that such an attempt is practicable.

(d) If the city manager does not deem it practicable to attempt a preinvestigation settlement or if such settlement attempt is unsuccessful, the manager shall conduct an investigation to determine whether there is probable cause to believe the allegations of the complaint.

(1) If the city manager determines there is no probable cause, the manager shall dismiss the complaint and take no further action thereon other than that of informing the concerned persons that the complaint has been dismissed.

(2) If the city manager determines that there is a sufficient basis in fact to support the complaint, the manager shall endeavor to eliminate the alleged violation by a conciliation agreement, signed by all parties and the manager, whereunder the alleged violation is eliminated and the complainant is made whole to the greatest extent practicable.

(3) The city manager shall furnish a copy of such signed conciliation agreement to the complainant and the person charged. The terms of a conciliation agreement may be made public, but no other information relating to any complaint, its investigation or its disposition may be disclosed without the consent of the complainant and the person charged.

(4) A conciliation agreement need not contain a declaration or finding that a violation has in fact occurred.

(5) A conciliation agreement may provide for dismissal of the complaint without prejudice.

(e) If a person who has filed a complaint with the city manager is dissatisfied with a decision by the manager to dismiss the complaint under paragraph (d)(1) of this section or if conciliation attempts as provided in paragraph (d)(2) of this section are unsuccessful to resolve the complaint, the aggrieved party may request a hearing before the City of Boulder Human Relations Commission,¹ which shall hold a hearing on the appeal. If the commission finds violations of this chapter, it may issue such orders as it deems appropriate to remedy the violations, including, without limitation, orders:

(1) Requiring the person found to have violated this chapter to cease and desist from the discriminatory practice;

(2) Providing for the sale, exchange, lease, rental, assignment or sublease of housing to a particular person;

(3) Requiring an employer to: reinstate an employee; pay backpay for discriminatory termination of employment, layoff or denial of promotion opportunity; make an offer of employment in case of discriminatory refusal of employment; make an offer of promotion in the case of discriminatory denial of promotion opportunity; or take other appropriate equitably remedial action;

(4) Requiring that a person make available a facility of public accommodation in the case of discriminatory denial of the use of such facility;

(5) Requiring that a person found to have violated this chapter report compliance with the order or orders issued pursuant to this section; and

(6) Requiring that a person found to have violated any provisions of this chapter make, keep and make available to the commission such reasonable records as are relevant to determine whether such person is complying with the commission's orders.

¹ Section 2-3-6, "Human Relations Commission," B.R.C. 1981.

(f) No person shall fail to comply with an order of the human relations commission.

(g) The city manager may initiate and file a complaint pursuant to this section based on the information and belief that a violation of this chapter has occurred. The manager may file such a complaint pursuant to the following standards:

(1) The manager has supervised any investigative testing used;

(2) Any investigative testing is not designed to induce a person to behave in other than such person's usual manner; and

(3) The case is not brought for the purpose of harassment.

(h) No complaint shall be accepted against the city or a city-appointed agency unless there is no state or federal protection for the human rights violation set forth in the complaint.

Ordinance Nos. 4879 (1985); 7040 (2000)

12-1-9. Judicial Enforcement of Chapter.

(a) The city manager may file a criminal complaint in municipal court seeking the imposition of the criminal penalties provided in section 5-2-4, "General Penalties," B.R.C. 1981, for violations of this chapter.

(b) The city manager may seek judicial enforcement of any orders of the human relations commission.

(c) Any party aggrieved by any final action of the human relations commission may seek judicial review thereof in the District Court in and for the County of Boulder by filing a complaint for review within thirty days after the date of the final action under the Colorado Rules of Civil Procedure 106(a)(4).

12-1-10. City Contractors Shall Not Discriminate.

The city manager shall require that all contractors providing goods or services to the city certify their compliance with the provisions of this chapter.

12-1-11. Authority to Adopt Rules.

The city manager and the human relations commission are authorized to adopt rules to implement the provisions of this chapter.

12-1-12. Gender Variance Exemptions.

Competitive sports and sports-related records and sex-segregated housing for persons under age twenty-five shall be exempt from the gender variance discrimination provisions of this chapter.

Ordinance No. 7040 (2000)

12-1-13. Elements of Proof.

Proof of the characteristics of the victim, while admissible to prove intent, and to determine reasonable accommodation for disabilities and for transitioning transsexuals, shall not otherwise be required as an element of proof in and of itself. The essential elements of proof shall be of discriminatory intent and of a nexus between such intent and an action or refusal or failure to act identified in this chapter.

Ordinance No. 7040 (2000)

Chapter 2 Landlord-Tenant Relations¹

12-2-1. Legislative Intent.

The purpose of this chapter is to supplement the provisions of state law governing the rights and duties of landlords and tenants of residential property in the city.

12-2-2. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Bank means a bank, credit union or similar institution that accepts deposits of money and insures such funds through the Federal Deposit Insurance Corporation, the National Credit Union Association or similar institution.

Interest means simple interest on the full amount of the security deposit on deposit.

Security deposit means any advance or deposit of money, regardless of its denomination, the primary function of which is to secure the performance of a rental agreement for residential premises or any part thereof.

Ordinance No. 7320 (2004)

12-2-3. Leases to be Provided.

Any person renting residential property for thirty days or more shall enter into a written lease relating to such rental within thirty days of the commencement of such rental, and the lessor shall provide a copy of such lease to each lessee thereof within seven working days of final execution of the lease or within fifteen working days of the signature thereof by any lessee, whichever is sooner. Prior to issuance of a summons and complaint under this section, the complaining witness or a peace officer of the city must first request a copy of the lease, and the person renting the residential property shall have five working days from the date of mailing or personal delivery of such request to provide a copy of the lease.

Ordinance No. 4969 (1986)

12-2-4. Written Disclosures Required.

(a) No operator shall allow any person to occupy a rental property as a tenant or lessee or otherwise for valuable consideration unless and until that operator has satisfied each of the following conditions:

- (1) The operator has executed and provided to the tenant a copy of a written lease, rental agreement, set of site rules or other written instrument containing the following information:
 - (A) The maximum occupancy levels permitted in the rental unit;
 - (B) Notice of the provisions contained in sections 5-3-11, "Nuisance Party Prohibited," 5-6-6, "Fireworks," and chapter 5-9, "Noise," B.R.C. 1981;
 - (C) Notice of the provisions contained in sections 6-2-3, "Growth or Accumulation of Weeds Prohibited," 6-3-3, "Trash Accumulation Prohibited," paragraph 7-6-13(a)(1), concerning parking prohibited on sidewalks, and section 8-2-13, "Duty to Keep Sidewalks Clear of Snow," B.R.C. 1981, relating to the responsibility of every owner, manager or operator of rental property to maintain a valid contract with a commercial trash hauler providing for the removal of accumulated trash from the property;
 - (D) The names of those individuals permitted, pursuant to the tenancy agreement, to occupy the rental unit;
 - (E) Notification to tenants that violation of the city's noise regulation requirements or residency within the rental unit of persons other than those lawfully occupying the unit pursuant to the tenancy agreement is cause for the termination of the tenancy; and

¹ Adopted by Ordinance No. 4957.

- (F) Notification that interest must be paid to tenants upon any security deposit collected pursuant to the provisions of sections 12-2-2, "Definitions," and 12-2-7, "Interest Rate On Security Deposits," B.R.C. 1981.
- (G) Notification to tenants of the date and nature of any violations of law during the preceding twenty-four months for which the owner, manager or operator has received written notice of violation pursuant to Section 10-2.5-6, "Required Procedures Prior to Commencement of Public Nuisance Action."

(b) The city manager shall approve a form that, if fully executed, will satisfy the requirements of subsection (a) of this section. Use of the approved form shall not be mandatory and individual operators may utilize other writings in lieu of such form so long as those writings satisfy the requirements of subsection (a) of this section.

(c) The operator has established and maintained an accurate listing of the identities of each of the persons who are authorized to reside in the subject rental unit.

(d) The maximum penalty for any violation or violations of this section that are charged as part of a single court proceeding shall be \$500.00.

Ordinance Nos. 7158 (2002); 7320 (2004); 7515 (2007); 7659 (2009); 7685 (2009)

12-2-5. Ownership of Security Deposit and Payment of Interest.

Any security deposit for residential property subject to regulation under state law shall be and remain the sole property of the tenant advancing same, and such security deposit plus interest shall not be retained by the person having custody of it after the termination of the tenancy except for actual cause, pursuant to the provisions of state law dealing with retention of security deposits. This section does not create a fiduciary relationship between the parties, but creates a duty to account for interest upon the termination of the tenancy.

Ordinance No. 7158 (2002)

12-2-6. Return of Accrued Interest - Enforcement.

(a) No person having custody of a security deposit for residential property shall fail to return accrued interest on the security deposit within one month after termination of the lease or surrender and acceptance of the premises, whichever occurs last, and according to the provisions of state law concerning the return of the related security deposit, notice of any deductions therefrom, and the legality of such deductions. Any additional accrued interest shall be returned at the time of the return of the related security deposit, subject to the same provisions of state law.

(b) Failure of any person having custody of a security deposit to provide the same notice required by state law for the retention of a security deposit with respect to the interest thereon shall work a forfeiture of such person's right to withhold any portion of the interest.

(c) The willful and wrongful retention of interest on a security deposit in violation of this chapter shall render the person having custody of the security deposit liable to the tenant for \$100.00 or treble the amount so retained, whichever is greater, together with reasonable attorneys' fees and court costs; except that the tenant has the obligation to give notice to such persons of the tenant's intention to file legal proceedings a minimum of seven days prior to filing the action.¹

(d) In any court action brought by a tenant under this chapter, the person having custody of the security deposit shall bear the burden of proving that retention of the interest on a security deposit or any portion thereof was not in violation of this chapter.

(e) Nothing in this chapter shall preclude a tenant from filing a claim under part 1, article 12, title 38, C.R.S., and a claim under this chapter in the same lawsuit.

(f) This section and section 12-2-5, "Ownership of Security Deposit and Payment of Interest," B.R.C. 1981, do not apply to any security deposit paid to a mobile home park on account of the lease of a mobile home space.

¹ If a landlord deliberately fails to return a security deposit during the additional seven-day notice period set forth in the State Security Deposit Act, § 38-12-103(3)(a), C.R.S., the retention of the deposit is "willful" under the State Act. Turner v. Lyons, 539 P.2d 1241 (Colo. 1975)

Ordinance Nos. 4969 (1986); 7158 (2002)

12-2-7. Interest Rate on Security Deposits.

(a) The rate of interest to be paid upon the refund of security deposits shall be determined by the manager by averaging the interest rates being paid on one-year certificates of deposit by three banks doing business within the city that, in the view of the manager, provide indicia of being significant participants in the local banking industry. This average interest rate will be calculated as of December 15 of each year or, if that date falls on a weekend or holiday, on the first business day thereafter. The manager's determination of the rate shall be final. The rate shall be published in a newspaper of general circulation or posted on a city internet site that is accessible to members of the general public. The average interest rate so determined shall be rounded no more than two places to the right of the decimal point. It shall become the rate of interest paid on any security deposit that is provided to a landlord during the calendar year starting on January 1 of the year immediately following the date of the manager's determination.

(b) For the year 2004, the rate of interest shall be determined by the manager using the method set forth in subsection (a) of this section, within ten days of March 19, 2004. Within three days of that determination, the interest rate so determined shall be published or posted and shall, thereafter, apply to any security deposit provided to a landlord as a consequence of a lease or rental agreement that is entered into after the date on which the manager's determination is published or posted. In every subsequent year, the manager's determination shall be made pursuant to the provisions of subsection (a) of this section.

(c) Interest on security deposits for multi-year tenancies shall be calculated separately each year of tenancy in the manner provided in this section. The manager shall retain and make available a list of all prior year interest rates and shall provide a standard formula for the calculation of interest rates on multi-year tenancies.

(d) Payments of interest on security deposits made pursuant to lease or rental agreements entered into prior to March 19, 2004, shall be paid at the rate of five and one-half percent per annum simple interest on the full amount of the security deposit.

Ordinance No. 7320 (2004)

12-2-8. Waiver Void.

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived shall be deemed to be against public policy and shall be void.

Ordinance Nos. 7158 (2002); 7320 (2004)

**Chapter 3
Drug Testing¹**

12-3-1. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Commercial vehicle means any vehicle which meets the definition set forth in the Colorado Department of Public Safety Minimum Standards for the Operation of Commercial Vehicles.

Employee means a person treated as an employee for purposes of federal income tax withholding: a) who is assigned or anticipated to be assigned to an immediate supervisor located in the city and does not have a principal out of home office located outside of the city, or b) who is assigned or anticipated to be assigned more than thirty-three percent of the time on the job for a period of more than three months to a job located in the city.

Employer means a person who pays wages or salary to an employee, an agent of such a person or a person in a position of authority over an employee.

¹ Adopted by Ordinance No. 5195.

12-3-2. Post-Employment Drug Testing Requirements.

Except as provided in section 12-3-4, "Exemptions," B.R.C. 1981, no employer shall request or require from an employee any urine, blood or other bodily fluid or tissue test for any drug or alcohol or determine an employee's eligibility for promotion, additional compensation, transfer, disciplinary or other personnel action, or the receipt of any benefit, based in whole or in part on the result of such test, unless all of the following conditions are met:

(a) At the time of the request or requirement, the employer has individualized reasonable suspicion, based on specific, objective, clearly expressed facts, to believe that the employee is under the influence of a drug or alcohol on the job, or his or her job performance is currently adversely affected by use of a drug or alcohol, or the employee has agreed to the test as a part of an employee assistance program after a finding or admission of prior drug or alcohol abuse;

(b) Prior to the administration of any drug or alcohol test, the employer adopts a written testing policy and makes it available to all employees. But a copy need not be provided directly to each employee, so long as a copy is made available freely for inspection by employees at any reasonable time during working hours, without personal identification of the employees. Such testing policy must, as a minimum, set forth all of the following information:

- (1) The employees subject to testing under the policy;
- (2) The circumstances under which drug or alcohol testing may be requested or required;
- (3) The right of an employee to refuse to undergo drug or alcohol testing and the consequence of refusal;
- (4) Any disciplinary or other personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test;
- (5) The right of an employee to obtain, immediately upon request to the employer's custodian thereof, a copy of all records maintained of his or her initial positive confirmatory test results, and to submit written information explaining any such results;
- (6) Any other appeal procedure available; and
- (7) A copy of this chapter;

(c) The collection of any urine specimen is accomplished without direct observation of the genitals by any person other than the employee being tested;

(d) A sufficient specimen is collected to perform two tests, and the one untested specimen is maintained until a negative test result is obtained, or, in case of a positive result, for a period of not less than one year following the date on which the specimen is collected;

(e) No portion of any specimen is tested for pregnancy, and except for pre-employment physicals, no portion of any specimen is examined for evidence of any other medical condition, other than for the presence of alcohol or drugs;

(f) The collection, storage and transportation of the specimen is accomplished in tamper-proof containers;

(g) Chain-of-custody documentation identifies how the specimen was handled, stored and tested, at all times;

(h) Positive test results are confirmed by means of gas chromatography/mass spectrometry or an alternate method of equal or greater sensitivity and accuracy;

(i) The employer permits the employee, at the employee's request and expense, to contract with a laboratory meeting the National Institute of Drug Abuse Standards to have a second confirmatory test performed on an untested portion of the original specimen, subject to the same chain-of-custody assurances provided for the original test; and

(j) The release of the test results is prohibited, except as authorized by the person tested, or to those employees of the employer with reasonable business need to know, or as required by a court of law.

Ordinance No. 5688 (1994)

12-3-3. Job Applicant Drug Testing Requirements.

Except as provided in section 12-3-4, "Exemptions," B.R.C. 1981, no employer shall conduct a drug or alcohol test as part of a pre-employment screening or pre-employment physical except under the following circumstances:

(a) The employer includes notice that a drug or alcohol test will be part of the pre-employment screening process or pre-employment physical in the application for employment, or if no application form is required, in all advertisements soliciting applicants for employment, and all applicants for employment are personally informed of the requirement for a drug or alcohol test at the first formal interview;

(b) The drug or alcohol test is required only of Colorado residents who are the single finalist for the position or out-of-state resident finalists for the position who come to Colorado for an interview, if the same test is required of all finalists for that position; and

(c) Subsections 12-3-2(b) through (j), B.R.C. 1981, are complied with concerning job applicants as well as employees.

Ordinance Nos. 5271 (1990); 5688 (1994)

12-3-4. Exemptions.

The following are exempt from this chapter:

- (1) United States government;
- (2) Colorado state government;
- (3) The University of Colorado;
- (4) Boulder County government;
- (5) Boulder Valley School District; and
- (6) Testing of an employee operating a commercial vehicle weighing over twenty six thousand pounds and for which a Commercial Driver's License is required, or which transports sixteen or more passengers, including the driver, under the Controlled Substances Testing Provisions set forth in the U.S. Department of Transportation regulations for commercial vehicles.

Ordinance No. 5688 (1994)

12-3-5. Employers' Rights.

(a) Nothing in this chapter restricts an employer's ability to prohibit the use of, possession of or trafficking in, illegal drugs during work hours, or restricts an employer's ability to discipline an employee for being under the influence of, using, possessing or trafficking in, illegal drugs during work hours or on the employer's premises. Nothing in this chapter restricts an employer's ability to prohibit the use of alcohol during work hours, or restricts an employer's ability to discipline an employee for being under the influence of alcohol during work hours or on the employer's premises.

(b) Nothing in this chapter prevents an employer from conducting routine medical examinations of employees or medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the work place or in the performance of an employee's job responsibilities. But no employer shall extend medical screening beyond the specific substance being monitored, and any inadvertently obtained information concerning drug or alcohol use shall be maintained in confidence in the medical record and not disclosed to any employer. No employer shall use any such evidence to determine promotion, additional compensation, transfer, termination, disciplinary or other personnel action or the receipt of any benefit.

(c) It is an affirmative defense that a person was required to conduct drug or alcohol testing or take disciplinary action against an employee based on such testing in order to comply with a statute or regulation of the United States or the State of Colorado or any of their agencies or any agency interpretation of such statute or regulation. It is a specific defense that a person, based on specific, objective, clearly expressed facts, was reasonably required to conduct such testing or take such action in order to compete effectively to obtain a contract with the United States or the State of Colorado or any of their agencies.

Ordinance No. 5688 (1994)

12-3-6. Enforcement.

(a) The penalty for violation of any provision of this chapter is a fine of not more than \$1,000.00 per violation. In addition, upon conviction of any person for violation of this chapter, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court under this section is a violation of this section and is punishable by a fine of not more than \$2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration.¹

(b) Any person who commits or proposes to commit an act in violation of this chapter also may be enjoined therefrom by the municipal court or by any other court of competent jurisdiction.

(c) An action for injunctive relief under this chapter may be brought by the city attorney, upon ascertaining that a violation is likely to occur. Nothing in this chapter shall be construed to create a private right of action for damages.

Ordinance No. 5639 (1994)

Chapter 4 Domestic Partners²

12-4-1. Purpose.

The city values the dignity and worth of all people and is committed to promoting justice, equity and inclusiveness. The city finds that domestic partnerships exist in many different forms, including unmarried couples in either same or opposite sex relationships who are living together. In order to promote equal respect and fair treatment and to protect the public health safety and welfare, it is the policy of the city to allow any two unrelated adults in a committed relationship who meet the domestic partnership criteria to register with the city and to obtain a certificate attesting to their status or to receive a certificate documenting their status but not be formally registered in the city's domestic partnership registry.

12-4-2. Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Common household means a place where both domestic partners reside. The legal right to occupy the common household need not be joint.

Marriage, as used in this chapter, shall mean a marriage as defined in § 14-2-104, C.R.S.

12-4-3. Requirements for Domestic Partnerships.

(a) In addition to freely declaring that both persons entering a domestic partnership are each other's sole domestic partner, an individual must:

- (1) Be an unmarried person eighteen years of age or older and competent to contract;
- (2) Not have been prohibited from marrying his or her domestic partner under the law of this state by reason of a blood relationship to the domestic partner or by reason of adoption;

¹ Ordinance No. 5639, effective July 15, 1994.

² Adopted by Ordinance No. 7416.

- (3) Share a "common household", as defined herein, with his or her domestic partner;
- (4) Not have a different domestic partner under the provisions of this chapter or any other comparable domestic partnership provision;
- (5) Execute, with his or her domestic partner, a certificate of domestic partnership, attesting to the foregoing requirements and that the parties are in a relationship of mutual support, caring and commitment with the present intention to remain in that relationship; and
- (6) Not have terminated the domestic partnership.

(b) No person shall make any misrepresentations in order to obtain a certificate of domestic partnership nor shall any person make any misrepresentations in connection with the process of the registration of a domestic partnership.

12-4-4. Creation and Termination of Domestic Partnerships.

(a) Creation: A domestic partnership is established when both parties execute a certificate of domestic partnership, attesting to the foregoing facts of section 12-4-3, "Requirements For Domestic Partnerships," B.R.C. 1981, before the city manager.

(b) Termination: A domestic partnership ends when either of the domestic partners dies, marries or executes a certificate of termination, stating that one or more of the criteria listed in subsection (a) of this section no longer apply, subject to the following conditions:

- (1) The domestic partnership shall terminate as of the date of the death or marriage of either partner, or as of the date of executing the certificate of termination; and,
- (2) In the event that only one of the partners executes the certificate of termination, then that partner shall, in such certificate, attest to the fact that he or she has sent a copy of the certificate of termination to the other partner at the other partner's last known address, registered mail, return receipt requested.

(c) Certification of Creation and Termination: To be effective, certificates of domestic partnership and certificates of termination must be certified by the city manager. Certificates of domestic partnership and certificates of termination may be filed with the city manager. The city manager shall assess a fee for certifying such certificates, and provide one certified copy to one or both of the parties.

(d) Prior Registry: Domestic partnerships declared under the City of Boulder's prior domestic registry may be terminated under the provisions of this section.

(e) Subsequent Domestic Partnerships: No person shall enter into a domestic partnership after termination until at least ninety days after the termination of any such prior domestic partnership.

(f) Fee: An applicant for a certificate documenting the creation or termination of a domestic partnership shall pay the fee in section 4-20-59, "Domestic Partnership Registration Fees," B.R.C. 1981.

(g) Administration: The city manager may make available forms for creating and terminating domestic partnerships, which forms shall meet all requirements for registering a domestic partnership pursuant to this chapter. In addition to meeting the foregoing requirements of this chapter, any forms provided by the city manager shall include a statement that under current law registering a domestic partnership under the provisions of this chapter does not alter the parties' contract or property rights.

12-4-5. Recognition of Domestic Partnerships Registered in Previous Registry and Other Jurisdictions.

For the purposes of this chapter, the city recognizes the domestic partnerships that are:

- (a) Prior Registry: Registered under the City of Boulder's prior domestic registry;
- (b) Governmentally Sanctioned: Are governmentally sanctioned civil unions or same sex marriages; or

(c) Domestic Partnerships of Other Jurisdictions: Publicly documented and created under other laws of other jurisdictions that meet requirements that are similar to the requirements of section 12-4-3, "Requirements For Domestic Partnerships," B.R.C. 1981.

12-4-6. Private Registry of Domestic Partnerships.

Nothing contained in this chapter shall be construed to prevent the city manager to continue the practice of allowing private registration of domestic partnership between two individuals. However, any privileges granted by the registration pursuant to section 12-4-4, "Creation and Termination of Domestic Partnerships," B.R.C. 1981, shall accrue to such privately registered domestic partnerships upon the presentation of such private registration certified by the city manager.

12-4-7. Rules and Rulemaking.

(a) Rulemaking Authority: The city manager may promulgate such rule as the manager considers necessary to implement and enforce this chapter. All such rules shall be adopted in accordance with the procedures set forth in chapter 1-4, "Rulemaking," B.R.C. 1981.

(b) Violation of Rules Prohibited: No person shall violate any rule issued by the city manager under this section.