City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10 **Ordinance/Resolution#** 2700

For Meeting of December 2, 2013 (Ordinance First Reading Date)

For Meeting of December 16, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE REPEALING AND REPLACING LCMC 1997, CHAPTER 13, ARTICLE I, FAIR HOUSING, SECTIONS 13-1 THROUGH 13-49 IN ITS ENTIRETY.

PURPOSE(S) OF ACTION:

Repeal and replace Chapter 13, Article I of the Municipal Code.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Andy Hume	**Department/Section:** Community Development / Planning & Neighborhood Services	**Phone:** 528-3048
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The current Fair Housing Ordinance of the Las Cruces Municipal Code was adopted in 1997. The 2011-2015 Consolidated Plan, completed in August 2011, included recommendations for staff to undertake to improve access to housing. Among the recommendations was an update to the City's fair housing ordinance. In particular, the update was to "accurately reflect the actions the City can take when fair housing complaints are received."

Based on City staff review and comments from the United States Department of Housing and Urban Development, certain changes are proposed for the Ordinance. They include:

- Correcting grammatical errors
- Addressing actions the City can take when fair housing complaints are received
- Including protection for victims of domestic abuse
- Limiting exemptions

For details about these and all other changes, see Attachment "A", Proposed Changes Table.

City staff held a 30-day public comment period July 22 – August 23, 2013. During that period staff sent proposed changes to various entities who handle housing issues. Staff also held a public input meeting on Wednesday, August, 14, 2013.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed Las Cruces Municipal Code, Chapter 13, Article I, Fair Housing.
3. Attachment "A", Proposed Changes Table.
4. Attachment "B", Current Chapter 13, Article I in legislative formatting.
5. Attachment "C", Public Meeting and Notification Ads.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: ____ in the amount of $_____ for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action will approve the Ordinance repealing and replacing Chapter 13, Article I of the Las Cruces Municipal Code, entitled Fair Housing.
2. Vote "No"; this action will deny the Ordinance repealing and replacing Chapter 13, Article I of the Las Cruces Municipal Code, entitled Fair Housing.
3. Vote to "Amend"; this action could modify the Ordinance.
4. Vote to "Table"; the current Ordinance will remain in effect.

REFERENCE INFORMATION:

1. N/A

COUNCIL BILL NO. 14-015
ORDINANCE NO. 2700

AN ORDINANCE REPEALING AND REPLACING LCMC 1997, CHAPTER 13, ARTICLE I, FAIR HOUSING, SECTIONS 13-1 THROUGH 13-49 IN ITS ENTIRETY.

The City Council is informed that:

WHEREAS, The current Fair Housing Ordinance of the Las Cruces Municipal Code was adopted in 1997; and

WHEREAS, changes are proposed by City staff and the United States Department of Housing and Urban Development; and

WHEREAS, Chapter 13, Article I of the Las Cruces Municipal Code, entitled Fair Housing, sets out the details for the City to establish fair housing; and

WHEREAS, Chapter 13, Article I of the Las Cruces Municipal Code must be repealed and replaced to ensure greater parity; and

WHEREAS, the Las Cruces City Council has the authority to amend the Municipal Code.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Chapter 13, Article I of the Las Cruces Municipal Code, entitled Fair Housing, as shown in Exhibit "A," attached hereto and made part of this Ordinance, is hereby repealed and replaced.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2013.

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT "A"

Sec. 13-1. - Definitions.

As used in this article:

Adaptable dwelling units, when used with respect to covered multifamily dwellings, means dwelling units that include the features of adaptable design specified in the Fair Housing Act of 1988, 24 CFR 100.205c.

Aggrieved person includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that such person will be injured by a discriminatory housing practice that is about to occur.

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with accessibility.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts.

Bathroom means a bathroom which includes a water closet (toilet), lavatory (sink), and bathtub or shower.

Clear means unobstructed.

Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

Covered multifamily dwellings means:

(1) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and
(2) Ground floor dwelling units in other buildings consisting of four or

more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

Disability means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities.
(2) A record of having such an impairment; or
(3) Being regarded as having such an impairment.
But such term does not include current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. § 802. As used in this definition: (a) "physical or mental impairment" includes (1) 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; genitourinary; hemic and lymphatic; skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Discriminatory housing practice means an act that is unlawful under section 13-5 of this article.

Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Entrance means any exterior access point to a building or portion of a building used by residents for the purpose of entering. An entrance does not include a door to a loading dock or a door used primarily as a service entrance.

Fair Housing Accessibility Guidelines means those guidelines set forth in 24 CFR Chapter I, Department of Housing and Urban Development, Part VI.

Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other persons having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of 18 years.

Family includes a single individual.

Ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

ICC/ANSI guidelines means those guidelines (commonly cited as ICC/ANSI A117.1-2003) set forth in the 2003 edition of the Accessible and Usable Buildings & Facilities providing accessibility and usability for persons with disabilities. These guidelines can be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 of the United States Code ("U.S.C."), receivers and fiduciaries.

Residential real estate-related transaction means any of the following:

(1) The making or purchasing of loans or providing other financial assistance;

a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

b. Secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property

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

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-2. - Fair Housing Act adopted.

Title VIII of the Civil Rights Act of 1968, *as amended by the* Fair Housing Act of 1988, the Fair Housing Accessibility Guidelines of 1991, are

hereby adopted and incorporated herein by reference.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-3. - Declaration of policy.

It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the city. This fair housing ordinance is intended to compliment federal and state fair housing laws and should be interpreted consistently with such laws, unless otherwise stated.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-4. - Exemptions.

(a) Nothing in section 13-5 of this article shall apply to

1) Units in an owner-occupied building containing no more than 2 units.
2) The rental of a room or rooms in a single-family dwelling unit if the owner actually maintains and occupies part of such living quarters as his/her residence.

(b) Nothing in section 13-5 of this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(c) Nothing in section 13-5 of this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(d) Nothing in section 13-5 of this article limits the applicability of any reasonable governmental restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(e) Nothing in section 13-5 of this article regarding familial status shall apply with respect to housing for older persons.

Housing for older persons means housing:

(1) Provided under any state or federal program that is specifically designed and operated to assist elderly persons; or

(2) Intended for, and solely occupied by, persons 62 years of age or older; or

(3) Intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older (except that newly constructed facilities need not comply with this requirement until 25 percent of the units in the facility are occupied), and where the facility meets other regulations adopted by the Federal Department of Housing and Urban Development as set forth in 24 C.F.R. 100.304; however

(4) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of September 13, 1988, who do not meet the age requirements set forth in subsections (e)(2) or (3) above; provided that all new occupants of such housing meet the age requirements of subsection (e)(2) or (3); or unoccupied units; provided that such units are reserved for occupancy by persons who meet the age requirements of subsections (e)(2) or (3) of this section.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-5. - Discrimination in the sale or rental of housing and other prohibited practices.

Except as exempted by section 13-4 of this article, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, or an intention to make any such preference, limitation or discrimination.

(4) To represent to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(6)
a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

1. That buyer or renter; or

2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3. Any person associated with that buyer or renter.

b. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

1. That person; or

2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3. Any person associated with that person.

c. For purposes of this subsection, discrimination includes:

1. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

2. A refusal to make reasonable modifications in rules, policies, practices, or services, when such modifications are necessary to afford such person equal opportunity to use and enjoy a dwelling; or

3. In connection with the design and construction of covered multifamily dwellings for first occupancy, for which a city building permit is issued after adoption of the ordinance from which this article derives, a refusal to design and construct those dwellings in accordance with the 1988 Fair Housing Act, 2003 International Building Code and CABO/ANSI A117.1-1998, and their amendments, as made elsewhere within this Municipal Code.

d. Nothing in subsection (b) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety or other individuals or whose tenancy would result in substantial physical damage to the property of others.

(7) For any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin. Nothing in this subsection prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(8) Deny any person 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 dwellings, or to discriminate against him/her in the terms or conditions of such access, membership, or participation, on account of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(9) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this article.

(10) A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on:

(i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or

(ii) the tenant or applicant having terminated a rental agreement under early lease termination clause.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-6. – Early lease termination.

In any lease or rental agreement covering premises occupied for dwelling purposes, a lessee or tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied pursuant to the provisions of this section and to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease.

Sec. 13-7. - Administration and enforcement.

(a) The authority and responsibility for administering the fair housing article shall be in the director of the community development department.

(b) All city agencies and departments shall administer their programs and activities relating to housing in a manner to affirmatively further the purposes of this article and shall cooperate with the community development department to further such purposes.

(c) The community development department shall review plans and construction of newly constructed covered multifamily dwellings for the purpose of making a determination as to whether the design and construction requirements of subsection 13-5(6)c.3. are met. No building permit shall be issued and no certificate of occupancy shall be issued for covered multifamily dwellings that do not meet those requirements. Notwithstanding the above, no one shall be denied a certificate of occupancy for failure to meet the requirements of subsection 13-5(6)c.3. if a city building permit was issued prior to the adoption of the ordinance from which this article is derived.

(d) The director of the community development department or his or her designee shall be responsible for providing information to and assisting aggrieved persons who request assistance in filing complaints with the U.S. Department of Housing and Urban Development, and/or in accordance with reporting/complaint filing processes established for the city not inconsistent with this section and this article.

(e) Whenever the director of the community development department *or designee* has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-5, the director *or designee* may invite the person to discuss the violation and methods of correcting the cause of the violation.

f) Section 13-5 makes it unlawful to discriminate in the sale or rental of housing

and other prohibited practices according to the Fair Housing Act. If a violation has occurred, the municipal court may assess a fine of not more than $500.00 or impose imprisonment for not more than 90 days or both, in addition to any fines and/or other remedies afforded under separate civil remedies and/or state or federal law. Each separate violation shall constitute a separate offense, and in the case of a continuing violation, each day that a violation continues after notice from the city and request for correction shall constitute a separate offense.

(Ord. No. 2592, §§ I, II, 11-1-10)

Fair Housing Ordinance Chapter 13, Article I

ISSUE	RECOMMENDATION
13-2: Grammatical error.	Should read: "*Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, the Fair Housing Accessibility Guidelines of 1991, are hereby adopted and incorporated herein by reference.*"
13-4 c): Should reflect HUD's exemptions under §100.10. Should be henceforth referred to as 13-4 b).	13-4 b) should read: "*Nothing in section 13-5 of this article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.*"
13-6 e): Omits the word "designee". Should henceforth be referred to as 13-7 e).	13-7 (e) should read: "*Whenever the director of the community development department or designee has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-5, the director may invite the person to discuss the violation and methods of correcting the cause of the violation.*"
13-6 f) and g): City is not an "aggrieved" person under the Act and cannot file on behalf of the aggrieved person.	13-6 (f) and (g), Administration and enforcement now referred to as 13-7 f) and g) should be removed.
CABO/ANSI A 117.1-1997 have been replaced with ICC/ANSI A117.1- 2003.	Code should read guidelines from ICC/ANSI A117.1-2003 Accessible and Usable Buildings & Facilities.
13-6: Current LCMC omits penalty for Fair Housing violation.	Current Ordinance should reincorporate penalty for violation. Revert to Ordinance 2208 (13-6 (h)) with modifications. 13-7 (f) should read: *"Section 13-5 makes it unlawful to discriminate in the sale or rental of housing and other prohibited practices according to the Fair Housing Act. If a violation has occurred, the municipal court may assess a fine of not more than $500.00 or impose imprisonment for not more than 90 days or both, in addition to*

	any fines and/or other remedies afforded under separate civil remedies and/or state or federal law. Each separate violation shall constitute a separate offense, and in the case of a continuing violation, each day that a violation continues after notice from the city and request for correction shall constitute a separate offense".
13-4 1): There ought to be limitations to exemptions on Fair Housing. Other states have modified their exemption to excuse only those seeking roommates within single-family dwellings.	13-4 1) Should read: *The provisions of this section shall not apply to* *a) Units in an owner-occupied building containing no more than 2 units.* *b) The rental of a room or rooms in a single-family dwelling unit if the owner actually maintains and occupies part of such living quarters as his/her residence.* City ordinance ought to limit exemptions similar Connecticut or D.C. laws.
Fair Housing Ordinance should include policies concerning housing discrimination of victims of domestic abuse as issue often leads to homelessness. The City's Consolidated Plan states that the majority of homeless women are/were victims of domestic violence. Violence Against Women Act (VAWA)'s housing protections only apply to residents of federal public or assisted housing, which excludes residents in private housing and other federal housing programs. VAWA also does not extend protections to survivors of non-intimate partner sexual assault. The state of New York offers early lease termination, which should be included in our ordinance. NM state laws offers minimal protection of housing discrimination to domestic abuse victims. Las Cruces ought to include early lease termination as well as antidiscrimination within its fair housing ordinance.	13-6 to become a section on early lease termination: *In any lease or rental agreement covering premises occupied for dwelling purposes, a lessee or tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied pursuant to the provisions of this section and to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease.* 13-5 10) should read: *"A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on: (i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or (ii) the tenant or applicant having terminated a rental agreement under early lease termination law."*

ATTACHMENT "B"

Sec. 13-1. - Definitions.

As used in this article:

Adaptable dwelling units, when used with respect to covered multifamily dwellings, means dwelling units that include the features of adaptable design specified in the Fair Housing Act of 1988, 24 CFR 100.205c.

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Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts.

Bathroom means a bathroom which includes a water closet (toilet), lavatory (sink), and bathtub or shower.

~~*CABO/ANSI guidelines* means those guidelines (commonly cited as CABO/ANSI A117.1-1997) set forth in the 1997 edition of the American National Standard for Buildings and Facilities providing accessibility and usability for persons with disabilities. These guidelines can be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.~~

Clear means unobstructed.

Common use areas means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between

buildings.

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But such term does not include current illegal use of or addiction to a controlled substance as defined in 21 U.S.C. § 802. As used in this definition: (a) "physical or mental impairment" includes (1) 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; genitourinary; hemic and lymphatic; skin, and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

Discriminatory housing practice means an act that is unlawful under section 13-5 of this article.

Dwelling means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

Entrance means any exterior access point to a building or portion of a building used by residents for the purpose of entering. An entrance does not include a door to a loading dock or a door used primarily as a service entrance.

Fair Housing Accessibility Guidelines means those guidelines set forth in 24 CFR Chapter I, Department of Housing and Urban Development, Part VI.

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(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other persons having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual who has not attained the age of 18 years.

Family includes a single individual.

Ground floor means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

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(1) The making or purchasing of loans or providing other financial assistance;
   a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
   b. Secured by residential real estate.
(2) The selling, brokering, or appraising of residential real property

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

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-2. - Fair Housing Act adopted.

Title VIII of the Civil Rights Act of 1968, *as amended by the* Fair Housing Act of 1988, the Fair Housing Accessibility Guidelines of 1991, ~~as amended,~~ are hereby adopted and incorporated herein by reference.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-3. - Declaration of policy.

It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the city. This fair housing ordinance is intended to compliment federal and state fair housing laws and should be interpreted consistently with such laws, unless otherwise stated.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-4. - Exemptions.

(a) Nothing in section 13-5 of this article shall apply to

1) Units in an owner-occupied building containing no more than 2 units.

2) The rental of a room or rooms in a single-family dwelling unit if the owner actually maintains and occupies part of such living quarters as his/her residence.

~~(a) Nothing in section 13-5 of this article, other than subsection 13-5(3) shall apply to any single-family house sold or rented by an owner, provided that:~~

~~(1) Such private individual owner does not own more than three such single-family houses at any one time; and~~

~~(2) In the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24-month period; and~~

~~(3) Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time; and~~

~~(4) Such house is sold or rented without the use in any manner of the~~

~~sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent salesman, or person (but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title); and~~

~~(5) Such house is sold or rented without the publication, posting or mailing, of any advertisement or written notice in violation of~~ section ~~13-5 of this article.~~

~~(b) Nothing in~~ section ~~13-5 of this article, other than subsection (3), shall apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his/her residence.~~

(~~e~~b) Nothing in section 13-5 of this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin.

(~~d~~c) Nothing in section 13-5 of this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(~~e~~d) Nothing in section 13-5 of this article limits the applicability of any reasonable governmental restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(~~f~~e) Nothing in section 13-5 of this article regarding familial status shall apply with respect to housing for older persons.

Housing for older persons means housing:

(1) Provided under any state or federal program that is specifically designed and operated to assist elderly persons; or

(2) Intended for, and solely occupied by, persons 62 years of age or older; or

(3) Intended and operated for occupancy by at least one person 55 years of age or older per unit, where at least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older (except that newly constructed facilities need not comply with this requirement until 25 percent of the units in the facility are occupied), and where the facility meets other regulations adopted by the Federal Department of Housing and Urban Development as set forth in 24 C.F.R. 100.304; however

(4) Housing shall not fail to meet the requirements for housing for older persons by reason of persons residing in such housing as of September 13, 1988, who do not meet the age requirements set forth in subsections (~~f~~e)(2) or (3) above; provided that all new occupants of such housing meet the age requirements of subsection (~~f~~e)(2) or (3); or unoccupied units; provided that such units are reserved for occupancy by persons who meet the age requirements of subsections (~~f~~e)(2) or (3) of this section.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-5. - Discrimination in the sale or rental of housing and other prohibited practices.

Except as exempted by section 13-4 of this article, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(3) To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, or an intention to make any such preference, limitation or discrimination.

(4) To represent to any person because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin, that any dwelling is not available for inspection, sale, or rental

when such dwelling is in fact so available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(6)
a. To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

1. That buyer or renter; or

2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3. Any person associated with that buyer or renter.

b. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

1. That person; or

2. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

3. Any person associated with that person.

c. For purposes of this subsection, discrimination includes:

1. A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications are necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

2. A refusal to make reasonable modifications in rules, policies, practices, or services, when such modifications are necessary to afford such person equal opportunity to use and enjoy a dwelling; or

3. In connection with the design and construction of covered multifamily dwellings for first occupancy, for which a city

building permit is issued after adoption of the ordinance from which this article derives, a refusal to design and construct those dwellings in accordance with the 1988 Fair Housing Act, 2003 International Building Code and CABO/ANSI A117.1-1998, and their amendments, as made elsewhere within this Municipal Code.

d. Nothing in subsection (b) requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety or other individuals or whose tenancy would result in substantial physical damage to the property of others.

(7) For any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin. Nothing in this subsection prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(8) Deny any person 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 dwellings, or to discriminate against him/her in the terms or conditions of such access, membership, or participation, on account of race, ethnicity, color, religion, sex, or gender identity, disability, familial status, sexual orientation, ancestry, or national origin.

(9) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this article.

(10) A landlord shall not terminate a tenancy, fail to renew a tenancy, refuse to enter into a rental agreement, or otherwise retaliate in the rental of a dwelling based substantially on:

(i) the tenant, applicant, or a household member's status as a victim of domestic violence, sexual assault, or stalking; or

(ii) the tenant or applicant having terminated a rental agreement under early lease termination clause.

(Ord. No. 2592, §§ I, II, 11-1-10)

Sec. 13-6. – Early lease termination.

In any lease or rental agreement covering premises occupied for dwelling purposes, a lessee or tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied pursuant to the provisions of this section and to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease.

Sec. 13-67. - Administration and enforcement.

(a) The authority and responsibility for administering the fair housing article shall be in the director of the community development department.

(b) All city agencies and departments shall administer their programs and activities relating to housing in a manner to affirmatively further the purposes of this article and shall cooperate with the community development department to further such purposes.

(c) The community development department shall review plans and construction of newly constructed covered multifamily dwellings for the purpose of making a determination as to whether the design and construction requirements of subsection 13-5(6)c.3. are met. No building permit shall be issued and no certificate of occupancy shall be issued for covered multifamily dwellings that do not meet those requirements. Notwithstanding the above, no one shall be denied a certificate of occupancy for failure to meet the requirements of subsection 13-5(6)c.3. if a city building permit was issued prior to the adoption of the ordinance from which this article is derived.

(d) The director of the community development department or his or her designee shall be responsible for providing information to and assisting aggrieved persons who request assistance in filing complaints with the U.S. Department of Housing and Urban Development, and/or in accordance with reporting/complaint filing processes established for the city not inconsistent with this section and this article.

(e) Whenever the director of the community development department *or designee* has reason to believe that any person has engaged in a discriminatory housing practice in violation of section 13-5, the director *or designee* may invite the person to discuss the violation and methods of correcting the cause of the violation.

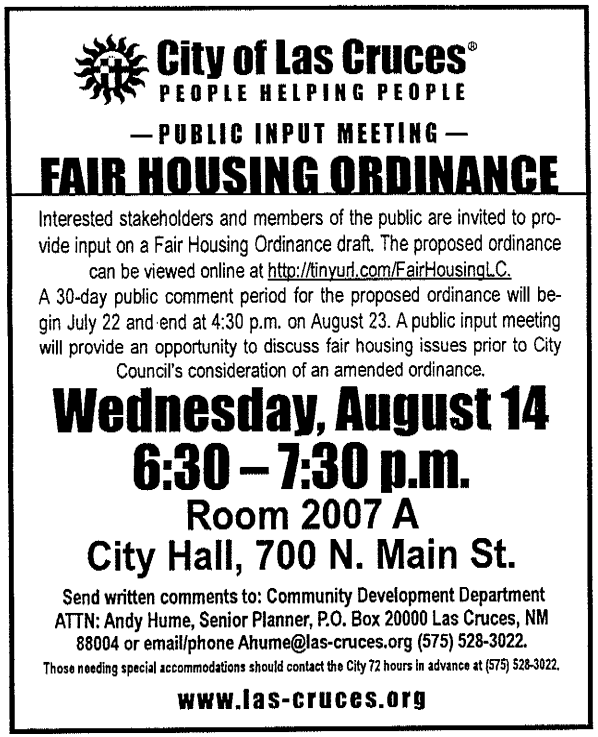
f) Section 13-5 makes it unlawful to discriminate in the sale or rental of housing and other prohibited practices according to the Fair Housing Act. If a violation has occurred, the municipal court may assess a fine of not more than $500.00 or impose imprisonment for not more than 90 days or both, in addition to any fines and/or other remedies afforded under separate civil remedies and/or state or

federal law. Each separate violation shall constitute a separate offense, and in the case of a continuing violation, each day that a violation continues after notice from the city and request for correction shall constitute a separate offense.

~~(f) Any person who has reason to believe that any other person has engaged in a discriminatory housing practice in violation of~~ section 13-5 ~~may refer information and/or receive assistance in filing a complaint regarding the alleged violation to the community development department. Whenever the director of the community development department has reason to believe that any person has engaged in a discriminatory housing practice in violation of~~ section 13-5, ~~the director shall refer such information regarding the violation to the U.S. Department of Housing and Urban Development or the state human right commission for prosecution in accordance with subsection~~ 13-6~~(g).~~

~~(g) If the community development department and/or codes enforcement/police department, in consultation with the city attorney's office, has reasonable cause to believe that a violation has occurred, the city shall refer the claim and information to the U.S. Department of Housing and Urban Development, or to the state human rights commission for violations of the state's fair housing statute for investigation and prosecution according to the Fair Housing Act of 1988.~~

(Ord. No. 2592, §§ I, II, 11-1-10)



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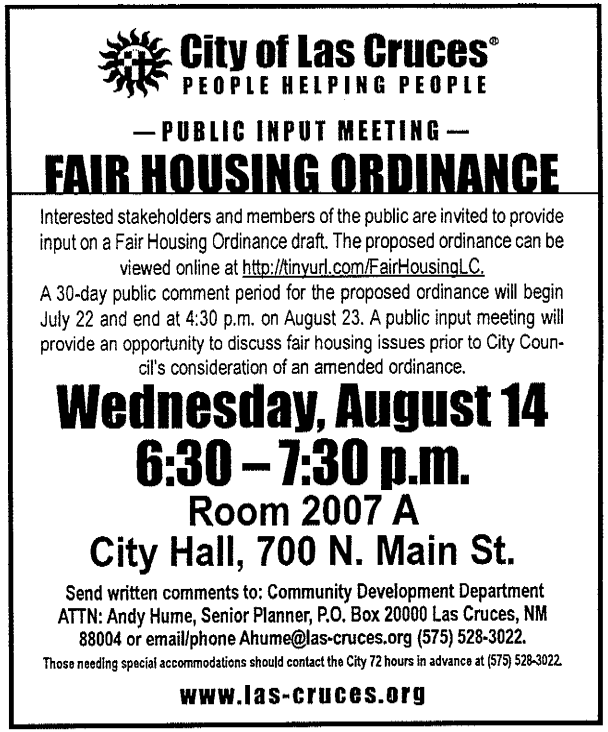

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ATTACHMENT "C"

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of December 2, 2013 (Ordinance First Reading Date)

For Meeting of December 16, 2013 (Adoption Date)

TITLE: **AN ORDINANCE REPEALING AND REPLACING LCMC 1997, CHAPTER 13, ARTICLE I, FAIR HOUSING, SECTIONS 13-1 THROUGH 13-49 IN ITS ENTIRETY.**

Purchasing Manager's Request to Contract (PMRC) {Required?} **Yes** ☐ **No** ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Community Development Staff Contact		528-3048	10/17/13
Department Director		528-3067	10-17-13
Other			
Assistant City Manager /CAO		2078	10/18/13
Management & Budget Manager		2107	10/18/13
Assistant City Manager/COO		-2071	11/1/13
City Attorney		2128	11/1/13
City Clerk		X2115	11/21/13

Rev. 8/2011