

1 [Prohibiting employment discrimination and business-to-business discrimination and making
2 miscellaneous amendments to clarify existing discrimination provisions.]

3 **Ordinance amending Articles 33, 33B and 38 of the Police Code by amending Sections**
4 **3303, 3803, and 3852 to prohibit employment discrimination against independent**
5 **contractors; amending Sections 3305, 3310, and 3805 to prohibit business-to-business**
6 **discrimination; amending Sections 3301, 3302, 3303, 3304 and 3305 to add creed and**
7 **national origin to the protected categories; amending Sections 3301, 3302 and 3305.1**
8 **to add weight and height to the protected categories; amending Sections 3303, 3305**
9 **and 3307 and adding Section 3305.2 to clarify provisions relating to discrimination for**
10 **association or retaliation with persons in protected categories; amending Sections**
11 **3300B.1, 3300B.3 and 3300B.4 to add age, gender identity, place of birth, weight and**
12 **height to the protected categories; and amending Sections 3302, 3304, 3305, 3305.1,**
13 **3306, 3307, 3811 and 3856 for technical changes.**

14
15 Note: Additions are single-underline italics Times New Roman;
16 deletions are ~~strikethrough italics Times New Roman~~.
17 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

18 Be it ordained by the People of the City and County of San Francisco:

19 Section 1. The San Francisco Police Code is hereby amended by amending Sections
20 3301, 3302, 3303, 3304, 3305, and 3305.1, 3306, 3307 and 3310, and adding Section 3305.2
21 to read as follows:

22 **SEC. 3301. POLICY.**

23 It is the policy of the City and County of San Francisco to eliminate
24 discrimination based on race, ~~religion~~, color, ancestry, national origin, place of birth, age, sex,
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1 age, religion, creed, disability, sexual orientation, gender identity, ~~disability, or place of birth,~~
2 weight or height within the City and County.

3 **SEC. 3302. FINDINGS.**

4 After public hearings and consideration of testimony and documentary evidence,
5 the Board of Supervisors finds that discrimination based on race, ~~religion,~~ color, ancestry,
6 national origin, place of birth, age, sex, age, religion, creed, disability, sexual orientation,
7 gender identity, ~~disability, or place of birth,~~ weight or height exists in the City and County of
8 San Francisco. The Board finds further that such discrimination poses a substantial threat to
9 the health, safety and general welfare of this community. Such discrimination foments strife
10 and unrest, and it deprives the City and County of the fullest utilization of its capacities for
11 development and advancement. The Board finds further that existing State and federal
12 restraints on arbitrary discrimination are not adequate to meet the particular problems of this
13 community, ~~nor~~ and that it is necessary and proper to enact local regulations adapted to the
14 special circumstances which exist in this City and County.

15 **SEC. 3303. EMPLOYMENT.**

16 (a) **Prohibited Activity.** It shall be unlawful for any person to do any of the
17 following acts wholly or partially ~~based on~~ because of an employee's, independent
18 contractor's or an applicant for employment's actual or perceived race, ~~religion,~~ color,
19 ancestry, national origin, place of birth, age, sex, age, religion, creed, disability, sexual
20 orientation, gender identity, ~~disability, or place of birth,~~ weight or height association with
21 ~~members of classes protected under this chapter or in retaliation for opposition to any~~
22 ~~practices forbidden under this chapter of an employee or applicant for employment:~~

23 (1) By an employer: To fail or refuse to hire, or to discharge any individual;
24 to discriminate against any individual with respect to compensation, terms, conditions or
25 privileges of employment, including promotion; or to limit, segregate or classify employees in

1 any way which would deprive or tend to deprive any individual of employment opportunities, or
2 otherwise adversely affect his/her status as an employee;

3 (2) By an employment agency: To fail or refuse to refer for employment or for
4 consideration as an independent contractor any individual; or otherwise to discriminate
5 against any individual;

6 (3) By a labor organization: To exclude or expel from its membership or to
7 otherwise discriminate against any individual; or to limit, segregate or classify its membership;
8 or to classify or fail or refuse to refer for employment any individual in any way which would
9 deprive or tend to deprive such individual of employment opportunities, or would limit such
10 employment opportunities, or otherwise adversely affect his/her status as an employee or as
11 an applicant for employment;

12 (4) By a person engaging the services of an independent contractor: To fail
13 or refuse to engage the services of, or to terminate the services of, any independent
14 contractor; to discriminate against any independent contractor with respect to the terms or
15 conditions under which the contracted for work is performed or evaluated or otherwise to
16 deprive or tend to deprive such individual of a fair opportunity to perform the contracted for
17 work;

18 (5) By an employer, employment agency or labor organization:

19 (i) To discriminate against any individual in admission to, or employment in,
20 any program established to provide apprenticeship or other training or retraining, including
21 any on-the-job training program,

22 (ii) To print, publish, advertise or disseminate in any way, or cause to be
23 printed, published, advertised or disseminated in any way, any notice or advertisement with
24 respect to employment, membership in, or any classification or referral for employment or
25 training by any such organization, which indicates an unlawful discriminatory preference.

1 (b) **Bona Fide Occupational Qualification Not Prohibited; Burden of**
2 **Proof.**

3 (1) Nothing contained in this Section shall be deemed to prohibit selection or
4 rejection based upon a bona fide occupational qualification;

5 (2) In any action brought under Section 3307 of this Article (Enforcement), if
6 a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide
7 occupational qualification, that party shall have the burden of proving: (1) that the
8 discrimination is in fact a necessary result of a bona fide occupational qualification; and (2)
9 that there exists no less discriminatory means of satisfying the occupational qualification.

10 (c) **Exceptions.**

11 (1) It shall not be an unlawful discriminatory practice for an employer to
12 observe the conditions of a bona fide seniority system or a bona fide employee benefit
13 system, provided such systems or plans are not a subterfuge to evade the purposes of this
14 Article; provided, further, that no such system shall provide a pretext to discriminate against
15 an individual because of his or her actual or perceived race, ~~religion~~, color, ancestry, *national*
16 *origin, place of birth, age, sex, age, religion, creed, disability*, sexual orientation, gender
17 identity, ~~disability, place of birth, weight, or height, association with members of classes~~
18 ~~protected under this chapter or in retaliation for opposition to any practices forbidden under~~
19 ~~this chapter;~~

20 (2) Nothing in this Section shall be construed to apply to employment by any
21 business which employs five or fewer employees including the owner and any management
22 and supervisory employees.

23 (d) **Notice.** All employers with a business tax registration certificate from the
24 City shall post in conspicuous places, available to employees *and independent contractors*, a
25 non-discrimination in employment notice in such form and content as shall be created and

1 approved by the Human Rights Commission. The notice shall inform employees and
2 independent contractors that employers and persons engaging the services of an independent
3 contractor are prohibited from discriminating in the recruitment, selection, training, promotion
4 and termination of employees, or in the recruitment, engagement, utilization or termination of
5 independent contractors based on any of the categories specified in this section Section.
6 The notice shall measure at least 8-1/2 by 11 inches and be in ten-point type or larger. The
7 notice shall be distributed by the Human Rights Commission to all businesses with a business
8 tax registration certificate issued by the Tax Collector and annually to all new such
9 businesses.

10 **SEC. 3304. HOUSING.**

11 (a) **Prohibited Activity.** It shall be unlawful for any person to do any of the
12 following acts wholly or partially ~~based on~~ because of a person's actual or perceived race,
13 ~~religion,~~ color, ancestry, national origin, place of birth, age, sex, age, religion, creed, disability,
14 sexual orientation, gender identity, ~~disability,~~ source of income, ~~or place of birth,~~ weight or
15 height ~~association with members of classes protected under this chapter or in retaliation for~~
16 ~~opposition to any practices forbidden under this chapter:~~

17 (1) To interrupt, terminate, or fail or refuse to initiate or conduct any
18 transaction in real property, including but not limited to the rental thereof; to require different
19 terms for such transaction; or falsely to represent that an interest in real property is not
20 available for transaction;

21 (2) To include in the terms or conditions of a transaction in real property any
22 clause, condition or restriction;

23 (3) To refuse to lend money, guarantee the loan of money, accept a deed of
24 trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition,
25 construction, alteration, rehabilitation, repair or maintenance of real property; or impose

1 different conditions on such financing; or refuse to provide title or other insurance relating to
2 the ownership or use of any interest in real property;

3 (4) To refuse or restrict facilities, services, repairs or improvements for any
4 tenant or lessee;

5 (5) To make, print, publish, advertise or disseminate in any way, or cause to
6 be made, printed or published, advertised or disseminated in any way, any notice, statement
7 or advertisement with respect to a transaction or proposed transaction in real property, or with
8 respect to financing related to any such transaction, which unlawfully indicates preference,
9 limitation or discrimination based on race, ~~religion~~, color, ancestry, *national origin, place of*
10 *birth, age, sex, age, religion, creed, disability*, sexual orientation, gender identity, ~~disability, or~~
11 ~~place of birth~~, source of income, weight or height.

12 For purposes of this Subsection (a), "source of income" means all lawful sources
13 of income or rental assistance from an any federal, State, local, or nonprofit-administered
14 benefit or subsidy program. "Source of income" also means a rental assistance program,
15 homeless assistance program, security deposit assistance program or housing subsidy
16 program. "Source of income" includes any requirement of any such program or source of
17 income, or rental assistance.

18 (b) **Prohibited Economic Discrimination.** It shall be unlawful for any
19 person to use a financial or income standard for the rental of housing that does either of the
20 following:

21 (1) Fails to account for any rental payments or portions of rental payments
22 that will be made by other individuals or organizations on the same basis as rental payments
23 to be made directly by the tenant or prospective tenant;

24 (2) Fails to account for the aggregate income of persons residing together or
25 proposing to reside together, or aggregate income of tenants or prospective tenants and their

1 cosigners or proposed cosigners, on the same basis as the aggregate income of married
2 persons residing together or proposing to reside together.

3 (c) **Exceptions.**

4 (1) Nothing in this Article shall be construed to apply to the rental or leasing
5 of any housing unit in which the owner or any member of his or her family occupies one of the
6 living units and: (1) it is necessary for the owner to use either a bathroom or kitchen facility in
7 common with the prospective tenant; or (2) the structure contains less than three dwelling
8 units;

9 (2) Nothing in this Article shall be deemed to permit any rental or occupancy
10 of any dwelling unit or commercial space otherwise prohibited by law.

11 **SEC. 3305. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.**

12 (a) **Prohibited Activity.** It shall be unlawful for any person to do any of the
13 following acts wholly or partially ~~based on~~ because of a person's actual or perceived race,
14 ~~religion,~~ color, ancestry, national origin, place of birth, age, sex, age, religion, creed, disability,
15 sexual orientation, gender identity, ~~disability, or place of birth,~~ weight or height, ~~association~~
16 ~~with members of classes protected under this chapter or in retaliation for opposition to any~~
17 ~~practices forbidden under this chapter:~~

18 (1) To deny, directly or indirectly, any person the full and equal enjoyment of
19 the goods, services, facilities, privileges, advantages, and accommodations of any business
20 establishment or ~~place of public accommodations~~ accommodation;

21 (2) Except as otherwise permitted by law, to deny, directly or indirectly, any
22 person admittance to the premises of the business establishment or ~~place of public~~
23 ~~accommodations~~ accommodation. No business establishment or ~~place of public~~
24 ~~accommodations~~ accommodation requesting or requiring identification documents to
25 demonstrate or confirm a person's proof of age may deny admittance to any person displaying

1 one valid identification document as proof of age. For purposes of Section 3305 (a)(2), the
2 term "valid identification document" means a document which contains the name, date of birth
3 and picture of the person presenting the document, and is issued by a federal, state, county or
4 municipal government, or subdivision or agency thereof, including, but not limited to, a motor
5 vehicle operator's license or identification card issued to a member of the Armed Forces;

6 (3) To make, print, publish, advertise or disseminate in any way, or cause to be
7 made, printed, published, advertised or disseminated in any way, any notice, statement or
8 advertisement with respect to any business establishment or public accommodation which
9 indicates that the full enjoyment of such business establishment or public accommodation will
10 be unlawfully refused an individual;

11 (4) For business establishments and public accommodations to discriminate
12 in any manner described in Subsections (a)(1), (a)(2), or (a)(3) between patrons with domestic
13 partners and patrons with spouses, and/or between the domestic partners and spouses of
14 such patrons, where the domestic partnership has been registered with a governmental entity
15 pursuant to State or local law authorizing such registration;

16 (5) For any business establishment or public accommodation to boycott or
17 blacklist, to surcharge, or to refuse to buy from, contract with, sell to, or trade with any person.

18 **SEC. 3305.1. HOME DELIVERY SERVICES.**

19 (a) It shall be unlawful for any person or business entity to refuse to provide
20 home delivery services to any residential address within the City and County of San Francisco
21 falling within that person's or business entity's normal service range. A person or business
22 entity may not set its normal service range to exclude a neighborhood or location based upon
23 the race, ~~religion~~, color, ancestry, national origin, place of birth, age, sex, age, religion, creed,
24 disability, sexual orientation, gender identity, ~~disability, or place of birth,~~ weight or height, of
25 the residents of that neighborhood or location. Where a person or business entity regularly

1 advertises home delivery services to the entire City and County, that person or business
2 entity's "normal service range" shall be defined by the geographic boundaries of the City and
3 County.

4 (b) For purposes of this Section, "home delivery services" shall mean the
5 delivery of merchandise to residential addresses, when such services are regularly advertised
6 or provided by any person or business entity.

7 (c) Notwithstanding any other provision of this Section, it shall not be
8 unlawful for a person or business entity to refuse to provide home delivery services to a
9 residential address if (i) the occupants at that address have previously refused to pay
10 in full for services provided to them by that person or business entity; or (ii) such refusal
11 is necessary for the employer to comply with any applicable State or federal
12 occupational safety and health requirements or existing union contract; or (iii) the
13 person or business entity has a reasonable good faith belief that providing delivery
14 services to that address would expose delivery personnel to an unreasonable risk of
15 harm.

16 **SEC 3305.2 ASSOCIATION AND RETALIATION.**

17 **(a) Association.** *It shall be unlawful for any person to do any of the acts described in*
18 *Sections 3303(a), 3304(a), 3305(a), or 3305.1(a) wholly or partially because a person*
19 *associates with a person or persons who are protected by this Article from discrimination*
20 *based on their actual or perceived race, color, ancestry, national origin, place of birth, sex,*
21 *age, religion, creed, disability, sexual orientation, gender identity, weight or height.*

22 **(b) Retaliation.** *It shall be unlawful for any person to do any of the acts described in*
23 *Sections 3303(a), 3304(a), 3305(a), or 3305.1(a) wholly or partially in retaliation against a*
24 *person because that person:*

25 *(i) Has opposed any act or practice made unlawful by this Article;*

1 (ii) Has supported this Article and its enforcement;

2 (iii) Has filed a complaint under this Article with the San Francisco Human Rights

3 Commission or any court; or

4 (iv) Has testified, assisted or participated in any investigation, proceeding, or litigation
5 under this Article.

6
7 **SEC. 3306. LIABILITY.**

8 Any person who violates any of the provisions of this Article or who aids in the
9 violation of any provisions of this Article shall be liable for, and the court must award to the
10 individual whose rights are violated, three times the amount of special and general damages,
11 or, in the case of unlawful discrimination in the rental of a unit, three times the amount of one
12 month's rent that the landlord charges for the unit in question. In all cases, the ~~The~~ court may
13 award in addition thereto, not less than \$200 but not more than \$400, together with attorney's
14 fees, costs of action, and punitive damages.

15 **SEC. 3307. ENFORCEMENT.**

16 (a) **Human Rights Commission.** Any person who believes that he or she
17 has been discriminated against in violation of Sections 3303 ~~and~~, 3305, and/or 3305.2 of this
18 Article relating to employment or business establishments ~~and~~ public accommodations may
19 file with the Human Rights Commission a request to have the Commission investigate and
20 mediate his or her complaint under the provisions of ~~Section~~ Chapter 12A of the
21 Administrative Code of the City and County of San Francisco.

22 (b) **Human Rights Commission.**

23 (1) Any person or organization who believes that a violation of ~~Section~~
24 Sections 3304 and/or 3305.2 of this Article relating to housing has occurred may file with the
25 Human Rights Commission a verified complaint in writing.

1 (2) Upon the filing with the Commission of a verified written complaint, the
2 Director of the Human Rights Commission or a designated member of the Commission staff,
3 shall make, within 10 days, a full and prompt investigation in connection therewith. If, upon
4 such investigation, the Director finds that the person charged in the complaint has not
5 engaged in or is not engaging in such unlawful practice, such finding, in writing, shall be filed
6 with the Commission and the complaint shall be dismissed. In addition to the other action the
7 Director may or shall take, if, upon such investigation, the Director determines that probable
8 cause exists for the allegations made in the complaint, the Director in his or her discretion
9 may endeavor to eliminate the unlawful practice charged in the complaint by means of
10 conciliation and persuasion.

11 (3) If the Director determines there is probable cause to conclude that an
12 unlawful act of discrimination has occurred, the Director shall ask the respondent to withhold
13 the housing accommodation that is the subject of the complaint from the housing market. If
14 the respondent does not agree to withhold the housing accommodation, the Director shall
15 post on the door of the housing accommodation a notice stating that the housing
16 accommodations are the subject of a complaint before the Commission. The notice shall
17 remain posted until a final decision by the hearing officer. Any destruction, defacement,
18 alteration or removal of the notice by the respondent or his or her agents shall be an infraction
19 and upon conviction thereof shall be punished by a fine of not less than \$250 nor more than
20 \$500.

21 (4) If, at any time after a complaint has been filed, the Director determines
22 that appropriate civil action to preserve the status quo or to prevent irreparable harm appears
23 advisable, the Director shall refer the matter to the City Attorney for appropriate legal action.
24 Appropriate legal action includes the seeking of injunctive relief to enjoin the owner of the
25 property from taking further action with respect to the rental, lease, or sale of the property until

1 the Commission has completed its investigation and made its determination. The Director
2 shall notify the parties of such referral to the City Attorney and notify the complainant that he
3 or she may initiate independently appropriate civil action to seek injunctive relief.

4 (5) If the unlawful practice is not eliminated within 20 days after the filing of
5 the complaint, the Director shall designate a person, other than a member of the Commission,
6 to serve as a hearing officer. This person shall preside over a hearing at which the parties
7 may offer such documents, testimony, written declarations or other evidence as may be
8 pertinent to the proceedings. The hearing shall be recorded and all evidence preserved for the
9 record. The hearing shall be held within 45 days of the filing of the complaint.

10 (6) The hearing officer shall render a decision which shall include written
11 findings of fact. The decision and findings shall be mailed within 30 days of the hearing.

12 (7) If the hearing officer finds that the respondent has engaged in a
13 discriminatory practice in violation of this Article, the hearing officer shall issue an order
14 requiring the respondent to cease and desist from the practice and to offer the housing
15 accommodation to the complainant under the terms for which the unit was offered to the
16 public. The respondent shall not be required to offer the housing accommodation to the
17 complainant if the unit has already been rented by a tenant who has occupied the unit in good
18 faith without knowledge of the pending complaint but the respondent shall be required to offer
19 a comparable unit, if available, to the complainant.

20 (8) The decision of the hearing officer shall be final unless the Commission
21 vacates his or her decision on appeal.

22 (9) Either party may file an appeal of the hearing officer's decision with the
23 Commission. Such an appeal to the Commission from the determination of the hearing officer
24 must be made within 15 days of the mailing of the decision and findings of fact. The appeal
25 shall be in writing and must state the grounds for appellant's claim that there was either error

1 or abuse of discretion on the part of the hearing officer. Each appeal shall be accompanied by
2 a \$15 filing fee; provided, however, the fee shall be waived for an individual who files an
3 affidavit under penalty of perjury stating that he or she is an indigent person who does not
4 have and cannot obtain the money to pay the filing fee without using money needed for the
5 necessities of life. The filing of an appeal will not stay the effect of the hearing officer's
6 decision.

7 (10) Upon receipt of an appeal, the entire administrative record of the matter,
8 including the appeal, shall be filed with the Commission.

9 (11) The Commission may in its discretion determine to hear an appeal. In
10 deciding whether to hear an appeal, the Commission shall consider, among other things,
11 fairness to the parties, hardship to either party and promotion of the policies and purposes of
12 this Article. In determining whether to hear an appeal the Commission may also review
13 material from the administrative record of the matter as it deems necessary. A vote of the
14 majority of the Commission shall be required for an appeal to be heard.

15 (12) In those cases where the Commission is able to determine on the basis
16 of the documents before it that the hearing officer has erred, the Commission may without
17 determining whether to hear the appeal remand the case for further hearing in accordance
18 with its instructions without conducting an appeal hearing. Both parties shall be notified as to
19 the time of the re-hearing, which shall be conducted within 30 days of the remand by the
20 Commission. In those cases where the Commission is able to determine on the basis of the
21 documents before it that the hearing officer's findings contain numerical or clerical
22 inaccuracies, or require clarification, the Commission may continue the hearing for purposes
23 of referring the case back to said hearing officer in order to correct the findings.

24 (13) Appeals accepted by the Commission shall be heard within 45 days of
25 the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in

1 writing as to whether the appeal has been accepted. If the appeal has been accepted, the
2 notice shall state the time of the hearing and the nature of the hearing. Such notice must be
3 mailed at least 10 days prior to the hearing.

4 (14) At the appeal hearing, the parties shall have an opportunity to present
5 oral and written argument in support of their positions. The Commission may in its discretion
6 allow the parties to present additional evidence that was not considered by the hearing officer.
7 After such hearing and after any further investigation which the Commission may deem
8 necessary, the Commission may, upon hearing the appeal, affirm, reverse or modify the
9 hearing officer's decision or may remand the case for further hearing in accordance with its
10 findings. The Commission's decision must be rendered within 45 days of the completion of the
11 hearing and the parties must be notified of such decision.

12 (15) In accordance with the above subsection, the Commission shall give the
13 parties written notice of the decision. The notice shall state that the decision is final.

14 (16) The Commission shall adopt reasonable procedures to carry out the
15 purposes of Section 3307(b).

16 (c) **Civil Action.** Any aggrieved person may enforce the provisions of this
17 Article by means of a civil action.

18 (d) **Injunction.**

19 (1) Any person who commits, or proposes to commit, an act in violation of
20 this Article may be enjoined therefrom by any court of competent jurisdiction.

21 (2) Action for injunction under this subsection may be brought by any
22 aggrieved person, by the District Attorney, by the City Attorney, or by any person or entity
23 which will fairly and adequately represent the interests of the protected class.

24 (e) **Bar.** A complaint to the Human Rights Commission is not a prerequisite
25 to the filing of a civil action under this Section. The pendency of a complaint before the Human

1 Rights Commission shall not bar any civil action under this Section, but a final judgment in any
2 civil action shall bar any further proceedings by the Human Rights Commission.

3 **SEC. 3310. DEFINITION.**

4 The word "person" as used in this Article shall mean any individual, person, firm,
5 corporation, business or other organization or group of persons however organized. For the
6 purposes of Section 3305(a)(5), "person" shall also mean, and include the partners,
7 managers, employees, agents, business associates, suppliers or customers of a firm,
8 corporation, business or other organization.

9 Section 2. The San Francisco Police Code is hereby amended by amending sections
10 3300B.1, 3300B.3, and 3300B.4 to read as follows:

11 **SEC. 3300B.1. FINDINGS AND PURPOSE.**

12 After public hearing and receipt of testimony, the Board of Supervisors finds and
13 declares that:

14 (1) Discriminatory practices of certain clubs or organizations where business
15 is frequently conducted and personal contacts valuable for business purposes, employment
16 and professional advancement are formed are a significant barrier to the advancement of
17 women and minorities in the business and professional life of the City and County of San
18 Francisco.

19 (2) While such clubs or organizations avowedly may have been formed for
20 social or civic purposes, the commercial nature of many of their activities and the extent to
21 which these activities have had a prejudicial impact on the business, professional and
22 employment opportunities of women and minorities are of significant magnitude.

23 (3) Business activity most frequently occurs in clubs or organizations which
24 have more than four hundred members and which provide regular meal services facilitating
25 the conduct of such business.

1 (4) Employers often pay their employees' membership dues and expenses at
2 such clubs or organizations because the employees' activities at said clubs or organizations
3 serve to develop and enhance the employer's business. Such clubs or organizations also rent
4 their facilities for use as conference rooms for business meetings attended by nonmembers.

5 (5) Clubs or organizations where the above practices occur provide benefits
6 to business entities and persons other than members and thus are not in fact "distinctly
7 private" in their nature.

8 (6) The City has a compelling interest in eradicating discrimination based on
9 sex, race, ~~creed~~, color, religion, ancestry, national origin, place of birth, sex, age, religion,
10 creed, disability, sexual orientation, gender identity, weight, or height ~~or disability~~ in order to
11 assure all of its citizens a fair and equal opportunity to participate in the business and
12 professional life of the City. Conduct and practices which exclude persons from entry to,
13 consideration for membership in, or the full advantages and privileges of such membership on
14 these bases are discriminatory and unacceptable, and are injurious to the body politic, the
15 business community and the City. Accordingly, the City's interest in eliminating such conduct
16 and practices in clubs or organizations covered by this Article outweighs the interest of their
17 members in private association.

18 (7) While the Board of Supervisors recognizes the interest in private
19 association asserted by club members, it finds that this interest does not overcome the public
20 interest in equal opportunity. It is not the Board's purpose to dictate the manner in which
21 certain private clubs conduct their activities or select their members, except insofar as is
22 necessary to ensure that clubs do not automatically exclude persons from consideration for
23 membership or unreasonably prevent enjoyment of club accommodations and facilities on
24 account of invidious discrimination. Furthermore, it is not the Board's purpose to interfere in
25

1 club activities or subject club operations to scrutiny beyond what is necessary in good faith to
2 enforce this Article.

3 **SEC. 3300B.3. PROHIBITION AGAINST DISCRIMINATION.**

4 (A) It shall be unlawful for a club which is not distinctly private to deny to any
5 person entry to or use of facilities at, membership in, or unreasonably prevent the full
6 enjoyment of said club wholly or partially on the basis of the person's actual or perceived sex,
7 race, ~~creed~~, color, ~~religion~~, ancestry, national origin, place of birth, sex, age, religion, creed,
8 disability, sexual orientation, gender identity, weight, or height ~~or disability~~.

9 (B) The provisions of this Article shall not apply to an institution
10 organized and operated exclusively for religious purposes as defined in 26 U.S.C.
11 Section 501(c)(3).

12 **SEC. 3300B.4. PROHIBITED PRACTICES: CITY MEETINGS.**

13 (A) No City official or employee shall sponsor, organize, attend or participate
14 in any meeting or other activity, the purpose of which is related to City business, in any
15 establishment or facility which does not afford full membership rights and privileges to any
16 person wholly or partially because of the person's actual or perceived sex, race, ~~creed~~, color,
17 ~~religion~~, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual
18 orientation, gender identity, weight, or height ~~or disability~~, except for City officials or
19 employees acting in the course of ongoing law enforcement, code enforcement or other
20 required investigations and inspections.

21 (B) No City funds shall be expended in connection with any meeting or other
22 activities held at any establishment or facility which does not afford full membership rights and
23 privileges to any person wholly or partially because of the person's actual or perceived sex,
24 race, ~~creed~~, color, ~~religion~~, ancestry, national origin, place of birth, sex, age, religion, creed,
25 disability, sexual orientation, gender identity, weight, or height ~~or disability~~, except for City

1 funds expended during the course of ongoing law enforcement, code enforcement or other
2 required investigations and inspections.

3 (C) No City official or employee shall be reimbursed for any dues or any other
4 expense incurred at an establishment or facility which does not afford full membership rights
5 and privileges to any person wholly or partially because of the person's actual or perceived
6 ~~sex, race, creed, color, religion,~~ ancestry, national origin, place of birth, sex, age, religion,
7 creed, disability, sexual orientation, gender identity, weight, or height ~~or disability~~, except for
8 expenditures incurred by a City official or employee acting in the course of ongoing law
9 enforcement, code enforcement or other required investigations and inspections. Any request
10 by a City official or employee for payment or reimbursement from City monies shall include a
11 signed statement that the request for payment or reimbursement is not for any expenses
12 incurred at such a private establishment or any other activity, or was incurred in the course of
13 an ongoing law enforcement, code enforcement or other required investigation or inspection.

14 Section 3. The San Francisco Police Code is hereby amended by amending Sections
15 3803, 3805, 3811, 3813 and 3852 to read as follows:

16 **SEC. 3803. EMPLOYMENT.**

17 (a) **Prohibited Activity.** It shall be unlawful for any person to do any of the
18 following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the
19 associated conditions covered by this Article:

20 (1) By an employer: To fail or refuse to hire, or to discharge any individual; to
21 discriminate against any individual with respect to compensation, terms, conditions or
22 privileges of employment, including promotion; or to limit, segregate or classify employees in
23 any way which would deprive or tend to deprive any individual of employment opportunities, or
24 otherwise adversely affect his/her status as an employee;

1 (2) By an employment agency: To fail or refuse to refer for employment or for
2 consideration as an independent contractor any individual; or otherwise to discriminate
3 against any individual;

4 (3) By a labor organization: To exclude or expel from its membership or to
5 otherwise discriminate against any individual; or to limit, segregate or classify its membership;
6 or to classify or fail or refuse to refer for employment any individual in any way which would
7 deprive or tend to deprive such individual of employment opportunities, or would limit such
8 employment opportunities, or otherwise adversely affect his/her status as an employee or as
9 an applicant for employment;

10 (4) By any person engaging the services of an independent contractor: To
11 fail or refuse to engage the services of, or to terminate the services of, any independent
12 contractor; to discriminate against any independent contractor with respect to the terms or
13 conditions under which the contracted for work is performed or evaluated or otherwise to
14 deprive or tend to deprive such individual of a fair opportunity to perform the contracted for
15 work;

16 (5) By an employer, employment agency or labor organization;

17 (i) To discriminate against any individual in admission to, or employment in,
18 any program established to provide apprenticeship or other training or retraining, including
19 any on-the-job training program;

20 (ii) To print, publish, advertise or disseminate in any way, or cause to be
21 printed, published, advertised or disseminated in any way, any notice or advertisement with
22 respect to employment, membership in, or any classification or referral for employment or
23 training by any such organization, which indicates an unlawful discriminatory act or
24 preference.
25

1 (b) **Bona Fide Occupational Qualification not Prohibited; Burden of**

2 **Proof.** 1) Nothing contained in this Section shall be deemed to prohibit selection or rejection
3 based upon a bona fide occupational qualification.

4 (2) In any action brought under Section 3811 of this Article (Enforcement), if
5 a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide
6 occupational qualification, that party shall have the burden of proving:

7 (i) That the discrimination is in fact a necessary result of a bona fide
8 occupational qualification; and

9 (ii) That there exists no less discriminatory means of satisfying the
10 occupational qualification.

11 (3) The capacity of an individual to perform his or her duties without
12 endangering his or her health or safety, or the health or safety of others is a bona fide
13 occupational qualification.

14 (c) **Exceptions.** Nothing in this Section shall be construed to prohibit any act
15 specifically authorized by the laws of the State of California or any actions taken by or under
16 the direction of the San Francisco Department of Public Health in order to protect the public
17 health.

18 **SEC. 3805. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.**

19 (a) **Prohibited Activity.** It shall be an unlawful practice for any person to do
20 any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or
21 any of the associated conditions covered by this Article:

22 (1) to deny any individual the full and equal enjoyment of the foods, services,
23 facilities, privileges, advantages and accommodations of any business establishment
24 or public accommodation;

1 (2) For any business establishment or public accomodation to boycott or
2 blacklist, to surcharge, or to refuse to buy from, contract with, sell to, or trade with any
3 person.

4 (b) **Advertising.** No person shall make, print, publish, advertise or
5 disseminate in any way any notice, statement or advertisement with respect to any business
6 establishment or public accommodation which indicates that a person is doing or will do
7 anything which this Section prohibits.

8 (c) **Exceptions.** Nothing in this Section shall be construed to prohibit any act
9 specifically authorized by the laws of the State of California or any actions taken by or under
10 the direction of the San Francisco Department of Public Health in order to protect the public
11 health.

12 **SEC. 3811. ENFORCEMENT.**

13 (a) **Human Rights Commission.** Any person who believes that he or she
14 has been discriminated against in violation of the provisions of this Article may file with the
15 Human Rights Commission a request to have the Commission investigate and mediate his or
16 her complaint under the provisions of Chapter 12A of the Administrative Code of the City and
17 County of San Francisco.

18 (b) **Civil Action.** Any aggrieved person may enforce the provisions of this
19 Article in a civil action.

20 (c) **Equitable Relief.**

21 (1) Any person who commits, or proposes to commit, an act in violation of
22 this Article may be enjoined therefrom by any court of competent jurisdiction.

23 (2) An action for equitable relief under this subsection may be brought by any
24 aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

1 ~~(b)~~ (d) **Bar.** A complaint to the Human Rights Commission is not a prerequisite
2 to the filing of a civil action under this Section. The pendency of a complaint before the Human
3 Rights Commission shall not bar any civil action under this Section, but a final judgment in any
4 civil action shall bar any further proceedings by the Human Rights Commission.

5 **SEC. 3813. DEFINITIONS.**

6 As used in this Article, the following words or phrases shall have the meanings
7 indicated:

8 (a) The word "AIDS" shall mean the condition which occurs when an
9 individual is infected with the virus known as lymphadenopathy-associated virus or human T-
10 lymphotropic virus type III or AIDS-associated retrovirus including, but not limited to, acquired
11 immunodeficiency syndrome (AIDS), AIDS-related complex, progressive generalized
12 lymphadenopathy, lymphadenopathy syndrome, and asymptomatic infection. It also includes
13 anyone who has any medical condition as a result of having any of the above. It also includes
14 any perception, whether real or imaginary, that a person is suffering from AIDS, any of the
15 conditions described above, or the perception, real or imaginary, that a person is at risk for
16 any of the conditions described above.

17 (b) The phrase "business establishment" shall mean any entity, however
18 organized, which furnishes goods or services to the general public. An otherwise qualifying
19 establishment which has membership requirements is considered to furnish services to the
20 general public if its membership requirements consist only of payment of fees or consist of
21 requirements under which a substantial portion of the residents of this City could qualify.

22 (c) The word "person" as used in this Article shall mean any individual,
23 person, firm, corporation, or other organization or group of persons however organized. For
24 the purposes of Section 3805(a)(2), "person" shall also mean, and include the partners,
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1 managers, employees, agents, business associates, suppliers or customers of a firm,
2 corporation, business or other organization.

3 **SEC. 3852. EMPLOYMENT.**

4 (a) **Prohibited Activity.** It shall be unlawful for any person to do any of the
5 following acts as a result of the fact, in whole or in part, that a person has any disease or
6 affliction that cannot be transmitted by casual contact:

7 (1) By an employer: To fail or refuse to hire, or to discharge any individual; to
8 discriminate against any individual with respect to compensation, terms, conditions or
9 privileges of employment, including promotion; or to limit, segregate or classify employees in
10 any way which would deprive or tend to deprive any individual of employment opportunities, or
11 otherwise adversely affect his/her status as an employee;

12 (2) By an employment agency: To fail or refuse to refer for employment or for
13 consideration as an independent contractor any individual; or otherwise to discriminate
14 against any individual;

15 (3) By a labor organization: To exclude or expel from its membership or to
16 otherwise discriminate against any individual, or to limit, segregate or classify its membership;
17 or to classify or fail or refuse to refer for employment any individual in any way which would
18 deprive or tend to deprive such individual of employment opportunities, or would limit such
19 employment opportunities, or otherwise adversely affect his/her status as an employee,
20 independent contractor, or as an applicant for employment;

21 (4) By a person engaging the services of an independent contractor: To fail
22 or refuse to engage the services of, or to terminate the services of, any independent
23 contractor; to discriminate against any independent contractor with respect to the terms or
24 conditions under which the contracted for work is performed or evaluated or otherwise to
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1 deprive or tend to deprive such individual of a fair opportunity to perform the contracted for
2 work;

3 (5) By an employer, employment agency or labor organization:

4 (i) To discriminate against any individual in admission to, or employment in,
5 any program established to provide apprenticeship or other training or retraining, including
6 any on-the-job training program;

7 (ii) To print, publish, advertise or disseminate in any way, or cause to be
8 printed, published, advertised or disseminated in any way, any notice or advertisement with
9 respect to employment, membership in, or any classification or referral for employment or
10 training by any such organization, which indicates an unlawful discriminatory act or
11 preference.

12 (b) **Bona Fide Occupational Qualification not Prohibited; Burden of**
13 **Proof.**

14 (1) Nothing contained in this Section shall be deemed to prohibit selection or
15 rejection based upon a bona fide occupational qualification.

16 (2) In any action brought under Section 3856 of this Article (Enforcement), if
17 a party asserts that an otherwise unlawful discriminatory practice is justified as a bona fide
18 occupational qualification, that party shall have the burden of proving:

19 (i) That the discrimination is in fact a necessary result of a bona fide
20 occupational qualification; and,

21 (ii) That there exists no less discriminatory means of satisfying the
22 occupational qualification.

23 (3) The capacity of an individual to perform his or her duties without
24 endangering his or her health or safety, or the health or safety of others is a bona fide
25 occupational qualification.

1 (c) **Exceptions.** Nothing in this Section shall be construed to prohibit any act
2 specifically authorized by the laws of the State of California or any actions taken by or under
3 the direction of the San Francisco Department of Public Health in order to protect the Public
4 Health.

5 (d) **Definition.** For the purposes of this ordinance, "person" shall mean any
6 individual, person, firm, corporation or other organization or group of persons however
7 organized.

8 **SEC. 3856. ENFORCEMENT.**

9 (a) **Human Rights Commission.** Any person who believes that he or she
10 has been discriminated against in violation of the provisions of this ordinance may file with the
11 Human Rights Commission a request to have the Commission investigate and mediate his or
12 her complaint under the provisions of Chapter 12A of the Administrative Code of the City and
13 County of San Francisco.

14 (b) **Civil Action.** Any aggrieved person may enforce the provisions of this
15 ordinance in a civil action.

16 (c) **Equitable Relief.**

17 (1) Any person who commits, or proposes to commit, an act in violation of
18 this ordinance may be enjoined therefrom by any court of competent jurisdiction.

19 (2) An action for equitable relief under this Subsection may be brought by
20 any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

21 (d) **Bar.** A complaint to the Human Rights Commission is not a prerequisite
22 to the filing of a civil action under this Section. The pendency of a complaint before the Human

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1 Rights Commission shall not bar any civil action under this Section, but a final judgment in any
2 civil action shall bar any further proceedings by the Human Rights Commission.

3
4 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

5 By: *Catharine Barnes*
6 Catharine Barnes
7 Deputy City Attorney
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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 021462

Date Passed:

Ordinance amending Articles 33, 33B and 38 of the Police Code by amending Sections 3303, 3803, and 3852 to prohibit employment discrimination against independent contractors; amending Sections 3305, 3310, and 3805 to prohibit business-to-business discrimination; amending Section 3301, 3302, 3303, 3304 and 3305 to add creed and national origin to the protected categories; amending Sections 3301, 3302 and 3305.1 to add weight and height to the protected categories; amending Sections 3303, 3305 and 3307 and adding Section 3305.2 to clarify provisions relating to discrimination for association and retaliation with persons in protected categories; amending Sections 3300B.1, 3300B.3 and 3300B.4 to add age, gender identity, place of birth, weight and height to the protected categories; and amending Sections 3302, 3304, 3305, 3305.1, 3306, 3307, 3811 and 3856 for technical changes.

October 28, 2002 Board of Supervisors — PASSED ON FIRST READING

Ayes: 7 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick
Absent: 4 - Newsom, Peskin, Sandoval, Yee

November 4, 2002 Board of Supervisors — FINALLY PASSED

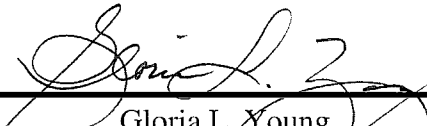
Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Leno, Maxwell, McGoldrick,
Newsom, Peskin, Sandoval, Yee


File No. 021462

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on November 4, 2002 by the Board of Supervisors of the City and County of San Francisco.

NOV 15 2002

Date Approved


Gloria L. Young
Clerk of the Board


Mayor Willie L. Brown Jr.