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

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 Sections 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 or 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.

Note: Additions are _single-underline italics Times New Roman_; deletions are _strike-through italics Times New Roman_. Board amendment additions are double underlined. Board amendment deletions are strikethrough normal.

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

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

SEC. 3301. POLICY.

It is the policy of the City and County of San Francisco to eliminate discrimination based on race, religion, color, ancestry, _national origin, place of birth, age, sex, 

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age, religion, creed, disability, sexual orientation, gender identity, disability, or place of birth, weight or height within the City and County.

SEC. 3302. FINDINGS.

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

SEC. 3303. EMPLOYMENT.

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

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

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

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

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

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

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

(ii) To print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by any such organization, which indicates an unlawful discriminatory preference.
(b) **Bona Fide Occupational Qualification Not Prohibited; Burden of Proof.**

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

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

(c) **Exceptions.**

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

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

(d) **Notice.** All employers with a business tax registration certificate from the City shall post in conspicuous places, available to employees and independent contractors, a non-discrimination in employment notice in such form and content as shall be created and
approved by the Human Rights Commission. The notice shall inform employees and
independent contractors that employers and persons engaging the services of an independent
contractor are prohibited from discriminating in the recruitment, selection, training, promotion
and termination of employees, or in the recruitment, engagement, utilization or termination of
independent contractors based on any of the categories specified in this section Section.
The notice shall measure at least 8-1/2 by 11 inches and be in ten-point type or larger. The
notice shall be distributed by the Human Rights Commission to all businesses with a business
tax registration certificate issued by the Tax Collector and annually to all new such
businesses.

SEC. 3304. HOUSING.

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

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

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

(3) To refuse to lend money, guarantee the loan of money, accept a deed of
trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition,
construction, alteration, rehabilitation, repair or maintenance of real property; or impose
different conditions on such financing; or refuse to provide title or other insurance relating to
the ownership or use of any interest in real property;

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

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

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

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

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

(2) Fails to account for the aggregate income of persons residing together or proposing to reside together, or aggregate income of tenants or prospective tenants and their
cosigners or proposed cosigners, on the same basis as the aggregate income of married
persons residing together or proposing to reside together.

(c) **Exceptions.**

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

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

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

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

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

(2) Except as otherwise permitted by law, to deny, directly or indirectly, any
person admittance to the premises of the business establishment or place of public
accommodations accommodation. No business establishment or place of public
accommodations accommodation requesting or requiring identification documents to
demonstrate or confirm a person's proof of age may deny admittance to any person displaying
one valid identification document as proof of age. For purposes of Section 3305 (a)(2), the
term "valid identification document" means a document which contains the name, date of birth
and picture of the person presenting the document, and is issued by a federal, state, county or
municipal government, or subdivision or agency thereof, including, but not limited to, a motor
vehicle operator's license or identification card issued to a member of the Armed Forces;

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

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

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

SEC. 3305.1. HOME DELIVERY SERVICES.

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

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advises home delivery services to the entire City and County, that person or business
entity’s “normal service range” shall be defined by the geographic boundaries of the City and
County.

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

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

SEC 3305.2 ASSOCIATION AND RETALIATION.

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

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

(i) Has opposed any act or practice made unlawful by this Article;
(ii) Has supported this Article and its enforcement;

(iii) Has filed a complaint under this Article with the San Francisco Human Rights Commission or any court; or

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

SEC. 3306. LIABILITY.

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

SEC. 3307. ENFORCEMENT.

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

(b) Human Rights Commission.

(1) Any person or organization who believes that a violation of Sections 3304 and/or 3305.2 of this Article relating to housing has occurred may file with the Human Rights Commission a verified complaint in writing.
(2) Upon the filing with the Commission of a verified written complaint, the Director of the Human Rights Commission or a designated member of the Commission staff, shall make, within 10 days, a full and prompt investigation in connection therewith. If, upon such investigation, the Director finds that the person charged in the complaint has not engaged in or is not engaging in such unlawful practice, such finding, in writing, shall be filed with the Commission and the complaint shall be dismissed. In addition to the other action the Director may or shall take, if, upon such investigation, the Director determines that probable cause exists for the allegations made in the complaint, the Director in his or her discretion may endeavor to eliminate the unlawful practice charged in the complaint by means of conciliation and persuasion.

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

(4) If, at any time after a complaint has been filed, the Director determines that appropriate civil action to preserve the status quo or to prevent irreparable harm appears advisable, the Director shall refer the matter to the City Attorney for appropriate legal action. Appropriate legal action includes the seeking of injunctive relief to enjoin the owner of the property from taking further action with respect to the rental, lease, or sale of the property until
the Commission has completed its investigation and made its determination. The Director shall notify the parties of such referral to the City Attorney and notify the complainant that he or she may initiate independently appropriate civil action to seek injunctive relief.

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

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

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

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

(9) Either party may file an appeal of the hearing officer's decision with the Commission. Such an appeal to the Commission from the determination of the hearing officer must be made within 15 days of the mailing of the decision and findings of fact. The appeal shall be in writing and must state the grounds for appellant's claim that there was either error
or abuse of discretion on the part of the hearing officer. Each appeal shall be accompanied by a $15 filing fee; provided, however, the fee shall be waived for an individual who files an affidavit under penalty of perjury stating that he or she is an indigent person who does not have and cannot obtain the money to pay the filing fee without using money needed for the necessities of life. The filing of an appeal will not stay the effect of the hearing officer's decision.

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

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

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

(13) Appeals accepted by the Commission shall be heard within 45 days of the filing of an appeal. Within 30 days of the filing of an appeal, both parties shall be notified in
writing as to whether the appeal has been accepted. If the appeal has been accepted, the
notice shall state the time of the hearing and the nature of the hearing. Such notice must be
mailed at least 10 days prior to the hearing.

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

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

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

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

(d) Injunction.

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

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

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

SEC. 3310. DEFINITION.

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

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

SEC. 3300B.1. FINDINGS AND PURPOSE.

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

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

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

(3) Business activity most frequently occurs in clubs or organizations which have more than four hundred members and which provide regular meal services facilitating the conduct of such business.
(4) Employers often pay their employees' membership dues and expenses at such clubs or organizations because the employees' activities at said clubs or organizations serve to develop and enhance the employer's business. Such clubs or organizations also rent their facilities for use as conference rooms for business meetings attended by nonmembers.

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

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

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

SEC. 3300B.3. PROHIBITION AGAINST DISCRIMINATION.

(A) It shall be unlawful for a club which is not distinctly private to deny to any
person entry to or use of facilities at, membership in, or unreasonably prevent the full
enjoyment of said club wholly or partially on the basis of the person's actual or perceived sex,
race, creed, color, religion, ancestry, national origin, place of birth, sex, age, religion, creed,

disability, sexual orientation, gender identity, weight, or height or disability.

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

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

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

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

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

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

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

SEC. 3803. EMPLOYMENT.

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

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

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

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

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

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

(ii) To print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by any such organization, which indicates an unlawful discriminatory act or preference.
(b) **Bona Fide Occupational Qualification not Prohibited; Burden of Proof.** 1) Nothing contained in this Section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.

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

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

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

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

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

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

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

(1) to deny any individual the full and equal enjoyment of the foods, services, facilities, privileges, advantages and accommodations of any business establishment or public accommodation;
(2) For any business establishment or public accommodation to boycott or blacklist, to surcharge, or to refuse to buy from, contract with, sell to, or trade with any person.

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

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

SEC. 3811. ENFORCEMENT.

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

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

(c) Equitable Relief.

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

(2) An action for equitable relief under this subsection may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.
(b) (d) Bar. A complaint to the Human Rights Commission is not a prerequisite to the filing of a civil action under this Section. The pendency of a complaint before the Human Rights Commission shall not bar any civil action under this Section, but a final judgment in any civil action shall bar any further proceedings by the Human Rights Commission.

SEC. 3813. DEFINITIONS.

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

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

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

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

SEC. 3852. EMPLOYMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The capacity of an individual to perform his or her duties without endangering his or her health or safety, or the health or safety of others is a bona fide occupational qualification.
(c) **Exceptions.** Nothing in this Section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the Public Health.

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

**SEC. 3856. ENFORCEMENT.**

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

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

(c) **Equitable Relief.**

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

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

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

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Supervisor Leno
BOARD OF SUPERVISORS
Rights Commission shall not bar any civil action under this Section, but a final judgment in any civil action shall bar any further proceedings by the Human Rights Commission.

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

By: Catharine Barnes
Deputy City Attorney
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
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.

Gloria L. Young
Clerk of the Board

Mayor Willie L. Brown Jr.