

ORDINANCE NUMBER O- 19203 (NEW SERIES)

ADOPTED ON JUL 28 2003

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AMENDING CHAPTER 5, ARTICLE 2,
DIVISION 96 OF THE SAN DIEGO MUNICIPAL CODE
BY AMENDING SECTIONS 52.9601, 52.9602, 52.9603,
52.9604, 52.9605, 52.9606, AND 52.9607, ALL RELATING
TO DISCRIMINATION BASED ON SEXUAL ORIENTATION.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1: That Chapter 5, Article 2, Division 96, of the San Diego Municipal Code is amended by amending Sections 52.9601, 52.9602, 52.9603, 52.9604, 52.9605, 52.9606, and 52.9607, to read as follows:

§52.9601 Statement of Policy

Discrimination based on *sexual orientation* or *gender identity* deprives the City of the fullest utilization of its resources and capacity for development and advancement. Such discrimination poses a substantial threat to the health, safety and welfare of the community. Existing state and federal restraints on arbitrary discrimination are inadequate to meet the particular problems of this City. It is hereby declared as the public policy of the City of San Diego that it is necessary to protect and safeguard the right and opportunity of all *persons* to be free from discrimination based on *sexual orientation* or *gender identity* or expression.

Notwithstanding the intent of this ordinance to protect all citizens from arbitrary discrimination, nothing in this ordinance shall be construed as endorsing, encouraging, or approving a particular lifestyle nor is it the intent of this ordinance to give special privileges or rights to any *person* based on *sexual orientation* or *gender identity* or expression.

§52.9602 **Definitions**

Each word or phrase that is defined in this Division appears in the text of the Discrimination Based On Sexual Orientation Code in italicized letters.

Business Establishments. As used in this Division, the term "*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: (a) consist only of payment of fees; or (b) consist of requirements under which a substantial portion of the residents of this City could qualify.

Educational Institutions. As used in this Division, the term "*educational institution*" shall mean any entity, however organized, which engages in the developing of knowledge and makes available the processes of training and instruction.

Employer. As used in this Division, "*employer*" includes any private person regularly employing five or more persons. "*Employer*" shall not include any federal, state or local agencies.

Frivolous. As used in this Division, the term "*frivolous*" shall mean (a) totally and completely without merit; or (b) for the sole purpose of harassing an opposing party.

Gender identity. As used in this Division, "*gender identity*" shall mean having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a *person's* actual or perceived sex.

Individual. As used in this Division, the term "*individual*" shall mean the same as the term "*person*." Wherever this Division refers to the *sexual orientation or gender identity* of any *individual*, and the *individual* is a group, the phrase shall mean the *sexual orientation or gender identity* of any member of the group.

Person. As used in this Division, the term "*person*" shall mean any natural *person*, firm, corporation, partnership or other organization, association or group of *persons* however organized.

Reasonable. As used in this Division, "*reasonable*" shall mean that which a *person* of ordinary care and prudence would believe to be true.

Religious Organizations. As used in this Division, the term "*religious organization*" shall mean an organization recognized as such under 26 U.S.C. section 501(c)(3).

Sexual Orientation. As used in this Division, the term "*sexual orientation*" shall mean an *individual's* supposed or actual sexual preference for any lawful sexual activity.

§52.9603 Employment

(a) Unlawful Employment Practices.

- (1) *Employers — Discrimination.* It shall be an unlawful employment practice for an *employer* to fail or refuse to hire, or to discharge any *individual*, or otherwise to discriminate against any *individual* with respect to compensation, terms, conditions or privileges of employment on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*.
- (2) *Employers — Segregation.* It shall be an unlawful employment practice for an *employer* to limit, segregate or classify employees or applicants for employment in any manner which would deprive or tend to deprive any *individual* of employment opportunities, or adversely affect his or her employment status on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*.
- (3) *Employment Agencies.* It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment any *individual*, or otherwise to discriminate against any *individual* on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*.
- (4) *Labor Organizations.* It shall be an unlawful employment practice for a labor organization to fail or refuse to include in its

membership or to otherwise discriminate against any individual; or to limit, segregate or classify its membership; 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 otherwise adversely affect her or his status as an employee or as an applicant for employment on the basis (in whole or in part) of such *individual's sexual orientation or gender identity*.

- (5) Job Training. It shall be an unlawful employment practice for an *employer*, an employment agency or a labor organization 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 on the basis (in whole or in part) of such *individual's sexual orientation or gender identity*.

- (6) [No change in text.]

- (b) Subterfuge.

It shall be unlawful to do any of the acts mentioned in this section for any reason that would not have been asserted wholly or partially, but for the *sexual orientation or gender identity* of any *individual*.

- (c) Bona Fide Occupational Qualification Not Prohibited; Burden of Proof
 - (1) through (2) [No change in text.]
- (d) Exceptions.
 - (1) through (2) [No change in text.]
 - (3) Affirmative Action Not Required. Nothing in this ordinance shall be construed as requiring affirmative action on the basis of *sexual orientation or gender identity*.

§52.9604 Housing and Other Real Estate Transactions

- (a) Unlawful Real Estate Practices.
 - (1) Transaction Generally. It shall be an unlawful real estate practice for any *person* 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; to include in the terms or conditions of a transaction in real property any clause, condition or restriction; or to falsely represent that an interest in real property is not available for transaction on the basis (in whole or in part) of any *individual's sexual orientation or gender identity*.
 - (2) Credit. It shall be an unlawful real estate practice for any *person* to refuse to lend money, guarantee the loan, 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; on the basis (in whole or in part) of any *individual's sexual orientation or gender identity*.

(3) Tenants' Services. It shall be an unlawful real estate practice for any *person* to refuse or restrict facilities, services, repairs or improvement for any tenant or lessee on the basis (in whole or in part) of any *individual's sexual orientation or gender identity*.

(4) [No change in text.]

(b) Subterfuge.

It shall be unlawful to do any of the actions mentioned in this Section for any reason that would not have been asserted wholly or partially, but for the *sexual orientation or gender identity* of any *individual*.

(c) Exceptions.

(1) through (2) [No change in text.]

§52.9605 Business Establishments

(a) Unlawful Business Practice.

(1) Unlawful Practices Generally. It shall be an unlawful business practice for any *person* to deny any *individual* the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any *business establishment* on the basis

(in whole or in part) of such *individual's sexual orientation* or *gender identity*.

(2) Credit. It shall be an unlawful business practice for any *person* to deny credit to any *individual* on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*.

(3) [No change in text.]

(b) Subterfuge.

It shall be unlawful to do any of the acts mentioned in this Section for any reason that would not have been asserted, wholly or partially, but for the *sexual orientation* or *gender identity* of any *individual*.

§52.9606 City Facilities and Services

(a) Unlawful Service Practices

(1) City Facilities. It shall be an unlawful service practice for any *person* to deny any *individual* the full and equal enjoyment of, or to place different terms and conditions on the availability of the use of any City facility on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*.

(2) City Services. It shall be an unlawful service practice for any *person* to deny any *individual* the full and equal enjoyment of, or to impose different terms or conditions on the availability of, any City service on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*.

(3) Supported Facilities and Services. It shall be an unlawful service practice for any *person* to deny any *individual* the full and equal enjoyment of, or to impose different terms and conditions upon the availability of, any service, program or facility wholly or partially funded or otherwise supported by the City of San Diego, on the basis (in whole or in part) of such *individual's sexual orientation* or *gender identity*. This subsection shall not apply to any facility, service or program which does not receive assistance from the City of San Diego which is not provided to the public generally.

(4) Advertising. It shall be an unlawful service practice for any person to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any service or facility provided by either the City of San Diego or an organization described in subsection 3 which indicates that the City of San Diego or an organization described in subsection 3 engages in or will engage in unlawful service practices.

(b) Subterfuge.

It shall be an unlawful discriminatory practice to do any of the acts mentioned in this Section for any reason which would not have been asserted, wholly or partially, but for the *sexual orientation* or *gender identity* of any *individual*.

§52.9607 Educational Institutions

(a) Unlawful Education Practices.

(1) Admission. It shall be an unlawful educational practice for any *person* to deny admission to any *educational institution*, or to impose different terms or conditions on admission, on the basis (in whole or in part) of such *individual's sexual orientation or gender identity*.

(2) Services. It shall be an unlawful educational practice for any *person* to deny any *individual* the full and equal enjoyment of, or to impose different terms or conditions upon the availability of, any services or program offered by an *educational institution* on the basis (in whole or in part) of such *individual's sexual orientation or gender identity*.

(3) through (4) [No change in text.]

(b) Subterfuge.

It shall be an unlawful discriminatory practice to do any of the acts mentioned in this Section for any reason which would not have been asserted, wholly or partially, but for the *sexual orientation or gender identity* of any *individual*.

Section 2. That the City Clerk is instructed to amend Chapter 5, Article 2, Division 96, of the San Diego Municipal Code by putting all the defined terms into italicized type, where not already indicated.

Section 3: That a full reading of this Ordinance is dispensed with prior to its final passage, since a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By *Lisa A. Foster*

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Deputy City Attorney

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