

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: August 10, 2015

TO: Herman Parker, Director, Park and Recreation Department

FROM: City Attorney

SUBJECT: Assembly Bill No. 2404 Regarding Equal Participation in Youth Athletics Programs

INTRODUCTION

This memorandum responds to your request for this Office to analyze Assembly Bill No. 2404 (AB 2404), including the effect of the expiration of one its provisions on January 1, 2015. AB 2404 was enacted to expand and support equal participation in youth athletics programs and allocation of parks and recreational facilities and resources. Legis. Counsel's Dig., Assem. Bill 2404 (2003-2004 Reg. Sess.) Sept. 28, 2004.

QUESTION PRESENTED

What is the effect of AB 2404 on the City and what, if any, are the impacts of the expiration of one provision in AB 2404 on January 1, 2015?

SHORT ANSWER

AB 2404, codified as California Government Code¹ section 53080, prohibits the City from discriminating in "community youth athletics programs" and in the allocation of City parks and recreational facilities and resources that enable or support those programs. The provision of the Assembly Bill that expired on January 1, 2015, refers to one of the methods by which the City may demonstrate that the community youth athletics programs it offers effectively accommodates the athletic interests and abilities of members of both genders. The effect of AB 2404 and of the sunset of this method of compliance on the City will depend on the City's practices and programs and those of the City's permittees and lessees operating community

¹ All subsequent references will be to the Government Code unless otherwise noted.

youth athletics programs. This Office is available to discuss specific programs or facilities as issues arise.

ANALYSIS

I. AB 2404 PROHIBITS THE CITY FROM DISCRIMINATING BASED ON SEX OR GENDER IN COMMUNITY YOUTH ATHLETICS PROGRAMS

AB 2404, codified as section 53080, states in part:

No *city, county, city and county, or special district*, including, but not limited to, a community services district, recreation and park district, regional park district, regional park and open-space district, regional open-space park district, or resort improvement district *shall discriminate against any person on the basis of sex or gender in the operation, conduct, or administration of community youth athletics programs* or in the allocation of parks and recreation facilities and resources that support or enable these programs.

Cal. Gov't Code § 53080(a) (emphasis added).

Pursuant to section 53080(a), the City may not discriminate, based on sex or gender, in the City's operation and administration of "community youth athletics programs."² Cal. Gov't Code § 53080(a). A "community youth athletics program" is defined as "any athletic program in which youth solely or predominantly participate, that is organized for the purposes of training for and engaging in athletic activity and competition, *and that is in any way operated, conducted, administered, supported, or enabled by a city, county, city and county, or special district.*" Cal. Gov't Code § 53080(c) (emphasis added). The City is further prohibited from allocating "parks and recreation facilities and resources" that support such programs in a discriminatory manner. Cal. Gov't Code § 53080(a). Parks and recreation facilities and resources include "park facilities, including, but not limited to, athletic fields, athletic courts, gymnasiums, recreational rooms, restrooms, concession stands and storage spaces; lands and areas accessed through permitting, leasing, or other land use arrangements, or otherwise accessed through cities, counties, cities and counties, or special districts; sports and recreation equipment; devices used to promote athletics such as scoreboards, banners, and advertising; and all moneys used in conjunction with youth athletics." Cal. Gov't Code § 53080(d).

² As a charter city, the City generally has the authority to act on municipal affairs but must comply with state law on matters determined to be of a statewide concern. Cal. Const. art. XI, § 5 and § 7; *see also*, 1995 City Att'y MOL 742 (95-78; Nov. 13, 1995). "Charter cities . . . derive their corporate powers directly from the California Constitution, subject to limitations of their respective charters *and enactments of the legislature on matters of statewide concern.*" The California Municipal Law Handbook, §1.11 (2015) (citing *Johnson v. Bradley*, 4 Cal. 4th 389, 394 (1992)) (emphasis added). Anti-discrimination laws would generally be considered to address matters of statewide concern. *See* U.S. Const. amend. XIV, § 1; Cal. Const. art. I, § 31 ("The State shall not discriminate against . . . any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.").

The stated intent of the statute is to give “girls . . . opportunities for participation in community youth athletics programs equal, in both quality and scope, to those accorded to boys.” Cal. Gov’t Code § 53080(e). According to the Legislative history, the author intended AB 2404 to “provide explicit guidance for cities and counties to come into compliance with civil rights laws by providing Title IX-type protection against discrimination based on gender by cities and counties in the administration of community youth athletics programs.”³ Assem. Floor Bill Analysis, Assem. Bill 2404 (2003-2004 Reg. Sess.) Aug. 20, 2004. In order to determine whether the City is in compliance with section 53080, the City would need to evaluate the specific youth athletics programs operated by or supported by the City using the criteria in section 53080.

II. AB 2404 ESTABLISHES A PROCESS FOR THE COURTS TO DETERMINE WHETHER SEX OR GENDER DISCRIMINATION EXISTS IN COMMUNITY YOUTH ATHLETICS PROGRAMS

In addition to prohibiting discrimination in community youth athletics programs, section 53080 authorizes civil actions for equitable and monetary relief for such discrimination. Cal. Gov’t Code § 53080(j). Section 53080 provides a framework for courts when hearing sex or gender discrimination claims arising out of community youth athletics programs. Reviewing courts are directed to consider the following factors, among others, in determining whether discrimination exists in a community youth athletics program:

- (1) *Whether the selection of community youth athletics programs offered effectively accommodate the athletic interests and abilities of members of both genders.*
- (2) The provision of moneys, equipment, and supplies.
- (3) Scheduling of games and practice times.
- (4) Opportunity to receive coaching.
- (5) Assignment and compensation of coaches.
- (6) Access to lands and areas accessed through permitting, leasing, or other land use arrangements, or otherwise accessed through a city, a county, a city and county, or a special district.
- (7) Selection of the season for a sport.
- (8) Location of the games and practices.
- (9) Locker rooms.
- (10) Practice and competitive facilities.
- (11) Publicity.

³ Section 53080 is not the only state law that prohibits discrimination in City programs and in the allocation of City facilities. The Unruh Civil Rights Act generally prohibits discrimination by businesses based on sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation. Cal. Civ. Code § 51(b), *see* City Att’y MS 2014-5 (Mar. 24, 2014) (discussing Unruh Civil Rights Act with respect to free admission to Balboa Park museums). “The Unruh Civil Rights Act . . . has been held to prohibit *local governmental agencies* from discriminating on the bases proscribed by the act.” Cal. Gov’t Code § 53080(b) (emphasis added).

- (12) Officiation by umpires, referees, or judges who have met training and certification standards.

Cal. Gov't Code § 53080(f) (emphasis added).

Prior to January 1, 2015, the City could demonstrate that the selection of community youth athletics programs effectively accommodated the athletic interests and abilities of both genders by showing a history and continuing practice of program expansion and resource allocation responsive to the interests and abilities of the underrepresented gender. Cal. Gov't Code § 53080(g)(2) and (h). However, effective January 1, 2015, cities may no longer utilize this method of compliance. Now, in the event of litigation arising out of a community youth athletics program, the City must show it has accommodated the athletic interests and abilities of both genders by showing that "[t]he community youth athletic program opportunities for boys and girls are provided in numbers substantially proportionate to their respective numbers in the community" or, if underrepresentation exists, by showing "the interests and abilities of the members of that gender have been fully and effectively accommodated by the present program and allocation of resources." Cal. Gov't Code § 53080(g)(1) and (3). This showing would be based on factual inquiries unique to each program.

CONCLUSION

AB 2404 added section 53080, which prohibits gender discrimination in the City's community youth athletics programs and in the City's allocation and operation of parks and recreational facilities and resources that enable or support such programs. Section 53080 authorizes civil actions to enforce the requirements of section 53080 and provides the courts reviewing such discrimination cases with a framework for determining whether gender discrimination exists. The effect of AB 2404 and of the sunset of one method of compliance on the City will depend on the City's practices and programs and those of the City's permittees and lessees operating community youth athletics programs. This Office is available to discuss specific programs or facilities as issues arise.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Heather M. Ferbert

Heather M. Ferbert

Deputy City Attorney

HMF:nja

cc: Andrew Field, Assistant Director, Park and Recreation Department

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