

Article 2: Police — Police Regulations — Offenses Against Government

Division 95: Aids Discrimination
*(“Aids Discrimination”
added 2-2-1988 by O-17031 N.S.)*

§52.9500 Findings

The City Council finds and declares:

- (a) That the medical condition described as Acquired Immune Deficiency Syndrome, commonly known as AIDS, is a deadly disease which has the potential to affect every segment of our City’s population;
- (b) That AIDS was first recognized in 1981 by the United States Public Health Service’s Center for Disease Control based on the study of a pattern of unusual illnesses among young, single males reported by the medical center associated with University of California at Los Angeles and New York University;
- (c) That AIDS in the opinion of the scientific and medical community is caused by a virus, known as Human Immunodeficiency Virus (HIV) (or in the past, HTLV-III or LAV), which attacks and cripples the body’s immune system and neurological system, thereby leaving the body vulnerable to opportunistic infections, certain cancers and neurological diseases;
- (d) That a person afflicted with AIDS suffers a variety of bacterial, viral and/or fungal caused illnesses, cancers, protozoan and neurological conditions which debilitate the body resulting in a high mortality rate within several years after diagnosis;
- (e) That the transmission of the virus has occurred through transfer of blood, blood by-products and body organs; through intimate sexual contact; through perinatal contact; or through the sharing of hypodermic needles used in drug injections;
- (f) That no evidence exists to indicate the spread of the virus through casual contact, through the air, water or food;

- (g) That medical studies of family groups in which one or more persons have been diagnosed with AIDS show no spread of the virus other than through sexual intimacy or through the exchange of blood, such as mother to fetus;
- (h) That a public health danger represented by the HIV virus and its subsequent manifestation as AIDS is caused by the lengthy incubation period during which period an apparently healthy but infected individual may spread the disease to other persons through the transfer of blood, blood by-products, body organs, semen or vaginal/cervical secretions, perinatally or through the sharing of hypodermic needles used in drug injections;
- (i) That AIDS has been recognized as a national public health emergency with a large proportion of the cases diagnosed in California;
- (j) That AIDS, in the opinion of the scientific and medical community, will continue to increase at a high rate within our City for the foreseeable future;
- (k) That persons with AIDS, or AIDS-related complex (ARC) or in an AIDS-related status (ARS), including persons infected with the AIDS virus who may never show AIDS symptoms or develop the disease are faced with potential discrimination and such potential for discrimination is sufficient to justify a City ordinance to prohibit those discriminatory practices which are not currently adequately addressed by federal and state law.

(“Findings” added 2-22-1988 by O-17031 N.S.)

§52.9501 Public Policy

It is hereby declared as the public policy of The City of San Diego that it is necessary to protect and safeguard the rights and opportunities of persons with AIDS, ARC or ARS in respect to discrimination in housing, employment, business establishments, testing and City facilities and services.

(“Public Policy” added 2-22-1988 by O-17031 N.S.)

§52.9502 Definitions

- (a) “AIDS” means Acquired Immune Deficiency Syndrome, a disease complex which occurs when an important part of the human immune system is destroyed by the action of a human immune deficiency virus known as HIV and previously referred to as HTLV-III or LAV, or whatever current definition is used by United States Public Health Center for Disease Control. AIDS is manifested by infections, cancers or neurological diseases;

- (b) “ARC” means AIDS–related complex. ARC occurs when the human immune system is weakened by the AIDS virus and such conditions as enlarged lymph nodes, fever, weight loss, malaise and chronic diarrhea result. ARC may or may not develop into AIDS.
- (c) “ARS” means AIDS–related status. Such status includes:
 - (1) A person who is HIV positive;
 - (2) A person, who because of association with another person having AIDS, ARC or is HIV positive, is regarded as very likely to contract the virus that causes AIDS;
 - (3) A person who is perceived and dealt with by others as though being infected with the virus that causes AIDS because of such person’s association with a person diagnosed as having AIDS, ARC or who is HIV positive.
- (d) “Business Establishment” includes any entity, however organized, whether for profit or not for profit, which furnishes goods or services, including educational services, or accommodations, to the general public; including any entity which has a membership requirement if its membership requirement consists only of the payment of a membership fee and a substantial number of the residents within The City of San Diego could qualify.
- (e) “Housing Accommodation” includes any improved or unimproved real property or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more persons.
- (f) “Housing Services” shall mean services otherwise provided by the owner of any housing accommodation to persons renting or leasing such housing accommodation, including but not limited to, utilities such as light, heat, water and telephone; ordinary repairs or replacement and maintenance, including painting; elevator services, laundry facilities and privileges, the use of common recreational facilities, janitorial services, resident manager, refuse removal, furnishings, food service, parking and any other benefits, privileges or facilities provided;
- (g) “Person” includes one or more individuals, partnerships, associations, corporations, labor organizations, legal representatives, trustees, trustees in bankruptcy and receivers or other fiduciaries;

- (h) “Owner” includes the lessee, sublessee, assignee, managing agent, real estate broker or salesman or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations.
- (i) “Employer” shall mean every person, including any public service corporation, regularly employing one or more persons or any person acting directly or indirectly as an agent of an employer.
(“Definitions” added 2–22–1988 by O–17031 N.S.)

§52.9503 Housing Accommodations and Housing Services

- (a) It shall be unlawful for any owner in the renting, leasing and/or providing of any housing accommodation or housing service to discriminate against any person because such person has AIDS, ARC or ARS.
- (b) Nothing in this section shall:
 - (1) Apply to any housing accommodation in which the owner or any member of his or her family occupies the same housing accommodation in common with the prospective tenant. This exception shall not apply where the owner occupies a separate apartment, condominium or other housing unit in a multiple–unit complex.
 - (2) Permit or require the rental or occupancy of any housing accommodation otherwise prohibited by law.
 - (3) Otherwise interfere with any just cause for the owner to evict a person from any housing accommodation or permit the delay of any unlawful detainer action.
 - (4) Require the renting of any housing accommodation reserved for the housing of students to non–student persons with AIDS, ARC or ARS.
(“Housing Accommodations and Housing Services” added 2–22–1988 by O–17031 N.S.)

§52.9504 Employment

- (a) Unlawful employment practices. It shall be an unlawful employment practice for any employer, employment agency or labor organization or any agent or employee thereof to do or attempt to do any of the following:

- (1) Fail or refuse to hire or to discharge any person or otherwise to discriminate against any person with respect to compensation, terms, conditions or privileges of employment, including promotion, on the basis (in whole or in part) that such person has AIDS, ARC or ARS.
 - (2) Limit, segregate or classify employees or applicants for employment in any manner which would deprive or tend to deprive any person of employment opportunities or adversely affect his or her employment status on the basis (in whole or in part) that such person has AIDS, ARC or ARS.
 - (3) Fail or refuse to refer for employment any person or otherwise to discriminate against any person on the basis (in whole or in part) that such person has AIDS, ARC or ARS.
 - (4) Fail or refuse to include in its membership or to otherwise discriminate against any person or to limit, segregate or classify its membership 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) that such person has AIDS, ARC or ARS.
 - (5) Discriminate against any person 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) that such person has AIDS, ARC or ARS.
 - (6) Make, print, publish or cause to be made, printed or published any notice, statement, sign, advertisement, application or contract with regard to employment that indicates any preference, limitation or discrimination with respect to the fact that a person has AIDS, ARC or ARS.
- (b) Bona fide occupational qualification not prohibited; Burden of proof.
- (1) Bona fide occupational qualification. Nothing contained in this section shall be deemed to prohibit selection, rejection or dismissal based upon a bona fide occupational qualification.
 - (2) Burden of proof. In any action brought under this article, 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:

- (A) That the discrimination is in fact a necessary result of a bona fide occupational qualification;
- (B) That there exists no less discriminatory means of satisfying the occupational qualification.

(c) Exceptions.

It shall not be an unlawful discriminatory practice for an employer to observe the conditions of 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 an excuse for failure to hire any person.

(“Employment” added 2-22-1988 by O-17031 N.S.)

§52.9505 Business Establishments

It shall be unlawful for any person or business establishment to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment on the grounds that such person has AIDS, ARC or ARS.

(“Business Establishments” added 2-22-1988 by O-17031 N.S.)

§52.9506 Testing

- (a) It shall be unlawful for any person to require another person to take any test or undergo any medical procedure designed to determine that a person has AIDS, ARC or carries the AIDS virus.
- (b) Nothing in this section shall:
 - (1) Prohibit any testing or medical procedure authorized by the laws of the United States, the State of California, the City or the County of San Diego or any testing or medical procedure required by the County Department of Health Services to protect the public health;
 - (2) Apply to an employer who can show that the absence of AIDS, ARC or the AIDS virus is a bona fide occupational qualification.

(“Testing” added 2-22-1988 by O-17031 N.S.)

§52.9507 City Facilities and Services

- (a) It shall be unlawful to deny any person the full and equal enjoyment of or to impose less advantageous terms or restrict the availability of, the use of any

City facility or participation in any City funded or supported services or programs on the grounds that such person has AIDS, ARC or ARS.

- (b) Nothing in this section shall:
 - (1) Apply to any facility, service or program which does not receive any assistance from the City and which is not open to or provided to the public generally;
 - (2) Restrict services or programs specifically designed for persons with AIDS, ARC or ARS.

(“City Facilities and Services” added 2-22-1988 by O-17031 N.S.)

§52.9508 Advertising

It shall be unlawful 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 sign, advertisement, application or contract which indicates an intent to engage in any practice made unlawful by this division.

(Amended 3-20-1989 by O-17271 N.S.)

§52.9509 Exceptions

- (a) Nothing in this division shall be construed to prohibit any act specifically authorized by the laws of the United States, the State of California or The City of San Diego or any act required by the County Department of Health Services to protect the public health.
- (b) Nothing in this division shall prohibit any act which is necessary to protect the health or safety of the general public. If a party to any action brought under this division asserts that an otherwise discriminatory practice is justified as necessary to protect the health or safety of the general public, that party shall have the burden of proving:
 - (1) That the discrimination is in fact a necessary result of a necessary course of conduct pursued to protect the health or safety of the general public; and

- (2) That there exists no less discriminatory means of satisfying the necessary protection of the health or safety of the general public.
(Amended 3-20-1989 by O-17271 N.S.)

§52.9510 Liability and Damages

Any person who violates any of the provisions of this division or who aids in the violation of any provisions of this division is liable for each and every such offense for damages up to a maximum of three times the amount of actual damages, for punitive damages as may be determined by a jury or a court sitting without a jury and for costs, including reasonable attorney's fees, as may be determined by the court.
(Amended 3-20-1989 by O-17271 N.S.)

§52.9511 Enforcement

- (a) Any aggrieved person may enforce the provisions of this division by means of a civil action.
- (b) Any person who commits or proposes to commit, an act in violation of this division may be enjoined therefrom by a court of competent jurisdiction.
- (c) An action for injunction under subdivision (b) may be brought by any aggrieved person or by any person or entity which will fairly and adequately represent the interests of the protected individual or class.
- (d) Nothing in this division shall preclude any aggrieved person from seeking any other remedy provided by law.
- (e) An action arising under this division shall not be rendered moot because of the death or physical or mental incapacity of the person who was the subject of the claimed discrimination.
- (f) Notwithstanding any provision of law, no criminal penalties shall attach for any violation of the provisions of this division.

(Amended 3-20-1989 by O-17271 N.S.)

§52.9512 Severability

If any part or provision of this division or the application thereof to any person or circumstance is held invalid, the remainder of the division, including the application of such part or provision to other persons or circumstances, shall not be effected thereby and shall continue in full force and effect. To this end, provisions of this division are severable.

(Amended 3-20-1989 by O-17271 N.S.)