

Article 2: Police — Police Regulations — Offenses Against Government

Division 96: Discrimination Based On Sexual Orientation

(Editors note added to title 4-16-1990.)

§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.

(Amended 7-28-2003 by O-19203 N.S.)

§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. (Amended 7-28-2003 by O-19203 N.S.)

§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) Advertising. It shall be an unlawful employment practice for an *employer*, employment agency or a labor organization to print, publish, advertise or disseminate 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 practice.

(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) Bona Fide Occupational Qualification. Nothing contained in this section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.
 - (2) Burden of Proof. In any action brought under Sections 52.9609 and 52.9610 of this Division, 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; and (b) that there exists no less discriminatory means of satisfying the occupational qualification.
- (d) Exceptions.
- (1) Bona Fide Employment Benefit Systems. 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 Division; provided further that no such system shall provide an excuse for failure to hire any *individual*.
 - (2) Standards of Conduct and Dress Codes. It shall not be an unlawful discriminatory practice for an *employer* to establish reasonable standards of conduct and dress codes which uniformly apply to all *persons*, and for such *employer* to fail or refuse to hire, or to discharge, any *individual* as a result of the failure of such *individual* to adhere to such standards of conduct or dress code.
 - (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*.

(Amended 7-28-2003 by O-19203 N.S.)

§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) Advertising. It shall be an unlawful real estate practice for any *person* to make, print, publish, advertise or disseminate 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 or attempts to indicate any unlawful preference, limitation or discrimination.

(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) Owner–Occupied and Small Dwellings. Nothing in this Section shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor or any member of his or her family occupies one of the living units and either (a) it is necessary for the owner or lessor to use either a bathroom or kitchen facility in common with the prospective tenant; or (b) the structure contains fewer than three dwelling units.
- (2) Effect on Other Laws. Nothing in this Division shall be deemed to permit rental or occupancy of any dwelling unit or commercial space

otherwise prohibited by law.
(Amended 7-28-2003 by O-19203 N.S.)

§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) Advertising. It shall be an unlawful business practice for any *person* to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any *business establishment* which indicates that such establishment engages or will engage in any unlawful business practice.

(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*.

(Amended 7-28-2003 by O-19203 N.S.)

§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*.

(Amended 7-28-2003 by O-19203 N.S.)

§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) Facilities. 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 facility owned or operated by an *educational institution*.
 - (4) Advertising. It shall be an unlawful educational practice for any *person* to make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to an *educational institution* which indicates that such institution engages in, or will engage in, unlawful educational 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*.
(Amended 7-28-2003 by O-19203 N.S.)

§52.9608 Frivolous Action Prohibited

Any person who files or maintains a frivolous action under this Division shall be liable for expenses, including attorney fees, incurred in defense of the action. The liability imposed by this section is in addition to any other liability imposed by law.
(“*Frivolous Action Prohibited*” added 4-16-1990 by O-17453 N.S.)

§52.9609 Enforcement

- (a) Civil Action. Any aggrieved person may enforce the provisions of this Division by means of a civil action.
- (b) Injunction.
 - (1) Any person who commits an act in violation of this Division may be enjoined therefrom by any court of competent jurisdiction.
 - (2) An action for injunction under this section may be brought by any aggrieved person, by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the protected class.

(“*Enforcement*” added 4-16-1990 by O-17453 N.S.)

§52.9610 Liability

Any person who violates any of the provisions of this Division or who aids in the violation of any provisions of this Division shall be liable for, and the court or a jury shall award to the individual whose rights are violated up to three (3) times the amount of actual damages, but in no case less than two hundred fifty dollars (\$250.00) for each and every offense as well as reasonable attorneys' fees. The court or jury may award punitive damages in a proper case.
("Liability" added 4-16-1990 by O-17453 N.S.)

§52.9611 Limitation On Action

Actions under this Division must be filed within one year of the alleged discriminatory acts.
("Limitation On Action" added 4-16-1990 by O-17453 N.S.)

§52.9612 Retaliation Prohibited

No person shall retaliate against any individual because such individual seeks the enforcement of the provisions of this Division.
("Retaliation Prohibited" added 4-16-1990 by O-17453 N.S.)

§52.9613 Nonwaiverability

Any written or oral agreement whereby any provision of this Division is waived or modified is against public policy and void.
("Nonwaiverability" added 4-16-1990 by O-17453 N.S.)

§52.9614 Severability

If any part or provision of this Division, or the application thereof to any person or circumstance, is held invalid, the remainder of this Division, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Division are severable.
("Severability" added 4-16-1990 by O-17453 N.S.)

§52.9615 Exemption

Religious Organizations. Religious organizations and their schools shall be exempt from the terms of this Division.
("Exemption" added 4-16-1990 by O-17453 N.S.)