

**San Francisco Police Code**

**ARTICLE 33:**

**PROHIBITING DISCRIMINATION BASED ON RACE, COLOR, ANCESTRY, NATIONAL ORIGIN, PLACE OF BIRTH, SEX, AGE, RELIGION, CREED, DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY, WEIGHT, OR HEIGHT**

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**SEC. 3301. POLICY.**

It is the policy of the City and County of San Francisco to eliminate discrimination based on race, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, 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, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, 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, 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 because of an employee's, independent contractor's or an applicant for employment's actual or perceived race, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight or height:

(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, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height;

(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. 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.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 433-94, App. 12/30/94; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000; Ord. 59-01, File No. 010141, App. 4/13/2001; Ord. 222-02, File No. 021462, App. 11/15/2002)

## SEC. 3304. HOUSING.

(a) **Prohibited Activity.** It shall be unlawful for any person to do any of the following acts wholly or partially because of a person's actual or perceived race, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, source of income, weight, or height:

(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, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, 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 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.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 433-94, App. 12/30/94; Ord. 251-98, App. 7/31/98; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000; Ord. 222-02, File No. 021462, App. 11/15/2002)

### **SEC. 3304.1. LONG-TERM CARE FACILITIES.**

(a) **Short Title.** This Section 3304.1 shall be known and may be referenced as the "LGBT Long-term Care Facility Residents' Bill of Rights."

(b) **Findings and Purpose.** In 2006, the California Legislature found that "lifelong experiences of marginalization place lesbian, gay, bisexual, and transgender (LGBT) seniors at high risk for isolation, poverty, homelessness, and premature institutionalization. Moreover, many LGBT seniors are members of multiple under represented groups, and as a result, are doubly marginalized. Due to these factors, many LGBT seniors avoid accessing elder programs and services, even when their health, safety, and security depend on it." California Welfare and Institutions Code § 9103.

Recent studies confirm the state's findings and provide evidence that LGBT seniors experience discrimination, including in long-term care facilities, where residents are particularly vulnerable because they must rely on others for necessary care and services, and may no longer enjoy the privacy of having their own home or even their own room.

Discrimination against LGBT individuals in long-term care facilities has gone largely unaddressed according to "Stories from the Field: LGBT Older Adults in Long-Term Care Facilities," a 2011 study published by the National Senior Citizens Law Center. In that study, 43% of respondents reported personally witnessing or experiencing instances of mistreatment of LGBT seniors in a long-term care facility, including: verbal or physical harassment from other residents; being refused admission or re-admission or being abruptly discharged; verbal or physical harassment from staff; staff refusal to accept medical power of attorney from the resident's spouse or partner; discriminatory restrictions on visitation; and staff refusal to refer to a transgender resident by his or her preferred name or pronoun. 81% of respondents believed that other residents would discriminate against an LGBT elder in a long-term care facility; 89% of respondents believed that staff would discriminate against an LGBT elder in a long-term care facility; and 53% believed that staff discrimination would rise to the level of abuse or neglect.

Even more recently, in 2013, the San Francisco LGBT Aging Policy Task Force commissioned a report by Professor Karen Fredriksen-Goldsen of the University of Washington, "Addressing the Needs of LGBT Older Adults in San Francisco: Recommendations for the Future," based on information collected from over 600 LGBT seniors residing in San Francisco, including nearly 140 LGBT seniors of color. This report found that nearly 60% of the study participants lived alone, and of the 15% with children, 60% reported that these children would not be available to assist them. Many reported poor physical and mental

health: nearly one third of all respondents reported poor general health; close to half reported having one or more disabilities; and one third of male participants reported that they were living with HIV or AIDS. These results indicate that, as compared to seniors in San Francisco generally, LGBT seniors have a heightened need for care but often lack family support networks available to non-LG BT seniors. Further, LGBT seniors' fear of accessing services is justified. Nearly half of the participants in the San Francisco study reported experiencing discrimination in the prior 12 months because of their sexual orientation or gender identity.

While state and local laws already prohibit discrimination in public accommodations on the basis of actual or perceived sexual orientation, gender identity, gender expression, and HIV status, the promise of these laws has not yet been fully actualized in long-term care facilities. The purpose of this LGBT Long-term Care Facility Residents' Bill of Rights is to accelerate the process of freeing LGBT residents and patients from discrimination, both by specifying prohibited discriminatory acts in the long-term care setting and by providing additional information and remedies to ensure that LGBT residents know their rights-and have the means to vindicate them.

(c) **Definitions.** For the purposes of this Section 3304.1,

"City" means the City and County of San Francisco.

"Gender Expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

"Gender Identity" means a person's gender as designated by that person. A person's gender identity shall be determined based on the individual's stated gender identity, without regard to whether the self-identified gender accords with the individual's physical appearance, surgical history, genitalia, legal sex, sex assigned at birth, or name and sex as it appears in medical records, and without regard to any contrary statement by any other person, including a family member, conservator, or legal representative. An individual who lacks the present ability to communicate his or her gender identity shall retain the gender identity used by that individual prior to losing his or her expressive capacity.

"Gender-nonconforming" means a person whose Gender Expression does not conform to stereotypical expectations of how a man or woman should appear or act.

"HRC" means the San Francisco Human Rights Commission.

"LGBT" means lesbian, gay, bisexual, or transgender.

"Long-term Care Facility" or "Facility" has the same meaning as in California Welfare and Institutions Code section 9701, as amended from time to time, and refers only to those Facilities that are located within the geographical boundaries of the City. Long-term Care Facilities include both privately owned and City-owned Facilities.

"Long-term Care Facility Staff" or "Facility Staff" means all directors, medical personnel, administrators, employees, independent contractors, and others who provide services or care to Residents of a Long-term Care Facility on Facility premises and on behalf of or with the permission of the Facility.

"Ombudsman Program" means the San Francisco Long-Term Care Ombudsman Program, a program mandated by the Older Americans Act and the Older Californians Act to investigate and resolve complaints regarding care in long-term care facilities.

"Resident" means a short-term or long-term resident or patient of a Long-term Care Facility.

"Transgender" means a person whose Gender Identity differs from his or her assigned or presumed sex at birth.

"Transition" means to undergo a process by which a person changes their physical sex characteristics and/or Gender Expression to match their inner sense of being male or female. This process may include, among other things, a name change, a change in preferred pronouns, and a change in social Gender Expression as indicated by hairstyle, clothing, and restroom use. Transition may or may not include hormone use and surgery.

(d) **Prohibited Activity.** It shall be unlawful for any Long-term Care Facility or Facility Staff to take any of the following actions wholly or partially on the basis of a person's actual or perceived sexual orientation, Gender Identity, Gender Expression, or HIV status:

(1) Deny admission to a Long-term Care Facility; transfer or refuse to transfer a Resident within a Facility or to another Facility; or evict or involuntarily discharge a Resident from a Facility;

(2) Deny a request by two Residents to share a room;

(3) Where rooms are assigned by gender, assign or refuse to assign a room to a Transgender Resident other than in accordance with the Transgender Resident's Gender Identity, unless at the Transgender Resident's request;

(4) Involuntarily reassign a Resident to a different room based on any person's complaints or concerns about that Resident's Gender Identity or Gender Expression;

(5) Prohibit a Resident from using, or harass a Resident who seeks to use or does use, a restroom available to other persons of the same Gender Identity, regardless of whether the Resident is making a gender Transition or appears to be Gender-nonconforming. Harassment includes, but is not limited to, requiring a Resident to show identity documents in order to gain entrance to a restroom available to other persons of the same Gender Identity;

(6) Refuse to use a Resident's preferred name or preferred pronoun;

(7) Deny a Resident the right to wear or be dressed in clothing, accessories, or cosmetics that are permitted for any other Resident;

(8) Restrict a Resident's right to associate with other Residents, including the right to sexual intimacy;

(9) Deny a Resident's right to receive or restrict a Resident's right to associate with visitors of his or her choice, including the right to sexual intimacy; or

(10) Deny or restrict medical or non-medical care that is appropriate to a Resident's organs and bodily needs, or provide medical or non-medical care in a manner that demeans the Resident's dignity or causes avoidable discomfort.

(e) **Exception.** The prohibitions in subsection (d) of this Section 3304.1 shall not apply to the extent that they are incompatible with any professionally reasonable clinical judgment that is based on articulable facts of clinical significance.

(f) **Additional Requirements.**

(1) **Recordkeeping.** Facilities shall employ procedures for recordkeeping, including but not limited to records generated at the time of admission, that include the Gender Identity, preferred name, and preferred pronoun of each Resident.

(2) **Confidentiality and Privacy.**

(A) **Confidentiality.** Long-term Care Facilities shall protect personally identifiable information regarding Residents' sexual orientation, Transgender status, Transition history, and HIV status from unauthorized disclosure, as required by the Health Insurance Portability and Accountability Act, the California Medical Information Act, Article 1 of the California Constitution, the California Health and Safety Code and regulations promulgated thereunder, and any other applicable provision of federal or state law. Facilities shall take such steps as reasonably necessary to minimize the likelihood of inadvertent or incidental disclosure of such information to other Residents, visitors, or Facility Staff except to the minimum extent necessary for Facility Staff to perform their duties.

(B) **Privacy.** Persons not directly involved in providing personal or medical care to a Transgender or Gender-nonconforming Resident shall not be present during case discussions, physical examination, treatment, or the provision of personal care to that Resident without the express permission of that Resident. Facilities shall use doors, curtains, screens, or other effective visual barriers to provide bodily privacy to Transgender or Gender-nonconforming Residents whenever such Residents are partially or fully unclothed. In addition, LGBT Residents shall be informed and have the right to refuse to be examined, observed, or treated by any Facility Staff when the primary purpose is educational or informational rather than therapeutic, and such refusal shall not diminish the Resident's access to care for the primary purpose of diagnosis or treatment.

(3) **LGBT Liaison.** Each Facility shall designate a staff member to serve as an LGBT liaison and shall submit the name and contact information of the designated staff member to the HRC and Ombudsman Program. The LGBT liaison shall complete an annual training concerning the requirements of this Section 3304.1 and general LGBT cultural competency that shall be organized and sponsored by the HRC and Ombudsman Program.

(4) **Anti-discrimination Notice.** Each Facility shall post the following notice alongside its current nondiscrimination policy, in all places and on all materials where that policy is posted:

"[Name of Facility] does not discriminate and does not permit discrimination, including bullying, abuse, or harassment, on the basis of actual or perceived sexual orientation, gender identity, gender expression, or HIV status, or based on association with another individual on account of that individual's actual or perceived sexual orientation, gender identity, gender expression, or HIV status. You may file a complaint with the San Francisco Human Rights Commission [provide contact information] or the Long-Term Care Ombudsman [provide contact information] if you believe that you have experienced this kind of discrimination."



(g) **Publications.** Within six months of the effective date of this Section 3304.1, the HRC, in collaboration with the Ombudsman Program, shall publish a layperson's handbook to assist Facilities in complying with this Section 3304.1 and to suggest model practices to serve the needs of LGBT Residents. The HRC shall also collaborate with the Ombudsman Program to publish a list of medical providers available to provide medical care to Transgender Residents of Long-term Care Facilities and shall update this list on an annual basis.

(h) **Enforcement.**

(1) **Human Rights Commission.** Any person who believes that a Facility or Facility Staff has discriminated against him or her in violation of Sections 3304.1 or 3305.2, as that Section 3305.2 applies to the rights protected by Section 3304.1, may file a complaint with the Human Rights Commission, which shall serve as a request to have the Commission investigate and mediate the complaint pursuant to Section 12A.5 of the Administrative Code.

(2) **Civil Action.** Any aggrieved person may enforce the provisions of Sections 3304.1 or 3305.2, as that Section 3305.2 applies to the rights protected by Section 3304.1, against privately owned Facilities or their Staff by means of a civil action. Any privately owned Facility or its Staff found to have violated any of the provisions of Sections 3304.1 or 3305.2, as that Section 3305.2 applies to the rights protected by Section 3304.1, or to have aided in any such violation, 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. The court may also award punitive damages in an amount not less than \$200 but not more than \$400, as well as attorneys' fees and costs of action. There shall be no right of action under this subsection 3304.1(h)(2) against the City or its officers, agents, or employees.

(3) **Injunction.** Any privately owned Facility or its Staff that commits, or proposes to commit, an act in violation of Sections 3304.1 or 3305.2, as that Section 3305.2 applies to the rights protected by Section 3304.1, may be enjoined therefrom by any court of competent jurisdiction. An action for injunction under this subsection (h)(3) may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any person or entity that will fairly and adequately represent the interests of the protected class. There shall be no right to injunctive relief under this subsection 3304.1(h)(3) against the City or its officers, agents, or employees.

(4) **Limitation.** An aggrieved person must file a complaint with the Human Rights Commission pursuant to subsection 3304.1(h)(1) or a civil action pursuant to subsection 3304.1(h)(2) within one year of the alleged violation of Section 3304.1 or 3305.2, as that Section 3305.2 applies to the rights protected by Section 3304.1.

(5) **Bar.** A complaint to the Human Rights Commission pursuant to subsection 3304.1(h)(1) is not a prerequisite to the filing of a civil action pursuant to subsection 3304.1(h)(2) or to seeking injunctive relief pursuant to subsection 3304.1(h)(3). The pendency of a complaint before the Human Rights Commission shall not bar any civil action, but a final judgment in any civil action involving the same parties and claims shall bar any further proceedings by the Human Rights Commission.

(6) **Exclusive Remedies.** Sections 3306 and 3307 notwithstanding, the provisions of this Section 3304.1(h) shall be the exclusive remedies for violations of Sections 3304.1 or 3305.2, as that Section 3305.2 applies to the rights protected by Section 3304.1.

## **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 because of a person's actual or perceived race, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight, or height:

(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 public accommodation;

(2) Except as otherwise permitted by law, to deny, directly or indirectly, any person admittance to the premises of the business establishment or public accommodation. No business establishment or public 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.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 17-92, App. 1/21/92; Ord. 433-94, App. 12/30/94; Ord. 265-98, App. 8/21/98; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000; Ord. 222-02, File No. 021462, App. 11/15/2002)

### **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, color, ancestry, national origin, place of birth, sex, age, religion, creed, disability, sexual orientation, gender identity, weight or height, of the

residents of that neighborhood or location. Where a person or business entity regularly advertises 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.

(Added by Ord. 217-96, App. 5/30/96; amended by Ord. 295-96, App. 7/17/96; Ord. 222-02, File No. 021462, App. 11/15/2002)

### **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), 3304.1(d), 3305(a), or 3305.1(a) wholly or partially because a person associates with a person or persons who are protected by this Article 33 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), 3304.1(d), 3305(a), or 3305.1(a) wholly or partially in retaliation against a person because that person: (1) has opposed any act or practice made unlawful by this Article 33; (2) has supported this Article 33 and its enforcement; (3) has filed a complaint under this Article 33 with the San Francisco Human Rights Commission or any court; or (4) has testified, assisted or participated in any investigation, proceeding, or litigation under this Article 33.

(Added by Ord. 222-02, File No. 021462, App. 11/15/2002; amended by Ord. 47-15, File No. 150118, App. 4/16/2015, Eff. 5/16/2015)

### **SEC. 3305.3. ALL-GENDER TOILET FACILITIES.**

(a) **Requirement.** All toilet facilities in any business establishment or place of public accommodation including those in or on City-owned buildings or property, whether existing or proposed, that are (1) single-user toilet facilities and (2) open to the public or to the employees of the establishment or public accommodation shall be identified as all-gender by signage that complies with either Title 24 of the California Code of Regulations or the Federal Americans with Disabilities Act and made available to persons of any gender identity. Multiple-user toilet facilities may be identified as all-gender facilities but are not required to be identified as all-gender.

**(b) Time for Compliance.**

(1) **Existing Businesses and Public Accommodations.** Business establishments and places of public accommodation that are subject to the requirements of this Section 3305.3 and in existence as of this Section's effective date shall have 90 days from the effective date to remove any gender-specific room identification signage on the toilet facility door and replace it with signage for persons of any sex or gender identity that complies with either Title 24 of the California Code of Regulations or the Federal Americans with Disabilities Act.

(2) **New Businesses and Public Accommodations.** New business establishments and places of public accommodation that are subject to the requirements of this Section 3305.3 shall provide the room identification signage required above and make each single-user toilet facility available for use by persons of any sex or gender identity immediately upon opening to the public.

(c) **Definitions.** For purposes of this Section 3305.3, the following definitions shall apply:

(1) "Business establishment" shall have the same meaning as in Section 3813(b) of this Code.

(2) "Public accommodation" shall have the same meaning as in Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12181(7), and the federal regulations adopted thereunder, as amended from time to time.

(3) "Single-user toilet facility" shall mean a private toilet facility with a single toilet, or with a single toilet and a urinal and designed for use by no more than one occupant at a time or for family or assisted used.

(d) Nothing in this Section 3305.3 shall be construed as requiring or authorizing (1) a reduction in the number of toilet facilities that are required by Title 24 of the California Code of Regulations or (2) a reduction in the number of toilet facilities accessible to persons with disabilities that are otherwise required under either Title 24 of the California Code of Regulations or the Federal Americans with Disabilities Act.

(Added by Ord. 53-16 , File No. 160024, App. 4/22/2016, Eff. 5/22/2016)

**SEC. 3306. LIABILITY.**

Any person who violates any of the provisions of this Article 33 or who aids in the violation of any provisions of this Article 33 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 also award punitive damages in an amount not less than \$200 but not more than \$400, as well as attorneys' fees and costs of action.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 400-87, App. 9/25/87; Ord. 222-02, File No. 021462, App. 11/15/2002; Ord. 47-15 , File No. 150118, App. 4/16/2015, Eff. 5/16/2015)

## **SEC. 3307. ENFORCEMENT.**

(a) **Human Rights Commission.** Any person who believes that he or she has been discriminated against in violation of Sections 3303, 3305, 3305.2, or 3305.3 of this Article 33 may file a complaint with the Human Rights Commission, which shall serve as a request to have the Commission investigate and mediate the complaint pursuant to Section 12A.5 of the Administrative Code.

(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 33 by means of a civil action.

(d) **Injunction.**

(1) Any person who commits, or proposes to commit, an act in violation of this Article 33 may be enjoined therefrom by any court of competent jurisdiction.

(2) An action for injunction under this subsection 3307(d) may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any person or entity that 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 3307. The pendency of a complaint before the Human Rights Commission shall not bar any civil action under this Section 3307, but a final judgment in any civil action involving the same parties and claims shall bar any further proceedings by the Human Rights Commission.

(f) **Responsibilities of the Department of Building Inspection.** Upon complaint from a member of the public or employee of a business establishment or place of public accommodation, or receipt of a request from the Human Rights Commission, the Department of Building Inspection shall inspect the business establishment or place of public accommodation, if subject to Section 3305.3, and determine if the business establishment or place of public accommodation is in compliance with the requirements. In addition, during the course of any regularly-scheduled interior inspection of a business establishment or place of public accommodation subject to Section 3305.3, the Department shall verify compliance with the requirements. Any business establishment or place of public accommodation found not to be in compliance with the requirements shall be deemed to be in violation of the Building Code and the Building Official is authorized to abate the violation in accordance with Section 102A of the Building Code.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 400-87, App. 9/25/87; Ord. 222-02, File No. 021462, App. 11/15/2002; Ord. 47-15, File No. 150118, App. 4/16/2015, Eff. 5/16/2015; Ord. 53-16, File No. 160024, App. 4/22/2016, Eff. 5/22/2016)

## **SEC. 3308. CRIMINAL PENALTY.**

Any person who violates any provision of Section 3304 of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$2,000 or by

imprisonment in the County Jail for a period of not more than six months, or both. Any person believing that a violation of said Section has been committed may file a complaint with the District Attorney.

(Added by Ord. 400-87, App. 9/25/87)

### **SEC. 3309. LIMITATION ON ACTIONS.**

Judicial actions or requests to the Human Rights Commission under this Article must be filed within one year of the alleged discriminatory acts.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 400-87, App. 9/25/87)

### **SEC. 3310. DEFINITION.**

The word "person" as used in this Article 33 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. For the purposes of Section 3304.1, the word "person" as used in this Article 33 shall mean any individual, or Long-term Care Facility or Facility Staff as those terms are defined in Section 3304.1, except as otherwise stated.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 400-87, App. 9/25/87; Ord. 222-02, File No. 021462, App. 11/15/2002; Ord. 47-15, File No. 150118, App. 4/16/2015, Eff. 5/16/2015)

### **SEC. 3311. SEVERABILITY.**

If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of the Article, 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, provisions of this Article are severable.

(Amended by Ord. 184-81, App. 4/20/81; Ord. 400-87, App. 9/25/87)

### **SEC. 3312. CITY LIABILITY LIMITED.**

The addition of "gender identity" to this ordinance shall not be construed to interfere with the City's duty to protect the health and safety of incarcerated persons. To this end, the prohibition on gender identity discrimination in this ordinance shall not be construed to impose any duty on the City, its officers or its employees for breach of which they are liable to any incarcerated person who claims that such breach proximately caused an injury which arose, while such person was in the custody of the City, from actions of its officers or employees intended to protect the health and safety of the person.

(Added by Ord. 433-94, App. 12/30/94)



**SEC. 3313. NO CONFLICT WITH STATE OR FEDERAL LAW.**

Nothing in this Article 33 shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

(Added by Ord. 47-15, File No. 150118, App. 4/16/2015, Eff. 5/16/2015)

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