ARTICLE 38: PROHIBITING DISCRIMINATION ON THE BASIS OF AIDS AND ASSOCIATED CONDITIONS

Sec. 3801. Policy.
Sec. 3802. Findings.
Sec. 3803. Employment.
Sec. 3804. Housing.
Sec. 3805. Business Establishments and Public Accommodations.
Sec. 3806. Educational Institutions.
Sec. 3807. City Facilities and Services.
Sec. 3808. Association and Retaliation.
Sec. 3809. Testing.
Sec. 3810. Liability.
Sec. 3811. Enforcement.
Sec. 3812. Limitation on Actions.
Sec. 3813. Definitions.
Sec. 3814. Severability.
Sec. 3815. Nonwaiverability.
Sec. 3816. Application to the City and County of San Francisco.
Sec. 3850. Policy.
Sec. 3851. Findings.
Sec. 3852. Employment.
Sec. 3853. Association and Retaliation.
Sec. 3854. Testing.
Sec. 3855. Liability.
SEC. 3801. POLICY.

It is the policy of the City and County of San Francisco to eliminate discrimination based on the fact that a person has AIDS or any medical signs or symptoms related thereto. In adopting this ordinance, the Board of Supervisors does not intend to proscribe any activity the proscription of which would constitute an infringement of the free exercise of religion as guaranteed by the United States and California constitutions.

(Added by Ord. 499-85, App. 11/20/85)

SEC. 3802. FINDINGS.

After public hearings and consideration of testimony and documentary evidence, the Board of Supervisors finds and declares that the medical condition described as acquired immune deficiency syndrome, and commonly known as AIDS, is a deadly disease which has the potential to affect every segment of the City's population. AIDS was first recognized in 1981. It is now seen as the top priority of the United States Public Health Service.

AIDS is the most severe manifestation of a spectrum of clinical disease caused by a virus, variously known as human T-lymphotropic virus type III, lymphadenopathy-associated virus, or AIDS-associated retrovirus, which attacks and cripples the body's immune system by killing T-helper lymphocytes, thereby leaving the body vulnerable to opportunistic infections and malignancies. A person afflicted with AIDS can suffer a variety of viral, bacterial, fungal, and protozoal infections and malignancies which eventually lead to death, usually within one year after diagnosis.

The spread of the virus has occurred only through the exchange of body fluids, that is blood, blood products, or semen, between individuals. No evidence exists to indicate that the virus can be spread by casual person-to-person contact. Medical studies of families in which one or more members have been infected with HTLV-III/LAV/ARV show no spread of the virus other than through sexual intercourse or from mother to fetus in utero. Medical studies of hospital personnel caring for AIDS patients show no spread of the virus other than through needle sticks. The public health of the danger presented by the virus and its subsequent manifestations of AIDS-related complex and AIDS is caused by a lengthy asymptomatic period of infection during which an apparently healthy individual may unknowingly spread the disease to other persons through the exchange of blood, blood products, or semen. AIDS is concentrated primarily in urban areas, with the City and County of San Francisco having the largest incidence of the disease in the country. In the opinion of the scientific, medical, and public health communities, AIDS will continue to increase at a high rate within our City for the foreseeable future.

AIDS and AIDS-related complex by their nature have created a minority of our citizens who are afflicted with a seriously disabling condition whose ultimate outcome is fatal. Individuals infected with the virus represent a significant segment of our population particularly victimized due to the nature of their infection and to the present climate of misinformation, ignorance, and fear in the general population. Discrimination against victims of AIDS and AIDS-related conditions exists in the City and County of San Francisco. Persons with AIDS or AIDS-related conditions are faced with discrimination in employment, housing, business
establishments, city facilities, city services, and other public accommodations. This discrimination poses a substantial threat to the health, safety, and welfare of the community. Existing state and federal restraints on such arbitrary discrimination are inadequate to meet the particular problems of this City and County.

(Added by Ord. 499-85, App. 11/20/85)

**SEC. 3803. EMPLOYMENT.**

(a) **Prohibited Activity.** It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article:

(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;

(4) By any 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 act or 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 3811 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:

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

(3) The capacity of an individual to perform his or her duties without endangering his or her health or safety, or the health or safety of others is a bona fide occupational qualification.

(c) **Exceptions.** Nothing in this Section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

(Added by Ord. 499-85, App. 11/20/85; amended by Ord. 222-02, File No. 021462, App. 11/15/2002)

**SEC. 3804. HOUSING.**

(a) **Prohibited Activity.** It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article:

(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 and 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 AIDS.

(b) **Exceptions.**

(1) Nothing in this Article shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

(2) Nothing in this Section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

(Added by Ord. 499-85, App. 11/20/85)

**SEC. 3805. BUSINESS ESTABLISHMENTS AND PUBLIC ACCOMMODATIONS.**

(a) **Prohibited Activity.** It shall be an unlawful practice for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article:
(1) To deny any individual the full and equal enjoyment of the foods, services, facilities, privileges, advantages and accommodations of any business establishment or public accommodation;

(2) 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.

(b) Advertising. No person shall make, print, publish, advertise or disseminate in any way any notice, statement or advertisement with respect to any business establishment or public accommodation which indicates that a person is doing or will do anything which this Section prohibits.

(c) Exceptions. Nothing in this Section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

(Added by Ord. 499-85, App. 11/20/85; amended by Ord. 222-02, File No. 021462, App. 11/15/2002)

SEC. 3806. EDUCATIONAL INSTITUTIONS.

(a) Prohibited Activity. It shall be an unlawful educational practice for any person to do any of the following:

(1) To deny admission, or to impose different terms or conditions on admission, as a result of the fact, in whole or in part, that a person has AIDS or any of the associated-conditions covered by this Article.

(2) 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 or any service or program offered by an educational institution as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article.

(b) Exceptions.

(1) It shall not be an unlawful discriminatory practice for a religious or denominational institution to limit admission, or give other preference to applicants of the same religion.

(2) Nothing in this Section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

(Added by Ord. 499-85, App. 11/20/85)

SEC. 3807. CITY FACILITIES AND SERVICES.

(a) Prohibited Activity. It shall be an unlawful practice for any person to deny any person the full and equal enjoyment, or to impose different terms and conditions on the availability, of any of the following:

(1) Use of any City facility or City service as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article.

(2) Any service, program or facility wholly or partially funded or otherwise supported by the City and County of San Francisco, as a result of the fact, in whole or in part, that a person has AIDS or any of the associated conditions covered by this Article.

(b) Exceptions. Nothing in this Section shall be construed to prohibit any act which is specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.
SEC. 3808. ASSOCIATION AND RETALIATION.

(a) **Association.** It shall be unlawful for any person to do any of the acts described in Sections 3803(a), 3804(a), 3805(a), 3805(b), 3806(a) or 3807(a) as a result of the fact that a person associates with anyone who has AIDS or any of the associated conditions covered by this Article.

(b) **Retaliation.** It shall be unlawful for any person to do any of the acts described in Sections 3803(a), 3804(a), 3805(a), 3805(b), 3806(b) or 3807(a) or to retaliate against a person because a person:

(i) Has opposed any act or practice made unlawful by this Article;

(ii) Has supported this Article and its enforcement;

(iii) Has filed a complaint under this Article with the San Francisco Human Rights Commission or any court:

(iv) Has testified, assisted or participated in any way in any investigation, proceeding, or litigation under this Article.

SEC. 3809. TESTING.

(a) No person shall require another to take any test or undergo any medical procedure designed to show or help show that a person has AIDS or any of the associated conditions covered by this Article.

(b) Subsection (a) does not apply to an employer who can show that the absence of AIDS is a bona fide occupational qualification.

(c) Nothing in this Section shall be construed to prohibit any act specifically authorized by the laws of the State of California Department of Public Health in order to protect the public health.

SEC. 3810. LIABILITY.

Any person who violates any of the provisions of this Article or who aids in the violation of any provisions of this Article is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than $1,000, and such costs and attorney’s fees as may be determined by the court. In addition, punitive damages may be awarded in a proper case.

SEC. 3811. ENFORCEMENT.

(a) **Human Rights Commission.** Any person who believes that he or she has been discriminated against in violation of the provisions of this Article may file with the Human Rights Commission a request to have the Commission investigate and mediate his or her complaint under the provisions of Chapter 12A of the Administrative Code of the City and County of San Francisco.

(b) **Civil Action.** Any aggrieved person may enforce the provisions of this Article in a civil action.

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

An action for equitable relief under this subsection may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

(d) Bar. A complaint to the Human Rights Commission is not a prerequisite to the filing of a civil action under this Section. The pendency of a complaint before the Human Rights Commission shall not bar any civil action under this Section, but a final judgment in any civil action shall bar any further proceedings by the Human Rights Commission.

SEC. 3812. LIMITATION ON ACTIONS.

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

SEC. 3813. DEFINITIONS.

As used in this Article, the following words or phrases shall have the meanings indicated:

(a) The word "AIDS" shall mean the condition which occurs when an individual is infected with the virus known as lymphadenopathy-associated virus or human T-lymphotropic virus type III or AIDS-associated retrovirus including, but not limited to, acquired immunodeficiency syndrome (AIDS), AIDS-related complex, progressive generalized lymphadenopathy, lymphadenopathy syndrome, and asymptomatic infection. It also includes anyone who has any medical condition as a result of having any of the above. It also includes any perception, whether real or imaginary, that a person is suffering from AIDS, any of the conditions described above, or the perception, real or imaginary, that a person is at risk for any of the conditions described above.

(b) The phrase "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 consist only of payment of fees or consist of requirements under which a substantial portion of the residents of this City could qualify.

(c) The word "person" as used in this Article shall mean any individual, person, firm, corporation, or other organization or group of persons however organized. For the purposes of Section 3805(a)(2), "person" shall also mean, and include the partners, managers, employees, agents, business associates, suppliers or customers of a firm, corporation, business or other organization.

SEC. 3814. 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.

SEC. 3815. NONWAIVERABILITY.
Any written or oral agreement which purports to waive any provision of this Article is against public policy and void.

(Added by Ord. 499-85, App. 11/20/85)

**SEC. 3816. APPLICATION TO THE CITY AND COUNTY OF SAN FRANCISCO.**

All the provisions of this Article apply to the City and County of San Francisco.

(Added by Ord. 499-85, App. 11/20/85)

**SEC. 3850. POLICY.**

It is the policy of the City and County of San Francisco to eliminate discrimination based on the fact that a person has a disease or affliction that cannot be transmitted by casual contact, or any symptoms related thereto. In adopting this ordinance, the Board of Supervisors does not intend to proscribe any activity the proscription of which would constitute an infringement of any right guaranteed by the United States and California Constitutions.

(Added by Ord. 195-86, App. 6/6/86)

**SEC. 3851. FINDINGS.**

After public hearings and consideration of testimony and documentary evidence, the Board of Supervisors finds and declares that discrimination in employment against persons with diseases and afflictions that cannot be transmitted by casual contact exists in the City and County of San Francisco. This discrimination cuts across all racial, ethnic, and economic lines. Such discrimination poses a substantial threat to the health, safety, and welfare of the community. Existing state and federal restraints on such arbitrary discrimination inadequate to meet the particular problems of this City and County.

(Added by Ord. 195-86, App. 6/6/86)

**SEC. 3852. EMPLOYMENT.**

(a) **Prohibited Activity.** It shall be unlawful for any person to do any of the following acts as a result of the fact, in whole or in part, that a person has any disease or affliction that cannot be transmitted by casual contact:

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, independent contractor, or as an applicant for employment;

4. By any 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 act or 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 3856 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:

(i) That the discrimination is in fact a necessary result of a bona fide occupational
qualification; and,

(ii) That there exists no less discriminatory means of satisfying the occupational qualification.

(3) The capacity of an individual to perform his or her duties without endangering his or her
health or safety, or the health or safety of others is a bona fide occupational qualification.

(c) **Exceptions.** Nothing in this Section shall be construed to prohibit any act specifically authorized
by the laws of the State of California or any actions taken by or under the direction of the San Francisco
Department of Public Health in order to protect the Public Health.

(d) **Definition.** For the purposes of this ordinance, "person" shall mean any individual, person, firm,
corporation or other organization or group of persons however organized.

(Added by Ord. 195-86, App. 6/6/86; amended by Ord. 222-02, File No. 021462, App. 11/15/2002)

**SEC. 3853. ASSOCIATION AND RETALIATION.**

(a) It shall be unlawful for any person to do any of the acts described in Section 3852 as a result of the
fact that a person associates with any one who has a disease or affliction that cannot be transmitted by casual
contact or any associated condition covered by this ordinance.

(b) It shall be unlawful for any person to do any of the acts described in Section 3852 or to retaliate
against a person because a person:

(i) Has opposed any act or practice made unlawful by this ordinance;

(ii) Has supported this ordinance and its enforcement;
(iii) Has filed a complaint under this ordinance with the San Francisco Human Rights Commission or any court;

(iv) Has testified, assisted or participated in any way in any investigation, proceeding or litigation under this ordinance.

(Added by Ord. 195-86, App. 6/6/86)

SEC. 3854. TESTING.

(a) No person shall require another to take any test or undergo any medical procedure designed to show or help show that a person has a disease or affliction that cannot be transmitted by casual contact or any associated condition covered by this ordinance.

(b) Subsection (a) does not apply to an employer who can show that the absence of a disease or affliction that cannot be transmitted by casual contact is a bona fide occupation qualification.

(c) Nothing in this section shall be construed to prohibit any act specifically authorized by the laws of the State of California or any actions taken by or under the direction of the San Francisco Department of Public Health in order to protect the public health.

(Added by Ord. 195-86, App. 6/6/86)

SEC. 3855. LIABILITY.

Any person who violates any of the provisions of this ordinance is liable for each and every such offense for the actual damages, and such amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than $1000, and such costs and attorneys’ fees as may be determined by the court. In addition, punitive damages may be awarded in a proper case.

(Added by Ord. 195-86, App. 6/6/86)

SEC. 3856. ENFORCEMENT.

(a) Human Rights Commission. Any person who believes that he or she has been discriminated against in violation of the provisions of this ordinance may file with the Human Rights Commission a request to have the Commission investigate and mediate his or her complaint under the provisions of Chapter 12A of the Administrative Code of the City and County of San Francisco.

(b) Civil Action. Any aggrieved person may enforce the provisions of this ordinance in a civil action.

(c) Equitable Relief.

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

(2) An action for equitable relief under this Subsection may be brought by any aggrieved person, by the District Attorney, by the City Attorney, or by any other person.

(d) Bar. A complaint to the Human Rights Commission is not a prerequisite to the filing of a civil action under this Section. The pendency of a complaint before the Human Rights Commission shall not bar any civil action under this Section, but a final judgment in any civil action shall bar any further proceedings by the Human Rights Commission.

(Added by Ord. 195-86, App. 6/6/86; amended by Ord. 222-02, File No. 021462, App. 11/15/2002)
SEC. 3857. LIMITATION ON ACTIONS.

Judicial actions or requests to the Human Rights Commission under this ordinance must be filed within two years of the alleged discriminatory act.

(Added by Ord. 195-86, App. 6/6/86)

SEC. 3858. SEVERABILITY.

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

(Added by Ord. 195-86, App. 6/6/86)

SEC. 3859. NONWAIVERABILITY.

Any written or oral agreement which purports to waive any provision of this ordinance is against public policy and void.

(Added by Ord. 195-86, App. 6/6/86)

SEC. 3860. APPLICATION TO THE CITY AND COUNTY OF SAN FRANCISCO.

All the provisions of this ordinance shall apply to the City and County of San Francisco.

(Added by Ord. 195-86, App. 6/6/86)

Disclaimer:
This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.