

ORDINANCE NO. 1899

**AN ORDINANCE OF THE CITY OF SANTA CLARA,
CALIFORNIA, ADDING CHAPTER 9.55 ("PROHIBITION
AGAINST DISCRIMINATION") TO TITLE 9 ("PUBLIC
PEACE, MORALS AND WELFARE") OF "THE CODE OF
THE CITY OF SANTA CLARA, CALIFORNIA"**

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, it is the intent of the City Council, in enacting this Chapter, to protect and safeguard the right and opportunity of all persons to be free from all forms of arbitrary discrimination, including discrimination based on age, race, color, creed, religion, national origin, ancestry, disability, marital status, sex, gender, gender identity and sexual orientation; and,

WHEREAS, the City Council's purpose in enacting this Chapter is to promote the public health and welfare of all persons who live and work in Santa Clara.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Chapter 9.55 (entitled "Prohibition Against Discrimination") is added to Title 9 (entitled "Public Peace, Morals and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") to read as follows:

**"Chapter 9.55
PROHIBITION AGAINST DISCRIMINATION**

Sections:

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9.55.010 Purpose and intent.

It is the intent of the City Council, in enacting this chapter, to protect and safeguard the right and opportunity of all persons to be free from all forms of arbitrary discrimination, including discrimination based on age, race, color, creed, religion, national origin, ancestry, disability, medical condition, marital status, sex, gender, sexual orientation and gender identity. The council's purpose in enacting this chapter is to promote the public health and welfare of all persons who live and work in Santa Clara.

9.55.020 Definitions.

(a) "Advertising" shall mean to make, print, publish, advertise or otherwise disseminate any notice, statement or advertisement with respect to any employment activity, any business activity, any service activity or any educational activity.

(b) "Age" shall mean eighteen years of age or older except as otherwise provided by law.

(c) "AIDS" means Acquired Immune Deficiency Syndrome (AIDS), AIDS related conditions (ARC), or any other medical condition which a person contracts as a result of having AIDS or ARC.

(d) "Business establishment" shall mean any entity, however organized, which furnishes goods, services or accommodations 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 only of requirements under which a substantial portion of the residents of the City could qualify.

(e) "Disability" or "disabled" shall mean, with respect to an individual: a physical or mental impairment that substantially limits one or more of the major life activities of the individual; a record of such an impairment; or being regarded as having such an impairment. For purposes of

this chapter discrimination on the basis of disability means that no covered entity shall discriminate against a qualified individual with a disability because of that individual's disability. The term "qualified individual with a disability" shall mean an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. Except as herein provided discrimination on the basis of disability is to be interpreted in a manner consistent with the Americans With Disabilities Act, the regulations promulgated pursuant thereto and judicial decisions lending construction thereto.

(f) "Discriminate, discrimination or discriminatory" shall mean any act, policy or practice which, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's age, race, color, creed, religion, national origin, ancestry, disability, marital status, sex, gender, gender identity, sexual orientation or medical condition. "Discrimination" includes the assertion of an otherwise valid reason for action as a subterfuge or pretext for prohibited discrimination.

(g) "Educational institution" shall mean any public or private educational institution including an academy, college, elementary or secondary school, extension course, kindergarten, preschool, nursery school, university, and any business, nursing, professional, secretarial, technical or vocational school.

(h) "Employee" shall mean any individual employed or seeking employment from an employer.

(i) "Employer" shall mean any person who, as of December 1, 2012, for compensation, regularly employs five (5) or more individuals, not including the employer's parents, spouse or children. For purposes of this chapter, an employer "regularly" employs five (5) individuals when the employer employs five (5) or more individuals for each working day in any twenty or more calendar

weeks in the current or previous calendar year. For purposes of this chapter an “employer” is also any person acting on behalf of an employer, directly or indirectly, or any employment agency.

(j) “Gender” shall have the same meaning as “sex” as that term is used herein and shall be broadly interpreted to include persons who are known or assumed to be transgendered.

(k) “Gender Identity” shall mean a person’s actual or perceived sex, and includes a person’s identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the person’s sex at birth.

(l) “Labor organization” shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection on behalf of employees.

(m) “Medical Condition” shall include AIDS, AIDS related conditions and the conditions delineated in California Government Code Sec. 12926(i).

(n) “Person” shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.

(o) “Place of public accommodation” shall include: inns; taverns; hotels; motels; restaurants; wholesale outlets; retail outlets; banks; savings and loan associations; other financial institutions; credit information bureaus; insurance companies; dispensaries; clinics; hospitals; theaters; recreational parks and facilities; trail camps; garages; public conveyances; public halls; and all other establishments within the City which offer goods, services, accommodations and entertainment to the public. A place of public accommodation does not include any institution, club or other place of accommodation which by its nature is distinctly private.

(p) “Service” shall mean any activity which contributes to the welfare of others.

(q) "Sexual orientation" shall mean known or assumed heterosexuality, homosexuality, or bisexuality.

(r) "Transaction in real estate" shall include the exhibiting, listing, advertising, negotiating, agreeing to transfer or transferring, whether by sale, lease, sublease, rent, assignment or other agreement, of any interest in real property or improvements thereon.

9.55.030 Prohibited acts of discrimination – employment.

(a) With regard to employment, it shall be unlawful for any employers or labor organizations, to engage in any of the following acts, wholly or partially for a discriminatory reason:

(1) To fail to hire, refuse to hire or discharge any individual;

(2) To discriminate against any individual, with respect to compensation, terms, conditions, or privileges of employment, including promotion; however nothing in this subsection shall be construed to require any employer to provide benefits, such as insurance, to individuals not employed by the employer;

(3) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities, or which would otherwise tend to adversely affect his or her status as an employee;

(4) To fail or refuse to refer for employment any individual in such a manner: that would deprive an individual of employment opportunities; that would limit an individuals employment opportunities; or that would otherwise adversely affect an individual's status as a prospective employee or as an applicant for employment;

(5) To discriminate against an individual in admission to, or employment in, any program established to provide apprenticeship or other job training, including an on-the-job training program;

(6) To print or publish, or cause to be printed or published, any discriminatory notice or advertisement relating to employment. This subsection shall not be construed so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability; or

(7) To discriminate in referring an individual for employment whether the referral is by an employment agency, labor organization or any other person.

9.55.040 Prohibited acts of discrimination – housing and real estate transactions.

(a) With regard to housing and real estate transactions it shall be unlawful to engage in any of the following acts wholly or partially for a discriminatory reason:

(1) To discriminate by impeding, delaying, discouraging or otherwise limiting or restricting any transaction in real property;

(2) To discriminate by imposing different terms on a real estate transaction;

(3) To represent falsely that an interest in real property is not available for transaction;

(4) To include in the terms or conditions of a real property transaction any discriminatory clause, condition or restriction;

(5) To discriminate in performing, or refusing to perform, any act necessary to determine an individual's financial ability to engage in a real estate transaction;

(6) For a property manager to discriminate by refusing to provide equal treatment of, or services to, occupants of any real property which he or she manages;

(7) To make, print or publish, or cause to be made, printed or published any discriminatory notice, statement, or advertisement with respect to a real estate transaction or proposed real estate transaction, or financing relating thereto. This subsection shall not be construed

so as to expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability. This subsection shall not be construed to prohibit advertising directed to physically disabled persons for the purpose of calling to their attention the existence or absence of housing accommodations or services for the physically disabled;

(8) To discriminate in any financial transaction involving real estate, on account of the location of the real estate be it residential or nonresidential (“redlining”);

(9) Notwithstanding the provisions of subsections (1) through (8) of this section, it shall not be an unlawful discriminatory practice for an owner to limit occupancy of a building to tenants on the basis of age in accordance with federal or California law; and,

(10) Notwithstanding the provisions of subsections (1) through (8) of this section, it shall not be an unlawful discriminatory practice for an owner, lessee or renter to refuse to rent, lease or sublease a portion of a single-family dwelling unit to a person as a roomer or boarder where it is anticipated that the owner, lessee or renter will be occupying any portion of the single-family dwelling or to refuse to rent, lease or sublease where it is anticipated that the owner, renter or lessee will be sharing either a kitchen or a bathroom with the roomer or boarder.

9.55.050 Prohibited acts of discrimination – business establishments or public accommodations.

(a) It shall be unlawful for a business establishment or place of public accommodation to engage in any of the following acts wholly or partially for a discriminatory reason:

(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 place of public accommodation; or

(2) To print, publish, circulate, post, or mail, directly or indirectly, a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services,

facilities, privileges, advantages, and accommodations of a business establishment or place of public accommodation will be unlawfully refused, withheld from or denied an individual, or which indicates that an individual's patronage of, or presence at, the business establishment or place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

9.55.060 Prohibited acts of discrimination – educational institutions.

(a) It shall be unlawful for an educational institution to engage in any of the following acts wholly or partially for a discriminatory reason:

(1) To deny, restrict, abridge or condition the use of, or access to, any educational facilities or educational services to any person otherwise qualified;

(2) Notwithstanding the provisions of subsection (a) of this section, it shall not be an unlawful discriminatory practice to limit attendance in classes or programs conducted by an educational institution based upon a reasonable educational objective, except where to do so would otherwise violate a duty imposed upon the institution by federal or state law to provide reasonable accommodation; and,

(3) Notwithstanding the provisions of subsection (a) of this section, it shall not be an unlawful discriminatory practice for an educational institution operated by a religious or denominational institution, or established for a bona fide religious purpose, to admit students or program attendees on the basis of that student's or attendee's religious or denominational affiliation or preference.

9.55.070 City services, facilities and transactions.

The City shall be bound by the provisions of this chapter to the same extent as private individuals.

9.55.080 General exceptions.

(a) Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that the practice is not intentionally devised to contravene the prohibitions of this chapter and can be justified by a reasonable business purpose. A reasonable business purpose shall not be based upon the comparative characteristics of one group in contrast to another, or a stereotyped characterization of one group in contrast to another.

(b) Unless otherwise prohibited by law, nothing contained in this chapter shall be construed to prohibit promotional activities such as senior citizen discounts and other similar practices designed primarily to encourage participation by protected groups.

(c) 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 such as a retirement, pension or insurance plan which is not a subterfuge or pretext to evade the purposes of this chapter.

(d) Prohibited discriminatory practices do not include acts based on a person's marital status which are reasonably taken in recognition of California community property laws pertaining to the acquisition, financing, holding or transferring of real estate.

(e) It shall not be an unlawful discriminatory practice for any person to carry out an affirmative action plan. An affirmative action plan is any plan devised to effectuate remedial or corrective action taken in response to past discriminatory practices, or as otherwise required by state or federal law.

(f) Nothing contained in this chapter shall be deemed to prohibit selection or rejection based solely upon a bona fide occupational qualification, a bona fide physical requirement, or, as to a

religious or denominational institution, based upon a preference for applicants of the same religion or denomination. Nothing contained in this chapter shall be deemed to prohibit a religious or denominational institution from selecting or rejecting applicants and employees for nonsecular positions on the basis of the applicant's or employee's conformance with the institution's religious or denominational principles. If a party asserts that an otherwise unlawful practice is justified as a permissible bona fide occupational qualification, a permissible bona fide physical requirement or as a permissible bona fide religious or denominational preference, that party shall have the burden of proving:

- (1) That the discrimination is in fact a necessary result of such a bona fide condition; and,
- (2) That there exists no less discriminatory means of satisfying the bona fide requirement.

9.55.090 Coercion or retaliation.

(a) It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against, or interfere with any person in the exercise of, or on account of having exercised, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected under this chapter, or on account of having expressed opposition to any practice prohibited by this chapter.

(b) It shall be an unlawful discriminatory practice for any person to require, request, or suggest that a person retaliate against, interfere with, intimidate or discriminate against a person, because that person has opposed any practice made unlawful by this chapter, or because that person has made a charge, or because that person has testified, assisted or participated in any manner in an investigation, proceeding or hearing authorized under this chapter.

(c) It shall be an unlawful discriminatory practice for any person to cause or coerce, or attempt to cause or coerce, directly or indirectly, any person in order to prevent that person from complying with the provisions of this chapter.

(d) Nothing contained herein shall be construed to impair the constitutionally protected right to freedom of speech.

(e) In the course of investigating or proving a charge of discrimination under this chapter, no person shall be required to disclose their sexual orientation or gender.

9.55.100 Enforcement.

(a) Private Right of Action. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a civil cause of action in any court of competent jurisdiction. Any such civil action shall be brought within one year of the alleged discriminatory act. The court may grant such relief as it deems appropriate, including but not limited to, compensatory damages, attorney's fees, equitable relief, and injunctive relief including an injunction ordering the respondent to cease and desist from the unlawful discriminatory practice. Punitive damages are not recoverable in any civil action brought pursuant to this chapter.

(b) Enforcement by City. Any person who violates the provisions of this chapter or who aids or incites such a violation shall be deemed guilty of an infraction.

(c) State/Federal Remedies.

(1) The civil and criminal remedies and penalties provided for in this chapter are in addition to, not in lieu of, those provided for by state and federal law. This chapter shall therefore not be construed so as to limit a person's right to file complaint with the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission or any other

state or federal agency vested with jurisdiction to receive, review and act upon complaints of discrimination of the type prohibited by this chapter.

(2) This chapter shall not be construed as limiting the right of any person to seek remedies in courts of competent jurisdiction pursuant to state or federal law which grant private rights of action to persons aggrieved by discriminatory acts of the type prohibited by this chapter.

(3) A person's election to seek remedies provided for in this chapter shall not operate to toll any statute of limitation set forth in state or federal law for pursuing remedies under state or federal law for acts of discrimination of the type prohibited by this chapter."

SECTION 2: Savings clause.

The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Constitutionality, severability.

If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.


SECTION 4: Effective date.

This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 30th day of October, 2012, by the following vote:

AYES:	COUNCILORS:	Gillmor, Kennedy, Kolstad, Mahan, McLeod and Moore and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:




ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA this 13th day of November 2012, by the following vote:

AYES:	COUNCILORS:	Gillmor, Kennedy, Kolstad, Mahan, McLeod and Moore and Mayor Matthews
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None