

Ordinance No. 2017-09

AN ORDINANCE OF THE CITY OF SANTA CRUZ
AMENDING CHAPTER 9.83 OF THE SANTA CRUZ MUNICIPAL CODE
PERTAINING TO THE PROHIBITION OF DISCRIMINATION

BE IT ORDAINED by the City of Santa Cruz as follows:

SECTION 1. Chapter 9.83 of the Santa Cruz Municipal Code is hereby amended to read as follows:

- 9.83.010 Purpose and intent.
- 9.83.020 Definitions.
- 9.83.030 Prohibited acts of discrimination – Employment.
- 9.83.040 Prohibited acts of discrimination – Housing and real estate transactions.
- 9.83.050 Prohibited acts of discrimination – Business establishments or public accommodations.
- 9.83.060 Prohibited acts of discrimination – Educational Institutions.
- 9.83.070 City services, facilities and transactions.
- 9.83.080 General exceptions.
- 9.83.090 Posting of notices.
- 9.83.100 Coercion or retaliation.
- 9.83.110 Preservation of business records.
- 9.83.120 Resolution and enforcement.

9.83.010 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 race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military and veteran status, or any other consideration made unlawful by local, State or Federal law.

The council also notes that the Federal Equal Employment Opportunity Commission and the State Department of Fair Employment and Housing, although ostensibly designed to receive, investigate, evaluate and expeditiously and inexpensively resolve complaints of discrimination, as a practical matter are not equipped to deal with the volume of complaints received. As a result, for the most part complaints are not thoroughly and quickly assessed and complainants are generally simply issued “right to sue” letters, leaving complainants and respondents with no alternative but time-consuming, expensive litigation. It is therefore also the intent of the council to provide an inexpensive, expedient and informal method of resolving discrimination disputes that may arise in the area of employment, housing, and public accommodation and to ease the burden on the superior and municipal courts of this county caused by the proliferation of civil filings arising out of such disputes.

Finally it is the intent of the council to protect Santa Cruz residents from unwarranted invasions of privacy or from discrimination based on matters that are of private concern.

(Ord. 92-11 § 1 (part), 1992).

9.83.020 DEFINITIONS.

(1) “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;

(2) “Age” shall mean eighteen years of age or older except as otherwise provided by law;

(3) “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;

(4) “Disability” or “disabled” shall mean, with respect to an individual: a physical or mental impairment that limits a major life activity; 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 Federal Americans with Disabilities Act and the California Fair Employment and Housing Act, the regulations promulgated pursuant thereto and judicial decisions lending construction thereto.

(5) “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 race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military and veteran status. “Discrimination” includes the assertion of an otherwise valid reason for action as a subterfuge or pretext for prohibited discrimination.

(6) “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.

(7) “Employee” shall mean any individual employed or seeking employment from an employer.

(8) “Employer” shall mean any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, except as follows: “Employer” does not include a religious association or corporation not organized for private profit.

(9) “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.

(10) “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.

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

(12) "Physical characteristic" shall mean a bodily condition or bodily characteristic of any person which is from birth, accident, or disease, or from any natural physical development, or any other event outside the control of that person including height, weight, and individual physical mannerisms. Physical characteristic shall not relate to those situations where a bodily condition or characteristic will present a danger to the health, welfare or safety of any individual.

(13) "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. (See also the definition of "Business Establishment")

(14) "Service" shall mean any activity which contributes to the welfare of others;

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

(16) "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.

(Ord. 92-11 § 1 (part), 1992).

9.83.030 PROHIBITED ACTS OF DISCRIMINATION – EMPLOYMENT.

(1) 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:

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

(b) 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;

(c) 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;

(d) 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 individual's employment opportunities; or that would otherwise adversely affect an individual's status as a prospective employee or as an applicant for employment;

(e) 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;

(f) 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

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expose the person who prints or publishes the notice or advertisement, such as a newspaper, to liability;

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

(Ord. 92-11 § 1 (part), 1992).

9.83.040 PROHIBITED ACTS OF DISCRIMINATION – HOUSING AND REAL ESTATE TRANSACTIONS.

(1) 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:

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

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

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

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

(e) 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;

(f) 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;

(g) 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;

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

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

(j) Notwithstanding the provisions of subsections (a) through (h) 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.

(Ord. 92-11 § 1 (part), 1992).

9.83.050 PROHIBITED ACTS OF DISCRIMINATION – BUSINESS ESTABLISHMENTS OR PUBLIC ACCOMMODATIONS.

(1) 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:

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(a) 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;

(b) 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.

(Ord. 92-11 § 1 (part), 1992).

9.83.060 PROHIBITED ACTS OF DISCRIMINATION – EDUCATIONAL INSTITUTIONS.

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

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

(b) 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;

(c) 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.

(Ord. 92-11 § 1 (part), 1992).

9.83.070 CITY SERVICES, FACILITIES AND TRANSACTIONS.

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

(Ord. 92-11 § 1 (part), 1992).

9.83.080 GENERAL EXCEPTIONS.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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:

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

(Ord. 92-11 § 1 (part), 1992).

9.83.090 POSTING OF NOTICES.

Every employer or institution subject to this chapter shall post and keep posted in a conspicuous location where business or activity is customarily conducted or negotiated, a notice, the language and form of which has been prepared by the city of Santa Cruz setting forth excerpts from or summaries of the pertinent provisions of this chapter and information pertinent to the enforcement of rights hereunder. The notice shall be in both English and Spanish. If over ten percent of an employer's employees speak, as their native language, a language other than English or Spanish, notices at that employer's place of business shall be posted in that language. At the request of the employer or institution, notices required by this section shall be provided by the city. Notices shall be posted within ten days after receipt from the city and in no case later than August 31, 1992.

(Ord. 92-11 § 1 (part), 1992).

9.83.100 COERCION OR RETALIATION.

(1) 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.

(2) 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.

(3) 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.

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

(5) 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.

(Ord. 92-11 § 1 (part), 1992).

9.83.110 PRESERVATION OF BUSINESS RECORDS.

Where a complaint of discrimination has been filed against a person under this chapter, the respondent shall preserve all records otherwise required to be maintained by state or federal law and which may be relevant to the charge or action, until a final disposition of the complaint.

(Ord. 92-11 § 1 (part), 1992).

9.83.120 RESOLUTION AND ENFORCEMENT.

(1) Grievance Procedure. Any employee whose employer has in place a formal written grievance procedure or other system to redress alleged improprieties covered by this chapter shall utilize and exhaust that procedure prior to proceeding under the provisions of this section. The final decision rendered in any such grievance proceeding shall not be considered res judicata in subsequent court proceedings brought pursuant to this chapter. If the subject grievance procedure calls for binding arbitration, neither the aggrieved person nor the employer shall be required to seek mediation as required at subsection (2)(a) of this section before seeking the other civil remedies afforded by this chapter.

(2) Private Right of Action. The following shall constitute the civil means for enforcing this chapter:

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice shall first file a complaint with a person designated by the city of Santa Cruz from time to time for the receipt of such complaints and shall seek to resolve the complaint through mediation. If the parties to the mediation cannot agree upon the mediator from a list provided by the city, the city's designee shall arbitrarily select three mediators from the list. Each party to the mediation shall have the right to challenge one mediator. An unchallenged mediator shall then be selected to mediate the dispute. The mediator's fees shall be equally borne by the parties. A complainant shall have six months from the date of the alleged discriminatory act or six months from the termination of the employee grievance procedure, if applicable, within which to commence mediation of his or her complaint. The objective of the mediation process shall be to achieve resolution of the complaint of discrimination by way of an understanding and mutual agreement between the parties. It shall not be to assign liability or fault. Statements of parties and statements of witnesses made during the mediation process to the mediator shall not be admissible in any subsequent proceedings for any purpose, including impeachment.

(b) After exhausting his or her mediation remedy pursuant to subsection (2)(a) of this section, 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 or within six months of the termination of mediation provided for in subsection (2)(a) of this section, whichever is later.

(c) 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.

(3) 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.

(4) State/Federal Remedies.

(a) 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 a complaint with the California Department of Fair Employment and Housing 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.

(b) 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.

(c) A person's election to seek remedies provided for in this chapter shall not delay the timeline for filing a complaint under 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.

(Ord. 92-11 § 1 (part), 1992).

SECTION 2: SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, firm, corporation or circumstance, is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion thereof. The City Council of the City of Santa Cruz hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, phrases, or portion be declared invalid or unconstitutional.

SECTION 3: This Ordinance shall be in force and take effect thirty (30) days after its final adoption.

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PASSED FOR PUBLICATION this 4th day of April, 2017, by the following vote:

AYES: Councilmembers Krohn, Mathews, Watkins, Brown, Noroyan; Vice Mayor Terrazas; Mayor Chase.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: _____
Mayor

ATTEST: _____
City Clerk Administrator

PASSED FOR FINAL ADOPTION this 25th day of April, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2017-09 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk Administrator