

TITLE 9 Public Peace and Safety

TITLE 9

PUBLIC PEACE AND SAFETY

<p>Chapter: 9.01 Definitions</p> <p>Chapter: 9.04 Curfew</p> <p>Chapter: 9.05 Consumption of Alcohol in Public Places</p> <p>Chapter: 9.08 Unattended Minors in Vehicles</p> <p>Chapter: 9.10 Knives or Daggers in Public Places</p> <p>Chapter: 9.12 Parade Permits and Regulations</p> <p>Chapter: 9.16 Noise</p> <p>Chapter: 9.20 Smoking Prohibited in Certain Public Areas</p> <p>Chapter: 9.21 Regulation of Tobacco Retailers</p> <p>Chapter: 9.25 Gambling</p> <p>Chapter: 9.26 Bingo</p> <p>Chapter: 9.30 Ambulance Service</p> <p>Chapter: 9.32 Unlawful Areas to Play Golf</p> <p>Chapter: 9.34 Discharge of Firearms</p> <p>Chapter: 9.36 Sale of Firearms</p> <p>Chapter: 9.39 Escort Bureaus and Introductory Services</p> <p>Chapter: 9.40 Distributing Food and Drug Samples and Advertising</p> <p>Chapter: 9.43 Amusement Game Arcades and Amusement Game Machines</p> <p>Chapter: 9.45 Display of Drug Paraphernalia</p> <p>Chapter: 9.48 Commercial Use of City Streets</p> <p>Chapter: 9.50 Prohibition of Aggressive Soliciting</p> <p>Chapter: 9.60 City Buildings and Facilities</p> <p>Chapter: 9.65 Display of Aerosol Spray Paint Containers and Marker Pens</p> <p>Chapter: 9.66 Graffiti Removal and Abatement</p> <p>Chapter: 9.68 Injuring or Interfering with Property</p>	<p>Chapter: 9.76 Hazardous Holes</p> <p>Chapter: 9.84 Identification Cards and Photographic Prints</p> <p>Chapter: 9.88 Lost and Unclaimed Property</p> <p>Chapter: 9.95 Use of City Sidewalks and Rights-of-Way for Dining Purposes</p> <p>Chapter: 9.97 Sitting or Lying on Sidewalks and Paseos Along Certain Downtown Portions of State Street</p> <p>Chapter: 9.98 Pedestrians Blocking Public Sidewalks</p> <p>Chapter: 9.99 Access to Health Care Facilities and Places of Worship</p> <p>Chapter: 9.100 Burglary and Robbery Alarm Systems</p> <p>Chapter: 9.114 Police Reserve Corps</p> <p>Chapter: 9.116 Civil Defense and Disaster</p> <p>Chapter: 9.118 Subpoenas</p> <p>Chapter: 9.126 Non-Discriminatory Employment Provisions for all Contracts of the City</p> <p>Chapter: 9.128 City Service Contractor Mandatory Minimum Wage</p> <p>Chapter: 9.130 Non-Discriminatory Provisions for Leases</p> <p>Chapter: 9.132 AIDS/HIV Discrimination</p> <p>Chapter: 9.135 Registration of Domestic Partnerships</p> <p>Chapter: 9.140 Solicitation of Employment, Business or Contributions from Streets</p> <p>Chapter: 9.145 Lowest Law Enforcement Priority Policy</p>
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CHAPTER 9.126

NON-DISCRIMINATORY EMPLOYMENT PROVISIONS FOR ALL CONTRACTS OF THE CITY

Sections:**9.126.010 Certificate Generally.****9.126.030 Application.****9.126.020 Contents of Certificate.****9.126.010 Certificate Generally.**

Consistent with a policy of non-discrimination in employment on contracts of the City of Santa Barbara and in furtherance of the provisions of Sections 1735 and 1777.6 of the California Labor Code, a "Contractor's Obligation for Non-discriminatory Employment Certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all bid specifications and contracts of the City for purchases, services, and the construction, repair, or improvement of public works. (Ord. 3500 §1(part), 1972.)

9.126.020 Contents of Certificate.

The "contractor's obligation for non-discriminatory employment" is as follows:

In performing the work of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this non-discrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the City advising the said labor union or worker's representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices Commission, or any other appropriate agency of the State designated by the City for the purposes of investigation to ascertain compliance with the Contractor's obligation for non-discriminatory employment provisions of this contract, or Fair Employment Practices statute.

(5) A finding of willful violation of the non-discriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Contractor may submit bids, the Contractor is a "disqualified bidder" for being "non-responsible".

The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of any such written notice, the City shall notify the Contractor that unless he demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

(6) Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City

Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees, that should the City Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the non-discriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such non-compliance. Such moneys shall be recovered from the Contractor. The City may deduct any such penalties from any moneys due the Contractor from the City.

(7) The Contractor certifies to the City that he has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:

(a) The Contractor shall notify all supervisors, foremen and other personnel officers in writing of the content of the non-discrimination provision and their responsibilities under it.

(b) The Contractor shall notify all sources of employee referrals, (including unions, employment agencies, advertisements, Department of Employment) of the content of the non-discrimination provision.

(c) The Contractor shall file a basic compliance report as required by the City. Willful false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.

(d) The Contractor shall notify the City of opposition to the non-discrimination provision by individuals, firms or organizations during the period of this contract.

(8) Nothing contained in this Contractor's Obligation for Non-discriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

(9) (a) In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.

(b) The Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction by the City, the Contractor may request the City to enter into such litigation to protect the interests of the City. (Ord. 4465, 1987; Ord. 3500 §1(part), 1972.)

9.126.030 Application.

This chapter shall only apply to contracts entered into following the effective date of the ordinance codified in this chapter, provided that any existing contract which is renewed or extended pursuant to an option shall upon renewal or extension be subject to the terms of this chapter and, as a condition of renewal or extension, such contract shall be revised to incorporate the provisions required by this chapter. (Ord. 3500 §1,(part), 1972.)

Chapter 9.130

NON-DISCRIMINATORY PROVISIONS FOR LEASES

Sections:

9.130.010 Certificate Generally.

9.130.030 Application.

9.130.020 Contents of Certificate.

9.130.010 Certificate Generally.

Consistent with a policy of non-discrimination in the use of real or personal property owned by the City of Santa Barbara a "lessee's obligation for non-discrimination certificate", as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all leases of City owned real or personal property. (Ord. 3501 §1(part), 1972.)

9.130.020 Contents of Certificate.

The "lessee's obligation for non-discrimination" is as follows:

(a) Lessee in the use of the property which is the subject of this lease or in the operations to be conducted pursuant to the provisions of this lease, will not discriminate or permit discrimination against any person or class of persons by reason of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.

(b) Lessee shall furnish its accommodations and services on a fair, equal and non-discriminatory basis to all users thereof and lessee shall only charge fair, reason-able and non-discriminatory prices for each unit of service.

Lessee may make reasonable and non-discriminatory rebates, discounts or other similar price reductions to volume purchasers to the extent permitted by law.

(c) Lessee shall make its accommodations and services available to the public on fair and reasonable terms without discrimination on the basis of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Sections 12900 - 12996) except where such discrimination is related to bona fide occupational qualification.

(d) Lessee shall not discriminate or allow discrimination either directly or indirectly, in hiring or employing persons to work on the leased premises.

(e) Lessee agrees that it shall insert the above articles in any agreement by which said Lessee transfers any interest herein or grants a right or privilege to any person, firm or corporation to use the leased premises or to render accommodations and services to the public on the leased premises.

(f) Non-compliance with provisions (a), (b), (c), (d), and (e) above shall constitute a material breach hereof and in addition to any other remedies provided by law or this lease, in the event of such non-compliance the Lessor shall have the right to terminate this lease and the interest hereby created without liability therefor, or at the election of the Lessor, the Lessor shall have the right to enforce judicially said provisions (a), (b), (c), (d), and (e).

In the event the Lessee is found to have failed to comply with the provisions of articles (a), (b), (c), (d), and (e) and notwithstanding any other remedy pursued by Lessor, the Lessee shall pay to the Lessor the sum of \$25.00 per day for each incident of a failure to comply. (Ord. 4465, 1987; Ord. 3501 §1(part), 1972.)

9.130.030 Application.

This chapter shall apply to new leases only after the effective date of the ordinance codified in this chapter and shall apply to existing leases upon any renewal of the term thereof after the effective date of the ordinance codified in this chapter. (Ord. 3501 §1(part), 1972.)

Chapter 9.132

AIDS/HIV DISCRIMINATION

Sections:

9.132.010 Findings.	9.132.070 City Facilities and Services.
9.132.020 Purpose and Public Policy.	9.132.080 Employment.
9.132.030 Definitions.	9.132.090 Advertising.
9.132.040 Housing Accommodations and Housing Services.	9.132.100 Testing.
9.132.050 Business Establishments.	9.132.110 Exceptions.
9.132.060 Medical Services.	9.132.120 Liability and Damages.
	9.132.130 Enforcement.

9.132.010 Findings.

The City Council finds and declares that:

A. The medical condition known as Acquired Immune Deficiency Syndrome, (commonly known as AIDS/HIV infection), is a deadly communicable disease and has the potential to affect every segment of our City's population.

B. AIDS/HIV infection was first recognized in 1981 by the United States Public Health Service's Center for Disease Control.

C. AIDS, in the opinion of the scientific and medical community, is caused by a virus, known as HIV infection (Human Immunodeficiency Virus) (or in the past, HTLV-III or LAV), which attacks and cripples the body's immune system and neurological system, thereby leaving the body vulnerable to opportunistic infections, certain cancers and neurological diseases.

D. A person afflicted with AIDS/HIV infection can suffer a variety of bacterial, viral, and/or fungal caused illnesses, cancers, protozoan and neurological conditions which debilitate the body resulting in a high mortality rate within several years after diagnosis.

E. The transmission of the virus has occurred through transfer of body fluids, for example blood, blood by-products, body organs and semen. Body fluids can be transferred through intimate sexual contact, through the sharing of hypodermic needles used in drug injections and through to a fetus and/or newborn infant from the mother.

F. No evidence exists to indicate the spread of the virus through casual contact, such as contact at work or at school, through the air or water or through the handling of food by persons having the AIDS virus.

G. Medical studies of family groups in which one or more persons have been diagnosed with AIDS/HIV infection show no spread of the virus except through the exchange of body fluid such as through sexual intimacy, through mother's milk, or through the exchange of blood, such as mother to fetus.

H. A public health danger represented by the HIV virus and its subsequent manifestation as AIDS is caused by the lengthy incubation period during which period an apparently healthy but infected individual may spread the disease to other persons through the transfer of body fluids such as blood, blood by-products, body organs, semen, or vaginal/cervical secretions, perinatally or through the sharing of hypodermic needles used in drug injections.

I. AIDS has been recognized as a national public health emergency with a large proportion of the cases diagnosed in California.

J. AIDS, in the opinion of the scientific and medical community, will continue to increase at a high rate within our City for the foreseeable future.

K. Persons with AIDS, AIDS-related complex (ARC), including persons infected with the HIV virus who may not show AIDS symptoms, or those perceived to fall into one of the above STATED CATEGORIES, are faced with potential discrimination, and such potential for discrimination is sufficient to justify a City ordinance to prohibit those discriminatory practices which are not currently adequately addressed by federal and state law. (Ord. 4758; 1992.)

9.132.020 Purpose and Public Policy.

It is hereby declared as the public policy of the City of Santa Barbara that it is necessary to protect and safeguard the rights and opportunities of persons with AIDS, ARC or HIV infection in respect to discrimination in housing, business establishments, testing, access to medical services and in City facilities and services. (Ord. 4758, 1992.)

9.132.030 Definitions.

A. "AIDS" means Acquired Immune Deficiency Syndrome, a disease complex which occurs when an important part of the human immune system is destroyed by the action of a human immune deficiency virus known as HIV infection and previously referred to as HTLV-III or LAV and as it may be further defined by the United States Public Health Services Center for Disease Control. AIDS is manifested by infections, cancers or neurological diseases. (For purposes of this Chapter, a person is regarded as having AIDS, ARC, or being infected with the virus (HIV infection) that causes AIDS if such person is perceived and treated by an alleged violator of the provisions of this Chapter as having AIDS, ARC, or being infected with the virus that causes AIDS, whether such medical condition exists or not.)

B. "ARC" means AIDS-related complex. ARC occurs when the human immune system is weakened by the AIDS virus, and such conditions as enlarged lymph-nodes, fever, weight loss, malaise, and chronic diarrhea result. ARC may develop into AIDS.

C. "Business Establishment" includes any entity, however organized, which furnishes goods or services, including educational services, or accommodations to the general public; including any entity which has a membership requirement if its membership requirement consists only of the payment of a membership fee and a substantial number of residents within the City of Santa Barbara could qualify.

D. "Employee" includes any person employed by an employer.

E. "Employer" means any person regularly employing one or more persons, or any person acting as an agent of an employer, directly or indirectly.

F. "Employment agency" means any person regularly undertaking compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

G. "HIV infected" means a person infected with the human immune deficiency virus.

H. "Housing accommodation" includes any improved or unimproved real property, or portion thereof, which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons.

I. "Housing Services" shall mean services otherwise provided by the owner of any housing accommodations to persons renting or leasing such housing accommodation, including but not limited to, utilities such as light, heat, water and telephone; ordinary repairs or replacement, and maintenance, including painting; elevator services, laundry facilities and privileges, the use of common recreational facilities, janitorial services, resident manager, refuse removal, furnishings, food service, parking and other benefits, privileges or facilities provided.

J. "Labor organization" means 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.

K. "Owner" includes the lessee, sublessee, assignee, managing agent, real estate broker or salesman, or any person having any legal or equitable right of ownership or possession or the right to rent or lease housing accommodations.

L. "Person" includes one or more individuals, partnerships, associations, corporations, labor organizations, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries.

M. "Medical Services" shall mean any public or private service provided by volunteers or paid professionals caring for the injured, or sick in relation to health, medicine, science or the treatment of disease. (Ord. 4758, 1992.)

9.132.040 Housing Accommodations and Housing Services.

A. It shall be unlawful for any owner of any housing accommodation or housing service to discriminate against any person because such person has AIDS, ARC or HIV infection.

B. Nothing in this Section shall:

1. Apply to any housing accommodation in which the owner or any member of his or her family occupies the same housing accommodation in common with the prospective tenant. This exception shall not apply where the owner occupies a separate apartment, condominium or other housing unit in a multiple-unit complex.
2. Permit or require the rental or occupancy of any housing accommodation otherwise prohibited by law.
3. Otherwise interfere with any just cause for an owner to evict a person from any housing accommodation or permit the delay of any unlawful detainer action.
4. Require the renting of any housing accommodation reserved for the housing of students to non-student persons with AIDS, ARC or HIV infection. (Ord. 4758, 1992.)

9.132.050 Business Establishments.

It shall be unlawful for any person to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment on the grounds that such person has AIDS, ARC or HIV infection. (Ord. 4758, 1992.)

9.132.060 Medical Services.

It shall be unlawful for any paid or unpaid professional, or medical establishment, or institution, public or private, to deny any person full and equal medical services, advantages or accommodations based upon the grounds that such person has AIDS, ARC or HIV infection. (Ord. 4758, 1992.)

9.132.070 City Facilities and Services.

A. It shall be unlawful to deny any person the full and equal enjoyment of, or to impose less advantageous terms, or restrict the availability of, the use of any City facility or participation in any City funded or supported service or program on the grounds that such person has AIDS, ARC or HIV infection.

B. Nothing in this Section shall:

1. Apply to any facility, service or program which does not receive any assistance from the City and which is not open to or provided to the public generally;
2. Restrict services or programs specifically designed for persons with AIDS, ARC or HIV infection. (Ord. 4758, 1992.)

9.132.080 Employment.

A. It shall be unlawful:

1. For an employer:
 - a. To fail or refuse to hire or to discharge any person, or otherwise to discriminate against any person with respect to compensation, terms, conditions, or privileges of employment, on the basis that such person has AIDS, ARC or HIV infection; or
 - b. To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect any person's status as an employee, on the basis that such person has AIDS, ARC or HIV infection.
2. For an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any person, or to classify or refer for employment any person on the basis that such person has AIDS, ARC or HIV infection.
3. For a labor organization:
 - a. To exclude or to expel from its membership or otherwise to discriminate against, any person on the basis that such person has AIDS, ARC or HIV infection;
 - b. To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any person, in any way which would deprive or tend to deprive any person of employment opportunities, or would limit such employment opportunities or otherwise adversely affect a person's status as an employee or as an applicant for employment, on the basis that such person has AIDS, ARC or HIV infection; or
 - c. To cause or attempt to cause an employer to discriminate against any person in violation of this Section.
4. For any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any person on the basis of AIDS, ARC or HIV infection in admission to, or employment in, any program established to provide apprenticeship or other training.

B. Notwithstanding any other provision of this Chapter, it shall not be unlawful:

1. For an employer to hire, employ, discharge, retire and reassign employees, for an employment agency to classify, or to refer for employment any person, for a labor organization to classify its membership or to classify or refer for employment any person, or for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any person in any such program, on the basis that such person has AIDS, ARC or HIV infection in those certain instances where the employer can show that the absence of AIDS, ARC or HIV infection is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.
2. For an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate against a person on the basis that such person has AIDS, ARC or HIV infection.
3. For an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results of such tests is not designed, intended or used to discriminate against a person on the basis that such person has AIDS, ARC or HIV infection. (Ord. 4758, 1992.)

9.132.090 Advertising.

It shall be unlawful 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, sign, advertisement, application or contract which indicates an intent to engage in any practice made unlawful by this Chapter. (Ord. 4758, 1992.)

9.132.100 Testing.

A. It shall be unlawful for any person to require another person to take any test or undergo any medical procedure that may be useful to determine that a person has AIDS or ARC or HIV infection.

B. Nothing in this Section shall:

1. Prohibit any testing or medical procedure authorized by the laws of the United States, the State of California or the City of Santa Barbara, or any testing or medical procedure required by the County Department of Health Services to protect the public health; or

2. Apply to an employer who can show that the absence of AIDS, ARC or the AIDS virus (HIV infection) is a bona fide occupational qualification. (Ord. 4758, 1992.)

9.132.110 Exceptions.

A. Nothing in this Chapter shall be construed to prohibit any act specifically authorized by the laws of the United States, the State of California or the City of Santa Barbara, or any act required by the County Department of Health Services to protect the public health.

B. Nothing in this Chapter shall prohibit any act which is necessary to protect the health or safety of the general public. If a party to any action brought under this Chapter asserts that an otherwise discriminatory practice is justified as necessary to protect the health or safety of the general public, that party shall have the burden of proving:

1. that the discrimination is in fact a necessary result of a necessary course of conduct pursued to protect the health or safety of the general public; and

2. that there exists no less discriminatory means of satisfying the necessary protection of the health or safety of the general public. (Ord. 4758, 1992.)

9.132.120 Liability and Damages.

Any person who violates any of the provisions of this Chapter or who assists in the violation of any of the provisions of this Chapter is liable for each and every such offense for damages up to a maximum of three times the amount of actual damages, tort damages plus punitive damages, as may be determined by a jury or a court sitting without a jury, and for costs, including reasonable attorney's fees, as may be determined by the court. (Ord. 4758, 1992.)

9.132.130 Enforcement.

A. Any aggrieved person may enforce the provisions of this Chapter by means of a civil action.

B. Any person who commits, or proposes to commit, an act in violation of this Chapter may be enjoined therefrom by a court of competent jurisdiction.

C. An action for injunction under subdivision B may be brought by any aggrieved person or by any person or entity which will fairly and adequately represent the interests of the aggrieved person.

D. Nothing in this Chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

E. An action arising under this Chapter shall not be rendered moot because of the death or physical or mental incapacity of the person who was the subject of the claimed discrimination.

F. Notwithstanding Section 1.28.010 of the Santa Barbara Municipal Code, no criminal penalties shall attach for any violation of the provisions of this Chapter. (Ord. 4758, 1992.)