

CHAPTER XXVI HOUSING*

26-4 FAIR HOUSING.

26-4.1 Short Title.

This section may be cited as the "Fair Housing Ordinance". (Ord. #1999-10, §2; Ord. #2008-1, §28)

26-4.2 Purpose.

The purpose of this section is to protect the health, safety and general welfare of all the inhabitants of the city by prohibiting discrimination in housing based upon race, color, religion, gender, sexual orientation, national origin, familial status, or disability. (Ord. #1999-10, §3; Ord. #2008-1, §28)

26-4.3 Definitions.

As used in this section

Disability (does not include the current illegal use of, or addition to, a controlled substance as defined in Section 102 of the federal Controlled Substance Act) means:

A physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual;

A record of such an impairment; or

Being regarded as having such impairment.

Dwelling means:

A. Any building, structure, or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families; or

B. Any vacant land that is offered for sale or lease for the construction or location of a building, structure or part of a building or structure described in subsection A above.

Familial status means:

The status resulting from one (1) or more persons who are under the age of eighteen (18) years being domiciled with an individual who is either:

The parent of the persons under age eighteen (18);

The legal guardian of the persons under age eighteen (18); or

***Editor's Note:** Former Chapter XXVI, Housing Opportunity Program, previously codified herein and containing portions of Ordinance Nos. 1998-3, 1999-42, 2001-32, 2002-32, 2003-6 and 2004-13 was repealed in its entirety by Ordinance No. 2005-30(A).

The designee (with written authorization) of the parent or legal guardian or custodian of the persons under age eighteen (18);

The status resulting from being pregnant; or

The status resulting from being in the process of securing legal custody of any person who is under the age of eighteen (18).

Family means:

An individual;

Two (2) or more persons related by blood, marriage, legal guardianship or adoption, plus resident domestic servants; or

Any group of not more than five (5) persons living together in a dwelling unit.

Housing for older persons means housing:

That the housing is specifically designed and operated to assist elderly persons under a federal or state program;

Intended for, and solely occupied by persons sixty-two (62) years of age or older; or

Intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older in at least eighty percent (80%) of the occupied units, and adheres to a policy that demonstrates an intent to house persons who are fifty-five (55) years or older.

Person includes one (1) or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, receivers, and fiduciaries.

To rent includes to lease, sublease, to let, or to otherwise grant for a consideration the right to occupy premises not owned by the occupant.
(Ord. #1999-10, §4; Ord. #2008-1, §28)

26-4.4 Certain Sales and Rental Exemptions.

A. Pursuant to paragraph B. below, subsections 26-4.8 through 26-4.14 SFCC 1987 do not apply to the following:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(a) The owner does not:

(i) Own more than three (3) single-family houses at any one (1) time; or

(ii) Own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title or any right to any part of the proceeds from the sale or rental of more than three (3) single-family houses at any one (1) time; and

(b) The house was sold or rented without:

(i) The use of the sales or rental facilities or services of a real estate broker, agent, or salesman licensed under the Real Estate License Act or an employee or agent of a licensed broker, agent, or salesman, or the facilities or services of the owner of a dwelling designed or intended for occupancy by five (5) or more families; or

(ii) The publication, posting, or mailing of a notice, statement or advertisement prohibited by Section 26-4.9 SFCC 1987; or

(2) The sale or rental of rooms or units in a dwelling containing living quarters occupied, or intended to be occupied, by no more than four (4) families living independently of each other if the owner maintains and occupies one (1) of the living quarters as the owner's residence.

B. The exemption in paragraph A. of this section applies only to one (1) sale or rental over a 24-month period if the owner did not reside in the house at the time of sale or rental or was not the most recent resident of the house prior to the sale or rental. (Ord. #1990-10, §5; Ord. #2008-1, §28)

26-4.5 Religious Organization and Private Club Exemption.

A. This section does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by, or in conjunction with, a religious organization, association, or society, from the following:

(1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion unless membership in the religion is restricted because of race, color or national origin; or

(2) Giving preference for such dwellings to persons of the same religion.

B. This section does not prohibit a private club not in fact open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members. (Ord. #1999-10, §6; Ord. #2008-1, §28)

26-4.6 Housing for the Elderly Exempted.

The provisions of this section relating to familial status do not apply to "housing for older persons" as defined. (Ord. #1999-10, §7; Ord. #2008-1, §28)

26-4.7 Appraisal Exemption.

This section does not prohibit a person engaged in the business of furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, gender, sexual orientation, disability, familial status, or national origin. (Ord. #1999-10, §8; Ord. #2008-1, §28)

26-4.8 Discrimination in Sales or Rental of Housing.

A. A person may not refuse to sell or rent a dwelling to a person who has made a bona fide offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, gender, sexual orientation, familial status, or national origin.

B. A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or providing services or facilities in connection with the sale or rental because of race, color, religion, gender, sexual orientation, familial status, or national origin.

C. This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the federal Controlled Substance Act.
(Ord. #1999-10, §9; Ord. #2008-1, §28)

26-4.9 Publication Indicating Discrimination.

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, gender, sexual orientation, disability, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination. (Ord. #1999-10, §10; Ord. #2008-1, §28)

26-4.10 Availability for Inspection.

A person may not represent to any person because of race, color, religion, gender, sexual orientation, disability, familial status, or national origin that a dwelling is not available for inspection, sale or rental when the dwelling is available. (Ord. #1999, §11; Ord. #2008-1, §28)

26-4.11 Entry into Neighborhood.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, gender, sexual orientation, familial status, national origin, or disability. (Ord. #1999-10, §12; Ord. #2008-1, §28)

26-4.12 Disability.

A. A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of:

- (1) A buyer or renter;
- (2) A person residing in, or intending to reside in, that dwelling after it is sold, rented, or made available; or
- (3) Any person associated with a buyer or renter.

B. A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of:

- (1) A buyer or renter;
- (2) A person residing in, or intending to reside in, that dwelling after it is sold, rented, or made available; or
- (3) Any person associated with that person.

C. For purposes of this section only, discrimination includes the following:

(1) Refusing to permit, at the expense of the person with the disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises of a dwelling, provided that, in the case of a rental, a landlord may:

(a) Reasonably condition permission for modifications upon the renter's agreement to restore the interior of the premises to its premodification condition, reasonable wear and tear excepted, and

(b) Reasonably condition such permission on the renter providing a reasonable description of the proposed modifications and reasonable assurances that all work will be done in a workmanlike manner and that all required permits will be obtained.

(2) Increasing for persons with a disability any customarily required security deposit except that to ensure available funds for restorations, if any, a landlord may negotiate an agreement that the renter deposit into an interest-bearing escrow account, over a reasonable period, a reasonable amount not to exceed the cost of restorations where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restoration. All interest shall accrue to the renter's benefit.

(3) Refusing to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, including public and common use areas.

(4) Failing to design or construct covered multi-family dwellings for first occupancy after March 13, 1991, in a manner that:

(a) The public use and common use portions of the dwellings are readily accessible to, and usable by, persons with a disability;

(b) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons in wheelchairs; and

(c) All premises within the dwellings contain the following features of adaptive design:

(i) An accessible route into and through the dwelling;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installations of grab bars; and

(iv) Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space; or

5. Making any inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling or any person associated with that person, has a disability or to determine the nature or severity of any disability, except that the following inquiries may be made if these inquiries are made of all applicants, regardless of disability:

(a) Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

(b) Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;

(c) Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;

(d) Inquiring whether an applicant for a dwelling is a current illegal user or addict of a controlled substance;

(e) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

D. Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for person with physical disabilities, commonly cited as "ANSI A 117.1," suffices to satisfy the requirements of paragraph C(4)(c) above.

E. As used in this section, the term "covered multi-family dwellings" means:

(1) Buildings consisting of four (4) or more units if the buildings have one (1) or more elevators; and

(2) Ground-floor units in other buildings consisting of four (4) or more units.

F. Nothing in this section requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
(Ord. #1999-10, §13; Ord. #2008-1, §28)

26-4.13 Residential Real Estate-Related Transactions.

A. A person whose business includes engaging in residential real estate-related transactions may not discriminate against a person in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, gender, sexual orientation, disability, familial status, or national origin.

B. In this section, "residential real estate-related transaction" means the following:

(1) Making or purchasing loans or providing other financial assistance;

(a) To purchase, construct, improve, repair, or maintain a dwelling; or

(b) Secured by residential real estate; or

(2) Selling, brokering, or appraising residential real property.

(Ord. #1999-10, §14; Ord. #2008-1, §28)

26-4.14 Restrictive Covenants.

A. Any restrictive covenant restricting occupancy or ownership of property on the basis of race, color, religion, national origin, gender, sexual orientation, familial status or

disability, whether included in an instrument affecting the title to real or leasehold property, is declared to be null, void and of no effect, and contrary to the public policy.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant until the covenant has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of contract to purchase, lease, mortgage or otherwise deal with such property.

(Ord. #1999-10, §15; Ord. #2008-1, §28)

26-4.15 Brokerage Service.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organizations or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms of conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, gender, sexual orientation, disability, familial status, or national origin. (Ord. #1999-10, §16; Ord. #2008-1, §28)

26-4.16 Administration.

A. The department as designated by the city manager, or its delegate, shall be responsible for the administration of this section. The city shall:

- (1) Provide a copy of the complaint to the city attorney if the city attorney is not the designated administrator;
- (2) Investigate complaints of violations of this section;
- (3) Notify the person against whom the complaint is made and identify the aggrieved person who filed the complaint;
- (4) Dismiss the complaint if after investigation finds that there is no merit in the complaint; and
- (5) Endeavor to eliminate the alleged discriminatory practice by conference and conciliation if after investigation finds that there is merit in the complaint.

B. The city may adopt administrative procedures to follow in the administration of this section.

C. The city shall advise the person filing a complaint that in order to preserve his or her rights under the federal regulations, the person shall simultaneously file a housing discrimination complaint with the U.S. department of housing and urban development. The city will provide information to the person regarding how to file the complaint. This paragraph does not apply to complaints regarding sexual orientation.

(Ord. #1999-10, §17; Ord. #2008-1, §28)

26-4.17 Enforcement.

A. If conference and conciliation do not eliminate the alleged discriminatory practice, the city shall refer the complaint to the secretary of the department of housing and urban development for an alleged discriminatory housing practice under the Federal Fair Housing Act. This paragraph does not apply to complaints regarding sexual orientation.

B. The city may file a complaint in municipal court if conference and conciliation do not eliminate the alleged discriminatory practice. Noncompliance with this section is subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987.

C. The city may pursue other enforcement remedies as may be authorized by law.
(Ord. #1999-10, §18; Ord. #2008-1, §28)

26-4.18 Effect.

Nothing contained in this section shall be deemed to repeal any other ordinance of the city relating to discrimination because of race, color, religion, national origin, gender, sexual orientation, familial status or disability; but all such ordinances and portions thereof in conflict herewith are repealed to the extent of such conflict. (Ord. #1999-10, §19; Ord. #2008-1, §28)

26-4.19 Separability.

The provisions of this section are separable and the invalidity of any part of this section shall not affect the validity of the rest of the section. (Ord. #1999-10, §20; Ord. #2008-1, §28)

***Editor's Note:** Former Chapter XXVI, Housing Opportunity Program, previously codified herein and containing portions of Ordinance Nos. 1998-3, 1999-42, 2001-32, 2002-32, 2003-6 and 2004-13 was repealed in its entirety by Ordinance No. 2005-30(A).

***Editor's Note:** Ordinance No. 2007-23, codified herein as Section 26-3, was adopted July 11, 2007.
