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ACTION CALENDAR

July 24, 2018

To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: Gender ID - City Records: Adopt definitions and ordinance to use the name, pronoun, and gender marker consistent with individual's gender identity on city documents and public records.

RECOMMENDATION

In Chapter 13.28.020, adopt definitions of Gender Identity and Gender Expression; and adopt ordinance 13.28.065 requiring City of Berkeley officials, staff, and personnel to record the name, pronoun, and gender marker in accordance with an individual's gender identity - male, female, or nonbinary - on all City of Berkeley documents and records, if distinct from name and sex listed on government identification forms.

BACKGROUND

In 2015, the New York City Commission on Human Rights implemented a Legal Enforcement Guidance on Gender Identity and Gender Expression, defining the two terms as:

“Gender Identity: One’s internal deeply-held sense of one’s gender which may be the same or different from one’s sex assigned at birth. One’s gender identity may be male, female, neither or both, e.g., non-binary. Everyone has a gender identity. Gender identity is distinct from sexual orientation.

Gender Expression: the representation of gender as expressed through, for example, one’s name, choice of pronouns, clothing, haircut, behavior, voice, or body characteristics.

Gender expression may not be distinctively male or female and may not conform to traditional gender-based stereotypes assigned to specific gender identities (Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23))”

The NYCHRL states that any “discrimination based on an individual’s gender identity, self-image, appearance, behavior, or expression – constitutes a violation of the City’s Human Rights Law” (Local Law No. 3 (2002); N.Y.C. Admin. Code § 8-102(23)).

According to the Transgender Law Center, gender identity discrimination has been banned in more than 200 cities across the United States. The State of Oregon was the first to recognize a non-binary gender, and California soon followed in Oregon’s footsteps with SB

179, Gender Identity: Female, Male, or Nonbinary. Although the state of California allows for this update of gender markers on California driver's license and birth certificates, a doctor's letter "attesting that the person has undergone clinically appropriate treatment for the person of gender transition" is required (CA HSC Sec. 103430).

In adopting definitions and policies into Chapter 13.28 - Discrimination on the Basis of Sexual Orientation - to record the names, pronouns, and gender markers in accordance with an individual's gender identity on all City of Berkeley documentation, the City will maintain its commitment to LGBTQ advocacy and inclusivity, and gender diversity and equality.

FINANCIAL IMPLICATIONS

Minimal

ENVIRONMENTAL IMPLICATIONS

No Negative impact

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Chapter 13.28
DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

BE IT ORDAINED by the Council of the City of Berkeley as follows:

That revisions to Section 13.28.020 and the addition of Section 13.28.065 be added to the Berkeley Municipal Code reading as follows:

Sections:

- 13.28.010 Policy.**
- 13.28.020 Finding--Definitions.**
- 13.28.030 Employment.**
- 13.28.040 Housing and other real estate transactions.**
- 13.28.050 Business establishments.**
- 13.28.055 Gender neutral restrooms.**
- 13.28.060 City facilities and services.**
- 13.28.065 City documentation and records.***
- 13.28.070 Educational institutions.**
- 13.28.080 Liability.**
- 13.28.090 Enforcement.**
- 13.28.100 Limitation on action.**

Section 13.28.010 Policy.

It is the policy of the City to eliminate discrimination based on sexual orientation within the City. It is the intent of the City Council to make discrimination based on sexual orientation unlawful in all circumstances in which discrimination based on race, color, religion, sex or national origin are unlawful under state and federal law. (Ord. 5106-NS § 1 (part), 1978)

Section 13.28.020 Finding--Definitions.

- A. Findings. After public hearings and consideration of testimony and documentary evidence, the council finds that discrimination based on sexual orientation exists in the City. The council finds further that such discrimination poses a substantial threat to the health, safety and general welfare of this community. Such discrimination foments strife and unrest, and it deprives the City of the fullest utilization of its capacities for development and advancement. The council finds further that existing state and federal restraints on arbitrary discrimination are not adequate to meet the particular problems of discrimination based on sexual orientation in this community, so that it is necessary and proper to enact local regulations adapted to the special circumstances which exist in this City.
- B. Definitions. As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this subsection:
 - 1. "Business establishment" means any entity, however organized, which furnishes goods or services to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements: (a) consist only of payment of fees; (b) consist of

requirements under which a substantial portion of the residents of this City could qualify; or (c) consist of an otherwise unlawful business practice.

2. "Individual" means the same as the term "person." Wherever this chapter refers to the sexual orientation of any individual, and the individual is a group, the phrase shall mean the sexual orientation of any member of the group.
3. "Person" means any natural person, firm, corporation, partnership or other organization, association or group of persons however organized.
4. "Sexual orientation" means an individual's actual or supposed sexual preference. Discrimination on the basis of sexual orientation shall include both discrimination based on actual knowledge of sexual orientation and discrimination based on supposition or assumption of sexual orientation. (Ord. 5106-NS § 1 (part), 1978)
5. *"Gender Identity" means one's internal deeply-held sense of one's gender which may be the same or different from one's sex assigned at birth. One's gender identity may be male, female, neither or both, e.g., non-binary.*
6. *"Gender Expression" means the representation of gender as expressed through, for example, one's name, choice of pronouns, clothing, haircut, behavior, voice, or body characteristics. Gender expression may not be distinctively male or female and may not conform to traditional gender-based stereotypes assigned to specific gender identities.*

Section 13.28.065 City Documentation and Records.

The City of Berkeley officials, staff, and personnel shall record the name, pronoun, and gender marker in accordance with an individual's gender identity - defined in Section 13.28.020.B.5 as male, female, neither or both, e.g., non-binary - on all City of Berkeley documentation and records (a) in accordance with an one's gender expression, (b) if distinct from name, pronoun, and gender marker listed on government identification forms.