

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Youth Commission

FROM: Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood Services Committee

DATE: January 28, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS

The Board of Supervisors has received the following, which at the request of the Youth Commission is being referred as per Charter Section 4.124 for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

**File: 160024**

**Ordinance amending the Police Code to mandate that businesses and places of public accommodation designate single-user toilet facilities that are available to the public or employees as all-gender and accessible to persons of any gender identity, and require enforcement of the signage requirements by the Department of Building Inspection; amending the Administrative Code to require buildings on land that the City owns or leases to provide all-gender toilet facilities; and affirming the Planning Department's determination under the California Environmental Quality Act.**

Please return this cover sheet with the Commission's response to **Erica Major, Assistant Committee Clerk, Public Safety and Neighborhood Services.**

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**RESPONSE FROM YOUTH COMMISSION**      Date: \_\_\_\_\_

\_\_\_\_\_ **No Comment**

\_\_\_\_\_ **Recommendation Attached**

\_\_\_\_\_  
**Chairperson, Youth Commission**

1 [Police, Administrative Codes - All-Gender Toilet Facilities]

2  
3 **Ordinance amending the Police Code to mandate that businesses and places of public**  
4 **accommodation designate single-user toilet facilities that are available to the public or**  
5 **employees as all-gender and accessible to persons of any gender identity, and require**  
6 **enforcement of the signage requirements by the Department of Building Inspection;**  
7 **amending the Administrative Code to require buildings on land that the City owns or**  
8 **leases to provide all-gender toilet facilities; and affirming the Planning Department's**  
9 **determination under the California Environmental Quality Act.**

10 **NOTE:** **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 Section 1. Findings.

19 (a) The Planning Department has determined that the actions contemplated in this  
20 ordinance comply with the California Environmental Quality Act (California Public Resources  
21 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of  
22 Supervisors in File No. \_\_\_\_\_ and is incorporated herein by reference. The Board  
23 affirms this determination.

24 (b) In the Compliance Guidelines to Prohibit Gender Identity Discrimination adopted  
25 by the San Francisco Human Rights Commission on December 10, 2003, the Commission  
stated that "[i]ndividuals have the right to use the bathroom/restroom that is consistent with

1 and appropriate to their gender identity.” To ensure that people of all genders have safe  
2 access to toilet facilities, the Commission urged that “all single-user bathrooms be designated  
3 gender neutral (unisex) and that all places of public accommodation and employment provide  
4 a gender neutral bathroom option.”

5 (c) Transgender and gender-nonconforming people frequently experience  
6 harassment in toilet facilities. Required use of gender-specific toilet facilities can create  
7 unnecessary risks that lead to transgender and gender-nonconforming people being denied  
8 access, verbally harassed, or physically assaulted in these facilities. These experiences, in  
9 turn, might impact the education, employment, health, and participation in public life of  
10 transgender and gender-nonconforming people. This is especially true for transgender women  
11 of color, who experience the highest rates of discrimination and harassment. To address the  
12 ongoing discrimination and harassment suffered by transgender and gender-nonconforming  
13 people, it is essential to provide more all-gender toilet facilities.

14 (d) The creation of more all-gender toilet facilities allows people to have greater  
15 access to toilet facilities consistent with their gender identity. A person who identifies as a  
16 woman should be permitted to use women’s facilities, and a person who identifies as a man  
17 should be permitted to use men’s facilities. But while a person might choose to use an all-  
18 gender toilet facility, no one should be required to use an all-gender toilet facility because of  
19 their gender identify.

20 (e) All-gender toilet facilities also benefit the entire community. They provide  
21 universal access for families with small children, people with disabilities who rely upon  
22 personal care assistance from an attendant or family member, and seniors who require  
23 assistance or supervision.

24 (f) In order to be inclusive of all gender identities, this ordinance uses the term “all-  
25 gender” toilet facilities rather than “unisex” or “gender-neutral” toilet facilities.

1  
2 Section 2. The Police Code is hereby amended by adding Section 3305.3 and revising  
3 Section 3307, to read as follows:

4 **SEC. 3305.3. ALL-GENDER TOILET FACILITIES.**

5 *(a) Requirement. All toilet facilities in any business establishment or place of public*  
6 *accommodation including those in or on City-owned buildings or property, whether existing or*  
7 *proposed, that are (1) single-user toilet facilities and (2) open to the public or to the employees of the*  
8 *establishment or public accommodation shall be identified as all-gender by signage that complies with*  
9 *either Title 24 of the California Code of Regulations or the Federal Americans with Disabilities Act*  
10 *and made available to persons of any gender identity. Multiple-user toilet facilities may be identified as*  
11 *all-gender facilities but are not required to be identified as all-gender.*

12 *(b) Time for Compliance.*

13 *(1) Existing Businesses and Public Accommodations. Business establishments and*  
14 *places of public accommodation that are subject to the requirements of this Section 3305.3 and in*  
15 *existence as of this Section's effective date shall have 90 days from the effective date to remove any*  
16 *gender-specific room identification signage on the toilet facility door and replace it with signage for*  
17 *persons of any sex or gender identity that complies with either Title 24 of the California Code of*  
18 *Regulations or the Federal Americans with Disabilities Act.*

19 *(2) New Businesses and Public Accommodations. New business establishments and*  
20 *places of public accommodation that are subject to the requirements of this Section 3305.3 shall*  
21 *provide the room identification signage required above and make each single-user toilet facility*  
22 *available for use by persons of any sex or gender identity immediately upon opening to the public.*

23 *(c) Definitions. For purposes of this Section 3305.3, the following definitions shall apply:*

24 *(1) "Business establishment" shall have the same meaning as in Section 3813(b) of*  
25 *this Code.*

1                   (2) “Public accommodation” shall have the same meaning as in Title III of the  
2 Americans with Disabilities Act of 1990, 42 U.S.C. Section 12181(7), and the federal regulations  
3 adopted thereunder, as amended from time to time.

4                   (3) “Single-user toilet facility” shall mean a private toilet facility with a single  
5 toilet, or with a single toilet and a urinal and designed for use by no more than one occupant at a time  
6 or for family or assisted used.

7                   (d) Nothing in this Section 3305.3 shall be construed as requiring or authorizing (1) a  
8 reduction in the number of toilet facilities that are required by Title 24 of the California Code of  
9 Regulations or (2) a reduction in the number of toilet facilities accessible to persons with disabilities  
10 that are otherwise required under either Title 24 of the California Code of Regulations or the Federal  
11 Americans with Disabilities Act.

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13 **SEC. 3307. ENFORCEMENT.**

14           (a) **Human Rights Commission.** Any person who believes that he or she has been  
15 discriminated against in violation of Sections 3303, 3305, ~~and/or~~ 3305.2, or 3305.3 of this  
16 Article 33 may file a complaint with the Human Rights Commission, which shall serve as a  
17 request to have the Commission investigate and mediate the complaint pursuant to Section  
18 12A.5 of the Administrative Code.

19           \* \* \* \*

20           (f) **Responsibilities of the Department of Building Inspection.** Upon complaint from a  
21 member of the public or employee of a business establishment or place of public accommodation, or  
22 receipt of a request from the Human Rights Commission, the Department of Building Inspection shall  
23 inspect the business establishment or place of public accommodation, if subject to Section 3305.3, and  
24 determine if the business establishment or place of public accommodation is in compliance with the  
25 requirements. In addition, during the course of any regularly-scheduled interior inspection of a

1 business establishment or place of public accommodation subject to Section 3305.3, the Department  
2 shall verify compliance with the requirements. Any business establishment or place of public  
3 accommodation found not to be in compliance with the requirements shall be deemed to be in violation  
4 of the Building Code and the Building Official is authorized to abate the violation in accordance with  
5 Section 102A of the Building Code.

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7 Section 3. The Administrative Code is hereby amended by adding Section 4.1-3, to  
8 read as follows:

9 **SEC. 4.1-3. ALL-GENDER TOILET FACILITIES IN BUILDINGS ON CITY-OWNED OR**  
10 **LEASED LAND.**

11 This Section 4.1-3 shall apply to all buildings on land owned by the City and County of San  
12 Francisco ("City") and all buildings that are leased to or by the City, whether such buildings are new  
13 or existing. For existing buildings, the City department or agency with jurisdiction over the building  
14 shall have six months from the effective date of this Section to comply with the requirements.

15 (a) **New Construction.** At least one all-gender toilet facility shall be provided on each floor  
16 in any new building constructed on City-owned land or that is constructed by or for the City where  
17 toilet facilities are required or provided. For purposes of this subsection (a) and subsection (b), below,  
18 "all-gender toilet facility" means a toilet facility that is not restricted to use by persons of a specific sex  
19 or gender identity by signage, design, or installation of fixtures.

20 (b) **Existing Buildings.** Unless not allowed by an existing lease, whenever extensive  
21 renovations are made on one or more floors in any building on land that the City owns or in a building  
22 that is leased to or by the City, at least one all-gender toilet facility shall be provided on each floor  
23 where the renovations take place and toilet facilities are required or provided. For purposes of this  
24 subsection (b), "extensive renovations" shall mean a renovation where the renovation construction  
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1 costs exceed 50% of the costs of providing toilet facilities that comply with the requirements of this  
2 Section 4.1-3.

3 (c) If there are five or more toilet facilities in the building that are designed for use by  
4 multiple occupants, at least one such facility in the building shall be identified as all-gender by the  
5 recognized California geometric symbol for such facilities so long as the minimum number of separate  
6 male and female toilet facilities required by Title 24 of the California Code of Regulations is  
7 maintained. The City official with management authority over the building shall decide which toilet  
8 facilities shall be designated.

9 (d) Nothing in this Section 4.1-3 shall be construed as requiring or authorizing (1) a  
10 reduction in the number of toilet facilities that are required by Title 24 of the California Code of  
11 Regulations or (2) a reduction in the number of toilet facilities accessible to persons with disabilities  
12 that are otherwise required under either Title 24 of the California Code of Regulations or the Federal  
13 Americans with Disabilities Act.

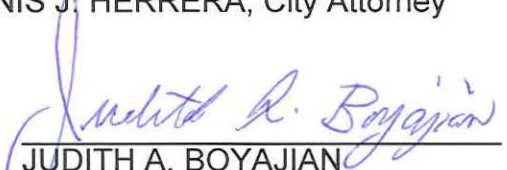
14  
15 Section 4. Effective Date. This ordinance shall become effective 30 days after  
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
18 of Supervisors overrides the Mayor's veto of the ordinance.

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20 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,  
22 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
23 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
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1 additions, and Board amendment deletions in accordance with the "Note" that appears under  
2 the official title of the ordinance.

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APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

By:   
JUDITH A. BOYAJIAN  
Deputy City Attorney  
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