

BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
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## MEMORANDUM

TO: Carol Isen, Director, Department of Human Resources  
All City Department Heads via Sophia Kittler, Mayor's Office

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: July 6, 2021

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Rules Committee received the following proposed legislation:

**File No. 210739**

**Ordinance amending the Administrative Code to repeal the City Employee's Sexual Privacy Ordinance; direct the Department of Human Resources (DHR) to request that applicants for City employment voluntarily provide anonymous sexual orientation and gender identity information; direct City departments to request that employees voluntarily provide anonymous sexual orientation and gender identity information when responding to surveys that also seek other demographic information; and direct DHR to develop systems to anonymously collect and retain sexual orientation and gender identity information.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

- c. Mawuli Tugbenyoh, Human Resources  
Andres Power, Mayor's Office



# City and County of San Francisco

## Master Report

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

**File Number:** 210739      **File Type:** Ordinance      **Status:** 30 Day Rule

**Enacted:** \_\_\_\_\_ **Effective:** \_\_\_\_\_

**Version:** 1      **In Control:** Rules Committee

**File Name:** Administrative Code - Repealing Employee Sexual Privacy Ordinance; Requiring Data Collection Requests      **Date Introduced:** 06/22/2021

**Requester:** \_\_\_\_\_ **Cost:** \_\_\_\_\_ **Final Action:** \_\_\_\_\_

**Comment:** \_\_\_\_\_ **Title:** Ordinance amending the Administrative Code to repeal the City Employee’s Sexual Privacy Ordinance; direct the Department of Human Resources (DHR) to request that applicants for City employment voluntarily provide anonymous sexual orientation and gender identity information; direct City departments to request that employees voluntarily provide anonymous sexual orientation and gender identity information when responding to surveys that also seek other demographic information; and direct DHR to develop systems to anonymously collect and retain sexual orientation and gender identity information.

**Sponsors:** Mayor;  
Mandelman

### History of Legislative File 210739

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	06/22/2021	ASSIGNED UNDER 30 DAY RULE	Rules Committee	07/22/2021	

1 [Administrative Code - Repealing Employee Sexual Privacy Ordinance; Requiring Data  
2 Collection Requests]

3 **Ordinance amending the Administrative Code to repeal the City Employee’s Sexual**  
4 **Privacy Ordinance; direct the Department of Human Resources (DHR) to request that**  
5 **applicants for City employment voluntarily provide anonymous sexual orientation and**  
6 **gender identity information; direct City departments to request that employees**  
7 **voluntarily provide anonymous sexual orientation and gender identity information**  
8 **when responding to surveys that also seek other demographic information; and direct**  
9 **DHR to develop systems to anonymously collect and retain sexual orientation and**  
10 **gender identity information.**

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

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

19 Section 1. Findings.

20 (a) The City and County of San Francisco is the largest employer in San Francisco,  
21 with approximately 37,000 employees who reflect the vibrant and diverse populations of San  
22 Francisco and the Bay Area. While the City collects certain anonymous demographic  
23 information from applicants for City employment, little is known about applicants or the City  
24 workforce in terms of LGBTQ+ identities. With certain narrow exceptions, Chapter 12E (City  
25 Employee’s Sexual Privacy Ordinance) of the Administrative Code prohibits the City from  
inquiring into “sexual orientation, practices, or habits” of City employees. As a practical

1 matter, this prohibits collection of sexual orientation and accurate gender identity information  
2 from City employees.

3 (b) Chapter 12E was necessary when enacted in 1985 to protect LGBTQ+ City  
4 employees and applicants from potential discrimination at the height of the HIV/AIDS  
5 epidemic. At that time, the larger population often assumed that any member of the LGBTQ+  
6 community might be living with HIV/AIDS, and HIV/AIDS had a tremendous stigma attached  
7 to it. This perception has shifted over time, given that discrimination and harassment based  
8 on HIV status, sexual orientation, and gender identity have since become prohibited under  
9 federal, state, and local law, as well as City policy. For instance, both the California Fair  
10 Employment and Housing Act (“FEHA”) and Title VII of the federal Civil Rights Act make it  
11 illegal for an employer to discriminate against employees based on sexual orientation, gender  
12 identity, and/or gender expression, and FEHA and the Americans with Disabilities Act protect  
13 employees from discrimination based on actual or perceived HIV status.

14 (c) San Francisco is a leader in LGBTQ+ issues, and has a rich history of LGBTQ+  
15 and HIV advocacy, art and culture, and groundbreaking legislation. LGBTQ+ communities all  
16 over the world look to San Francisco as a model to follow – a city that understands how  
17 crucial it is for our diverse communities to be seen, counted, respected, and celebrated.

18 (d) This ordinance addresses the dearth of information regarding key demographics of  
19 the City’s applicant pool and workforce, with the goal of effectively identifying, measuring, and  
20 addressing the needs of City employees and LGBTQ+ equity issues in the workplace. The  
21 City remains committed to upholding protections for its LGBTQ+ applicants and employees,  
22 and to maintaining the privacy of all its applicants and employees by collecting data about  
23 sexual orientation and gender identity on a voluntary and anonymous basis.

1 Section 2. The Administrative Code is hereby amended by deleting Chapter 12E  
2 (consisting of Sections 12E.1, 12E.2, 12E.3, and 12E.4), adding Section 16.9-29 to Article I of  
3 Chapter 16, and deleting Section 104.3(e) to read as follows:

4 ~~**CHAPTER 12E:**~~

5 ~~**CITY EMPLOYEE'S SEXUAL PRIVACY ORDINANCE**~~

6  
7 ~~**SEC. 12E.1. SHORT TITLE.**~~

8 ~~*This ordinance shall be known and may be cited as the City Employee's Sexual Privacy*~~  
9 ~~*Ordinance and may be cited as the Sexual Privacy Ordinance.*~~

10  
11 ~~**SEC. 12E.2. FINDINGS.**~~

12 ~~*Consistent with the City's policies as set forth in Article 33 of the San Francisco Police Code*~~  
13 ~~*proscribing discrimination in employment on the basis of sexual orientation, with San Francisco*~~  
14 ~~*Charter Section 8.310, which requires that all employees be selected solely upon the basis of merit and*~~  
15 ~~*fitness, and with California Constitution Article I, Section 1, which protects the inalienable right to*~~  
16 ~~*privacy, the Board of Supervisors finds that the City and County of San Francisco, as an employer, has*~~  
17 ~~*no reason to inquire into the sexual practices or habits of City employees or job applicants.*~~

18  
19 ~~**SEC. 12E.3. PROHIBITED PRACTICES.**~~

20 ~~*Except as provided in Section 12E.4 of this ordinance, no officer, board, agency, commission or*~~  
21 ~~*employee of the City and County of San Francisco may inquire into the sexual orientation, practices or*~~  
22 ~~*habits of any City employee or job applicant.*~~

1            **SEC. 12E.4. EXCEPTIONS TO PROHIBITED PRACTICES.**

2            ~~No officer, board, agency, commission or employee of the City and County of San Francisco~~  
3 ~~may inquire into the sexual practices or habits of any City employee or job applicant unless (a) the~~  
4 ~~Civil Service Commission first approves the questions, inquiries or screening procedures and~~  
5 ~~specifically finds that there is a direct relationship between the questions, inquiries or screening~~  
6 ~~procedures and the fitness of the City employee or job applicant for the position; or (b) the practices or~~  
7 ~~habits inquired about are criminal under the laws of California; or (c) the practices or habits inquired~~  
8 ~~about are relevant to an investigation being conducted by a local, State or Federal agency pursuant to~~  
9 ~~a complaint of sexual harassment of a City employee or job applicant; or (d) the practices or habits~~  
10 ~~inquired about are relevant to an investigation of misconduct being conducted by a department head.~~

11  
12            **SEC. 16.9-29. COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY**  
13 **INFORMATION.**

14            (a) Definitions. For purposes of this Section 16.9-29, the following definitions shall apply:

15            “Demographic Information” means information about an individual’s sex, gender, race, or  
16 ethnicity.

17            “Gender Identity” has the meaning set forth in Section 3304.1(c) of the Police Code.

18            “Sexual Orientation” means a person’s emotional, romantic and/or sexual attraction to other  
19 people.

20            (b) Starting on January 1, 2022, the Department of Human Resources (“DHR”) shall request  
21 that applicants who apply for City employment through DHR’s applicant tracking system voluntarily  
22 provide information concerning the applicant’s Sexual Orientation and Gender Identity in accordance  
23 with the requirements of subsection (d). DHR shall develop systems necessary to collect and retain  
24 such information.

1           (c) Starting on January 1, 2022, any City department that conducts a written survey or other  
2 written inquiry of City employees that requests employees voluntarily provide anonymous Demographic  
3 Information shall also request on such written survey or inquiry that employees voluntarily provide  
4 information concerning the employees' Sexual Orientation and Gender Identity in accordance with the  
5 requirements of subsection (d).

6           (d) In seeking to collect information about applicants' and employees' Sexual Orientation and  
7 Gender Identity, a department shall:

8                   (1) Communicate to applicants and employees that providing Sexual Orientation and  
9 Gender Identity information is voluntary, that the applicant or employee provides the information  
10 anonymously, and that no adverse action will be taken based on the individual decision to either  
11 provide or decline to provide the information;

12                   (2) Request Sexual Orientation and Gender Identity information using questions and  
13 approaches consistent with guidelines promulgated by the Human Resources Director or the Director's  
14 designee; and

15                   (3) Advise applicants and employees that to the extent the department inadvertently  
16 obtains personally identifiable information regarding Sexual Orientation and Gender Identity, the  
17 department shall protect such information from unauthorized use or disclosure.

18           (e) Confidentiality and Privacy. To the extent departments inadvertently obtain personally  
19 identifiable information regarding applicants' and employees' Sexual Orientation and Gender Identity,  
20 departments shall protect such information from unauthorized use and disclosure, to the extent  
21 permitted by law and as required by any applicable law, including Article 1 of the California  
22 Constitution.

23           (f) This Section 67.9-29 does not in any way diminish the protections afforded by City law  
24 against discrimination based on Sexual Orientation or Gender Identity, and shall not be interpreted or  
25 applied so as to diminish such protections under state or federal law.

1           (g) The Human Resources Director or the Director’s designee shall adopt guidelines to  
2 implement Subsection 16.9-29(d)(2), to specify the questions that may be asked and any other  
3 guidelines that the Director or designee deems appropriate in their discretion to implement the  
4 requirements of this Section 16.9-29.

5  
6           **SEC. 104.3. DATA COLLECTION AND TRAINING.**

7           \*       \*       \*       \*

8           ~~(e) In the event there is a conflict between the requirements of this Section 104.3 and Chapter~~  
9 ~~12E of the Administrative code, the requirements of this Section 104.3 shall prevail.~~

10  
11           Section 3. Effective Date. This ordinance shall become effective 30 days after  
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
14 of Supervisors overrides the Mayor’s veto of the ordinance.

15  
16           APPROVED AS TO FORM:  
17           DENNIS J. HERRERA, City Attorney

18           By: /s/ Bradley A. Russi  
19               BRADLEY A. RUSSI  
20               Deputy City Attorney

21           n:\legana\as2021\2100326\01537718.docx



## LEGISLATIVE DIGEST

[Administrative Code - Repealing Employee Sexual Privacy Ordinance; Requiring Data Collection Requests]

**Ordinance amending the Administrative Code to repeal the City Employee's Sexual Privacy Ordinance; direct the Department of Human Resources (DHR) to request that applicants for City employment voluntarily provide anonymous sexual orientation and gender identity information; direct City departments to request that employees voluntarily provide anonymous sexual orientation and gender identity information when responding to surveys that also seek other demographic information; and direct DHR to develop systems to anonymously collect and retain sexual orientation and gender identity information.**

### Existing Law

Chapter 12E of the Administrative Code prohibits the City from inquiring into the sexual orientation, habits, and practices of City employees, subject to certain exceptions. This prohibition was enacted during the height of the HIV/AIDS crisis in the City as a means to prevent discrimination against LGBTQ+ individuals, who were perceived to be HIV positive or living with AIDS at that time. Since the enactment of Chapter 12E, discrimination and harassment based on HIV status, sexual orientation, and gender identity is now prohibited under federal, state, and local law, as well as City policy.

### Amendments to Current Law

The proposed ordinance would repeal Chapter 12E of the Administrative Code. It would require the Department of Human Resources (DHR) to request that individuals who apply for City employment through DHR's applicant tracking system to voluntarily provide anonymous sexual orientation and gender identity information. The ordinance would further require City departments to request that City employees voluntarily provide anonymous sexual orientation and gender identity information when the department conducts surveys that also request other demographic information. DHR must adopt guidelines concerning the questions and approaches applicable to these requests for information.

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**From:** [Russi, Brad \(CAT\)](#)  
**To:** [Peacock, Rebecca \(MYR\)](#); [BOS Legislation, \(BOS\)](#)  
**Cc:** [Kittler, Sophia \(MYR\)](#); [Ruiz-Cornejo, Victor \(MYR\)](#); [Farley, Clair \(ADM\)](#); [Crego, Pau \(ADM\)](#)  
**Subject:** RE: Mayor -- [Ordinance] -- [Administrative Code - Repealing Employee Sexual Privacy Ordinance; Requiring Data Collection Requests]  
**Date:** Tuesday, June 22, 2021 5:11:58 PM

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I approve the ordinance as to form. Thanks.

**Bradley Russi**

Deputy City Attorney  
Office of City Attorney Dennis Herrera  
(415) 554-4645 Direct  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102  
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**From:** Peacock, Rebecca (MYR) <[rebecca.peacock@sfgov.org](mailto:rebecca.peacock@sfgov.org)>  
**Sent:** Tuesday, June 22, 2021 4:45 PM  
**To:** BOS Legislation, (BOS) <[bos.legislation@sfgov.org](mailto:bos.legislation@sfgov.org)>; Russi, Brad (CAT) <[Brad.Russi@sfcityatty.org](mailto:Brad.Russi@sfcityatty.org)>  
**Cc:** Kittler, Sophia (MYR) <[sophia.kittler@sfgov.org](mailto:sophia.kittler@sfgov.org)>; Ruiz-Cornejo, Victor (MYR) <[victor.ruiz-cornejo@sfgov.org](mailto:victor.ruiz-cornejo@sfgov.org)>; Farley, Clair (ADM) <[clair.farley@sfgov.org](mailto:clair.farley@sfgov.org)>; Crego, Pau (ADM) <[pau.crego@sfgov.org](mailto:pau.crego@sfgov.org)>  
**Subject:** Mayor -- [Ordinance] -- [Administrative Code - Repealing Employee Sexual Privacy Ordinance; Requiring Data Collection Requests]

Attached for introduction to the Board of Supervisors is an **ordinance amending the Administrative Code to repeal the City Employee's Sexual Privacy Ordinance; direct the Department of Human Resources (DHR) to request that applicants for City employment voluntarily provide anonymous sexual orientation and gender identity information; direct City departments to request that employees voluntarily provide anonymous sexual orientation and gender identity information when responding to surveys that also seek other demographic information; and direct DHR to develop systems to anonymously collect and retain sexual orientation and gender identity information.**

[@RUSSI, BRAD \(CAT\)](#), can you please reply-all to confirm your approval? Thanks!

Please let me know if you have any questions.

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Rebecca Peacock ([they/them](#))

(415) 554-6982 | [Rebecca.Peacock@sfgov.org](mailto:Rebecca.Peacock@sfgov.org)  
Office of Mayor London N. Breed  
City & County of San Francisco