

BOARD of SUPERVISORS



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MEMORANDUM

TO: Olson Lee, Director, Mayor's Office of Housing and Community Development
Micki Callahan, Director, Department of Human Resources
Catherine Dodd, Director, Health Service System
Trent Rhorer, Executive Director, Human Services Agency
Shireen McSpadden, Acting Executive Director, Department of Aging and Adult Services
Sam Dodge, Director, Housing Opportunity, Partnership and Engagement
Barbara A. Garcia, Director, Department of Public Health
Maria Su, Director, Department of Children, Youth and Their Families
Naomi Kelly, City Administrator, Office of the City Administrator

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: April 18, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following proposed legislation, introduced by Supervisor Wiener on April 12, 2016:

File No. 160362

Ordinance amending the Administrative Code to require City departments and contractors that provide health care and social services to seek to collect and analyze data concerning the sexual orientation and gender identity of the clients they serve.

If you have any additional 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.

Referral from the Office of the Clerk of the Board
Government Audit and Oversight Committee
April 18, 2016
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c:

Eugene Flannery, Mayor's Office of Housing and Community Development

Susan Gard, Department of Human Resources

Louise Rainey, Human Services Agency

Bridget Badasow, Department of Aging and Adult Services

Dee Schexnayder, Housing Opportunity, Partnership and Engagement

Christine Keener, Housing Opportunity, Partnership and Engagement

Greg Wagner, Department of Public Health

Colleen Chawla, Department of Public Health

1 [Administrative Code - Collection of Sexual Orientation and Gender Identity Data]

2
3 **Ordinance amending the Administrative Code to require City departments and**
4 **contractors that provide health care and social services to seek to collect and analyze**
5 **data concerning the sexual orientation and gender identity of the clients they serve.**

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

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

14 Section 1. The Administrative Code is hereby amended by adding Chapter 104,
15 consisting of Sections 104.1 through 104.9, to read as follows:

16 **CHAPTER 104: COLLECTION OF SEXUAL ORIENTATION AND GENDER IDENTITY**

17 **DATA**

18 **SEC. 104.1. FINDINGS AND PURPOSE.**

19 The City and County of San Francisco is committed to using data to identify the needs of San
20 Franciscans and to evaluate whether the City is effectively and equitably meeting those needs.

21 However, many City departments and contractors that provide critical public services, such as
22 housing, health care, and public assistance benefits, do not collect information on the sexual
23 orientation or gender identity of the clients they serve. As a result, it is difficult to quantify the needs of
24 the lesbian, gay, bisexual, and transgender (LGBT) population, to identify programs in which they are
25 underrepresented or underserved, and to track improvement in access to services over time.

1 Even in the absence of widespread data collection, research suggests that LGBT communities
2 face disproportionately high rates of poverty, suicide, homelessness, isolation, substance abuse, and
3 violence. For example, according to a 2011 report issued by the Institute of Medicine (IOM), a
4 division of the National Academies of Sciences, Engineering, and Medicine, the homeless youth
5 population includes a disproportionate number of lesbian, gay, and bisexual youth. The IOM report
6 also found that: rates of smoking, alcohol consumption, and substance abuse may be higher among
7 lesbian, gay, and bisexual youth and adults than heterosexual youth and adults; LGBT youth report
8 experiencing elevated levels of violence, victimization, and harassment; and, lesbians and bisexual
9 women may use preventive health services less frequently than heterosexual women.

10 Notwithstanding these preliminary findings, there are significant gaps in research relating to
11 LGBT health and well-being. As a result of these gaps, the 2011 IOM Report concluded that “[m]ore
12 demographic data on lesbian, gay, bisexual and transgender people across the life course are needed,
13 as are data on LGBT subpopulations.”

14 Collecting demographic data on sexual orientation and gender identity is a necessary first step
15 to understand the extent to which LGBT people are experiencing disparities in health and well-being
16 and whether San Francisco’s programs and services are reaching LGBT people in need of care and
17 assistance.

18 The purpose of this Chapter 104 is to accelerate the collection and analysis of sexual
19 orientation and gender identity data in order to evaluate how City agencies can better serve the needs
20 of LGBT San Franciscans.

21 **SEC. 104.2. DEFINITIONS.**

22 For purposes of this Chapter 104:

23 “City” means the City and County of San Francisco.

24 “Client” means an individual who seeks or receives Direct Services from a Covered
25 Department, Contractor, or Grantee.

1 “Contract” means any agreement between a Covered Department and a Person to provide
2 Direct Services on behalf of the City for a price to be paid out of monies deposited in the City Treasury
3 or out of trust monies under the control of or collected by the City, but excluding agreements for a
4 cumulative amount of \$50,000 or less per vendor in each fiscal year.

5 “Contractor” means a Person who enters into a Contract with a Covered Department.

6 “Covered Department” means the Department of Public Health, the Department of Human
7 Services, the Department of Aging and Adult Services, the Department of Children, Youth and their
8 Families, and the Mayor’s Office of Housing and Community Development.

9 “Demographic Information” means information about an individual’s gender, race, or
10 ethnicity.

11 “Direct Services” means services intended to assist Clients to access health care, housing,
12 employment, vocational training, public assistance, or counseling. “Direct Services” does not include
13 licensing, permitting, or other administrative or business functions undertaken by Covered
14 Departments, Contractors, or Grantees.

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

16 “Grant” means any agreement between a Covered Department and a nonprofit entity to
17 provide Direct Services to the public or a portion of the public, whether the agreement is funded by the
18 City or by Federal or State grant funds, but excluding grants where the award amount is less than
19 \$50,000 per vendor in each fiscal year.

20 “Grantee” means a Person who receives a Grant from a Covered Department.

21 “LGBT” means lesbian, gay, bisexual, or transgender.

22 “Person” means any natural person, corporation, sole proprietorship, partnership, association,
23 joint venture, limited liability company, or other legal entity.

24 “Sexual orientation” has the meaning set forth in Section 12B.1(c) of the Administrative Code.
25

1 **SEC. 104.3. DATA COLLECTION AND TRAINING.**

2 (a) Starting July 1, 2017, when, in the course of providing Direct Services, a Covered
3 Department collects and records Demographic Information from Clients, the Covered Department
4 shall seek to collect and record information about Clients' Sexual Orientation and Gender Identity, in
5 accordance with subsection (c).

6 (b) Starting July 1, 2017, when, in the course of providing Direct Services, a Contractor or
7 Grantee is required by the terms of the Contract or Grant to collect and record Demographic
8 Information from Clients, the Contractor or Grantee shall seek to collect and record information about
9 Clients' Sexual Orientation and Gender Identity, in accordance with subsection (c), and shall report
10 such data to the Covered Department that is party to the Contract or Grant, in the manner and
11 frequency as determined by that Covered Department.

12 (c) In seeking to collect information about Clients' Sexual Orientation and Gender Identity,
13 Covered Departments, Contractors, and Grantees shall:

14 (1) communicate to Clients that the provision of Sexual Orientation and Gender
15 Identity information is voluntary, and no Direct Services shall be denied to Clients who decline to
16 provide that information; and

17 (2) solicit Gender Identity and Sexual Orientation data using questions and
18 approaches consistent with the Department of Public Health's Policies and Procedures entitled
19 "Sexual Orientation Guidelines: Principles for Collecting, Coding, and Reporting Identity Data,"
20 reissued on September 2, 2014, and "Sex and Gender Guidelines: Principles for Collecting, Coding,
21 and Reporting Identity Data," reissued on September 2, 2014, or any successor Policies and
22 Procedures.

23 (3) advise Clients that they will protect personally identifiable information
24 regarding Clients' Sexual Orientation and Gender Identity from unauthorized disclosure, to the extent
25 permitted by law.

1 (d) Each Covered Department shall instruct its staff, Contractors, and Grantees who
2 provide Direct Services in the requirements of this Chapter 104 and in the strategies for data
3 collection, coding, and reporting set forth in the Department of Public Health's Policies and
4 Procedures referenced in subsection (c)(2), above.

5 **SEC. 104.4. CONFIDENTIALITY AND PRIVACY.**

6 Covered Departments, Contractors, and Grantees shall protect personally identifiable
7 information regarding Clients' Sexual Orientation and Gender Identity from unauthorized disclosure,
8 to the extent permitted by law and as required by the Health Insurance Portability and Accountability
9 Act, the California Medical Information Act, Article 1 of the California Constitution, the California
10 Health and Safety Code and regulations promulgated thereunder, the California Welfare and
11 Institutions Code and regulations promulgated thereunder, and any other applicable provision of
12 federal or state law.

13 **SEC. 104.5. CONTRACTS AND GRANTS.**

14 (a) Covered Departments shall include in all Contracts and Grants that impose an
15 obligation within the scope of services to collect Demographic Information, a provision requiring
16 compliance with this Chapter 104.

17 (b) This Chapter 104 is intended to have prospective effect only, and shall not be interpreted
18 to impair the obligations of any Contract or Grant existing on the effective date of this Chapter.

19 (c) Any violation of this Chapter 104 shall be deemed a material breach of the Contract or
20 Grant, and the City may pursue all rights or remedies available to the City under the Contract or
21 Grant, including but not limited to the right to terminate the Contract or Grant.

22 **SEC. 104.6. WAIVERS AND EXCLUSIONS.**

23 (a) The provisions of Chapter 104 shall not apply to the extent that they are incompatible
24 with any professionally reasonable clinical judgment that is based on articulable facts of clinical
25 significance.

1 **(b)** A Covered Department, with the approval of the City Administrator, may waive the
2 requirements of this Chapter 104 in full or in part if the Covered Department determines that strict
3 application of the requirements would not be feasible, would create an undue hardship, or that there
4 are similar circumstances that warrant granting of the waiver. The Covered Department's decision to
5 grant a waiver shall be in writing and shall be delivered to the Clerk of the Board of Supervisors. But,
6 unless the entirety of Chapter 104 is waived, there can be no waiver of Sections 104.3(c) and 104.4.

7 **(c)** Some or all of the provisions of this Chapter 104 shall not apply where the Covered
8 Department makes a written finding that the application or inclusion of such provisions would violate
9 or be inconsistent with the terms or conditions of a grant, subvention, or contract with an agency of the
10 State of California or the United States or the instructions of an authorized representative of any such
11 agency with respect to any such grant, subvention, or contract.

12 **SEC. 104.7. RULES AND REGULATIONS.**

13 The City Administrator may adopt rules, regulations, or guidelines for the implementation of
14 this Chapter 104.

15 **SEC. 104.8. MONITORING AND REPORTING.**

16 **(a)** The City Administrator shall monitor the City's compliance with this Chapter 104.

17 **(b)** By no later than July 1, 2017, each Covered Department shall submit to the City
18 Administrator a Compliance Plan that includes the following information, and any other information
19 the City Administrator deems relevant to assessing implementation of and compliance with this
20 Chapter:

21 **(1)** a description of the Covered Department's efforts to update its electronic data
22 storage systems (i.e., databases) so that they are capable of securely storing Sexual Orientation and
23 Gender Identity data;

1 (2) a description of the Covered Department's efforts to revise any forms used to
2 collect demographic information so that they are capable of collecting Sexual Orientation and Gender
3 Identity data; and

4 (3) a description of the Covered Department's efforts and plans to instruct staff.
5 Contractors, and Grantees in the requirements of this Chapter 104.

6 (c) By July 15, 2018, and each July 15 thereafter, each Covered Department shall annually
7 submit to the City Administrator a Report that:

8 (1) analyzes the data collected under this Chapter 104 by the Covered Department,
9 its Contractors, and Grantees;

10 (2) identifies any Direct Services programs operated by the Covered Department, its
11 Contractors, or Grantees, where the data demonstrate that LGBT individuals are underrepresented or
12 underserved; and

13 (3) describes the steps the Covered Department and its Contractors and Grantees
14 will take to make the programs identified in subsection 104.8(c)(2) more accessible to LGBT
15 individuals who are eligible for those services.

16 **SEC. 104.9. UNDERTAKING FOR THE GENERAL WELFARE.**

17 In enacting and implementing this Chapter 104, the City is assuming an undertaking only to
18 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
19 obligation for breach of which it is liable in money damages to any person who claims that such breach
20 proximately caused injury.

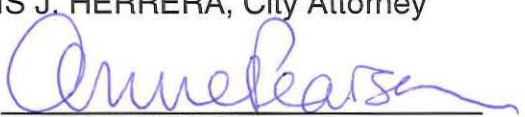
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22 Section 2. Effective Date.

23 This ordinance shall become effective 30 days after enactment. Enactment occurs
24 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
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1 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
2 Mayor's veto of the ordinance.

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

By: 
ANNE PEARSON
Deputy City Attorney

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