

File No. 150362

Committee Item No. 1

Board Item No. 60

### COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight

Date July 7, 2016

Board of Supervisors Meeting

Date July 19, 2016

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Completed by: Erica Major

Date July 1, 2016

Completed by: *EM*

Date 7/1/2016

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

7           **SEC. 104.4. CONFIDENTIALITY AND PRIVACY.**

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

15           **SEC. 104.5. CONTRACTS AND GRANTS.**

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

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

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

24           **SEC. 104.6. WAIVERS AND EXCLUSIONS.**

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

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

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

15           **SEC. 104.7. RULES AND REGULATIONS.**

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

18           **SEC. 104.8. MONITORING AND REPORTING.**

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

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

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

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

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

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

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

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

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

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

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

24  
25           Section 2. Effective Date.



**REVISED LEGISLATIVE DIGEST**  
(Substituted, 6/28/2016)

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

**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.**

Existing Law

Currently, there is no law that requires City departments, contractors, or grantees that provide direct services to San Franciscans to collect information about the sexual orientation and gender identity of the clients served.

Amendments to Current Law

The proposed ordinance would require five City departments (the Department of Public Health, the Department of Human Services, the Department of Aging and Adult Services, the Department of Children, Youth and their Families, and the Mayor's Office of Housing and Community Development) to seek to collect information about their clients' sexual orientation and gender identity when they are providing direct services, such as access to housing, healthcare, or public assistance benefits, and otherwise collect demographic information. For example, a covered City department that, in the course of providing medical services, asks patients to report their race, ethnicity, or gender, would be required by the proposed ordinance to seek to collect information about patients' sexual orientation and gender identity as well.

The duty to collect sexual orientation and gender identity data also would apply to the five covered departments' contractors and grantees, where their contract or grant with the City is for the performance of direct services and requires demographic data collection. The data collection obligation would apply only to contracts and grants entered into on or after the effective date of the ordinance.

In seeking to collect information about clients' sexual orientation and gender identity, the covered departments, their contractors, and grantees would be required to: 1) advise clients that the provision of this information is voluntary and that no services will be denied to clients who decline to provide it; 2) solicit this information using questions and approaches consistent with policies and procedures adopted by the Department of Public Health; and 3) advise clients that they will protect personally identifiable information regarding sexual orientation and gender identity from unauthorized disclosure, to the extent permitted by law.

By no later than July 1, 2017, the five covered departments would be required to submit to the City Administrator a Compliance Plan that demonstrates the steps they have taken to comply with the proposed law. The Compliance Plan would include, among other information required by the City Administrator, a description of the covered department's efforts to update any databases so that they are capable of securely storing sexual orientation and gender identity data, a description of the department's efforts to update any paper forms that are used to solicit demographic information, and a description of the department's efforts to train its staff, contractors and grantees in the requirements of the new law.

By no later than July 1, 2018, and every year thereafter, each covered department would be required to submit to the City Administrator a report that analyzes the data collected by the department, its contractors, and grantees, and identifies any direct services programs where the data demonstrate that lesbian, gay, bisexual and transgender (LGBT) individuals are underrepresented or underserved. The report would also include information about the steps the department intends to take increase program access to LGBT clients where they appear to be underserved.

#### Background Information

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

The five city Departments that would be affected by the proposed ordinance provide a broad array of critical direct services intended to connect San Franciscans to healthcare, employment, vocational training, public assistance and counseling. In the course of providing these services, the covered departments and their contractors and grantees sometimes collect demographic information, including but not limited to information about the race, ethnicity and gender of the clients they serve.

By contrast, the collection of information about clients' sexual orientation and gender identity is less common and consistent. As a result, it is difficult to quantify the needs of the LGBT population, to identify programs in which they are underrepresented or underserved, and to track improvement in access to services over time. For these reasons, a 2013 report prepared by the Institute for Multigenerational Health for the San Francisco LGBT Aging Policy Taskforce concluded that "[i]t is imperative that San Francisco include sexual orientation, sexual behavior, and gender identity questions in City sponsored aging and health

surveys and other data collection tools. Such information is critically needed so that these communities are considered in planning and service development. A more complete understanding of the needs of San Francisco's aging LGBT population will only be accomplished when sexual orientation and gender identity are in both aging and non-aging related City data-bases."

In 2013, in recognition of the fact that gender identity is associated with differences in access to health care and health outcomes, the Department of Public Health adopted a policy and procedure entitled, "Sex and Gender Guidelines: Principles for Collecting, Coding, and Reporting Identity Data." This Policy and Procedure adopts a set of guiding principles for the collection of gender identity data, and offers specific instructions relating to the questions that should be used to identify sex and gender. In 2014, the Department of Public Health adopted similar guidance relating to the collection of sexual orientation data. The proposed ordinance would require the covered departments, their contractors, and grantees to solicit information consistent with the guidance and instructions contained in these two policies.

The proposed ordinance would build on the Department of Public Health's efforts by accelerating the collection and analysis of sexual orientation and gender identity data in order to evaluate how City agencies can better serve the needs of LGBT San Franciscans.

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BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## 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

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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  
Page 2

c:

Eugene Flannery, Mayor's Office of Housing and Community Development  
Susan Gard, Department of Human Resources  
Louise Rainey, Human Services Agency  
Bridget Badafow, 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



# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [160362]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.**

**Sponsor(s):**

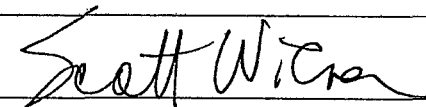
Supervisor Scott Wiener

**Subject:**

Administrative Code - Collection of Sexual Orientation and Gender Identity Data

**The text is listed below or attached:**


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.

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED W  
BOARD  
Time stamp or meeting date 

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
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Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

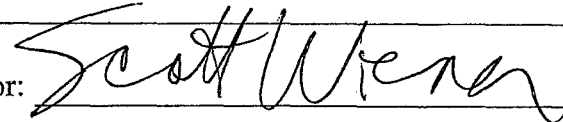
- Small Business Commission
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Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

Clerk's Use Only:

