

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.~~

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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.

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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

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