

BOARD OF COUNTY COMMISSIONERS

DATE: August 6, 2013

AGENDA ITEM NO. 26

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature

Subject:

Authorization to Advertise a Public Hearing Regarding a Proposed Ordinance Prohibiting Gender Identity Discrimination under Chapter 70 of the Pinellas County Code Relating to Human Relations

Department:

Office of Human Rights

Staff Member Responsible:

Paul Valenti, Director

Recommended Action:

I RECOMMEND THAT THE BOARD OF COUNTY COMMISSIONERS AUTHORIZE ADVERTISEMENT FOR A PUBLIC HEARING TO ADOPT AN ORDINANCE AMENDMENT TO CHAPTER 70 OF THE PINELLAS COUNTY CODE, RELATING TO HUMAN RELATIONS, TO PROHIBIT DISCRIMINATION BASED ON GENDER-IDENTITY.

Summary Explanation/Background:

Chapter 70 of the Pinellas County Codes prohibits discrimination in employment, housing, and places of public accommodation. The proposed ordinance would, with certain exceptions, prohibit discrimination in employment, housing, and places of public accommodation based on one's gender-identity.

If advertising is approved, the public hearing for this proposed ordinance will be Tuesday, August 20, 2013, at 6:00 P.M.

Fiscal Impact/Cost/Revenue Summary:

No substantial impact or cost is anticipated.

Exhibits/Attachments Attached:

Memorandum from Director of Human Rights
Proposed Ordinance (strike through and underline format)
Proposed Ordinance (final clean version)




Pinellas County Office of Human Rights

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Memorandum from Office of Human Rights

To: Board of County Commissioners

Through: Robert LaSala, County Administrator

From: Paul Valenti, Director of Human Rights 

CC: Jim Bennett, Pinellas County Attorney
Michelle Wallace, Sr. Assistant County Attorney

Date: July 19, 2013

Re: **"Gender-Identity" as a Protected Class under Chapter 70 of the Pinellas County Codes Relating to Human Relations**

Background:

Protections against discrimination based on a person's "gender identity" have been approved, or are being considered, in other jurisdictions across Florida¹, and have been passed in 17 states². Additionally, legislation prohibiting gender identity discrimination is pending before the United States Senate³. The Board has asked staff to prepare for their consideration an ordinance which would include "gender identity" as a prohibited basis of discrimination within Chapter 70 of the Pinellas County Codes relating to Human Relations⁴.

¹ According to Equality Florida, these are Broward County, Monroe County, Palm Beach County, Volusia County, Orange County, Leon County, Tampa, Orlando, Miami, North Miami, South Miami, Miami Beach, Dunedin, Gainesville, Tallahassee, Saint Augustine, Gulfport, Oakland Park, Key West, West Palm Beach, Lake Worth, Wellington, and Venice, jurisdictions which in total have a population of approximately 6.4 million people.

² Information obtained from www.hrc.org.

³ The "Employment Non-Discrimination Act", or "ENDA."

⁴ Chapter 70 of the Pinellas County Codes prohibits discrimination in housing, employment, and places of public accommodation. Major exceptions to Chapter 70's current protections include employers with less than five (5) employees, owner occupied housing with four or less units, religious housing (except for discrimination based on race, color or national origin), and private clubs.

Staff members from the County Attorney's Office and the Office of Human Rights have worked collectively to prepare a proposed ordinance. Copies of this proposed ordinance, one showing revisions to Chapter 70 (Exhibit A), and the other a "clean" version of the proposed ordinance (Exhibit B), are attached for your review.

Summary of Proposed Ordinance:

Currently, Chapter 70 of the Pinellas County Codes prohibits (except in limited circumstances discussed below) discrimination based on one's "sex." Staff recommends that the proposed ordinance strike references to "sex" in Chapter 70, and in its place substitute the term "gender." The proposed ordinance would define "gender" as follows:

"Gender includes but is not limited to sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity, or not being asserted for an improper purpose."

Other Provisions:

Consistent with the current provisions of Chapter 70, the proposed ordinance specifically exempts the application of this definition of "gender" in employment and places of public accommodation as follows:

Employment:

- For religious corporations, associations, and societies, when the employment is connected with the beliefs, tenets, and doctrines of a particular faith; and
- For religious educational institutions or organizations owned, operated, supervised, or controlled by a religious institution or organization in granting preferences to members of the same religion.

Places of Public Accommodation:

- For religious corporations, associations, and societies, or any non-profit institutions or organizations owned, operated, supervised, or controlled by a religious institution or organization in granting preferences to members of its facilities, and services;

- In rest rooms, shower rooms, bathhouses, and similar facilities which are by their nature private, or dormitory lodging facilities; and
- To private clubs which are not, in fact, open to the public (unless the club has more than 400 members, provides regular meal service, and regularly receives payment of dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from or on behalf of non-members for the furtherance of a trade or business).

In addition, as referenced above, the provisions of Chapter 70 relating to housing discrimination already exempts housing related to religious organizations and private clubs⁵.

Enforcement of the Proposed Ordinance:

Consistent with the current provisions of Chapter 70, responsibility for the enforcement of the proposed ordinance would reside with the Pinellas County Office of Human Rights.

The investigation of alleged violations of the proposed ordinance would follow the same procedures, and use the same analyses, as other claims of discrimination now processed by the Pinellas County Office of Human Rights.

As the proposed substitution of "sex" for "gender" includes protection for one's "gender identity", the protections afforded by the proposed ordinance would be greater than those protections currently afforded by state or federal law. In instances where the discriminatory conduct is alleged to be based on one's "gender identity", should a "reasonable cause" determination be entered by the Pinellas County Office of Human Rights, the Pinellas County Office of Human Rights would initiate an administrative hearing before the State of Florida's

⁵ See §70-105, which reads as follows:

"Religious organization and private club exemptions

(a) This division does not prohibit a religious organization, association, or society, or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from:

- (1) Limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, unless membership in the religion is restricted on account of race, color, or national origin; or
- (2) Giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.

(b) This division does not prohibit a private club not open to the public that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of that lodging to its members or from giving preference to its members."

Department of Administrative Hearings (DOAH) – as is the current practice for cases alleging discrimination based on one's sexual orientation⁶.

In hearings before DOAH, potential recovery is limited to actual damages and reasonable attorney's fees – punitive or exemplary damages are not recoverable.

To assist the board further in their deliberations, I provide below a list of many "Frequently Asked Questions" which often arise when jurisdictions consider prohibiting discrimination based on "gender-identity."

I remain available to answer any questions you may have.

Frequently Asked Questions:

Q: How do I address or refer to someone who identifies with a sex different than their physiology, or their sex at birth?

A: You should refer to a person who identifies with a sex different than their physiology, or their sex at birth, in the manner which they prefer. Additionally, it is not inappropriate to ask a person the manner in which they prefer to be addressed if they haven't advised you of their preference.

Q: Why should a form of sexual behavior get this kind of protection?

A: The proposed ordinance DOES NOT protect inappropriate sexual **behavior**. Anyone engaging in inappropriate sexual **behavior** can be held to account for their inappropriate **behavior**. ***Harassing behavior is not permitted regardless of one's gender.*** By way of example, if a person is in a men's restroom, and puts his hand on someone else's thigh, that's harassment - claims of gender identity would not protect this inappropriate **behavior**, or protect the person from the adverse consequences of such inappropriate **behavior**. The same principles would apply, of course, in women's facilities.

Q: Do prohibitions against "gender-identity" discrimination prohibit separate rest rooms, locker rooms, showers, etc., based on one's sex? Will a third set of such facilities be required?

A: Separate rest rooms, locker rooms, showers, etc., may still be maintained. Moreover, there is no requirement that a third set of such facilities be created or maintained. Under the proposed ordinance, however, persons who identify with a sex different than their physiology, or their sex at birth, would be permitted to use the facilities of the gender with which they identify.

⁶ For this fiscal year, the Office of Human Rights has had three (3) employment cases and one (1) housing case filed on the basis of sexual orientation. No sexual orientation case is currently pending with DOAH.

Q: What if my employees/patrons are uncomfortable using single-sex facilities when a person who identifies with a sex different than their physiology, or their sex at birth, is using the same facilities at the same time?

A: While unisex, sex neutral or "family" facilities are not required, if they exist, all persons should be afforded the equal opportunity to make use of these facilities.

If people object to transgender individuals using "their" rest rooms, strive to accommodate all employees'/patrons' use in an equitable and non-discriminatory manner, including consideration of "in-use" signs. Consider designating a disabled accessible rest room a unisex/accessible rest room.

These same principles should apply to locker rooms, shower facilities, etc. - strive to accommodate all employees'/patrons' use in an equitable and non-discriminatory manner, including consideration of "in-use" signs, privacy stalls or screens, or other considerations for privacy for equal use by all.

There are a number of ways in which a balance may be struck between the privacy concerns of all employees/patrons, but the guiding principle should be to afford a person access to use of facilities which correlate to their gender identity without consigning them to distant, inferior, unsafe or unsanitary options.

Q: Can my business maintain dress codes?

A: Yes. Under the proposed ordinance, however, persons who identify with a sex different than their physiology, or their sex at birth, should be permitted to conform to the dress code which correlates to the gender with which they identify.

Q: Can someone use the protections proposed under the ordinance to engage in pranks, "jokes", or other inappropriate purposes?

A: No. The definition of "gender" specifically requires that a person's gender-related identity be "...shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity, or not being asserted for an improper purpose."

Q: How does the proposed ordinance apply to the School District?

A: In employment cases, the current definition of a covered "employer" under Chapter 70 specifically exempts "The United States or a corporation wholly owned by the government of the United States...[Indian tribe[s]]... bona fide private membership clubs...[and] [t]he state." Florida judicial opinions, Florida

Statutes, and a prior memorandum from the County Attorney's Office, all hold the School District to be an agency of the state. Thus the proposed ordinance would not authorize claims of gender-identity discrimination against the School District (or any other form of prohibited discrimination found in Chapter 70) being filed with or investigated by the Office of Human Rights.

Moreover, it is not believed that the School District owns any housing stock. Thus, it is not believed that the prohibitions of any form of housing discrimination found in Chapter 70 apply to the School District.

Finally, the School District is not considered to be a "place of public accommodation" as defined by Chapter 70⁷. Thus, it is not believed that the prohibitions of any form of public accommodation discrimination found in Chapter 70 apply to the School District.

⁷ See §70-211, which defines place of public accommodation as follows:

"Place of public accommodation means and includes all places included within the meaning of the following: inns, taverns, roadhouses, hotels, and motels, whether operated for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants, eating houses, and any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirits or malt liquors are sold; ice cream parlors, confectioneries, soda fountains, and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind, are retailed for consumption on the premises; wholesale and retail stores and establishments dealing with goods or services of any kind; dispensaries, clinics, hospitals; bathhouses, swimming pools; laundries and all other cleaning establishments; barbershops, beauty shops; theaters, motion picture houses, airdromes, roof gardens, music halls, racecourses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors; garages; all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; and public halls and public elevators of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants."

Exhibit A

"Red-lined", or "Marked-up" version of Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF PINELLAS, PROVIDING THAT THE PINELLAS COUNTY CODE BE REVISED BY AMENDING SECTIONS 70-51, 70-52, 70-53, 70-101, 70-103, 70-107, 70-176, 70-177, 70-178, 70-179, 70-181, 70-182, 70-211, 70-212, 70-213, 70-214, OF SAID CODE; AMENDING DIVISION II, EMPLOYMENT, DEFINITIONS, TO INCLUDE A DEFINITION OF GENDER; AMENDING DIVISION II, EMPLOYMENT, PURPOSES AND INTENT, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION II, EMPLOYMENT, UNLAWFUL PRACTICES, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, DEFINITIONS, TO INCLUDE A DEFINITION OF GENDER; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PURPOSES AND INTENT, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, APPRAISALS, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, SALE OR RENTAL DISCRIMINATION, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED PUBLICATION, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, FALSELY REPRESENTING AVAILABILITY, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, ENTRY INTO NEIGHBORHOOD, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, RESIDENTIAL REAL ESTATE RELATED TRANSACTIONS, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, BROKERAGE SERVICES, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, DEFINITIONS, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, PURPOSES AND INTENT, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, EXCEPTIONS FROM SUBDIVISION, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, DISCRIMINATION PROHIBITED, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AMENDMENT OF PROPOSED ORDINANCE AT PUBLIC HEARING; PROVIDING FOR AREAS EMBRACED.

WHEREAS, the Home Rule Charter of Pinellas County, Florida, Article III, Section 2.02(e) directs the Board of County Commissioners of Pinellas County, Florida, to establish provisions for the protection of human rights from discrimination; and

WHEREAS, the County has enacted Ordinance 92-14, as amended, which is codified at Chapter 70 of the Pinellas County Code, which establishes the means for providing and ensuring the equal rights and opportunities for all people of the County in the areas of employment, housing, and public accommodations; and

WHEREAS, the Board of County Commissioners desires to amend the provisions of Ordinance 92-14, as amended,- by substituting the word "gender," which is defined as including but not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex at birth, for the word "sex".

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Pinellas County, Florida:

Section 1.

Section 70-51 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-51. Definitions.

Gender includes but is not limited to sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity, or not being asserted for an improper purpose.

Section 2.

Section 70-52 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-52. Purposes and intent.

- (a) (2) Secure for all individuals within the county the freedom from discrimination because of race, color, religion, national origin, ~~sex~~gender, sexual orientation, age, marital status, or disability in connection with employment, and thereby to promote the interests, rights and privileges of individuals within the county.

Section 3.

Section 70-53 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-53. Unlawful practices.

- (a) *Unlawful discrimination in employment practices.*

- (1) *Employers.* It is a discriminatory practice for an employer to:

- a. Fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, religion, national origin, ~~sex~~gender, sexual orientation, age, marital status, or disability; or
- b. Limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, religion, national origin, ~~sex~~gender, sexual orientation, age, marital status, or disability.
- c. The above described prohibited discrimination on the basis of ~~sex~~gender includes sexual harassment, including ~~same-sex—same-gender~~ sexual harassment, and pregnancy discrimination.

- (2) *Employment agencies.* It is a discriminatory practice for an employment agency on the basis of race, color, religion, national origin, ~~sex~~gender, sexual orientation, age, marital status, or disability to:

- a. Fail or refuse to refer for employment or otherwise discriminate against an individual; or
- b. Classify or refer for employment an individual on such a discriminatory basis.

- (3) *Labor organizations.* It is a discriminatory practice for a labor organization to:
- a. Exclude or to expel from membership or otherwise discriminate against any individual on the basis of race, color, religion, national origin, sexgender, sexual orientation, age, marital status, or disability;
 - b. Limit, segregate, or classify membership or applicants for membership, or to classify or to fail or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of race, color, religion, national origin, sexgender, sexual orientation, age, marital status, or disability; or
 - c. Cause, assist, or attempt to cause or assist an employer to violate this division.
- (4) *Training programs.* It is an unlawful practice for an employer, labor organization, or training committee to discriminate against an individual on the basis of race, color, religion, national origin, sexgender, sexual orientation, marital status, or disability in a training program providing apprenticeship or other training.
- (5) *Advertising.* It is a discriminatory practice for an employer, labor organization, or employment agency to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination based on race, color, religion, national origin, sexgender, sexual orientation, marital status, or disability.
- (6) *Discriminatory information gathering.* Except as permitted and required by regulations of the commission, or by applicable federal or state law, it is a discriminatory practice for an employer or employment agency to elicit information about an employee's race, color, religion, sexgender, sexual orientation, national origin, age, marital status, or disability, or to keep or disclose a record of such information for the purposes of effecting discrimination.

Section 4.

Section 70-101 of the Pinellas County Code is hereby amended to read as follows:

“Sec. 70-101. Definitions.

Gender includes but is not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of the person's core identity, or not being asserted for an improper purpose.

Section 5.

Section 70-103 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-103. Purposes and intent.

- (a) (2) Secure for all individuals within the county the freedom from discrimination because of race, color, religion, national origin, ~~sex~~gender, sexual orientation, familial status, or handicap in connection with housing and public accommodations, and thereby to promote the interests, rights and privileges of individuals within the county.

Section 6.

Section 70-107 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-107. Appraisals.

This division does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, ~~sex~~gender, sexual orientation, handicap, familial status, or national origin.

Section 7.

Section 70-176 of the Pinellas County code is hereby amended to read as follows:

Sec. 70-176. Sale or rental.

- (a) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, handicap, religion, ~~sex~~gender, sexual orientation, familial status, or national origin.
- (b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with such sale or rental, because of race, color, handicap, religion, ~~sex~~gender, sexual orientation, familial status, or national origin.

- (c) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

Section 8.

Section 70-177 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-177. Publication.

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sexgender, sexual orientation, handicap, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination.

Section 9.

Section 70-178 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-178. Falsely representing availability.

A person may not represent to any person because of race, color, religion, sexgender, sexual orientation, handicap, familial status, or national origin that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection, sale or rental.

Section 10.

Section 70-179 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-179. Entry into neighborhood.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sexgender, sexual orientation, handicap, familial status, or national origin.

Section 11.

Section 70-181 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-181. Residential real estate related transactions.

- (a) A person or entity whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate

related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, ~~sex~~gender, sexual orientation, handicap, familial status, or national origin.

(b) As used in this section, "residential real estate related transaction" means:

(1) Making or purchasing loans or providing other financial assistance:

- a. To purchase, construct, improve, repair, or maintain a dwelling; or
- b. Secured by residential real estate; or

(2) Selling, brokering, or appraising residential real property.

Section 12.

Section 70-182 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-182. Brokerage services.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation therein, on the basis of race, color, religion, national origin, ~~sex~~gender, sexual orientation, familial status, or handicap.

Section 13.

Section 70-211 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-211. Definitions.

Gender includes but is not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of the person's core identity, or not being asserted for an improper purpose.

Section 14.

Section 70-212 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-212. Purpose and intent.

- (a) It is the purpose and intent of the board of county commissioners through the passage of this subdivision to assure to the citizens of the county the equal enjoyment of the facilities and services of any public place of accommodation, regardless of their race, color, religion, national origin, ~~sex~~gender, sexual orientation, or disability.
- (b) To the extent that the provisions of this subdivision overlap or conflict with other provisions of this article, such other provisions shall take precedence.
- (c) The enforcement of this subdivision may be delegated by interlocal agreement to other units of local government or to nonprofit corporations.

Section 15.

Section 70-213 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-213. Exemptions from subdivision.

- (a) The provisions of this subdivision shall not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society from giving preference to the members of the same religion in the enjoyment of its facilities and services, unless membership in such religion is restricted on account of race, color, ~~gender~~, sexual orientation, or national origin.
- (b) The provisions of this subdivision relating to public accommodations do not prohibit discrimination on the basis of ~~sex~~gender in rest rooms, shower rooms, bathhouses, and similar facilities which are by their nature simply private, or dormitory lodging facilities.
- (c) The provisions of this subdivision shall not apply to any private club or other establishment which is not, in fact, open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment which is a place of public accommodation. However, any institution, club, or place of accommodation which has more than 400 members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers for the furtherance of the trade or business, shall not receive an exemption as a private club under this subdivision.
- (d) The provisions of this subdivision shall not be construed as prohibiting the giving of special discounts on goods and services by a place of public accommodation,

provided such goods or services are not denied to individuals on the basis of race, color, religion, national origin, sexgender, sexual orientation, or disability.

Section 16.

Section 70-214 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-214. Discrimination prohibited.

- (a) It is a violation of this subdivision for an operator of a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another person the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that person's race, color, religion, national origin, sexgender, sexual orientation, or disability. For the purposes of this subdivision, the failure by an owner of a public building, or a private building which has restrooms open to the public, to comply with the provisions of F.S. § ~~553.141~~553.86, relating to the provision of public restrooms, shall be considered a denial of full and equal enjoyment of the facilities of a place of public accommodation to women on the basis of their sexgender.
- (b) It is a violation of this subdivision for an owner or operator of a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any person or that any such person is unwelcome, objectionable or unacceptable because of that person's race, color, religion, national origin, sexgender, sexual orientation, or disability.

Section 17. Inclusion in the Code.

The provisions of the ordinance shall be included and incorporated in the Pinellas County Code, as an amendment and an addition thereto, and shall be appropriately renumbered, if necessary, to conform to the uniform numbering system of the Pinellas County Code.

Section 18. Severability.

If any section, subsection, sentence, clause, phrase or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining portions of this ordinance invalid or unconstitutional.

Section 19. Amendment of Proposed Ordinance at Public Hearing.

Any section, subsection, sentence, clause, phrase, or provision of this Ordinance as proposed be amended, added, or deleted by majority vote of the Board of County Commissioners

as a result of matters raised at the public hearing or in consultation with responsible authorities, and in such event, the amendments, additions or deletions shall be validly adopted without additional advertisement or hearing.

Section 20. Areas Embraced.

This Ordinance shall be effective in the incorporated and unincorporated areas of the County.

Exhibit B

"Clean" version of Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF PINELLAS, PROVIDING THAT THE PINELLAS COUNTY CODE BE REVISED BY AMENDING SECTIONS 70-51, 70-52, 70-53, 70-101, 70-103, 70-107, 70-176, 70-177, 70-178, 70-179, 70-181, 70-182, 70-211, 70-212, 70-213, 70-214, OF SAID CODE; AMENDING DIVISION II, EMPLOYMENT, DEFINITIONS, TO INCLUDE A DEFINITION OF GENDER; AMENDING DIVISION II, EMPLOYMENT, PURPOSES AND INTENT, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION II, EMPLOYMENT, UNLAWFUL PRACTICES, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, DEFINITIONS, TO INCLUDE A DEFINITION OF GENDER; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PURPOSES AND INTENT, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, APPRAISALS, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, SALE OR RENTAL DISCRIMINATION, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED PUBLICATION, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, FALSELY REPRESENTING AVAILABILITY, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, ENTRY INTO NEIGHBORHOOD, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, RESIDENTIAL REAL ESTATE RELATED TRANSACTIONS, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, BROKERAGE SERVICES, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, DEFINITIONS, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, PURPOSES AND INTENT, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, EXCEPTIONS FROM SUBDIVISION, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; AMENDING DIVISION III, HOUSING AND PUBLIC ACCOMMODATIONS, PROHIBITED DISCRIMINATION IN PUBLIC ACCOMMODATIONS, DISCRIMINATION PROHIBITED, BY SUBSTITUTING THE WORD GENDER FOR THE WORD SEX; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AMENDMENT OF PROPOSED ORDINANCE AT PUBLIC HEARING; PROVIDING FOR AREAS EMBRACED.

WHEREAS, the Home Rule Charter of Pinellas County, Florida, Article III, Section 2.02(e) directs the Board of County Commissioners of Pinellas County, Florida, to establish provisions for the protection of human rights from discrimination; and

WHEREAS, the County has enacted Ordinance 92-14, as amended, which is codified at Chapter 70 of the Pinellas County Code, which establishes the means for providing and ensuring the equal rights and opportunities for all people of the County in the areas of employment, housing, and public accommodations; and

WHEREAS, the Board of County Commissioners desires to amend the provisions of Ordinance 92-14, as amended,- by substituting the word "gender," which is defined as including but not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex at birth, for the word "sex".

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Pinellas County, Florida:

Section 1.

Section 70-51 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-51. Definitions.

Gender includes but is not limited to sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity, or not being asserted for an improper purpose.

Section 2.

Section 70-52 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-52. Purposes and intent.

- (a) (2) Secure for all individuals within the county the freedom from discrimination because of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability in connection with employment, and thereby to promote the interests, rights and privileges of individuals within the county.

Section 3.

Section 70-53 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-53. Unlawful practices.

- (a) *Unlawful discrimination in employment practices.*

- (1) *Employers.* It is a discriminatory practice for an employer to:

- a. Fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability; or
- b. Limit, segregate, or classify an employee in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the status of an employee because of race, color, religion, national origin, -gender, sexual orientation, age, marital status, or disability.
- c. The above described prohibited discrimination on the basis of gender includes sexual harassment, including same-gender sexual harassment, and pregnancy discrimination.

- (2) *Employment agencies.* It is a discriminatory practice for an employment agency on the basis of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability to:

- a. Fail or refuse to refer for employment or otherwise discriminate against an individual; or

- b. Classify or refer for employment an individual on such a discriminatory basis.
- (3) *Labor organizations.* It is a discriminatory practice for a labor organization to:
 - a. Exclude or to expel from membership or otherwise discriminate against any individual on the basis of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability;
 - b. Limit, segregate, or classify membership or applicants for membership, or to classify or to fail or refuse to refer an individual for employment in a way which would deprive or tend to deprive, limit, or adversely affect an individual's employment opportunities on the basis of race, color, religion, national origin, gender, sexual orientation, age, marital status, or disability; or
 - c. Cause, assist, or attempt to cause or assist an employer to violate this division.
- (4) *Training programs.* It is an unlawful practice for an employer, labor organization, or training committee to discriminate against an individual on the basis of race, color, religion, national origin, gender, sexual orientation, marital status, or disability in a training program providing apprenticeship or other training.
- (5) *Advertising.* It is a discriminatory practice for an employer, labor organization, or employment agency to publish an advertisement relating to employment, indicating a preference, limitation, specification, or discrimination based on race, color, religion, national origin, gender, sexual orientation, marital status, or disability.
- (6) *Discriminatory information gathering.* Except as permitted and required by regulations of the commission, or by applicable federal or state law, it is a discriminatory practice for an employer or employment agency to elicit information about an employee's race, color, religion, gender, sexual orientation, national origin, age, marital status, or disability, or to keep or disclose a record of such information for the purposes of effecting discrimination.

Section 4.

Section 70-101 of the Pinellas County Code is hereby amended to read as follows:

“Sec. 70-101. Definitions.

Gender includes but is not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of the person's core identity, or not being asserted for an improper purpose.

Section 5.

Section 70-103 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-103. Purposes and intent.

- (a) (2) Secure for all individuals within the county the freedom from discrimination because of race, color, religion, national origin, gender, sexual orientation, familial status, or handicap in connection with housing and public accommodations, and thereby to promote the interests, rights and privileges of individuals within the county.

Section 6.

Section 70-107 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-107. Appraisals.

This division does not prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, gender, sexual orientation, handicap, familial status, or national origin.

Section 7.

Section 70-176 of the Pinellas County code is hereby amended to read as follows:

Sec. 70-176. Sale or rental.

- (a) A person may not refuse to sell or to rent after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, handicap, religion, gender, sexual orientation, familial status, or national origin.
- (b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with such sale or rental, because of race, color, handicap, religion, gender, sexual orientation, familial status, or national origin.

- (c) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

Section 8.

Section 70-177 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-177. Publication.

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, gender, sexual orientation, handicap, familial status, or national origin, or an intention to make such a preference, limitation, or discrimination.

Section 9.

Section 70-178 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-178. Falsely representing availability.

A person may not represent to any person because of race, color, religion, gender, sexual orientation, handicap, familial status, or national origin that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection, sale or rental.

Section 10.

Section 70-179 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-179. Entry into neighborhood.

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, gender, sexual orientation, handicap, familial status, or national origin.

Section 11.

Section 70-181 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-181. Residential real estate related transactions.

- (a) A person or entity whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate

related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, gender, sexual orientation, handicap, familial status, or national origin.

(b) As used in this section, "residential real estate related transaction" means:

(1) Making or purchasing loans or providing other financial assistance:

- a. To purchase, construct, improve, repair, or maintain a dwelling; or
- b. Secured by residential real estate; or

(2) Selling, brokering, or appraising residential real property.

Section 12.

Section 70-182 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-182. Brokerage services.

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation therein, on the basis of race, color, religion, national origin, gender, sexual orientation, familial status, or handicap.

Section 13.

Section 70-211 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-211. Definitions.

Gender includes but is not limited to sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the individual's assigned sex or physiology at birth, which gender-related identity can be shown by evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of the person's core identity, or not being asserted for an improper purpose.

Section 14.

Section 70-212 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-212. Purpose and intent.

- (a) It is the purpose and intent of the board of county commissioners through the passage of this subdivision to assure to the citizens of the county the equal enjoyment of the facilities and services of any public place of accommodation, regardless of their race, color, religion, national origin, gender, sexual orientation, or disability.
- (b) To the extent that the provisions of this subdivision overlap or conflict with other provisions of this article, such other provisions shall take precedence.
- (c) The enforcement of this subdivision may be delegated by interlocal agreement to other units of local government or to nonprofit corporations.

Section 15.

Section 70-213 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-213. Exemptions from subdivision.

- (a) The provisions of this subdivision shall not prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society from giving preference to the members of the same religion in the enjoyment of its facilities and services, unless membership in such religion is restricted on account of race, color, gender, sexual orientation, or national origin.
- (b) The provisions of this subdivision relating to public accommodations do not prohibit discrimination on the basis of gender in rest rooms, shower rooms, bathhouses, and similar facilities which are by their nature simply private, or dormitory lodging facilities.
- (c) The provisions of this subdivision shall not apply to any private club or other establishment which is not, in fact, open to the public, except to the extent that the goods, services, facilities, privileges, advantages, or accommodations of the establishment are made available to the customers or patrons of another establishment which is a place of public accommodation. However, any institution, club, or place of accommodation which has more than 400 members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages, directly or indirectly, from or on behalf of nonmembers for the furtherance of the trade or business, shall not receive an exemption as a private club under this subdivision.
- (d) The provisions of this subdivision shall not be construed as prohibiting the giving of special discounts on goods and services by a place of public accommodation,

provided such goods or services are not denied to individuals on the basis of race, color, religion, national origin, gender, sexual orientation, or disability.

Section 16.

Section 70-214 of the Pinellas County Code is hereby amended to read as follows:

Sec. 70-214. Discrimination prohibited.

- (a) It is a violation of this subdivision for an operator of a place of public accommodation, whether personally or through the actions of an employee or independent contractor, to deny or refuse to another person the full and equal enjoyment of the facilities and services of any place of public accommodation on the basis of that person's race, color, religion, national origin, gender, sexual orientation, or disability. For the purposes of this subdivision, the failure by an owner of a public building, or a private building which has restrooms open to the public, to comply with the provisions of F.S. § 553.86, relating to the provision of public restrooms, shall be considered a denial of full and equal enjoyment of the facilities of a place of public accommodation to women on the basis of their gender.
- (b) It is a violation of this subdivision for an owner or operator of a place of public accommodation, either personally or through the actions of an employee or independent contractor, to display or publish any written communication which is to the effect that any of the facilities and/or services of a place of public accommodation will be denied to any person or that any such person is unwelcome, objectionable or unacceptable because of that person's race, color, religion, national origin, gender, sexual orientation, or disability.

Section 17. Inclusion in the Code.

The provisions of the ordinance shall be included and incorporated in the Pinellas County Code, as an amendment and an addition thereto, and shall be appropriately renumbered, if necessary, to conform to the uniform numbering system of the Pinellas County Code.

Section 18. Severability.

If any section, subsection, sentence, clause, phrase or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining portions of this ordinance invalid or unconstitutional.

Section 19. Amendment of Proposed Ordinance at Public Hearing.

Any section, subsection, sentence, clause, phrase, or provision of this Ordinance as proposed be amended, added, or deleted by majority vote of the Board of County Commissioners

as a result of matters raised at the public hearing or in consultation with responsible authorities, and in such event, the amendments, additions or deletions shall be validly adopted without additional advertisement or hearing.

Section 20. Areas Embraced.

This Ordinance shall be effective in the incorporated and unincorporated areas of the County.

APPROVED AS TO FORM
OF HON. CHIEF JUSTICE ATTORNEY

by Michelle Wallace
Attorney