

MEMORANDUM

Agenda Item No. 7(C)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: (Second Reading 12-2-14)
September 16, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Ordinance amending
Chapter 11A of the Code
to prohibit discrimination
in housing, public
accommodations, and
employment based on gender
identity or gender expression
Ordinance No. 14-118

The accompanying ordinance was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Audrey M. Edmonson, Commissioner Bruno A. Barreiro, and Commissioner Daniella Levine Cava and Co-Sponsors Commissioner Sally A. Heyman, Commissioner Barbara J. Jordan and Commissioner Dennis C. Moss.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum



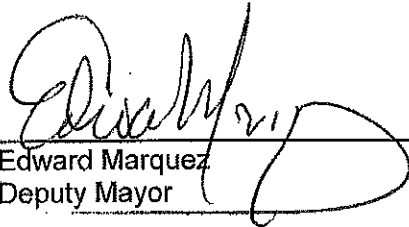
Date: December 2, 2014

To: Honorable Chairwoman Rebeca Sosa⁷
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Ordinance Amending Chapter 11A to Prohibit Discrimination in Housing, Public Accommodations, and Employment Based on Gender Identity or Gender Expression; Providing Severability

The proposed ordinance amends Chapter 11A of the Code prohibiting discrimination in housing, public accommodations, and employment based on gender identity or gender expression. The implementation of this ordinance will expand the responsibilities of the Office of Human Rights and Fair Employment Practices and may increase the total number of discrimination complaints filed. At this time is difficult to accurately assess the impact of this ordinance on current staffing levels.


Edward Marquez
Deputy Mayor

Fis00615



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 2, 2014

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 7(C)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(C)
12-2-14

ORDINANCE NO. 14-118

ORDINANCE AMENDING CHAPTER 11A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO PROHIBIT DISCRIMINATION IN HOUSING, PUBLIC ACCOMMODATIONS, AND EMPLOYMENT BASED ON GENDER IDENTITY OR GENDER EXPRESSION; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, until recently, data on the prevalence and character of discrimination against transgender and gender non-conforming people has been limited to small studies and anecdotal reports; and

WHEREAS, in the first comprehensive national effort to document this problem, the National Center for Transgender Equality and the National Gay and Lesbian Task Force in 2011 launched a six-month data collection process, interviewing 6,450 transgender people from all fifty (50) states, the District of Columbia, Puerto Rico, Guam and the United States Virgin Islands, via an extensive questionnaire that covered critical topics such as employment, education, health care, housing, public accommodation, criminal justice, family life and access to government documents; and

WHEREAS, the final study resulted in the publication of the National Center for Transgender Equality and the National Gay and Lesbian Task Force's Study entitled "Injustice at Every Turn: A Report of the National Transgender Discrimination Survey" ("Study"); and

WHEREAS, the Study revealed that gender identity or gender expression discrimination was pervasive throughout the entire sample; and

WHEREAS, according to the American Psychological Association “gender identity” is an individual’s sense of being either male or female, man or woman, or something other or in-between. “Gender expression” describes the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns and social interactions; and

WHEREAS, the Study showed that (1) 90 percent of the respondents reported experiencing harassment, mistreatment or discrimination in employment, with 47 percent reporting that they experienced an adverse job outcome such as being fired, not hired or denied a promotion; (2) 19 percent of the respondents were denied housing; and (3) 53 percent of the respondents reported being verbally harassed or disrespected in places of public accommodations, such as hotels, restaurants, buses, airports and governmental agencies; and

WHEREAS, the Study further showed that (1) the combination of anti-transgender bias and persistent, structural racism was especially devastating for all respondents, but even more so for transgender people of color; (2) that the respondents lived in extreme poverty, i.e. the respondents were nearly four times more likely to have a household income of less than \$10,000 per year compared to the general population; and (3) that a staggering 41 percent of respondents reported attempting suicide compared to 1.6 percent of the general population, with rates rising for those who lost a job due to bias (55 percent), were harassed/bullied in school (51 percent), had low household income, or were the victim of physical assault (61 percent) or sexual assault (64 percent); and

WHEREAS, also based on an exit poll conducted in Miami-Dade County by SAVE Dade Inc., during the 2012 General Election, over 90 percent of voters responding disagree that people should be fired from the workplace simply for being gay or transgender; and

WHEREAS, notwithstanding this overwhelming data on discrimination against transgender and gender non-conforming people there are very few federal and state laws that offer protections for them based on gender identity or gender expression; and

WHEREAS, in fact, it was not until 2013 that Congress extended protections to transgender and gender non-conforming people, who are victims of domestic and sexual violence: and

WHEREAS, on March 7, 2013, President Obama signed the reauthorization of the Violence Against Women's Act ("Act"), which now offers protections against discrimination based on gender identity in those programs that receive federal funding; and

WHEREAS, the Act is a step in the right direction, neither the federal or the State of Florida's civil rights laws extend similar protections based on gender identity or gender expression in the areas of employment, housing and public accommodations; and

WHEREAS, notwithstanding the lack of nondiscrimination laws based on gender identity or gender expression on the federal and state level, many local governments have taken the lead by enacting nondiscrimination laws that extend such protections; and

WHEREAS, currently, there are approximately fourteen (14) Florida counties and cities, including Broward County, Leon County, Monroe County, Palm Beach County, Volusia County, City of Dunedin, City of Gainesville, City of Gulfport, City of Key West, City of Lake Worth, City of Miami Beach, City of Tampa, and City of Oakland Park, that have extended protections based on gender identity or gender expression; and

WHEREAS, based on a letter received by this Board from the Miami-Dade HIV/AIDS Partnership there are between 5,020 and 20,080 transgender people living in Miami-Dade

County, who do not have similar protections as those similarly situated persons living in neighboring counties or cities; and

WHEREAS, this Board has a responsibility to protect the residents of Miami-Dade County from all forms of discrimination; and

WHEREAS, this Board can improve transgender and gender non-conforming people's lives in a significant way by advancing anti-discrimination protections to them; and

WHEREAS, this Board has already, in exercising its police powers related to public safety, health and general welfare, declared as the policy of Miami-Dade County to eliminate and prevent discrimination in employment, public accommodations, credit and financing practices, and housing accommodations based on race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status or sexual orientation as well as source of income in housing only; and

WHEREAS, this Board in furtherance of this policy enacted Ordinance No. 97-17, as amended, which is codified in Chapter 11A of the Code of Miami-Dade County ("Code"); and

WHEREAS, for purposes of enforcement of Chapter 11A, this Board established a quasi-judicial board pursuant to Section 11A-5 of the Code known as the Miami-Dade Commission on Human Rights ("Human Rights Commission"), which has jurisdiction to hear matters arising from claims of discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation and source of income; and

WHEREAS, this Board also established the position of the Human Rights Commission's Director whose duties, functions, powers and responsibilities include but are not limited to

enforcement of Chapter 11A, Articles II, III, IV, V, and VIII, investigating claims of discrimination, conciliation, issuing probable cause determinations and staffing the Human Rights Commission; and

WHEREAS, this Board, in exercising its police powers related to public safety, health and general welfare, declares as the policy of Miami-Dade County that the elimination and prevention of discrimination in employment, public accommodations, credit and financing practices, and housing accommodations because of gender identity or gender expression is in the best interest of Miami-Dade County,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Sections 11A-1 and 11A-2 of Article I of the Code of Miami-Dade County, Florida, are hereby amended to read as follows:¹

ARTICLE I. GENERAL PROVISIONS

Sec. 11A-1. Declaration of policy and scope.

- (1) *Policy.* It is hereby declared to be the policy of Miami-Dade County, in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent discrimination in employment, family leave, public accommodations, credit and financing practices, and housing accommodations because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status >>, gender identity, gender expression,<< or sexual orientation. It is further hereby declared to be the policy of Miami-Dade County to eliminate and prevent discrimination in housing based on source of income.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

* * *

Sec. 11A-2. Definitions.

The definitions set out herein shall apply to articles II, III, IV and V:

* * *

(8) *Discrimination* shall mean any difference, distinction or preference in treatment, access or impact because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, >>gender identity, gender expression,<< sexual orientation, or source of income.

* * *

>>(12) *Gender identity* shall mean a person's innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth (e.g., the sex listed on their birth certificate).

(13) *Gender expression* shall mean all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.<<

~~[(12)]~~>>(14)<<*Marital status* shall mean the state of being married, unmarried, single, divorced, separated or widowed, and the conditions that may be associated therewith, including pregnancy or parenthood.

~~[(13)]~~>>(15)<<*National origin* shall include citizenship status, ancestry, place of birth, and language characteristics thereof.

~~[(14)]~~>>(16)<<*Person* shall mean one (1) or more natural persons, individuals, employees, employers, employment agencies, owners, businesses, government, government agencies, government departments, unions, joint apprenticeship

committees, firms, associations, joint ventures, partnerships, estates, trusts, trustees, trustees in bankruptcy, legal representative, mutual companies, joint-stock companies, receivers, syndicates, fiduciaries, corporations, unincorporated organizations, and all other groups or combinations.

[(15)]>>(17)<<*Person with a disability*

* * *

[(16)]>>(18)<<*Religion* shall mean any belief protected by the free exercise clause of the First Amendment of the United States Constitution.

[(17)]>>(19)<<*Respondent* shall mean person or persons alleged to have engaged in a discriminatory act or practice prohibited by this chapter.

[(18)]>>(20)<<*Sexual orientation* shall mean heterosexuality, homosexuality or bisexuality whether such orientation is real or perceived.

[(19)]>>(21)<<*Mediation* shall mean an informal conference held with a neutral third party to help the parties resolve their disputes prior to the investigation of the complaint, or at any time during the investigation of the complaint.

[(20)]>>(22)<<*Hearing officer* shall mean an employee of the Division of Administrative Hearings within the State of Florida, Department of Administration, employed to conduct hearings pursuant to F.S. chapter 120, or other person selected by the Chairperson of the Commission on Human Rights, or his or her designee, to conduct a hearing pursuant to this chapter from a pool of hearing officers, who are members of the Florida Bar in good standing. The hearing officers shall serve for a term of two (2) years and shall not be entitled to compensation; however, they shall receive reimbursement for parking in county garages and for mileage for any hearing-related business. Such reimbursement shall be consistent with County policy.

[(21)]>>(23)<<*Prevailing party* shall have the same meaning as such term has in section 722 of the Revised Statutes of the United States (42 U.S.C. 1988).

Section 2. Sections 11A-12 and 11A-13 of Article II of the Code of Miami-Dade County, Florida, are hereby amended to read as follows:

ARTICLE II. HOUSING

Sec. 11A-12. Unlawful housing practices.

- (1) *Discrimination in sale or rental of housing and other prohibited practices.* It shall be unlawful for any person, owner, financial institution, real estate broker, real estate agent or any representative of the above to engage in any of the following acts because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status, >>gender identity, gender expression,<< or sexual orientation of a prospective buyer, renter, lessee or any person associated with a prospective buyer, renter or lessee:

* * *

Sec. 11A-13. Exceptions to unlawful housing practices.

* * *

~~[[2]]~~>>(3)<<*Religious organization.* Nothing in this article shall prohibit a religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such person, unless that religious organization, association or society restricts membership based on race, color, national origin, ancestry, or disability. Furthermore, nothing in this article relating to unlawful housing practices based on >>gender identity, gender expression or<< sexual orientation shall pertain to any religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

//

~~[(3)]~~>>(4)<<*Private club.* Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

~~[(4)]~~>>(5)<<*Maximum occupancy laws.* Nothing in this article limits the applicability of any reasonable state law, County ordinance or municipal ordinance or restriction regarding the maximum number of occupants permitted to occupy a dwelling.

~~[(5)]~~>>(6)<<*Housing for older persons.* Nothing in this article regarding familial status shall apply to housing for older persons. As used in this article, "housing for older persons" means housing:

* * *

~~[(6)]~~>>(7)<<*Furnishing appraisals.* Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, sex, disability, familial status, marital status, national origin >>gender identity, gender expression<< or sexual orientation.

~~[(7)]~~>>(8)<<*Conviction for illegal manufacture or distribution of controlled substance.* Nothing in this chapter prohibits conduct against any person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 893.03, Florida Statutes, as amended, or its successor statute.

Section 3. Sections 11A-19 and 11A-22 of Article III of the Code of Miami-Dade

County, Florida, are hereby amended to read as follows:

ARTICLE III. PUBLIC ACCOMMODATIONS

Sec. 11A-19. Unlawful public accommodations practices.

It shall be an unlawful practice for any person to engage in any of the following acts because of the race, color, religion, ancestry,

national origin, age, sex, pregnancy, disability, marital status, familial status >>, gender identity, gender expression,<< or sexual orientation of any individual or of any person associated with that individual:

* * *

Sec. 11A-22. Exceptions to unlawful public accommodations practices.

* * *

(5) Nothing in this article shall apply with respect to a religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with any such group, from limiting its goods, facilities, services, privileges or advantages to persons of the same religion or from giving preference to any such person, however, that religious organization, association or society shall not restrict membership based on race, color, national origin, ancestry, sex, pregnancy, age, marital status, familial status or disability. Furthermore, nothing in this article relating to unlawful public accommodation practices based on >>gender identity, gender expression or<< sexual orientation shall pertain to any religious organization, association, society or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

* * *

Section 4. Section 11A-26 of Article IV of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

ARTICLE IV. EMPLOYMENT

Sec. 11A-26. Unlawful employment practices.

(1) It shall be unlawful for any employer to engage in any practices described below on account of the race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status >>, gender identity,

gender expression, << or sexual orientation of any individual or any person associated with such individual:

* * *

- (2) It shall be unlawful for any employment agency or company providing employees to engage in any of the practices described below on account of any individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status >>, gender identity, gender expression, << or sexual orientation:

* * *

- (3) It shall be an unlawful employment practice for a labor organization to engage in any of the practices described below on account of any individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status >>, gender identity, gender expression, << or sexual orientation:

* * *

- (5) Exemptions to unlawful employment practices.

- (a) Notwithstanding any other provision of this article it shall not be an unlawful employment practice:

* * *

- (iii) For any employer to apply different standards of compensation, or different terms, conditions, benefits, privileges of employment pursuant to a bona fide, written seniority or merit system or piece-work system or a system which measures earnings by quantity provided that such difference does not discriminate because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status >>, gender identity, gender expression, << or sexual orientation.

- (iv) For an employer or employment agency or representative of either to give or to act upon

the results of any professionally validated ability test provided that such test, its administration or action upon the result is not designed, intended or used to discriminate because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status >>, gender identity, gender expression,<< or sexual orientation.

*

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*

- (c) Nothing contained in this article shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, marital status, familial status >>, gender identity, gender expression,<< or sexual orientation of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, marital status, familial status >>, gender identity, gender expression,<< or sexual orientation in any community, section or other area of the county or in the available work force in any community, section or other area of the county.

Section 5. Sections 11A-34 and 11A-35 of Article VI of the Code of Miami-Dade

County, Florida, are hereby amended to read as follows:

ARTICLE VI. OFFICE OF FAIR EMPLOYMENT PRACTICES

Sec. 11A-34. Declaration of policy.

- (1) It has been and is the policy of Miami-Dade County to provide equal employment opportunity for all without regard to race, sex, color, national origin, religion, age, disability, ancestry, marital status, pregnancy, >>gender identity, gender expression,<< sexual orientation or

veteran's status and to prohibit unlawful discrimination on such basis.

* * *

Sec. 11A-35. Definitions.

When used herein:

- (a) *Affirmative action* shall mean a program to ensure equal employment opportunity and treatment for all qualified individuals without regard to race, color, religion, national origin, age, disability, sex, marital status, pregnancy, veteran's status >>, gender identity, gender expression,<< or sexual orientation, and to every extent possible, eliminate areas of underutilization in employment of minorities, women and persons with disabilities. However, nothing in this section shall be interpreted to require the County to grant preferential treatment to any individual because of >>gender identity, gender expression or<< sexual orientation.

* * *

Section 6. The substantive rights that have been created and have accrued in whole or in part under Chapter 11A shall not be extinguished or in any way affected by the repeal and reenactment of Chapter 11A or by the renumbering of Chapter 11A.

Section 7. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 8. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: December 2, 2014

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Terrance A. Smith



Co-Prime Sponsors: Commissioner Audrey M. Edmonson
Commissioner Bruno A. Barreiro
Commissioner Daniella Levine Cava
Co-Sponsors: Commissioner Sally A. Heyman
Commissioner Barbara J. Jordan
Commissioner Dennis C. Moss