

# MEMORANDUM

HSSC  
Agenda Item No. 2(A)

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

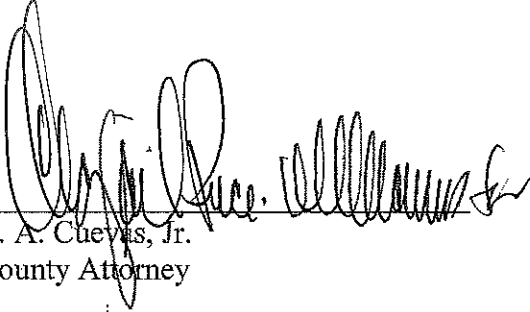
**DATE:** August 26, 2013

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

**SUBJECT:** Ordinance amending Chapter  
11A of the Code, relating to  
discrimination in housing,  
public accommodations, and  
employment based on gender  
identity or expression

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

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/smm

# Memorandum



**Date:**

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

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

**Subject:** Ordinance Amending Chapter 11A of the Code Relating to Discrimination in Housing,  
Public Accommodations, and Employment Based on Gender Identity or Expression

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The proposed ordinance amends Chapter 11A of the Code relating to discrimination in housing, public accommodations, and employment based on gender identity or expression. Implementation of this ordinance will not have a fiscal impact to the County.

A handwritten signature in black ink, appearing to read "Edward Marquez", written over a horizontal line.

Edward Marquez  
Deputy Mayor

Fis7513



**MEMORANDUM**  
(Revised)

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

**DATE:** May 21, 2013

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

**SUBJECT:** Agenda Item No. 4(B)

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. 4(B)  
5-21-13

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING CHAPTER 11A OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, RELATING TO DISCRIMINATION IN HOUSING, PUBLIC ACCOMMODATIONS, AND EMPLOYMENT BASED ON GENDER IDENTITY OR 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 expression<sup>1</sup> discrimination was pervasive throughout the entire sample; and

**WHEREAS**, the Study showed that (1) ninety percent (90%) of the respondents reported experiencing harassment, mistreatment or discrimination in employment, with forty-seven percent (47%) reporting that they experienced an adverse job outcome such as being fired, not hired or denied a promotion; (2) nineteen percent (19%) of the respondents were denied housing; and (3) fifty-three percent (53%) 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 transgendered 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% of respondents reported attempting suicide compared to 1.6% of the general population, with rates rising for those who lost a job due to bias (55%), were harassed/bullied in school (51%), had low household income, or were the victim of physical assault (61%) or sexual assault (64%); and

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

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<sup>1</sup> 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.

**WHEREAS**, in fact, it was not until this year that Congress extended protections to transgendered 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**, although 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 expression in the areas of employment, housing and public accommodations; and

**WHEREAS**, notwithstanding the lack of nondiscrimination laws based on gender identity or 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, Palm Beach County, Leon County, Monroe County, Volusia County, City of Dunedin, City of Key West, City of West Palm Beach, City of Gainesville, City of Tampa, City of Lake Worth, City of Miami Beach, City of Oakland Park, and City of Gulfport, that have extended protections based on gender identity or expression; and

**WHEREAS**, based on a letter received by the Board from the Miami-Dade HIV/AIDS Partnership there are approximately 5,020 – 20,080 transgendered persons 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 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.** Section 11A-1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>2</sup>

**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 or 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.

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**Section 2.** Section 11A-2 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 11A-2. Definitions.**

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<sup>2</sup> 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.



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 or expression.<< sexual orientation, or source of income.

\* \* \*

>>(22) Gender Identity or Expression shall mean having, or being perceived as having, a gender-related self-identity, self-image, appearance, expression or behavior, whether or not such gender-related characteristics differ from those associated with the person's assigned sex at birth.<<

**Section 3.** Section 11A-12 of the Code of Miami-Dade County, Florida, is 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 or expression,<< ~~[[e]]~~ sexual orientation >>, or source of income<< of a prospective buyer, renter, lessee or any person associated with a prospective buyer, renter or lessee:

\* \* \*

**Section 4.** Section 11A-13 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

~~[[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 or 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.

\* \* \*

(6) 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 or expression<< [[ø#]] sexual orientation >>, or source of income<<.

**Section 5.** Section 11A-19 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**ARTICLE II. PUBLIC ACCOMMODATION**

**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 or expression,<< or sexual orientation of any individual or of any person associated with that individual:

\* \* \*

**Section 6.** Section 11A-22 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**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 or 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 7.** Section 11A-26 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 or 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 or 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 or 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 or 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 or expression, << or sexual orientation.

\* \* \*

(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 or 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 or 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 8.** Section 11A-34 of the Code of Miami-Dade County, Florida, is 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 or expression, << sexual orientation or veteran's status and to prohibit unlawful discrimination on such basis.

**Section 9.** Section 11A-35 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**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 or 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 or expression or << sexual orientation.

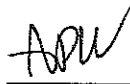
**Section 10.** The substantive rights that have been created and have accrued in whole or in part under Chapter 11A shall not be extinguished or in any way affected by the repeal and reenactment of Chapter 11A or by the renumbering of Chapter 11A.

**Section 11.** 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 12.** 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:

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Terrence A. Smith

Co-Prime Sponsors: Commissioner Audrey M. Edmonson

Commissioner Bruno A. Barreiro

Co-Sponsors:

Commissioner Sally A. Heyman

Commissioner Barbara J. Jordan