

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
PART 49 OF CHAPTER 2.08 OF TITLE 2 OF THE SAN
JOSE MUNICIPAL CODE TO ENSURE THE WOMEN'S
BILL OF RIGHTS IS FULLY INCLUSIVE OF LGBTQ
COMMUNITY MEMBERS, COMMUNITIES OF COLOR,
AND PEOPLE WITH DISABILITIES**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Part 49 of Chapter 2.08 of Title 2 of the San José Municipal Code is amended to read as follows:

Part 49

The Women and Non Binary People's Bill of Rights

2.08.4900 Purpose of Chapter

The Council of the City of San José declares that it is the policy of the City to take affirmative action to eliminate the practice of discrimination and prejudice on account of sex or gender in the areas of housing, employment, education, community services and related fields.

2.08.4910 Definitions

As used in this Part, the following words and phrases shall have the meanings indicated herein:

- A. "CEDAW" shall mean The Convention on the Elimination of All Forms of Discrimination Against Women.
- B. "City" shall mean the City of San José.
- C. "Commission" shall mean the San José Human Services Commission.
- D. The "Council" shall mean the City Council of San José.
- E. "Women" shall mean all persons who identify with the sex category woman, whether or not assigned to that category at birth. This includes both cisgender and transgender women.
- F. "Disaggregated data" shall mean information collected and analyzed by enumerated categories in order to identify the disparities existing between people of different genders. These categories shall include, to the extent permitted by law, sex, race, immigration status, parental status, language, sexual orientation,

disability, age and other attributes. This data will be collected in a manner that will facilitate intersectional analysis.

- G. "Discrimination against women" shall include, but not be limited to, any distinction, exclusion or restriction made on the basis of sex or gender that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of all people, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The definition of discrimination includes gender-based violence against women, that is, violence that is directed against a woman because she is perceived as a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty by family, community or government. It also includes any difference in treatment based on race, color, religion, ancestry, national origin, place of birth, sex, sexual orientation, romantic orientation, affectionate orientation, gender, gender identity or expression, familial status, age, handicap or disability, or use of support animals.
- H. "Gender" shall mean a social construct used to classify a person as a man, woman, or some other identity. Fundamentally different from the sex one is assigned at birth; a set of social, psychological and emotional traits, often influenced by societal expectations. Gender is a person's internal sense of self as male, female, both or neither (gender identity), as well as one's outward presentation and behaviors (gender expression). Gender norms vary among cultures and over time. Gender is also the way society produces, positions, and policies women and men as "opposite," mutually exclusive, natural categories of persons, and organizes ideas, interactions, and roles on the basis of presumed differences. It can be used to establish hierarchies between women, men and

non-binary people and the use of a gender binary (i.e. the proposal that there are only two genders) erase the experiences of non-binary people..

- I. "Gender analysis" shall mean an intersectional examination of the racial, ethnic, cultural, disability, economic, social, civil, legal and political relations between women, men and non-binary people within a certain entity, recognizing that women, men and non-binary have different social roles, responsibilities, opportunities and needs and that these differences, which permeate our society, affect how decisions and policy are made.
- J. "Gender equity" shall mean the redress of discriminatory practices and establishment of conditions enabling women to achieve full equality with men, recognizing that needs of women and men may differ, resulting in fair and equitable outcomes for both. It includes the redress of discriminatory practices and establishment of conditions enabling all persons identifying as transgender, non-binary and gender non-conforming to achieve full equality.
- K. "Human rights" shall mean the rights every individual possesses that are intended to improve the conditions in society that protect each person's dignity and well-being and the humanity of all people. These rights are possessed by a person regardless of immigration status, including immigrant visa holders who come to the United States to live permanently, or immigrants who come to the United States for time-specific purposes, such as tourism, education, training and temporary workers as well as undocumented persons living in the United States.
- L. "Racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin, which has

the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

- M. “Sex”, for the purposes of this ordinance, shall mean the gender of a person, as perceived, presumed or assumed by others, including those who are changing or have changed their gender identification.

- N. “Violence against women” shall mean any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, girls and non-binary people including threats of those acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life, including domestic violence.

- O. “Work of Equal Value” shall mean that an employer shall not pay any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. For the purposes of this statute, pay includes wages, benefits and total compensation.

- P. “Age Discrimination” shall mean discrimination based upon age against women, girls and non-binary people of any age and shall also include any person so protected by further amendment to the Federal Age Discrimination in Employment Act or the California Fair Employment and Housing Act.

- Q. “Familial Status” shall have the definition given in California Government Code Section 12955.2.
- R. “Culture” shall mean the sum of attitudes, customs and beliefs that distinguishes one group of people from another.
- S. “Non-binary” shall mean a spectrum of gender identities that are not exclusively masculine or feminine— identities that are outside the gender binary. Non-binary is an umbrella term that can include people who identify as having no gender, that is, are agender; who identify with both man and woman, such as bigender people; people whose gender identity may contain but not be limited to man or woman, such as genderfluid people. Intersex people may or may not identify as non-binary. Non-binary people may use they/them pronouns, though some non-binary people use she/her or he/him or other pronouns entirely.

2.08.4920 Local Principles of CEDAW

It shall be the goal of the City to implement the principles underlying CEDAW by addressing discrimination against women, girls and non-binary people in areas including economic development, and violence against women, girls and non-binary people. The City shall ensure that the City does not discriminate against women and non-binary people in areas including employment practices, allocation of funding and delivery of direct and indirect services. The City shall conduct gender analyses, as described in Section 2.08.4940 (Gender Analysis and Action Plan), to determine what, if any, City practices and policies should change to implement the principles of CEDAW.

A. Economic Development.

1. The City shall take all appropriate measures to eliminate discrimination against women, girls and non-binary people in the City of San José in employment and other economic opportunities, including, but not limited to, ensuring:
 - a. The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment and the right to receive access to and vocational training for nontraditional jobs;
 - b. The right to promotion, job security and all benefits and conditions of service, regardless of parental status, particularly encouraging the appointment of women to decision making posts, City revenue generating and managing commissions and departments, and judicial positions;
 - c. The right to equal remuneration, including benefits and to equal pay in respect to work of equal value;
 - d. The right to the protection of health and safety in working conditions, including supporting efforts not to purchase sweatshop goods and protection from violent acts at the workplace, and reasonable accommodations for pregnant and nursing mothers.
2. The City shall encourage and, where possible, fund the provisions of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in

particular through promoting the establishment and development of a network of child care facilities, paid family leave, family-friendly policies and work-life balance. These forms of support should be available to adoptive parents, single parents, queer parents, queer platonic partners who are parents, biological parents, and other kinds of parents. These forms of support should be available without regard to whether the parents' legal relationship to each other includes marriage, domestic partnership, or none of the above.

3. The City shall promote access to safe and affordable housing and transportation.
4. The City shall encourage the use of public education and all other available means to urge financial institutions to facilitate women's access to bank accounts, loans, mortgages, and other forms of financial services.

B. Violence Against Women, Girls and Non-Binary People.

1. The City shall take and diligently pursue all appropriate measures to prevent and redress sexual and domestic violence and trafficking against women, girls and non-binary people, including, but not limited to:
 - a. Police enforcement of criminal penalties and civil remedies, when appropriate;
 - b. Providing appropriate protective and support services for survivors, including counseling and rehabilitation programs;

- c. Providing gender-sensitive training of City employees regarding violence against women, girls and non-binary people, where appropriate; and
- d. Providing rehabilitation programs for perpetrators of violence against women, girls and non-binary people, where appropriate.

The City shall not discriminate on the basis of race, ethnicity, culture, language or sexual orientation, when providing the above supportive services.

- 2. It shall be the goal of the City to take all necessary measures to protect women, girls and non-binary people from sexual harassment in their places of employment, school, public transportation, and any other places where they may be subject to harassment. Such protection shall include streamlined and rapid investigation of complaints.
- 3. Sex workers are especially vulnerable to violence because their legal status tends to marginalize them. It shall be the policy of San José that the Police Department diligently investigate violent attacks against sex workers and take efforts to establish the level of coercion involved in the sex work, in particular where there is evidence of trafficking in women, girls and non-binary people. It shall be the goal of the City to develop and fund projects to help sex workers who have been subject to violence and to prevent such acts.
- 4. Labor trafficking, sexual exploitation and trafficking, and domestic servitude affect women from and in the City of San José. The City shall

endeavor to study these issues and develop appropriate policies, procedures, and training to uphold the principles of CEDAW.

5. The City shall ensure that all public works projects include measures, such as adequate lighting, to protect the safety of women, girls and non-binary people.
6. It shall be the goal of the City to fund public information and education programs to change traditional attitudes concerning the roles and status of women and men.

2.08.4930 Powers and Duties

The powers and duties of the Commission shall be as follows:

- A. As a tool for determining whether the City is implementing the local principles of CEDAW and preventing discriminating against women, girls and non-binary people, selected City departments, programs, and policies to the extent permitted by law, shall undergo a gender analysis and develop an Action Plan. The gender analysis shall be conducted according to guidelines developed by the Human Services Commission.
- B. To study by means of meetings, conferences or public hearings, conditions which demonstrate discrimination or prejudice because of sex or gender.
- C. To consult and cooperate with the Council and federal, state, county, city and other public agencies and to refer, if requested, to the proper governmental agencies any matters, disputes, or controversies already in the jurisdiction of their existing powers, with the intent that duplication of efforts should be avoided.

- D. To prepare and disseminate information in the field of sex or gender discrimination and prejudice and to advise and counsel the residents of the City, the Council, the Mayor, and departments and agencies of the City, other cities, special districts, state, and federal governments on matters involving the needs of women, girls and non-binary people and relating to discrimination and prejudice on account of sex or gender.
- E. To recommend, and assist in implementation of where needed, necessary procedures, programs, or legislation to promote and ensure equal rights and opportunities for all women.
- F. To render to the Council, at least once each calendar year, a report or reports of its activities.
- G. Subject to the approval of the Mayor, to request of any City department information, services, facilities, and any other assistance for the purposes of furthering the objectives of this Part.

2.08.4940 Gender Analysis and Action Plan

- A. As a tool for determining whether the City is implementing the local principles of CEDAW and/or discriminating against women, girls and non-binary people, selected City departments, programs, and policies to the extent permitted by law shall undergo a gender analysis and develop an Action Plan. The gender analysis shall be conducted according to guidelines developed by the Commission. The gender analysis shall include:

1. the collection of intersectionally disaggregated data, as defined above in Section 2.08.4910.F.;
 2. an evaluation of gender equity in the entity's operations, including its budget allocations, delivery of direct and indirect services and employment practices; and
 3. the entity's integration of human rights principles and the local principles of CEDAW as set forth in Resolution No. 78468. Upon completion of the gender analysis, the entity shall develop an Action Plan that contains specific recommendations on how it will correct any identified deficiencies and integrate human rights principles and the local principles of CEDAW into its operations.
- B. The Commission shall identify the City departments, programs, and policies to undergo the gender analysis and shall develop timelines for completion of the analyses and Action Plans.
- C. The Commission shall train the selected department, policy or program staff to conduct its gender analysis and shall provide technical assistance to the entity throughout the gender analysis process and development of the Action Plan.
- D. Each department or program undergoing a gender analysis shall designate a management and/or executive level employee to serve as a liaison to the Commission and to coordinate the completion of the gender analysis.
- E. Each department or program undergoing a gender analysis shall provide a report on its gender analysis and its Action Plan to the Commission, which shall review, analyze and comment on the report and forward it to the Mayor and the Council.

F. The Commission shall monitor the implementation of each department's Action Plan.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk