

ADMINISTRATIVE ORDER NUMBER 2-39

SUBJECT: Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning

Responsible Department: Personnel Services

Date Issued: 1/11/2021

Date Revised:

Approved: *(Signature on File)*

Purpose

This Policy addresses the needs of transgender and gender non-conforming employees that may arise in the workplace when a transgender person transitions while working at the City. This Policy understands that the needs of each employee must be assessed on a case-by-case basis. In all cases, the goal is to ensure the respect and support for all employees, including transgender or gender non-conforming employees, compliance with California's Fair Employment and Housing Act (FEHA) and all other applicable federal, state, and local laws.

Definitions

The definitions in this Policy are intended to assist in understanding the different terminology that may be encountered. The understanding of these and other terms may be different for each person. Employees may or may not use these terms to describe themselves. Applicable definitions should not be assumed to apply to any specific person.

Gender Binary: Gender classified into two distinct, opposite categories of male and female. Either of the two sexes (male and female) assigned at birth based on biological attributes.

Non-Binary: A spectrum of gender identities not separated by two distinct, opposite categories of male and female.

Gender Expression: A person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex assigned at birth.

Gender Identity: Each person's internal understanding of their gender, which may include male, female, a combination of male and female, neither male nor female, or a gender different from the person's sex assigned at birth.

Gender Fluid: A person whose gender identification, and sometimes, presentation, shifts, whether within or outside of societal, gender-based expectations. Being fluid in motion between genders.

Gender Non-Conforming: Persons displaying gendered traits which are not generally associated with their sex assigned at birth. Gender non-conforming persons may or may not identify as male, female, gender fluid/genderqueer, or transgender.

LGBTQ+ (sometimes LGBTQIA): An abbreviation meaning Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Questioning, and Asexual.

Sexual Orientation: A person's physical and emotional attraction to people of the same and/or other gender. It is important to note that sexual orientation is distinct from gender identity and expression.

Transgender: A person's gender identification that is different from the person's assigned sex at birth

Transitioning: The process of changing one's gender from the sex assigned at birth to the gender reflecting one's gender identity. There are many different ways to transition. Some people undergo physical and/or biological transition, some undergo a social/emotional transition, and some undergo both. It is a process that may also include telling one's family, friends, and co-workers, and may include the process of changing one's name and gender on legal documents and identification.

Policy

I. PRIVACY/CONFIDENTIALITY

Individual employees will decide when, with whom, and to what extent, they share their private information related to their gender identity and/or gender expression. Employees shall not disclose information that may reveal another employee's private information related to the other employee's gender identity and/or expression to others without that employee's permission, except where legally required, or as necessary to fulfill the City's legal obligations relating to the employee's gender identity and/or expression. Information about an employee's gender identity, gender expression, transgender status, or gender transition may constitute confidential medical information.

II. TRANSITIONING EMPLOYEES

A. ANTI-DISCRIMINATION/HARASSMENT

Transitioning employees have the right to openly be who they are, and, may express their gender identity without fear of discrimination or harassment, consistent with applicable law and Administrative Order 2-16. Transitioning employees who believe they are being subjected to discrimination or harassment are to follow the procedures under Administrative Order 2-16.

B. EMPLOYEE NOTIFICATION

Any transitioning employee is encouraged to speak with their supervisor, manager, and/or the Personnel Services Director or designee. The employee's Department and Personnel Services designees will assist the employee with all logistical aspects of their gender transition including, name changes on paperwork and in computer systems, photos on identification cards, working with the employees' immediate supervisor and workgroup to ensure proper name and pronoun usage, and assist with other logistical aspects as required by law. The transitioning employee may be required to sign appropriate forms and provide related legal documents.

C. DEPARTMENT RESPONSIBILITIES

If an employee informs a Department Director, manager, or supervisor, of their intention to transition, it is the Department Director's professional responsibility to ensure compliance with this Policy, and applicable state and federal law. In addition,

Supervisors/Managers shall:

- a. Make clear that the conversation will be held in confidence unless disclosure is required by law or in furtherance of the City's legal obligations.
- b. Obtain permission from the employee prior to discussing the transition with any other employee unless required by law or in furtherance of the City's legal obligations.
- c. Ask for and honor the employee's preferred name and pronouns.
- d. Make sure the employee is aware of this Policy and any resources available to them.
- e. Provide the employee with a copy of this Administrative Order and attachments as well as Administrative Order 2-16.

D. OFFICIAL RECORDS

Employees have the legal right to have the name and pronoun corresponding to the employee's gender identity used on official records, unless otherwise required by law (e.g., if the IRS requires an individual's legal name be used for tax purposes, the City is required to use the employee's legal name). The City will change the employee's official records to reflect a change in name and/or gender upon request.

E. NAMES/ PRONOUNS

An employee has the right to be addressed by the name and pronoun that correspond to the employee's gender identity, upon request. A legal name and/or gender change is not

required. The intentional or persistent refusal to respect an employee's gender identity (e.g., intentionally referring to the employee by a name or pronoun that does not correspond to the employee's gender identity) can constitute harassment and is a violation Administrative Order 2-16 and the California FEHA. All employees shall use the name and pronoun(s) requested by the employee and consistent with the employee's gender identity.

F. RESTROOM/SHOWER/LOCKER ROOM ACCESSIBILITY

Employees shall have access to the restroom, shower, and/or locker room corresponding to their gender identity. Any employee who has a need or desire for increased privacy, regardless of the underlying reason, will be provided access to a single stall or private restroom, shower, and/or locker room when feasible. However, no employee shall be required to use a single stall or private restroom, shower, and/or locker room.

G. DRESS CODE

Employees may wear clothing and hairstyles consistent with their gender identity. Transgender and gender non-conforming employees must still comply with City and departmental dress codes and grooming standards.

Attachments:

1. Checklist in Support of AO 2-39
2. Guidance in Support of AO 2-39

Checklist in Support of AO 2-39 Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning

Items to discuss with employee:	
	Confirm individual's chosen name and chosen gender pronoun(s).
	AO 2-39 Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning
	Appearance and attire expectations: Appearance and attire should align with departmental dress codes.
	Restroom and facilities use: Ensure individual knows they can use any bathroom that corresponds to their gender identity
	Ongoing support: Provide opportunity for individual to schedule check-ins or other future meetings.
If individual will take leave:	
	Be sure to advise of sick leave and other leave options.
	Health insurance, SDI (if applicable), short or long-term disability (if applicable) and other benefits.
If individual will be changing their legal name:	
	Legal name change: Legal name change is required for payroll and retirement accounts. Submit request through self-service. Provide legal documentation (social security card; driver's license).
	Retirement benefits: Remind individual to connect with retirement office.
	New W-4: Data to be updated in employee self-service.
	Health insurance, life insurance (if applicable), and other benefits.
Action Items (if applicable):	
	Provide individual with copies of the AO and Guidelines for the Transitioning Individual and/or provide website linking those documents
	Create new City ID badge (unless required to use legal name)
	Update departmental staff directory
	Conduct search of all City web and intranet sites to ensure they reflect individual's chosen name and gender
	Update individual's email account and computer username
	Update individual's phone line name display
	Update individual's personal information in HRMS
	Replace name plate (if applicable)
	Replace photos on display (if applicable)
	Order business cards (if applicable)
	Update parking pass (if applicable)



Guidance in Support of AO 2-39 Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning

Introduction

The City of Fresno (City) is dedicated to maintaining an inclusive, respectful, safe and productive workplace for all transgender, gender-nonconforming, gender non-binary, and gender-transitioning employees, applicants, and contractors. Transitioning individuals have the right to express their gender identity, including through appearance, use of a new name and/or gender pronoun, and use of facilities that correspond with their gender identity. Discrimination, harassment, and retaliation based on gender, gender identity, and gender expression are unacceptable. This guidance will help all employees have the tools they need to safeguard against negative and discriminatory behavior.

Your Rights

You have the right to express your gender identity at work through your appearance and by using the name and gender pronoun you choose. Harassment or exclusion from regular work activities is unacceptable. City policies and departmental dress codes will need to be followed.

Your transition is confidential and you can say as much or as little about it as you like. You do not have to disclose private information. This includes medical information, medical history, or other medical records.

Roles and Responsibilities

Diverse and inclusive workplaces contribute to the City's success. The City and its departments must create an environment that welcomes transitioning individuals and includes them in business, as any employee would be included. Management support for transitioning individuals is essential.

Department Personnel Managers are the main contact for transitioning individuals and their supervisors. Together they will create and carry out a workplace transition plan and use a sensitive approach in discussing the individual's needs and concerns. The Personnel Department may also provide inclusion and cultural competency training, as appropriate, for the department's employees.

Supervisors will lead by example, treating transitioning individuals with support, respect, and dignity. This includes using the transitioning individual's chosen name and gender pronoun(s).

Notification of Transition

Transitioning individuals will let their HR representatives and immediate supervisors (or another supervisor) know when they are ready to talk about transitioning. Those key

personnel will then talk to each other to be sure everyone is ready to create and carry out an effective workplace transition plan.

Transition Plan

The transition plan is a document put together by the transitioning individual and HR representative. The plan lays out who will be told about the transition; how information will be communicated; a timeline for when the transition will be complete; expectations; and impacts or consequences of violations. The plan shall be signed by all affected parties as an acknowledgement of agreement. The “Checklist in Support of AO-___ Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning” will assist in facilitating the development of a transition plan.

The “Checklist in Support of AO 2-39 Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning” shall guide discussions and actions for the employee, Personnel, supervisors and other departments.

Appearance, Attire, and Facilities Access

Transitioning individuals must comply with the same standard of dress and appearance, and any existing dress code, as all other employees in their workplace doing the same job.

All City employees, applicants, and contractors have the right to use facilities (restrooms, locker rooms, etc.) that match their gender identity and/or gender expression. Departments are encouraged to designate all-gender restrooms for use by all employees. However, transgender and gender-nonconforming employees are not expected or required to use all-gender restrooms. City employees may not question or harass people about their restroom choice.

Changes to Identification and Records

The Personnel representative will work with management and the transitioning individual to determine when personnel records and professional licenses and registrations, if any, need to be revised. The following chart should help with determining the changes that need to happen and who is responsible for them.

	Personnel	Transitioning Individual	Department
Update Name	X	X	X
New City ID Badge		X	X
Update Staff Directory			X
Update Email Account	X		X (Information Services)
Update Phone Line			X (Information Services)
New Name Plate (if applicable)			X
Photos on Display (if applicable)			X
Submit New W-4		X	(Payroll)
Order Business Cards			X
Availability of FMLA, CFRA, ADA, etc.	X	X	X
Professional Licenses	X	X	X

Employees must use their legal names and genders for certain legal purposes, such as payroll and retirement accounts. These records are confidential.

Confidentiality and Privacy

HR representatives must clearly communicate the City’s AO 2-39 Policy Regarding Transgender and Gender non-Conforming Employees: Employee Transitioning, and any other policies that tell transitioning individuals about their right to privacy.

Transitioning individuals cannot be made to disclose medical information. Medical information, medical history, and other medical records are private. These records can only be disclosed at the transitioning individual’s request, and with their consent.

Benefits

Should transitioning individuals need time off for their transition their Personnel representative will explain the City’s medical benefits, sick leave policy, availability of FMLA, CFRA, and ADA, and other City benefits, including life insurance, if applicable. Transitioning individuals should contact the Retirement Office for information on their retirement plan.

Training for Department, Management, and/or Employees

Department supervisors must support efforts to ensure a successful transition. Management is responsible for creating and maintaining a safe and productive work environment, modeling support, and ensuring privacy and confidentiality. In accordance with Administrative Order 2-16 Discrimination and Harassment Policy and Complaint Procedure all employees must attend training within 6 months of hire and every other

year thereafter.

Protection from Discrimination & Reporting Violations

Co-workers must respect transitioning individuals and not treat them differently because of their gender identity and/or gender transition. If a co-worker is unsure of the appropriate pronoun to use with a transitioning individual, it is acceptable to respectfully ask which pronouns the individual has chosen. Intentional or repeated misgendering or misnaming can lead to discipline, up to and including termination. Supervisors must correct anyone they hear using the wrong name or gender pronoun.

All employees are to report harassing, retaliatory, or discriminatory behavior, whether directed at themselves or co-workers. Retaliation against any individual who reports or files a complaint, or helps in the investigation of a complaint, is prohibited.

Managers/Supervisors must be proactive in monitoring behavior towards transitioning individuals. Managers/Supervisors shall report any complaints of misconduct under "AO 2-39 Policy Regarding Transgender and Gender Non-Conforming Employees; Employee Transitioning" to their immediate supervisor and/or the Director of Personnel Services.