



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Vice Mayor Magdalena
Carrasco, District 5

SUBJECT: LEGAL DEFINITION OF
SEX UNDER TITLE IX

DATE: 10-25-18

APPROVED:

RECOMMENDATION

1. Direct the City Attorney to analyze the Department of Health and Human Services effort to establish a new legal definition of sex under Title IX; and to come back to Rules with a report of a potential federal policy change and the effect on the City of San José, our employees, and residents.
2. Adopt a resolution opposing any policy change in Title IX that rolls back civil rights protections for the Transgender Community. Deliver a letter to the largest federal agencies that enforce some part of Title IX: Secretary of Health and Human Services Alex Azar, Secretary of Education Betsy DeVos, Secretary of Labor Alex Acosta, Attorney General Jeff Sessions, and Roger Severino, Director of the Office for Civil Rights at the U.S. Department of Health and Human Services.
3. Place the item on the November 27th, 2018, City Council Agenda for action.

SUMMARY

Title IX passed in 1972 and was written into law as follows:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

The Trump administration along with the Department of Health and Human Services (HHS) are reportedly drafting new language to define sex under Title IX as “a biological, immutable condition determined by genitalia at birth.” This new definition would essentially eradicate federal recognition of the estimated 1.4 million Americans who identify as Transgender.

In the past few years, there has been a significant rollback of rules protecting the Transgender community. Many of these protections began during the Obama administration and the current administration is attempting to erase the federal civil rights protections for Transgender people in education, employment, and access to health care. Per the Transgender Law Center, this

administration intends to ignore the preponderance of law, science, and evidence on gender identity to empower hate, to roll back access to healthcare, and to make schools less safe for Transgender and gender nonconforming youth.

The National Center for Transgender Equality is an organization that advocates to change policies to increase the understanding and acceptance of Transgender people. They released a study that many LGBTQ+ organizations used to establish policies to defend and protect our Transgender community. This study brings to light what is both blatantly obvious and far too often dismissed from the human rights agenda. Transgender and gender non-conforming people face injustice at every turn: in childhood homes, in school systems that promise to shelter and educate, in harsh and exclusionary workplaces, at the grocery store, the hotel front desk, in doctors' offices and emergency rooms, before judges and at the hands of property owners, police officers, health care workers and other service providers.

Courts and government agencies have helped the Transgender community achieve victories protecting them and other gender nonconforming communities in *Whitaker v. Kenosha Unified School District*, *Macy v. Holder*, *CA Education Committee v. Jack O'Connell*, and *US v. George Toone*.

Locally, our County has been a champion for our Transgender community by creating the Office of LGBTQ+ Affairs, a LGBTQ+ shelter, and the Transgender Health Clinic.

This recommendation meets the criteria for Council resolutions outlined in Council Policy 0-11, Council Resolution Policy because it calls to maintain the federal civil rights protections for all Transgender people, including those in our local community, in education, employment and access to health care (Criteria 1). Adopting a resolution opposing the administration's proposed definition of sex that would take away protections for the Transgender community has civic, cultural, social, economic, philosophical and educational value (Criteria 2).

I recommend our City take a proactive stance against the language change and invite us to support any future Amicus Brief or support any future federal legislation to reverse any potential language the HHS and Trump Administration will set.

My City Council colleagues and I would like every Transgender resident to know that we stand with them and will continue to defend, support, and protect them against the Trump administration's ignorant policies.