

Staff: Robert J. Newman
Counsel



THE COUNCIL
REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION
MARCEL VAN OOYEN, DEPUTY CHIEF OF STAFF

COMMITTEE ON GENERAL WELFARE
BILL DEBLASIO, CHAIR

April 24, 2002

INT. NO. 24

By: By Council Members Perkins, Lopez, Quinn, Reed, the Speaker (Council Member Miller), Moskowitz, Rodriguez, Boyland, Avella, Davis, DeBlasio, Gennaro, Gerson, Katz, Koppell, Liu, McMahon, Monserrate, Rivera, Sears, Weprin, Brewer, Barron, Serrano and Stewart; also Council Members Addabbo Jr., Martinez, Yassky, Clarke, Baez and Recchia

TITLE:

To amend the administrative code of the city of New York in relation to gender-based discrimination.

ADMINISTRATIVE CODE:

Adds a new subdivision 23 to section 8-102 to chapter 1 of title 10.

BACKGROUND:

The Committee on General Welfare met on Tuesday, April 23, 2002 today to consider Proposed Int. No. 24, a proposed local law that would define the term “gender” in the City’s Human Rights law to include transgendered individuals, thereby explicitly prohibiting discrimination against such individuals.

BACKGROUND

Transgendered individuals suffer from very basic discrimination in New York City. Advocates report that transgendered individuals are routinely denied places to live, jobs and service at public accommodations such as restaurants and retail stores based solely on their transgender status. Advocates further maintain that one of the harshest aspects of this discrimination is that it drives transgendered individuals underground where they must struggle any way they can to survive. Many turn to prostitution and drugs in despair. Transgendered individuals are also subject to discriminatory harassment and physical abuse. Continued discrimination against transgendered individuals, is not only unfair but is also dangerous to the health and safety of transgendered individuals, and protection from discrimination for transgendered individuals is very often a matter of life and death.

The City's Human Rights law provides a wide variety of individuals unique and strong protections against discrimination in the areas of employment, housing and public accommodations. One of the protected classes of individuals includes those who are discriminated against based upon their "actual or perceived... gender." Ad. Code. § 8-107. The term "gender" is not defined in the Human Rights law. Advocates maintain that one way to address the issue of transgender discrimination is to amend the Human Rights law to define the term "gender" to include transgendered individuals, thereby explicitly prohibiting discrimination against such individuals. Others maintain that the term "gender" in the Human Rights law is already understood to provide protections for transgendered individuals and has been interpreted by courts and other experts to provide such protection. As a result, it is argued, Int. No. 24 is of little or no utility as a method of deterring discrimination against transgendered individuals.

The Council disagrees with this position. In 1991, the City Council passed legislation affecting what many consider to have been a complete overhaul of the City's Human Rights law. Central to the 1991 changes to the law was the expansion of the breadth of unlawful discriminatory practices as well as the scope of protected classes of individuals. Specifically, new protected classes based on age, disability and sexual orientation were added to the law. In addition, the term "sex" as it referred to unlawful sex discrimination in the old law, was changed to "actual or perceived... gender" in the new version. As a result of the 1991 amendments, the City's Human Rights law is currently one of the broadest in the nation providing protections for a large group of protected classes. Further, by including in Human Rights law the provision that it "be construed liberally for the accomplishment of the purposes thereof", the Council signaled its intent that the protections afforded by the law be given the widest possible effect. Indeed, the Council stated that "faced with restrictive interpretations of human rights laws on the state and federal levels, it is especially significant that the city has seen fit to strengthen the local human rights laws at this time... It is imperative that restrictive interpretations of state or federal liberal construction provisions are not imposed upon city law." Proceedings of the Council Vol. I-B, Part 2, p.1341.

However, despite the Council's clear intent that the current human Rights law be interpreted as broadly as possible, the Council finds that in order to avoid the vagaries of a changing judiciary and political structures and to make certain that the law is never misinterpreted, it is necessary to clarify the law. It is, however, specifically not the intent of the Council that this clarifying legislation be used as support for a claim that this or any other state or federal law be interpreted as not inclusive of transgender rights. Instead, Int. No. 24 is meant merely to clarify the Council's original intent with regard to the City's human rights law, which was to ensure broad coverage under the City's human rights law.

ANALYSIS

Proposed Intro. No. 24 would amend the Human Rights law by adding a new subdivision 23 to §8-102, which would define the term “gender” to include a person’s gender identity, self image, appearance, behavior or expression, whether or not that gender identity, self image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.

EFFECTIVE DATE

This local law would be effective immediately.

THE HEARING

As noted above, the Committee held a hearing regarding Int. No. 24 on Tuesday, April 23, 2002. The Committee heard extensive testimony in favor of the bill. After hearing the testimony, the Committee approved the bill by a vote of 7 in favor to 1 against.