



Protocol for Gender Identity and Gender Expression; Transgender and Gender Non-Conforming Persons

REVISED

Introduction

The City of Hamilton (The City) is committed to providing a safe, respectful, and inclusive environment for community members who use our services and for all employees. The City has a legal and moral responsibility to maintain environments that are free from discrimination and harassment for community members and employees. The City is committed to enhancing equity and inclusion through the provision of City services and within the workplace, and to promote awareness of our human rights obligations. In accordance with the Ontario *Human Rights Code (the Code)*, the City recognizes the dignity and worth of every person such that each person feels a part of our community and is able to contribute fully without harassment or discrimination.

The City recognizes that transgender and gender non-conforming persons constitute one of the most disadvantaged groups in our society. This group routinely experiences discrimination, harassment and violence because of their gender identity or gender expression. Such experiences create barriers to civic engagement and participation in the broader community and deny us the benefits of contributions from all Hamiltonians.

The City also acknowledges that individuals often face barriers based on more than one prohibited ground under the *Code* and thus every person will have different experiences. For example, barriers may differ between an individual who identifies as transgender and also has a disability, and another transgender individual who also belongs to a racialized minority group. When City services or employment have inclusive standards and requirements, but a particular bona fide standard or requirement would pose a difficulty for a person due to an individual characteristic connected to any prohibited ground of discrimination, the City has an obligation to accommodate the individual to the point of undue hardship with respect to health and safety or cost.

In order to ensure that all employees and members of our community, especially transgender and gender non-conforming individuals, feel safe and welcomed, the City has developed this protocol specifically to set out guidelines to ensure the equitable, fair, and respectful treatment of all persons who work at or otherwise interact with the City as a resident or service user.

There are a number of policies and procedures this protocol accompanies that demonstrate and enforce the City's commitment to the equity and inclusion of all persons and also reinforce the City's legislative requirements. This protocol supports the City's existing policies and procedures, and as such should be read in conjunction with the following:

- Equity and Inclusion Policy
- Harassment and Discrimination Prevention Policy
- Personal Harassment Prevention Policy
- Procedure for Resolving Harassment & Discrimination Issues
- Employment Accommodation Policy
- Workplace Accommodation Procedure
- Violence in the Workplace Prevention Policy
- Violence in the Workplace Prevention Procedure
- Workplace Breastfeeding Policy

Purpose

Through this protocol, the City seeks to provide employees with clear guidelines regarding actions and behaviour that is inclusive and respectful of all gender identities and expressions.

This protocol has also been developed to raise awareness and understanding of our shared obligation to promote the dignity and equitable treatment of all employees and members of our community, regardless of their gender identity or gender expression.

Rights and Responsibilities

All people have a right to be treated with dignity and respect, free from discrimination and harassment.

The Ontario *Human Rights Code* (the *Code*) prohibits the harassment and discrimination of persons based on the prohibited grounds outlined within the *Code*, which includes gender expression and gender identity. Individuals are protected from discrimination and harassment in five social areas, including:

- In receiving goods, services, and using facilities
- In occupying housing accommodations
- When entering into contracts
- In employment
- In joining or belonging to a union or professional or vocational association

In compliance with the *Code*, individuals who identify as transgender or gender non-conforming have the right to be free from discrimination, harassment and violence, which includes the right to:

- be identified and referred to based on their gender identity;
- access facilities and services based on their gender identity;
- be communicated with in a respectful manner;
- be able to voice a complaint or express concern about human rights violations without fear of reprisal

Scope and Application

All employees, at all levels within the organization, play an important role in creating safe, inclusive and respectful environments for transgender and gender non-conforming employees and citizens, both within the workplace and in accessing City services.

All employees at the City are required to follow the guidelines as set out within this protocol and to abide by all related City policies and procedures. For the purposes of this protocol, “all employees” includes but is not limited to: full and part time regular, temporary and contract employees. Additionally, students, interns, and volunteers must also follow this protocol.

This protocol has been separated into two sections:

- 1) Customer Service Guidelines, and;
- 2) Employee Guidelines.

While there may be overlap within these sections, the separation is intended to provide employees with greater clarity and direction.

Customer Service Guidelines:

1. Privacy and Confidentiality

- 1.1 All persons are entitled to privacy and confidentiality. In accordance with Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and the Personal Health Information Protection Act (PHIPA), the City has a legal obligation to protect data gathered and to ensure that information collected remains secure and confidential.
- 1.2 Information must only be collected where there is a bona fide reason to do so.
- 1.3 Information pertaining to community members should be kept only if necessary.
- 1.4 A person's medical history, particularly as it relates to sex assigned at birth, social or medical sex/gender transition, anatomy, as well as any information regarding their gender identity must remain confidential. Where information may be required for accommodation or to otherwise meet the needs of the person, only relevant information should be shared and limited to only those individuals who are directly involved in the process.
- 1.5 Disclosure of a transgender or gender non-conforming person's gender identity or the extent of their transition without their consent and knowledge is prohibited and considered to be a form of harassment and discrimination under the Ontario *Human Rights Code*.

2. Identification, Language, and Administrative Systems

- 2.1 Everyone has the right to define their own gender. Transgender persons should be recognized as they want to be, whether or not they have undergone surgery or whether their identity documents reflect their gender identity.
- 2.2 All persons must be referred to by their preferred name, gender and pronoun.

- 2.3 Community members have a right to update their administrative record(s) to match their gender identity should they wish to do so.

3. Collecting data on sex and gender

- 3.1 Data on sex and gender is often collected when there is little or no need to know in order to provide a product or service. Before collecting data on sex or gender, thought should be given as to whether there is a legitimate need or a legal requirement to solicit this type of data.
- 3.2 What constitutes a 'legitimate need' may vary. Employees should consider the following when determining whether to ask for sex and/or gender data:
- What is the rationale for asking for sex and/or gender data?
 - Is knowing a person's sex or gender essential to providing a service?
 - Will this data be used in demographics and analysis? Is it useful to improve services?
 - Can the data be collected in an anonymized manner and analyzed in the aggregate, or is there a need to attach the data to an individual's administrative record.
 - How will this data be stored and kept secure?
 - Does asking for this data contribute to the City's equity and inclusion strategy?
- 3.3 Where a legitimate need or legal requirement to collect sex and gender data has been identified, it is essential that the option be made available for people to self-identify, wherever possible, in categories that go beyond the two categories of "female" and "male." One best practice is to permit persons to self-identify in an open text box format, wherever possible.
- 3.4 If data will be used in demographics and analysis, or to improve service delivery, a separate demographic question may be used to identify transgender/non-binary service users (e.g. What is your gender: _____, Would you like to self-identify as: transgender, non-binary, Two-Spirit, or

as a person with a history of sex/gender transition? Y/N) and this information should not be included on the individual's account or data profile.

4. Dress code

- 4.1 All persons are entitled to dress in accordance with their gender identity or gender expression. An individual's gender expression, and the fact that it may be different than a staff member's expectations around dress or grooming that may be common based on a particular gender identity, shall not be used as grounds to question a person's self-identified gender identity or remove the person from a washroom or change room.

5. Washrooms and change facilities

- 5.1 The City of Hamilton will make all efforts to ensure that persons can use washrooms with safety, privacy and dignity, regardless of their gender identity or gender expression.
- 5.2 All persons have the right to access washroom and change facilities based on their self-identified gender identity.
- 5.3 Where available, the City will provide an all-gender, single stall washroom/change room for use by any persons who desire it. The use of all-gender, single-stall washroom/change room could be an option that people may choose, but this option should not be imposed upon an individual because of the individual's gender identity.
- 5.4 If any person has a bona fide reason to request additional privacy but private change room facilities are unavailable, accommodation will be provided on an individual basis to address the individual's needs. This may include such things as providing access to an office or a restricted area; implementing a change room schedule; redesigning existing facilities; and creating a private area within a public area (i.e.: separating an area with a curtain).
- 5.5 Harassment of any person in a washroom/change room based on their gender identity or gender expression, including a challenge to the person's right to access the washroom/change room space because of their gender identity or gender expression, is unacceptable. If an individual engages in

persistent harassment staff may require the individual to leave the washroom/change room and use the alternative facilities.

- 5.6 All persons have the right to use City washroom and change room facilities without harassment, sexual harassment, voyeurism, and physical and sexual assault. In addition to any legal sanctions that these behaviours may result in, engaging in these behaviours would be grounds to remove a person from City facilities.

6. Support for Employees

- 6.1 The City's Human Rights, Access and Equity Office in Human Resources can be contacted to provide employees with information, resources and support as required to the provision of high quality services to all persons.
- 6.2 Should employees need assistance or guidance at any time in the implementation of this Protocol, they are advised to contact Human Rights, Access and Equity as soon as possible. Good faith and timely requests for assistance or guidance are encouraged if and when an employee is unclear about the application of the protocol in a particular situation, and an employee's timely request for assistance from the office will be taken into consideration should a complaint be made regarding the employee's handling of the situation.

Employee Guidelines:

1. Privacy and Confidentiality

- 1.1 All employees of the City of Hamilton are entitled to privacy and confidentiality. In accordance with Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and the Personal Health Information Protection Act (PHIPA), the City has a legal obligation to protect data gathered and to ensure that information collected remains secure and confidential.
- 1.2 Information must only be collected where there is a bona fide reason to do so.
- 1.3 Information pertaining to a transgender and gender non-conforming person's gender identity must remain confidential, unless the person provides consent for information to be released. For example, prior to the first day that a transitioning employee will be publically expressing their gender at work, the employee may provide consent to a Manager or a representative from Human Rights, Access and Equity to disclose some information to the employee's colleagues to confirm the City's support for the employee, increase understanding, and facilitate the transition.
- 1.4 A person's medical history, particularly as it relates to transitioning, as well as any information regarding their gender identity must remain confidential. Where information may be required for accommodation or to otherwise meet the needs of the person, only relevant information should be shared and be limited to only those individuals with a need to know who are directly involved in the process.
- 1.5 All employee information is to be kept in Human Resources in a secure filing location. Information must be securely housed and accessible only by those with a legitimate need to do so.
- 1.6 Disclosure of a transgender or gender non-conforming person's gender identity or the extent of their transition without their knowledge and consent is prohibited and considered to be a form of harassment and discrimination under the Ontario *Human Rights Code*.

2. Identification, Language, and Administrative Systems

- 2.1 Everyone has the right to define their own gender. Transgender persons should be recognized based on how they identify their gender, without reference to anatomy or whether their identity documents reflect their gender identity.
- 2.2 All persons must be referred to by their preferred name, gender and pronoun.
- 2.3 Employees have a right to update their administrative record wherever possible to match their gender identity should they wish to do so.
- 2.4 All City employees are expected to use inclusive language within the workplace and during interactions with the public. Examples of this include using gender neutral language when gender specific language is unnecessary, for example using “people” instead of “men and women,” “esteemed guests” instead of “ladies and gentlemen,” or “they” instead of “he” and “she.”

3. Collecting data on sex and gender

- 3.1 Data on sex and gender is often collected when there is little or no need to know in order to provide a product or service. Before collecting data on sex or gender, thought should be given as to whether there is a legitimate need or a legal requirement to solicit this type of data.
- 3.2 Where a legitimate need or legal requirement to collect sex and gender data has been identified, wherever it is possible the option should be made available for people to self-identify in categories that go beyond the two categories of “female” and “male.” The best practice is to allow employees to self-identity in an open text box.
- 3.3 If data will be used in demographics and analysis, or to improve service delivery, a separate demographic question may be used to identify transgender/non-binary service users (e.g. What is your gender: _____) Would you like to self-identify as: transgender, non-binary, Two-Spirit, or as a person with a history of sex/gender transition? Y/N). This information

should not be included on the individual's account or data profile, but used in the aggregate.

4. Dress code

- 4.1 All employees are entitled to dress in accordance with their gender identity or gender expression. If employees are required to wear uniforms, uniforms will be provided that reflects the employee's gender identity.

5. Washrooms and change facilities

- 5.1 The City of Hamilton will make all efforts to ensure that all employees can use washrooms with safety, privacy and dignity, regardless of their gender identity or gender expression.
- 5.2 All persons have the right to access washroom and change facilities based on their self-identified gender identity.
- 5.3 Where available, the City will provide an all-gender, single stall washroom/change room for use by any persons who desire it. The use of all-gender, single-stall washroom/change room should be an option that people may choose but should not be imposed upon an individual because of the individual's gender identity.
- 5.4 If any person has a bona fide reason to request additional privacy but private change room facilities are unavailable, accommodation will be provided on an individual basis to address the individual's needs. This may include such things as providing access to an office or a restricted area; implementing a change room schedule; redesigning existing facilities; and creating a private area within a public area (ie: separating an area with a curtain).
- 5.5 Harassment of any person in a washroom/change room based on their gender identity or gender expression, including a challenge to the person's right to access the washroom/change room space because of their gender identity or gender expression, is unacceptable. Any employee who engages in harassment will be subject to disciplinary action as outlined in the Harassment and Discrimination Prevention Policy and Personal Harassment Prevention Procedure.

- 5.6 All persons have the right to use City washroom and change room facilities without harassment, sexual harassment, voyeurism, and physical and sexual assault. In addition to any legal sanctions that these behaviours may result in, employees engaging in these behaviours are subject to disciplinary action as outlined in the Harassment and Discrimination Prevention Policy and Personal Harassment Prevention Procedure.

6. Employee Gender Transition

- 6.1 The City is supportive of employees who decide to transition. The City will provide appropriate support and accommodation to employees during their transition process upon an employee's request.
- 6.2 The City of Hamilton's Human Rights, Access and Equity Office will provide resources and support to employees beginning, and throughout, the transitioning process. Resources and supports will be determined through the collaborative development of an individualized gender transition accommodation plan.
- 6.3 Transitioning employees are entitled to express their gender identity and gender expression without fear of discrimination, harassment, or reprisal.
- 6.4 The City will work with the employee and the employee's union representative (as applicable) to develop an individualized workplace gender transition accommodation plan to identify and address accommodation steps that may be required in the workplace to support the employee's transition. This plan may include timelines and dates for when the employee will be addressed by their new name and pronoun; when employment records will be changed; when and how other employees will be informed of the change; and how management and the union will otherwise support the transitioning employee.

7. Support for Employees

- 7.1 The City's Human Rights, Access and Equity Office in Human Resources can provide employees with information, resources and support as required in order to provide high quality services to all persons and maintain an inclusive workplace environment.

- 7.2 Should employees need assistance or guidance at any time in the implementation of this Protocol, they are advised to contact Human Rights, Access and Equity as soon as possible.

Review Schedule

The Transgender and Gender Non-Conforming Protocol will be reviewed on an annual basis, in tandem with the Harassment and Discrimination Policy and the Equity and Inclusion Policy.

History

This protocol was approved by Council on XX-XX-XXXX

APPENDIX A: Glossary for understanding gender identity and expression

The definitions identified below are based primarily on the Ontario Human Rights Commission's (OHRC) Policy on Gender Identity and Gender Expression.

The City recognizes that there may be some contention around these definitions within various communities, but has adopted those from the OHRC for alignment and consistency. This list of definitions is not exhaustive, and is not intended to be a comprehensive educational review. Employees who would like more information are encouraged to consult the resources identified in Appendix B, or to contact Human Rights, Access & Equity Section of Human Resources.

Sex: the classification of people as male, female or intersex. Sex is usually assigned at birth and is based on an assessment of a person's reproductive systems, hormones, chromosomes and other physical characteristics.

Gender identity: each person's internal and individual experience of gender. It is a person's sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex.

For most people, their sex and gender identity align. For some, it does not. A person may be born male but identify as a woman, or born female but identify as a man. Other people may identify outside the categories of woman/man, or may see their gender identity as fluid and moving between different genders at different times in their life.

Gender expression: how a person publicly presents or expresses their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways people express their gender. Others perceive a person's gender through these attributes.

All people, regardless of their gender identity, have a gender expression and they may express it in any number of ways. For trans people, their chosen name, preferred pronoun and apparel are common ways they express their gender. People who are trans may also take medically supportive steps to align their body with their gender identity.

Trans or transgender: an umbrella term that describes people with diverse gender identities and gender expressions that do not conform to stereotypical ideas about what

it means to be a girl/woman or boy/man in society. “Trans” can mean transcending beyond, existing between, or crossing over the gender spectrum. It includes but is not limited to people who identify as transgender, transsexual, cross dressers or gender non-conforming (gender variant or gender queer).

“Trans” includes people whose gender identity is different from the gender associated with their birth-assigned sex. Trans people may or may not undergo medically supportive treatments, such as hormone therapy and a range of surgical procedures, to align their bodies with their internally felt gender identity.

People who have transitioned from one gender to another may simply identify as female or male. Others may also identify as trans, as a trans woman or a trans man. Some people may identify as trans and not use the labels “female” or “male.” Others may identify as existing between male and female or in different ways beyond the binary of male/female.

Trans people may identify their gender in many ways. There is no single or universal experience of what it means to be trans. As a result, different trans people face distinct forms of discrimination in society, and this may relate to whether they identify as male, female, a person with a trans history, a person in the process of transitioning, a trans man, trans woman, transsexual, or gender non-conforming.

Gender non-conforming/gender variant/gender queer:^[1] [2] individuals who do not follow gender stereotypes based on the sex they were assigned at birth. They may identify and express themselves as “feminine men” or “masculine women” or as androgynous, outside of the categories “boy/man” and “girl/woman.” People who are gender non-conforming may or may not identify as trans.

Trans man and trans woman: A person whose sex assigned at birth is “female” and identifies as a man may also identify as a trans man (female-to-male FTM). A person whose sex assigned at birth is “male” and identifies as a woman may also identify as a trans woman (male-to-female MTF).

Transitioning: refers to a host of activities that some trans people may pursue to affirm their gender identity. This may include changes to their name, sex designation, dress, the use of specific pronouns, and possibly medically supportive treatments such as hormone therapy, sex-reassignment surgery or other procedures. There is no checklist or average time for a transition process, and no universal goal or endpoint. Each person decides what meets their needs.

“Lived” gender identity: the gender a person internally feels (“gender identity” along the gender spectrum) and publicly expresses (“gender expression”) in their daily life including at work, while shopping or accessing other services, in their housing environment or in the broader community.

Sexual orientation and gender identity are different: sexual orientation describes human sexuality, from gay and lesbian to bisexual and heterosexual orientations.^[3] A person’s gender identity is fundamentally different from and not related to their sexual orientation. Because a person identifies as trans does not predict or reveal anything about their sexual orientation. A trans person may identify as gay, lesbian, queer, straight or bisexual, just as people who do not identify as trans.

Two-Spirit: a term used by Aboriginal people to describe from a cultural perspective people who are gay, lesbian, bisexual, trans or intersex. It is used to capture a concept that exists in many different Indigenous cultures and languages. For some, the term Two-Spirit describes a societal and spiritual role that people played within traditional societies, such as: mediators, keepers of certain ceremonies, transcending accepted roles of men and women, and filling a role as an established middle gender.^[4]

Cisgender and cisnormativity: most people are “cisgender” (not trans); that is, their gender identity is in line with or “matches” the sex they were assigned at birth. Cisnormativity (“cis” meaning “the same as”) refers to the commonplace assumption that all people are cisgender and that everyone accepts this as “the norm.” The term is used to describe prejudice against trans people that is less overt or direct and more widespread or systemic in society, organizations and institutions. This form of systemic prejudice may even be unintentional and unrecognized by the people or organizations responsible.

Transphobia: the aversion to, fear or hatred or intolerance of trans people and communities. Like other prejudices, it is based on stereotypes and misconceptions that are used to justify discrimination, harassment and violence toward trans people.

[1] Gender queer: “those who identify their gender outside of traditional gender categories and may not identify as either trans men or trans women. Some gender queer individuals pursue medical transition options and some do not.” Pyne, *supra* note 34, at 9.

[2] While the OHRC combines the terms Gender non-conforming/gender variant/gender queer in their definitions, the City of Hamilton recognizes that these terms are unique, different and not synonymous.

[3] Sexual orientation is also a protected ground under the *Code*

[4] 2-Spirited People of the 1st Nations, *Our Relatives Said: A Wise Practices Guide* (2008) online: 2-Spirited People of the 1st Nations, www.2spirits.com.

APPENDIX B: Additional Resources

City of Hamilton
Human Resources Division
Human Rights, Access & Equity Section
905.546.2424 ext. 8080 or 6134

Guiding Legislation:

The Ontario *Human Rights Code*
<https://www.ontario.ca/laws/statute/90h19>

Canadian Charter of Rights and Freedoms
<http://laws-lois.justice.gc.ca/eng/const/page-15.html>

For Further Information on Gender Identity and Gender Expression:

Policy on Preventing Discrimination Because of Gender Identity and Gender Expression
<http://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>

Questions and Answers about Gender Identity and Pronouns
<http://www.ohrc.on.ca/en/questions-and-answers-about-gender-identity-and-pronouns>

Creating Authentic Spaces: A Gender Identity and Gender Expression Toolkit to Support the Implementation of Institutional and Social Change
<http://www.the519.org/news/gender-expression-toolkit>