

1 FAIR EMPLOYMENT AND HOUSING COUNCIL MEETING  
2 VII - PUBLIC HEARING: PROPOSED REGULATIONS REGARDING  
3 TRANSGENDER IDENTITY AND EXPRESSION

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
LOS ANGELES, CALIFORNIA  
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REPORTED BY: ANNA MARIE SPINELLI, CSR NO. 11805

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<p>1 FAIR EMPLOYMENT AND HOUSING COUNCIL MEETING 2 VII - PUBLIC HEARING: PROPOSED REGULATIONS REGARDING 3 TRANSGENDER IDENTITY AND EXPRESSION 4 --- 5 6 7 8 9 10 11 12 13 Fair Employment and Housing Council Public 14 Hearing taken at Ronald Reagan State Building, 300 South 15 Spring Street, Auditorium (First Floor), Los Angeles, 16 California, commencing at 10:25 a.m., Monday, June 27, 17 2016, before Anna Marie Spinelli, CSR No. 11805. 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 2</p>	<p>1 LOS ANGELES, CALIFORNIA; MONDAY, JUNE 27, 2016, 2 10:25 A.M. 3 --- 4 5 6 7 MR. MANDELBAUM: Okay. Great. Well, we are on 8 the record on Monday June 27th, 2016. We are here at 9 the Ronald Reagan State Building located at 300 South 10 Spring Street in California. My name is Chaya 11 Mandelbaum Chairperson of the Fair Employment and 12 Housing Council. 13 Joining me today are members of the Fair 14 Employment Housing Council members Dale PEREZ, Andrew 15 Schneiderman, Patricia Perez, Dara Schur and Tim 16 Iglesias as well as Chief Deputy Director of the 17 Department of Fair Employment and Housing Joan Keegan. 18 Even though we have made initial introductions 19 let me, again, welcome you to this hearing. The purpose 20 of this hearing is to receive public comments regarding 21 issuance of the Amendment to the Fair Employment and 22 Housing Council regulations regarding Transgender 23 Identity and Expression that are being proposed by the 24 Fair Employment and Housing Council. 25 This rule-making action clarifies, makes</p> <p style="text-align: right;">Page 4</p>
<p>1 APPEARANCES: 2 3 4 FAIR EMPLOYMENT AND HOUSING COUNCIL: 5 Chaya Mandelbaum, Chairperson 6 Dale Brodsky, Councilmember 7 Dara Schur, Councilmember 8 Joan Keegan, Chief Deputy 9 Patrica Perez, Councilmember 10 Andy Schneiderman, Councilmember 11 Tim Iglesias, Councilmember 12 13 DEPARTMENT OF FAIR EMPLOYMENT &amp; HOUSING 14 Brian Sperber, Regulatory/Legislative Counsel 15 Dispute Resolution Division 16 320 West 4th Street 17 10th Floor 18 Los Angeles, California 90013 19 (213) 337-4495 20 21 DEPARTMENT OF FAIR EMPLOYMENT &amp; HOUSING 22 Paul Kennedy 23 Business Service Office 24 2218 Kausen Drive 25 Suite 100 Elk Grove, California 95758 (916) 478-7251</p> <p style="text-align: right;">Page 3</p>	<p>1 specific and supplements existing state regulations 2 interpreting FEHA set forth in Government Code Section 3 12900 et seq. 4 As it relates to employment the FEHA prohibits 5 harassment and discrimination because of race, religious 6 creed, color, national origin, ancestry, physical 7 disability, mental disability, medical condition, 8 genetic information, marital status, sex, gender, gender 9 identity, gender expression, age, sexual orientation and 10 military or veteran status. 11 The proposed regulations are slated to appear 12 in the California Code of Regulations Title II, Sections 13 11030, 11031 and 11034. Copies of the proposed 14 amendment to the FEHA Regulations are available on the 15 table outside of the conference room and are also on the 16 website to those participating in public. 17 The regulations themselves are reflected in 18 Attachment D to the materials and the Notice of Initial 19 Statement of Reasons are reflected in Attachments B and 20 C respectively. 21 The text of the council's proposed regulations 22 are also available on the web page. The Council is 23 holding this hearing as part of its formal rule making 24 process. We noticed this public comment hearing more 25 than 45 days ago in California Regulatory Notice</p> <p style="text-align: right;">Page 5</p>

<p>1 Register published on May 13, 2016 and also via e-mail 2 sent to more than 7,500 individuals and state holders 3 and also on the Council's web page. 4 Pursuant to that Notice we are taking testimony 5 here today on the proposed amendments and we also will 6 accept written comments on the proposed regulations 7 until 5 p.m. today. You make e-mail written comments to 8 the Council at FEHcouncil@dfeh.ca.gov. 9 If you prefer you can mail them instead to the 10 Council in care of Brian Sperber at the DFEH's Los 11 Angeles office, located at 320 West Fourth Street, 10th 12 Floor, Los Angeles, California 90013. 13 If you brought written comments today and do 14 not plan to separately submit them via e-mail or mail, 15 please give a copy to Brian Sperber. If you have not 16 brought written comments we would appreciate it if you 17 could provide us with a written copy by 5 p.m. today. 18 Anyone who testifies here today or submits 19 written comments will receive a copy of any changes or 20 amendments the Council makes to the proposed amendments 21 of FEHA Regulations as well anyone who makes such a 22 request. 23 Also, anyone who testifies or submits written 24 comments will have a 15-day period within which to make 25 written comments if any further changes to their</p> <p style="text-align: right;">Page 6</p>	<p>1 Unless anyone has any questions we are ready to 2 begin. I'll turn it briefly over to Council members 3 Perez and PEREZ and any preliminary comments or should 4 we move right into the testimony. 5 MS. BRODSKY: Well, do you want us to just go 6 through and summarize what we added to the regulations 7 or do you think that that's sufficiently taken care of 8 just in the draft itself? 9 MR. MANDELBAUM: Whichever way you prefer. 10 MS. BRODSKY: I mean, you know, we could -- I 11 don't know how much, you know, maybe we can jump into it 12 and go through. But there are some -- I mean, if just 13 for those in the audience and those looking at the 14 draft, obviously, the changes are those that are 15 underlined. 16 And so the real -- what you'll see is our 17 effort to include transitioning explicitly in the 18 regulations and then to make language changes to reflect 19 that there is not necessarily a binary -- it is not a 20 binary male/female breakdown so we tried to adjust the 21 language accordingly there. 22 And we, then, talk about specific working 23 conditions including the accessibility to the facilities 24 employer facilities including restrooms, dressing rooms, 25 locker rooms that sort of thing.</p> <p style="text-align: right;">Page 8</p>
<p>1 proposed amendment to the FEHA Regulations made by the 2 Council during its rule-making process. 3 The Council will consider each comment made 4 here today as well as all written comments received. 5 The Council will respond to each of the written comments 6 in writing in its final statement of reasons which will 7 become part of the Council's rule-making record. 8 The hearing is being transcribed by a Certified 9 Court Reporter and the transcript of the hearing as well 10 as all written comments received here today will also be 11 part of Council's official rule-making record. 12 Because this hearing is being transcribed it is 13 critical that anyone speaking do so clearly and that 14 only one person speak at a time. You will not be sworn 15 in when you testify, however, we do ask that you come to 16 the front of the room and speak into the microphone so 17 that the court reporter can take down your testimony 18 today. 19 Please begin by stating and spelling your name 20 and stating your affiliation. Also, if you are 21 commenting on a specific regulation please identify the 22 section and subsection of the regulation so that we may 23 refer to it as you speak. We will hear testimony until 24 all those wishing to testify today have had an 25 opportunity to do so.</p> <p style="text-align: right;">Page 7</p>	<p>1 We also address the issue of having -- making 2 accommodations when that becomes -- or it's not really 3 accommodations but also in working conditions. So this 4 is not staying away from the explicit language of 5 accommodations but that doesn't really play here. 6 What we are talking about is altering the 7 conditions so that working conditions do provide equal 8 opportunity and equal working conditions. And then, we 9 talk about there's a provision on employers the 10 obligation of employers to recognize individuals' own 11 names and pronouns that people want to use. 12 And to make it clear that an employer who is 13 requested to use a particular name or pronoun and 14 doesn't do that may be subject to liability under the 15 Act. And then, basically, as an overall concept is to 16 look at sex and sex discrimination under the Act as an 17 inclusive umbrella. So I think that summarizes where we 18 are at and then the specific comments will be useful. 19 MR. MANDELBAUM: Great. Well, we are ready to 20 solicit anyone wishing to testify in this public 21 hearing. Please come to the front of the room and speak 22 into the microphone at the podium. 23 THE PUBLIC: Good morning. My name is Madison 24 Fairchild, M-a-d-i-s-o-n; last name F-a-i-r-c-h-i-l-d. 25 I introduced myself earlier this morning. I am also a</p> <p style="text-align: right;">Page 9</p>

<p>1 member of the transgender community myself as a 2 trans-woman of color and now I am a practicing attorney 3 recently licensed then in regards to the L.A. Attorney 4 Consortium, I'm starting my own legal practice this year 5 in employment law and immigration. 6 Specifically focused on helping those with 7 lower income brackets and middle income brackets with 8 another focus on those in the ineligible community. So, 9 I'm here to really endorse the changes that the Council 10 has suggested in order to come in alignment with other 11 state and federal laws regarding the rights of 12 transgender workers and the responsibilities that 13 employers have. 14 These changes are also welcome because they 15 provide clarity on the protection transgender community 16 members have, members can expect as we do expense 17 litigation such as this. I also thank you for your 18 forward lengthy application to move away what is quickly 19 coming a no longer viable way to think of gender as 20 belonging to a binary system. 21 The changes put forth in FEHA represent more 22 than safety concerns in access to restrooms or any other 23 facilities in the workplace. These changes will allow 24 for possibly a growth in our state's economy. Our 25 state's economy is dependent on the level of employment Page 10</p>	<p>1 Gender expression is a concern to me because 2 that is defined earlier on in FEHA under Section 11030, 3 Subsection A, gender expression means a person's gender 4 related appearance. Appearance is not regulated only to 5 our investment, our apparel, our hairstyles and makeup 6 if that is a factor, but it also comes into play with 7 our body languages and our appearance. 8 So given that, now with the way it is stated 9 the employer can ask and require the employee to show 10 proof of documentation of your gender body modifications 11 to adjust to your expression of gender. 12 MS. BRODSKY: But look at C on the page before 13 2C, transitioning employees shall not be required to 14 undergo, or provide proof of any particular medical 15 treatment to use facilities designated for use by a 16 particular gender. 17 PUBLIC SPEAKER: Exactly. I agree. 18 MS. BRODSKY: Because that's already there. 19 PUBLIC SPEAKER: So I'm just wondering would 20 that present a conflict then because now we're adding 21 this less portion to say, okay, notwithstanding what's 22 before now do you have a right to ask and require. 23 MS. BRODSKY: I'm not seeing where you're 24 looking. 25 MR. MANDELBAUM: Pat, I think the ambiguity or Page 12</p>
<p>1 and our business access to safe workers' conditions have 2 encouraged and welcomed diversities by no means of 3 hostility and harassment so that employees can reach 4 their full potential productive value for the business. 5 In turn this increases of value in business to 6 our own state's economy given that the changes are not 7 one side benefits to the members of the community but 8 the benefit of the state's economy as a whole. That 9 being said I would like to move forward discussion on 10 two points, the first one being Section 11030, 11 Subsection F the definition of transitioning. 12 For that one there I would like to suggest that 13 we add something to the effect that states that there is 14 no fine amount of time that applies to the process of 15 transitioning. 16 My second area of discussion is regards to 17 Section 11034, Subsection I, Number One. In that 18 section my concern is where there is the exception as 19 when it comes up after and less specifically to the 20 portion that now when an employee initiates 21 communication with the employer regarding adjustment to 22 employee's working condition. 23 Now the employer can automatically require 24 proof and documentation of the person's gender identify 25 or gender expression. Page 11</p>	<p>1 what I understand I-1 to mean is that just it's not 2 unlawful if they -- well, I guess, it's independently 3 unlawful irrespective if you meet the BFOQ the violation 4 to act. But I understand the ambiguity and I don't 5 think that's the intent. 6 MS. SCHUR: It's just the last portion of that 7 that you are concerned about; is that correct. 8 MS. BRODSKY: Or the first part. 9 PUBLIC SPEAKER: Right. Well, I'm also 10 concerned about the portion BFOQ, but I would first like 11 to just bring up the discussion about once the employee 12 comes to the employer and opens up this window of 13 discussion that now while we have Subsection C under 14 11034, Subsection EC, whether or not allowed to require 15 any proof of gender modification in appearance 16 medically. Now, it also says that later on in here that 17 they can't. 18 MS. PEREZ: It might be poorly worded and, 19 certainly, we can look at it just for the intent of that 20 purpose. The reason that we put language in there was 21 very very specific and intentional. 22 We wanted to make sure to make it clear to the 23 employer that they didn't have a right to demand or 24 require that proof from a public policy kind of, you 25 know, in your life perspective, certainly, things that Page 13</p>

<p>1 we know as well is that employers can be shut down in 2 communication especially when they feel uncomfortable 3 about how to have this discussion in open and in a 4 respectful way. 5 So the intent of that language isn't in any way 6 to interfere with the contribution in the earlier 7 section, it is simply to say to employers don't just 8 ignore someone's request. We certainly have what we 9 would expect is to have an on-going dialogue with the 10 employee. That's the intent of it. I think when you 11 take a look at it and make sure that it's worded in 12 whether it meets that. 13 PUBLIC SPEAKER: Yes, definitely it's more of 14 the wording. 15 MS. BRODSKY: I think the word "unless" is 16 maybe the focal point where it is a little confusing. 17 PUBLIC SPEAKER: Well, I understood that you 18 were taking the phrasing from the Washington D.C. and 19 the Washington D.C. code also does not distinguish 20 anything with regards to gender identify, gender 21 expression. 22 It only simply states gender so that was my 23 concern immediately with the gender expression and that 24 it would conflict with what was said earlier where the 25 employer cannot require any documentation of proof of Page 14</p>	<p>1 as with regards to the requirement. 2 Because often times it conflicted with Section 3 11034, Subsection H-1 where the employer cannot require 4 the employee to state that they are transgender. 5 So right here we're stating that the employer 6 cannot require proof of the person's gender so we 7 already understand that gender is not a binary system, 8 but it is going to encompass other facts, you know, 9 someone who transgenders or transitions here. 10 MS. PEREZ: I think it might just be easier so 11 we can work on this at the subcommittee level to maybe 12 make this wording not offensive and so the intent we are 13 having here, which I personally think it is vital, 14 because what I don't want is to give employers an 15 opportunity to say the reason we didn't talk to you and 16 the reason we never responded to a request for a name 17 change or for anything else is because we're prohibited 18 from doing that. 19 I don't want to give -- I want to make sure 20 that employers have that open discussion so maybe it is, 21 you know, ending a sentence before what you object to in 22 having a separate section or separate sentence that says 23 nothing in, you know, the Act prohibits open dialogue, 24 you know, open discussion and stuff like that. 25 PUBLIC SPEAKER: I think that would be open Page 16</p>
<p>1 that expression through body modification. 2 MS. PEREZ: That was the intent, though, that I 3 think makes sense. 4 PUBLIC SPEAKER: Yes, I totally understand now. 5 We want to welcome that open dialogue so that can be 6 discussed but at the same time I don't think we want to 7 burden the employee to now all of a sudden having to 8 show especially for the proof isn't finite it is not 9 defined. 10 What level of proof is the employer going to 11 require at this point? Do they need my birth 12 certificate to also be changed where I may come from a 13 different country where it is not going to be possible 14 to change that birth certificate or are they going to 15 require medical proof where maybe the person who is 16 transitioning is not going to have certain procedures or 17 elects not to or can't afford procedures and therefore 18 they can not provide us with that. 19 MR. IGLESIAS: I think we're agreeing that the 20 substance privilege you're saying is the alternative 21 language, is that what you are saying? 22 PUBLIC SPEAKER: I was trying to come up with 23 alternative language, but I just couldn't find any way 24 to change it without basically just striking it all out 25 so that it wouldn't conflict with what is stated before Page 15</p>	<p>1 discussion open dialogue. Right. 2 MR. MANDELBAUM: We welcome your comments but 3 so that other people can hear them, perhaps, you can 4 come up afterwards and let people participate and the 5 public can hear you. 6 MS. PEREZ: And if you do have any specific 7 suggestions we certainly welcome them. 8 PUBLIC SPEAKER: Certainly. That is what I was 9 leaning towards was having another subsection to that 10 that would get to the intent of what the Council wants 11 because I do listen to your meetings and I heard you say 12 that specifically that you wanted to open up the 13 dialogue between employer and employee but nothing to 14 have it shut down discussion so I understand that and I 15 am happy to hear that from you. 16 MS. BRODSKY: Okay. 17 PUBLIC SPEAKER: My next level of concern is 18 because it kind of opens itself up again with the once 19 the employer has proven that they have a bonafide 20 occupational qualification, while we have to look at 21 caselaw to find out when employers have that burden. 22 Caselaw now will be construed those situations 23 pertaining, for example, in cases of safety, privacy 24 concerns and the essence of the business. 25 So, for example, under privacy you have cases Page 17</p>

<p>1 where the wet nurse the employer can, you know, put out 2 announcements that this is only for female wet nurses 3 because a patient might be elderly female patients and 4 there is that level of privacy involved. 5 Also, there was bathroom attendants and locker 6 room attendants. So for the male's locker room or the 7 female's locker room you are going to have an employee 8 who associates with that gender. So, in those cases it 9 is okay for the employer to put up a job announcement 10 saying male bathroom attendant or the male's locker room 11 which I totally understand. 12 But now with this once again we are opening it 13 up to say, okay, well, if you have that kind of 14 employment then you are allowed to require proof of and 15 inquire about a person's gender so that would bring 16 forth a person's transgender that type of question which 17 was already previously not allowed under 11034. 18 MS. BRODSKY: I think one way that we might be 19 able to deal with that and I'm just looking to go back 20 to the regulations in 11010 do explain what is meant by 21 BFOQ, I think, and I'm just looking to see that that 22 maybe a way to cross reference. 23 PUBLIC SPEAKER: So, how would you like to 24 cross-reference this to state. 25 MS. BRODSKY: To define which would be</p> <p style="text-align: right;">Page 18</p>	<p>1 issues. I don't know it maybe redundant or not, it may 2 not be necessary. It might help. 3 MS. PEREZ: I think that it might make the most 4 sense I think what you're suggesting that we end the 5 sentence after expression or condition of employment 6 period. And then maybe have two subsections one that 7 better defines BFOQ and the other one that says 8 something along the lines of, you know, there's no 9 prohibition against open dialogue. 10 PUBLIC SPEAKER: Right. 11 MS. PEREZ: -- in order to address those 12 issues. 13 PUBLIC SPEAKER: Without giving it up to the 14 employer that it be required -- 15 MS. PEREZ: That is the subsection would then 16 be the statement which is that it unlawful to require 17 this stands alone. 18 PUBLIC SPEAKER: Yes. Thank you. 19 MS. PEREZ: Okay. Thank you. 20 MR. SCHNEIDERMAN: If we can go back to the 21 first comment. 22 PUBLIC SPEAKER: Yes. 23 MR. SCHNEIDERMAN: Where you wanted to talk 24 about applying others expressly there is no limited 25 amount of time of body transition.</p> <p style="text-align: right;">Page 20</p>
<p>1 cross-reference and faculty affirmative defenses that 2 generally apply to this BFOQ and adverse impact. 3 PUBLIC SPEAKER: Right. 4 MS. BRODSKY: So like 11010A defines BFOQ where 5 an employer or other covered entity in practice on the 6 State is completely entirely upon individuals on the 7 basis of the Act and gives an example. The employer or 8 other covered entity must prove the practice is 9 justified because all or substantially all are included 10 individuals are unable to safely and personally perform 11 a job in question because the actual business operation 12 would otherwise be undermined. 13 So that would be one way to go or, at least, to 14 of cross reference that. 15 PUBLIC SPEAKER: Right. So then similarly -- 16 MS. BRODSKY: Although, that it doesn't 17 specifically mention privacy, but it doesn't exclude it. 18 PUBLIC SPEAKER: Right. So you would then 19 suggest a Subsection to Number One, then? That said 20 offenses BFOQ would still apply? 21 MS. BRODSKY: What I'm thinking might I'm not 22 wetted to this so in addition to the sentences that BFOQ 23 mentioned in 11031 I think we should cross-reference 24 both A through C and then 11010. 25 It might help with concerns here for BFOQ</p> <p style="text-align: right;">Page 19</p>	<p>1 PUBLIC SPEAKER: To transitioning. 2 MR. SCHNEIDERMAN: Yes. Can you explain why 3 that is important? 4 PUBLIC SPEAKER: Because transitioning should 5 never be required to have and complain some people are 6 in a constant fuss so they are in a constant stage of 7 transitioning and I think that lends itself to explain 8 that we are no longer seeing gender on a binary system 9 it's more fluid and constantly in motion and so that 10 helps us transition. 11 MS. BRODSKY: I think we tried to do that by 12 not having a start and stopping point but to go through 13 to begin living as which I think we tried to come up 14 with that that captured the process because it is a 15 process here. It doesn't have a starting date and an 16 ending date necessarily. Do you think that doesn't 17 attach that? 18 PUBLIC SPEAKER: Well, my concern came up 19 originally with Section 11034. Here we go 11034, 20 Subsection EC, where it used the term itself 21 Transitioning employee should not be required to undergo 22 or provide proof of any particular medical treatment to 23 use facilities that are made to be used by a particular 24 gender. 25 My concern there was that transitioning maybe</p> <p style="text-align: right;">Page 21</p>

1 seen separate and apart from someone who has already  
2 fully transitioned, for example, you know, the  
3 transwoman working at an establishment.  
4 She is working without anybody never even  
5 knowing that she is a transwoman but then later  
6 throughout her career she is outed against her wishes  
7 because now it is understood that she is a transgender  
8 woman she is no longer in the transitioning process for  
9 her, herself, as an individual but she is already  
10 reached her end point.  
11 So because of the way it is written with  
12 transitioning this wouldn't necessarily apply to  
13 advocate for her to say that now you cannot ask her to  
14 require any proof but if we just simply add that  
15 transitioning is not a finite amount of time then now  
16 this would also apply to her.  
17 MS. BRODSKY: And you don't think that is  
18 accomplished in F of 11030F of the definition of  
19 transitioning?  
20 PUBLIC SPEAKER: No. Because it kind of  
21 alludes to that it is a process that one would express  
22 there is an end point to it.  
23 MS. BRODSKY: Well, we don't ever say there is  
24 an end point. I mean, go through to beginning. Okay.  
25 MS. PEREZ: I think under your example I

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1 understand your concern about the issue of transitioning  
2 that employees as described will still fully be  
3 protected because transgender is protected.  
4 PUBLIC SPEAKER: Transgender, right.  
5 MS. PEREZ: So they would still be fully  
6 protected but I appreciate your concern about making  
7 sure there is no content that there is a starting and  
8 end date so we need to go through it and see if we can  
9 revisit that again. But I appreciate the clarification  
10 on that.  
11 MS. BRODSKY: I think we were more concerned  
12 about the other way that it's a person in process we  
13 want to make sure that that person is protected as  
14 well --  
15 PUBLIC SPEAKER: Right.  
16 MS. BRODSKY: -- for someone who has already  
17 transitioned.  
18 PUBLIC SPEAKER: So there is no amount of time.  
19 It's not open and closed. It's, you know, gender  
20 transition.  
21 MR. IGLESIAS: It maybe, I don't know, that we  
22 can go back and add to it. It is possible to add to  
23 that there is no limit. I think that the language goes  
24 through does suggest a completion point so in that  
25 current language there is a little bit of an implied

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1 notion that there is one.  
2 PUBLIC SPEAKER: Because if you are going  
3 through the process you're eventually going to get to  
4 the end of the process.  
5 MS. BRODSKY: I think we were using that word  
6 unartfully. I think we it was to undergo but we didn't  
7 want -- we also wanted to be careful that someone didn't  
8 look at the word "undergo" as undergoing some medical  
9 treatment which we are saying, you know, we don't want  
10 you looking for a way to express that without -- you  
11 know, which is why it is a little awkward because there  
12 are two provisionals to go through and to begin -- but  
13 maybe we can come up with something more.  
14 PUBLIC SPEAKER: When one goes through  
15 something and expects there to be an end point so we'd  
16 like to make sure that it's understood that there maybe  
17 not be a definite amount of time to result in an end  
18 point for anyone in particular.  
19 MS. PEREZ: Would your concerns be addressed if  
20 the language was not -- it's my concern about saying  
21 something like there is no finite amount of time I would  
22 actually have the opposite concern of what you are  
23 saying some people do reach an end point and I wouldn't  
24 want there to be a misconception as every trans-employee  
25 is always going to have to reach.

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1 So I'm curious if there's something in between  
2 that would cover your concerns that there might be  
3 something like just a little more -- what is the word,  
4 something along the lines of not necessarily, you  
5 know --  
6 PUBLIC SPEAKER: There would maybe not be.  
7 MS. PEREZ: -- you know, everyone's process is  
8 the same.  
9 PUBLIC SPEAKER: Right. Right. There may not  
10 be a finite amount of time that applies to the process  
11 in particular.  
12 MS. PEREZ: That will still address your  
13 concerns. Do you understand what my concern would be --  
14 PUBLIC SPEAKER: Yeah. No, lock it out for  
15 anybody.  
16 MS. PEREZ: -- right? Yeah.  
17 MR. IGLESIAS: One possibility would be to  
18 substitute the word "choose" or "go through" so it would  
19 be transitioning the process some transgender people  
20 choose to begin living as and then doesn't say anything.  
21 MS. BRODSKY: I don't know.  
22 PUBLIC SPEAKER: Well, yeah. Because I mean  
23 you start to remove the embedded assumption that there  
24 is a process with a start and finish. That sounds good.  
25 Okay. Thank you.

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1 MS. PEREZ: Thank you so much.  
2 MS. BRODSKY: Thank you.  
3 MR. MANDELBAUM: Thank you very much.  
4 PUBLIC SPEAKER: Hi, everyone. So just a  
5 couple of notes on the discussion we just had.  
6 MR. MANDELBAUM: Can you start just by spelling  
7 your name.  
8 PUBLIC SPEAKER: So my name is Drian Juarez.  
9 First name D-r-i-a-n; last name, J-u-a-r-e-z.  
10 And, once again, I'm a Program Manager with the  
11 Los Angeles LGP Center, Legal Services Department where  
12 I manage the transgender economic empowerment project.  
13 It is an employment program that's focused on helping  
14 trans-people locate friendly employers, transition on  
15 the job or advocate for their rights and their jobs.  
16 So, these regulations are really vital to the work that  
17 I've been doing with the community.  
18 I think what might be really helpful is if we  
19 can have sections in here that verify the intent of the  
20 language because I don't see any trans-people on this  
21 panel.  
22 And so, I think it trans-people have questions  
23 about the language nontrans-people just gender people  
24 will definitely have questions about this language.  
25 And so I think clarifying the intent might be

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1 something that's really really important for employers  
2 who are going to look at those regulations so that is  
3 something to consider.  
4 Also, I would consider working with the  
5 trans-community. I think often times we experience that  
6 -- our experience is that regulations laws happen to us  
7 instead of including us. And so, I would advocate that  
8 you invite Madison, myself, community members to review  
9 these with you and help you look at the ways that these  
10 can be problematic for employers or might not be as  
11 clear for employers.  
12 And so, you know, you have resources here that  
13 you can utilize.  
14 MR. MANDELBAUM: And just on that point, we  
15 certainly actively solicit the feedback all of meetings  
16 have to be in public so the other Council members other  
17 than the subcommittee even this is our opportunity to  
18 examine it. So, we encourage you to keep coming to  
19 meetings, writing letters, it is just because of the  
20 public meeting and some of the logistics this is the  
21 avenue by which we can solicit this feedback.  
22 PUBLIC SPEAKER: So now back to my little spiel  
23 here. So, again, I want to say thank you. Thank you  
24 for the proposed regulations on transgender identify and  
25 expression.

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1 Again, my name is Drian Juarez and I'm a proud  
2 transgender woman. I'm also a program manager in charge  
3 of the transgender economic empowerment project. TEEP  
4 as we call it for short is the first and longest running  
5 transgender employment program in Los Angeles.  
6 Transgender people are experiencing an epidemic of  
7 violence.  
8 Unemployment rates are twice the national  
9 average in our in community and 55 percent of us lose  
10 jobs when we are either out or identified as trans in  
11 the workplace.  
12 The regulations we're setting forth today are  
13 really saving lives and transforming lives. I, myself,  
14 was forced into the street economy and do stress work  
15 due to workplace discrimination. I lost my job. Even  
16 though I was an immigrant I did all the things we're  
17 supposed to do at college, I graduated high school, but  
18 still when I went to transition I was not allowed to and  
19 had no support from my employer or my insurance  
20 provider.  
21 In 2005 I was shot in the face and I have a  
22 glass eye after experiencing a hate. Since that time, I  
23 have worked with hundreds and hundreds of transgender  
24 people whose lives have been decimated due to workplace  
25 discrimination.

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1 I am privileged to be here with you today to be  
2 able to speak about these things because many in our  
3 community and many of my friends have died due to  
4 discrimination in the world and it is on their behalf  
5 that I'm here today to say thank you.  
6 Thank you for keeping our community safe.  
7 Thank you for making diversity a priority within hiring  
8 practices and thank you for helping everyone live  
9 authentic lives and prosper economically.  
10 This is the beginning of that change and these  
11 discussions are sometimes not straight forward sometimes  
12 they are difficult, sometimes they are very nuanced.  
13 But what you are doing here today by having these  
14 discussions is modelling what this can look like for  
15 other cities and other municipalities.  
16 So thank you so much. I really, from the  
17 bottom of my heart, just want to say thank you for  
18 including trans-people.  
19 MR. MANDELBAUM: Thank you for your comments.  
20 PUBLIC SPEAKER: Good morning. As I said  
21 earlier, my name is Melissa Petrofsky. I am with the  
22 Petrofsky Law Firm in Irvine, California and today I am  
23 here on behalf of the California Employment Lawyers  
24 Associations, Fair Employment Housing Council  
25 Regulations Committee.

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<p>1 As you know our organization is made up of 2 attorneys who primarily represent employees throughout 3 the State of California. The Committee has had the 4 opportunity to review proposed regulations regarding 5 transgender identity and expression. First let me say 6 we applaud the effort to bring clarity to such an 7 important and timely topic.</p> <p>8 Such transparency is important not only to the 9 California employees that we represent but also the 10 employers who maybe struggling to figure out how to 11 comply with the codes.</p> <p>12 In the same vain we believe that some of the 13 proposed regulations can benefit from a little bit of 14 clarification or I could I submit our written comments 15 by the deadline this evening, but in the meantime I am 16 going to address a few of the things.</p> <p>17 It's, basically, almost the same regulations 18 that we've already discussed here today the first one 19 being 11030F. I understand where the definition came 20 from it is basically the same definition that was kind 21 of pulled from a lot of sources out there in regards to 22 the federal governments and state governments.</p> <p>23 But the issue that we have with it is that a 24 couple of the phrasing was a little too vague and a 25 little limiting.</p> <p style="text-align: right;">Page 30</p>	<p>1 I know with regulations you don't want to get 2 too wordy with these things and we recognize that. But 3 I think with this particular definition it's so 4 important and so pivotal to what we are trying to do 5 here that it warrants kind of a longer definition.</p> <p>6 And so our definition will be in our papers but 7 just so that I have it here for your listening pleasure. 8 We drafted a proposal that states "Transitioning is a 9 multi-step process of unlimited duration which 10 transgender people take steps to change their sexual 11 identify, gender expression, gender presentations or 12 gender identity.</p> <p>13 The process of transitioning differs between 14 individuals which include but is not limited to 15 expression of personal choice to transition, expression 16 of interest in changing gender or intent to change 17 gender, presentation as a different sex, changing of 18 appearance, changing of name self-identifying pronouns, 19 change of legal gender or legal documents, adoption, 20 mannerisms perceived that's consistent with a particular 21 gender identify, change in voice, change of bathroom 22 and/or facility usage that aligns gender expression or 23 identity, participation in gender-specific sports or 24 recreational activities, hormonal therapy, sex 25 reassignment surgery, and/or other medical treatment or</p> <p style="text-align: right;">Page 32</p>
<p>1 We also had an issue with not having a phrase 2 similar to the indefinite period of time and our 3 proposal will also have like an inclusion of that form 4 in there because our members had come up with kind of 5 the some concerns about making sure that it's very clear 6 that there is no definite period of time for 7 transitioning.</p> <p>8 And so, you know, I looked at we looked at the 9 EEOC kind of to determine if they had a really good 10 definition and they, basically, I think relied a lot on 11 the definitions from the Office of Personal Management 12 as well as the DOL.</p> <p>13 And some of the issues that we had with the 14 definition itself is that it creates almost like a 15 finite list of what transitioning means because there is 16 no language in there at all included but not limited to 17 which basically states that you may or may not involve 18 like reassignment surgery and stuff like that.</p> <p>19 So we actually came up with a larger definition 20 to kind of explain the transition process based off of 21 sources we found from the OPM from land to legals, also, 22 Wikipedia actually was a great source for information. 23 It was actually probably the best thing out there, I was 24 very shock, and so it came up with more of an inclusive 25 list of what that could mean to a lot of people.</p> <p style="text-align: right;">Page 31</p>	<p>1 procedures. A change in general maybe part-time or 2 involve changes in some gender expression and not in 3 others."</p> <p>4 So that is our proposed language just to make 5 it clearer, I think it is really important. I think 6 that particular definition could mean a lot to a lot of 7 people.</p> <p>8 MS. BRODSKY: In your written comments do you 9 have the authority on which you or the sources you've 10 gone to get that much expanded definition.</p> <p>11 PUBLIC SPEAKER: I believe so. But if not, I 12 will make sure that it is in there today.</p> <p>13 MS. BRODSKY: That will be helpful. Thanks.</p> <p>14 MS. PEREZ: Just a perspective just the very 15 beginning of that language and this is just a question 16 for you to answer.</p> <p>17 The example that was given earlier of a person 18 who had finished transitioning is living the life fully 19 now as a trans-woman is outed later the indication that 20 I got from there is that there is some instances where 21 there is an end period.</p> <p>22 I think the way that initial phrase is written 23 in here implies that for everyone it is a continuing 24 process. Does that make sense?</p> <p>25 PUBLIC SPEAKER: No. I understand. Our</p> <p style="text-align: right;">Page 33</p>

<p>1 concern with the way it was worded before and have seen 2 it several times is when you say some -- a process some 3 transgender people go through. 4 MS. PEREZ: Uh-huh. 5 PUBLIC SPEAKER: Or, you know, I guess, I just 6 seems like we wanted to make it broader than just saying 7 some people may or may not go through this process. 8 MS. PEREZ: And I appreciate all the language 9 and I appreciate it being clearer and broader, what I'm 10 concerned about is going so far that the impression 11 given by an employer who has no understanding of this is 12 there is never an ending. 13 So, I'm just curious if there might be a way of 14 I appreciate there may or may not, I appreciate that in 15 some circumstance, I appreciate individualized, but I 16 don't want to go so far that the idea is that there is 17 never an ending for anyone. 18 Does that make sense? 19 PUBLIC SPEAKER: Correct. Maybe, instead of 20 unlimited maybe extended duration or not -- 21 MS. PEREZ: Exactly. 22 PUBLIC SPEAKER: -- included extended duration. 23 MS. PEREZ: Yeah. It would be unlimited but 24 that would work. 25 PUBLIC SPEAKER: So we can put that in our Page 34</p>	<p>1 distinct from gender expression is needed that might be 2 something that could be removed. It's basically how 3 you're presenting yourself in the gender that you are 4 presenting yourself as. 5 So, if that means gender expression it doesn't 6 necessarily need to be in there in all presentation. 7 MR. IGLESIAS: I'm just concerned that if we 8 add another word phrase we would need to do that. 9 PUBLIC SPEAKER: No. I understand that. 10 MS. PEREZ: And the ones that we have defined 11 thus far is because they are actually specifically in 12 the Act. 13 PUBLIC SPEAKER: Okay. So the next one that we 14 had wanted to address is Section 11034G. 15 And this is a regulation that's stated An 16 employer is disclosed direct a running standard so long 17 as it serves a legitimate business purpose. That's 18 really the phrase that we are having some issues with. 19 Our concern is the phrase "legitimate business 20 purpose." The term is inconsistent we believe with the 21 second code of regulations 11010B and Code Section 22 12951. 23 And we wanted to clarify that the burden of 24 proving a business necessity that's what the code 25 sections address still fall on the employer. Page 36</p>
<p>1 proposal if you would like and maybe change the word 2 unlimited. 3 MS. BRODSKY: Because I think, otherwise, it is 4 hard to distinguish when transitioning from transgender. 5 They merge. 6 PUBLIC SPEAKER: Right. I can see that. I can 7 see that. Yeah, I mean I think the idea is we have 8 something about having an extended duration. 9 MS. BRODSKY: Sure. 10 PUBLIC SPEAKER: Would probably satisfy or 11 justify it better. 12 MR. IGLESIAS: Another question, on the 13 definition that you offered, you used the phrase gender 14 presentation. 15 PUBLIC SPEAKER: Yes. 16 MR. IGLESIAS: We don't have a definition for 17 that and in the law, at least, as I understand it, we 18 have gender expression gender identity. 19 So could you speak to what gender presentation 20 means vis-a-vis the other terms that we do have or -- I 21 guess, I'm just trying to figure out whether we needed 22 to add another definition. 23 MS. PEREZ: Whether it's distinct from gender 24 expression, perhaps. 25 PUBLIC SPEAKER: Right. It might not be as Page 35</p>	<p>1 And so, we actually propose that the addition 2 of specific protections to the new Subdivision G3 for 3 individuals who are transitioning so we would make it 4 under G1, it is lawful for employer or other covered 5 entity to impose upon an applicant or employee's 6 physical appearance, grooming or dress standard so long 7 as the employer can show the following: The standard is 8 justified the business necessity as defined under 9 Section 11010B. 10 The employer has effectively notified his 11 employees of the circumstance and time with compliance 12 with the standard that is required and consequences of 13 violating the standards and any such standard does not 14 discriminate base on individual's sex, including gender 15 identify or gender expression. 16 MR. MANDELBAUM: But doesn't business necessity 17 only kick in in the context of adverse impact analysis? 18 So it's not clear to me that having grooming standards 19 or dress standards would adversely impact in all 20 instances of protected categories. If they are 21 uniformly applied. 22 PUBLIC SPEAKER: Well, I guess, our concern was 23 really more that we would be putting it in a separate 24 with a legitimate business purpose. It seems vague and 25 we would like it more to be conformed with the other Page 37</p>

<p>1 type of business assessment clause that are out there. 2 Because legitimate business purpose can be 3 interpreted to mean a lot of things and so we just 4 believe that as a matter of policy it should really 5 conform with the other quoting rights that talk about 6 that. 7 MS. SCHUR: Can I ask a clarifying question? 8 PUBLIC SPEAKER: Absolutely. 9 MS. SCHUR: I really appreciate all the 10 comments they are very helpful to the Council as we try 11 and move forward in sort of new grounds in this area. 12 But this one I'm struggling with a little bit 13 because most of the standards, particularly, imposing 14 different standards based on peoples gender identity and 15 expression, I mean, I really agree with. 16 But there are many businesses where they want 17 to be able to say the people interact with the public 18 can't wear flip-flops or their mid-drifts or whatever 19 and those would be applied uniformly regardless of who 20 they are applied for. 21 I don't know that that always rises to business 22 necessity but it is a legitimate business purpose to say 23 we express a certain level of grooming among our 24 employees who are interacting with the public. 25 Just as an example, I don't know that that</p> <p style="text-align: right;">Page 38</p>	<p>1 PUBLIC SPEAKER: So, I think, there is 2 heightened standard that should be applied based off of 3 just general grooming standards throughout the 4 workplace. 5 MS. PEREZ: And I actually see it as almost the 6 opposite. I actually thinking that needing a legitimate 7 business interest so using Council members showed an 8 example if there is a location, let's say, surfers and 9 the standard is that women have to wear skirts and men 10 have to wear pants. It would seem to me that that's -- 11 and that seemed to be a legitimate business purpose for 12 that reason. 13 It seems to me that a transwoman would want to 14 conform with the rule is for women and it almost seems 15 like it would be the opposite if you said business 16 necessity. 17 I mean, I actually think that it is saying the 18 employer using to look at the person who identifies as a 19 woman just as you do every other woman and she would be 20 required to wear the same thing. I actually think it's 21 actually appropriate to say gender appropriate. 22 PUBLIC SPEAKER: I guess, but the term 23 "legitimate business reason" is still left undefined so 24 I worry that we take it to the extreme and that, you 25 know, an employer can -- I would want them to be able to</p> <p style="text-align: right;">Page 40</p>
<p>1 would necessarily be bad if they said women have to wear 2 dresses, but if they just said everybody has to that 3 dress business casual or business professional. 4 I'm just struggling with it at this point about 5 how do we have make sure we don't cross the line with 6 the regulating dress that's inappropriate to people's 7 own choices and to provide, you know, individuality and 8 creativity, but I think it is different than the very 9 high standards for business necessity. 4. 10 So, I'm just thinking out loud here as you 11 raise the issue about where we go along the lines there. 12 PUBLIC SPEAKER: No. I understand. I think 13 there is a difference when you're talking about grooming 14 standards and we do this with religion to. 15 There is a difference between what you regulate 16 in terms of somebody's religious dress as you can with, 17 just as you said, somebody has the absolute right to say 18 to their employees they can't wear flip-flops as long as 19 that's uniform and it's not anything that violates 20 anybody's right to FEHA. 21 I think when you're talking about it here the 22 dressing grooming standards that we're talking about are 23 we're talking about the ability to be able to dress 24 towards the gender in which you are identifying. 25 MS. SCHUR: Absolutely.</p> <p style="text-align: right;">Page 39</p>	<p>1 enforce or that we get people to enforce it. If is left 2 undefined than an employer will say, well, that's pretty 3 much everything. 4 MS. PEREZ: That's going to be undefined and 5 unclear regardless so I don't see it necessarily as an 6 issue that is going to impact the transgender community 7 to a greater degree. 8 I mean, a woman would want -- a transgender 9 woman might object and say this is not what a legitimate 10 business reason. So, I don't disagree that it's precise 11 terms but, unfortunately, there are a lot of implied 12 [sic] terms and certain events that we can do and I 13 don't think it is more precise to say that it's a 14 necessity and I actually think it would Council at this 15 to change it. 16 MS. BRODSKY: I, also, think I'm going to 17 repeat with what Chairperson Mandelbaum said, if we 18 define business associated through case log development 19 it really does come into play with adverse impact and we 20 don't want to get into adverse impact here. 21 Because we defined business necessity in 22 11010D, and that is where that comes into play, if we -- 23 I think the calling it a legitimate business purpose is 24 one step up from calling it job-related. 25 And that is more -- I mean, I think it's better</p> <p style="text-align: right;">Page 41</p>

<p>1 defined than job-related because I don't think you would 2 want it to be job related and that would be the limit 3 and that would be the criterion. 4 So we've tried to come up with something that 5 was more than job-related but as far as the employer to 6 have to prove something more than that and legitimate 7 business purpose seemed to be kind of reached that 8 level. 9 And I agree I don't think that you're going to 10 get anything more definitive that you're going to want 11 to be stuck with. 12 MR. MANDELBAUM: Aren't all these concerns sort 13 of satisfied by the remainder of that sentence? I mean 14 this is just so long as the standard does not 15 discriminate on the basis of sex, gender, gender 16 identity, gender expression so all of these grooming 17 standards are subject to the same discrimination inquiry 18 this is just the standard in and of itself. 19 PUBLIC SPEAKER: I understand what you are 20 saying. I will take it back it to the Committee and 21 we'll look at what to put into our written proposal and 22 if there is something there or not. 23 MS. SCHUR: And if your thoughts of either it's 24 definitional ways, you know, ways to make it clearer 25 what you mean by that either there's intent of the Page 42</p>	<p>1 purposes of any adverse employment action or a claimed 2 based on the applicant's designation." 3 And then there's Subsection A for the purposes 4 of statistical data gathering and in order to meet a 5 legally mandated obligation an employer or other covered 6 entity may request voluntary identification of an 7 employee's gender once the employer or other covered 8 entity hired the employee. 9 This information is to be collected and/or used 10 by an employer or covered entity fully for statistical 11 and record keeping purposes in compliance with all other 12 applicable law." 13 Basically what our idea is that we remove all 14 of the other protected classifications let's take out 15 the box in the application process, but like with 16 everything else you have a separate page that you have 17 statistical data that comply with the Fair Pay Act and 18 then hiring managers don't ever see what is the gender 19 or the box of the applicant. 20 MS. BRODSKY: Were you combining H and I 21 because it was a very long passage there. It sounded 22 like you were sort of combining some of the provisions 23 in H with, maybe, Number One in I. 24 PUBLIC SPEAKER: I think a lot of it was. I 25 mean we have a separate thing, we also have some of the Page 44</p>
<p>1 definition please feel free to suggest them. 2 PUBLIC SPEAKER: Absolutely. Okay. So the 3 next one is Section 11034H. This one we had a couple of 4 different thoughts on actually. We understood what the 5 intent of the regulation was but we were thinking about 6 how it was having interplayed with the Fair Pay Act 7 which requires employers to report or keep records of 8 any sort of protected classification information on 9 their employees from peoples reporting many purposes of 10 litigation as our organization knows very well. 11 So we were thinking of a way that you could 12 satisfy the same result in taking the decision of about 13 whether to hire somebody out a gender-based 14 classification and also upholding those areas of the 15 Fair Pay Act. 16 And so we have a proposal to this session H2 17 which says "Unless an employer or other covered entity 18 can meet a burden of showing a BFOQ it is unlawful to 19 require an applicant to identify their gender during the 20 application process including during any job interviews 21 if other employer or other covered entity can meet its 22 burden of showing a BFOQ designation by an applicant of 23 a gender that is inconsistent with the applicant 24 assigned sex at birth or presumed gender shall not be 25 considered fraudulent or a misrepresentation for the Page 43</p>	<p>1 issues with the clarity of I as well. And so we 2 actually had a separate proposal of how to just kind of 3 separate that out and just kind of organize it to make 4 it clearer because we had some of the same concerns as 5 previous speakers on that issue. 6 MS. PEREZ: I'm just curious on the issue of 7 designating the word "female," for example, on the 8 application. We received prior to the meeting a public 9 comment which I think is taken care of by the we worded 10 this but I just wanted to present it to you for a 11 counter to that. 12 PUBLIC SPEAKER: Sure. 13 MS. PEREZ: Which is something from the School 14 District and it applies, obviously, not just in schools 15 but where part of the hiring process that you have to go 16 through a life scan in this particular case and some 17 legally mandated way of identifying yourself. 18 And the concern that this person had was we 19 have to know that because, in fact, the application for 20 the life scan had that and there is nothing that we can 21 do about that as an employer. 22 I think, and obviously Council, Ms. Brodsky and 23 I were talking about, but the subcommittee, I think, 24 that the way they worded it takes care of that because 25 what we say is legally mandated to follow, for example, Page 45</p>

<p>1 what the I.D. says and do that and I'm just curious if 2 there's a counter that there are, I think, going to be 3 some legitimate circumstances under which identifying 4 yourself from a legal perspective is going to be 5 important. 6 PUBLIC SPEAKER: Right. And I think that is 7 the reason why it's good to address the BFOQ component 8 within this whole section. There are going to be some 9 legitimate purposes in which I need to do it. 10 But I think we can keep it separate from at 11 least the job application itself as to whether or not 12 you have to check that box just like you do the same 13 thing with age, you do the same thing with pretty much 14 all of the other protected categories. 15 MS. PEREZ: Except that for all those other 16 things like the EEO form it's all voluntary. If there 17 is a job review you have to know that person's gender 18 how would you take care of that? A lot of people 19 intended. 20 PUBLIC SPEAKER: I think that we probably cover 21 the BFOQ though it would be the exception to be able to 22 check the box. 23 MS. PEREZ: Right. But what I'm saying is that 24 you're suggesting we put gender in the same category as 25 race and those other that those forms are voluntarily Page 46</p>	<p>1 action. 2 I guess I'm trying to figure out with those 3 protections why it would be necessary to take it out of 4 the application process when there, certainly, is on 5 certain occasions a legitimate reason to have that in 6 there. 7 PUBLIC SPEAKER: I guess, it's more to protect 8 the employee from having to then go and explain because 9 assuming they have a box that says male or female and 10 they are not quite sure whether or not they should be 11 marking the box as to what their gender is at birth and 12 the gender that they identify with that it causes more 13 confusion and anxiety for them and it also could cause 14 needless litigation. 15 MR. IGLESIAS: So assuming for purposes of, you 16 know, talking about the bathroom attendant is a BFOQ for 17 gender and that is what they are hired for. So would 18 you suggest that for when an employer knows they are 19 hiring for a position for which there is a claim there 20 is a BFOQ for their gender they can have it in that 21 application but you are saying you don't want that for 22 other job applications unless it's a BFOQ? 23 PUBLIC SPEAKER: Correct. And then, the last 24 one was I as I kind of mentioned. We also thought it 25 just needed to be revise and reorganized that there was Page 48</p>
<p>1 they're not -- you know, I mean, I don't ever have to 2 disclose my race so I can just throw that form away. 3 PUBLIC SPEAKER: Got you. 4 MS. PEREZ: So I'm still curious as to why 5 keeping it, for example, on the application. What we 6 say right now is we are not going check -- if you check 7 female we're not going to say to an employer you can ask 8 for I.D. to confirm that. 9 PUBLIC SPEAKER: Correct. But if you are 10 getting to the point where you have to actually do the 11 life scan you may not have to do on initial application. 12 I'm not sure, I don't want to speak to something that 13 I'm not quite familiar with but I believe that's a 14 different form in and of itself and, in fact, mandatory. 15 Yeah. This would be just the initial application to get 16 through the hiring process. 17 MS. PEREZ: No. I understand. It's two 18 different issues. One is a life scan application issue 19 the other one is, I guess, I'm trying to figure out why 20 the suggestion is that it be take out of the application 21 at all if we already have a regulation protection saying 22 we're not going to allow employers to ask for proof of 23 on the application, Number One; and Number Two, if a 24 person puts a gender that doesn't match their gender at 25 birth that can't be used as a reason for an adverse Page 47</p>	<p>1 just a lot of ambiguity there has to what it was trying 2 to say. 3 So ours is basically our proposed Subdivision 4 which is C in the written documentation are to take I2 5 and 3, well, we're basically, I'll start with I-1. I-1 6 should be amended and divided into three separate 7 subdivisions for the sake of clarity and we propose the 8 division to separate each exception to the prohibition 9 against inquiries or requirements for proof of an 10 individual's sex, gender, gender identify or gender 11 expression. 12 We thought that would make it clear and also in 13 the two to three our proposed subdivisions would allow 14 to protect employees from discrimination, retaliation 15 when they either oppose unlawful employment practices, 16 inquiries, requests required documentation or other 17 proof about their sex, gender, gender identity or gender 18 expression that are not supported by a BFOQ or engage in 19 protected conduct, initiates communications with the 20 employer about a modification, adjustment or reasonable 21 accommodation or sex, gender, gender identify or gender 22 expression. 23 The anti-retaliation language in proposed 24 subdivisions I-2 and I-3 reflect a broad public policy 25 interest and encourage the employees who oppose unlawful Page 49</p>

<p>1 employment practices and protecting employees to seek 2 modifications, adjustments and reasonable accommodations 3 in the workplace and also ensure the employers do not 4 terminate or take adverse employment actions against 5 employees seeking or receiving modification adjustments 6 or reasonable accommodations. 7 And lastly we added the reasonable 8 accommodation language in Subdivision I-3 in light of 9 the Council's conclusion of medical conditions of the 10 definition of transitioning. 11 The prohibitions against discrimination and the 12 language noting employees get certain rights under other 13 sections of the act adding the reasonable accommodation 14 language avoiding potential confusion between the 15 Council's language, modifications or adjustments and 16 reasonable accommodations based on physical or mental 17 disabilities or medical conditions as defined by the 18 act. 19 So, I'll read our stuff for I-1, 2 and 3. So, 20 for I-1 it is unlawful for employers and other covered 21 entities to inquire about, request or seek other proof 22 of an individual's sex, gender, gender identify or 23 gender expression as a condition of employment unless 24 the employer or other covered entity can meet it's 25 burden of proving a BFOQ defense.</p> <p style="text-align: right;">Page 50</p>	<p>1 regarding the issuance of the proposed amendment the 2 FEHA Regulations regarding Transgender Identity and 3 Expression. 4 We will accept written comments to the proposed 5 amendments until 5 p.m. today. The hearing portion of 6 this meeting is now adjourned. 7 8 (Hearing proceedings adjourned at 11:35 a.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 52</p>
<p>1 2, would be it is unlawful to discriminate or 2 retaliate against an employee because that employee has 3 refused to respond to or otherwise comply with unlawful 4 inquiries, requests or requirements for documentation 5 for other proof from the individual's sex, gender, 6 gender identity or gender expression. 7 3, it is unlawful to discriminate or retaliate 8 against an employee that initiate's communication with 9 the employer regarding any requests in modification, 10 adjustment or reasonable accommodations to the 11 employee's terms, conditions, rights and privileges of 12 an employment. 13 Those are our basic suggestions on how to 14 reorganize to get Council's goal by making it just a 15 little clearer. 16 MR. MANDELBAUM: Great. Thank you. 17 PUBLIC SPEAKER: Thank you. 18 MS. BRODSKY: Thank you very much. 19 MR. MANDELBAUM: Any further public comment. 20 Brian, anything via e-mail? 21 MR. SPERBER: The Transgender Law Center and 22 National Center for Lesbian rights submitted a letter 23 but nothing for the meeting right here. 24 MR. MANDELBAUM: Great. Well, so thank you all 25 for taking the time to provide public comments to us</p> <p style="text-align: right;">Page 51</p>	<p>1 REPORTER'S CERTIFICATE 2 3 4 I, ANNA MARIE SPINELLI, CSR No. 11805, a Certified 5 Shorthand Reporter, certify; 6 That the foregoing proceedings were taken before me 7 at the time and place therein set forth; 8 That the statements made at the time of the 9 foregoing proceedings were recorded stenographically by 10 me and were thereafter transcribed; 11 That the foregoing is a true and correct transcript 12 of my shorthand notes so taken. 13 I further certify that I am not a relative or 14 employee of any attorney of the parties, nor financially 15 interested in the action. 16 I declare under penalty of perjury under the laws 17 of California that the foregoing is true and correct. 18 19 Dated this 27th day of June, 2016. 20 21 _____ 22 ANNA MARIE SPINELLI, CSR NO. 11805 23 24 25</p> <p style="text-align: right;">Page 53</p>

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