Proposed Ordinance 2012-296: Frequently Asked Questions

1. What would the Ordinance do?

The Ordinance adds “sexual orientation” and “gender identity or expression” to the anti-discrimination provisions of the Jacksonville Ordinance Code, labeling as “discrimination” decisions based on “sexual orientation” or “gender identity or expression.”

The new “discrimination” classifications of “sexual orientation” and “gender identity or expression” would be applied in the areas of employment, public accommodations, and housing.

2. How does The Ordinance define “sexual orientation”?

The Ordinance defines “sexual orientation” broadly as “a person’s actual or perceived heterosexuality, homosexuality, or bisexuality.” It does not offer any further definition of what these terms mean. This definition presents significant problems to the public since sexual behavior and sexual identity does oftentimes change throughout a person’s life. Unlike the color of one’s skin, there is no way to look at a person and know whether they are heterosexual, homosexual, or bisexual. In fact, scientists who study sexual behavior cannot agree on a universal definition of “sexual orientation.”

3. How does The Ordinance define “gender identity or expression”?

The Ordinance defines “gender identity or expression” as “a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual’s assigned sex at birth.” This definition also presents significant problems to the public, and should cause citizens to distrust this measure. Such a broad definition bases gender on a person’s psychological identification as male or female, which may or may not correspond to the person's body or designated sex at birth (meaning the sex originally listed on a person's birth certificate).

Some people claim a “gender identity or expression” based only on how they feel, while others claim a “gender identity or expression” because of hormones they may be taking, or a surgical procedure they had. One female NCAA basketball player decided that she was a “man,” though she did nothing physically to her fully female body. The media all decided that a “man” was now playing women’s college basketball. Another woman in Oregon had her breasts removed, had her birth certificate changed to indicate that she was now a “man,” received a marriage license with another woman, and then became artificially inseminated, subsequently bearing a child, all as a so-called “man.” The Ordinance would apply to both of these types of circumstances, and just about every other imaginable circumstance of “gender identity or expression.”
There is really no clear understanding of—or limitation on—what “gender identity or expression” is or what it means, which creates a massive legal problem. There is no commonly accepted definition or meaning of “gender identity or expression,” and no city should adopt phrases or meanings in the law that nobody can understand.

4. **How are the classifications of “sexual orientation” and “gender identity or expression” different from those already found in the Jacksonville Ordinance Code?**

The existing anti-discrimination provisions of the Ordinance Code prohibit discrimination based on immutable characteristics (like race, color, or sex), or features that are clearly defined and objective (age, marital status, disability, or national origin), and religion (protected by the first clause of the First Amendment of the U.S. Constitution). In contrast, the Ordinance creates the new “sexual orientation” and “gender identity or expression” categories, which involve behavior, emotions, and self-perceptions. These concepts are not clearly defined and oftentimes change. The laws that protect us should be clear and not constantly moving targets that can mean different things to different people.

Alarmingly, the existing Jacksonville Ordinance Code provisions expressly refer to the civil rights protections of the U.S. Constitution and the federal and state laws enacted to enforce those protections, but the Ordinance removes those references in favor of its new subjective classifications.

5. **Has the State of Florida enacted any laws regarding “sexual orientation” or “gender identity or expression”?**

No.

6. **Does the Ordinance impose penalties?**

Yes. Those who are offended by a business or by others regarding their perceived “sexual orientation” or “gender identity or expression” may easily file a formal legal complaint against that business or other entity. That business must first incur legal costs (likely thousands of dollars) to defend against the complaint. The agency overseeing the complaint has broad powers, and can issue enforceable orders against the person or business, including ordering the payment of damages and even civil penalties of up to $50,000. A person or business found to have violated the Ordinance can also be criminally prosecuted and sentenced to pay fines up to $500 and/or imprisonment for up to 90 days.

7. **Will The Ordinance negatively impact small businesses?**

Yes. Most business owners started their own business so that they could do things their way and not have someone else tell them how to run their own business. Many business
owners have sincere religious or moral beliefs about sexual behavior, relationships, and other matters, but the Ordinance grants no respect to those beliefs.

The Ordinance exempts businesses having fewer than 15 employees from the hiring requirements of the Ordinance. Of course, there are numerous small businesses having 15 or more employees, and no such exemption is available to these small businesses. Moreover, there is no exemption for small businesses, regardless of the number of employees, in the public accommodation and housing provisions of the Ordinance.

Thus, any business owner, landlord, or other individual who holds traditional views about sexual behavior and gender would likely be severely limited in making decisions in accordance with those views. For example, a modeling agency that needed a female model for a particular clothing line may be forced to hire a man who believes that he is a woman because of his “gender identity or expression.” This type of application of the Ordinance would also apply in a sweeping array of other areas, including schools, day care centers, and the sale or rental of property.

When other cities or states have enacted laws like the Ordinance, small business owners have been forced to provide services that violate their own beliefs, even when equally capable alternative service providers were offered to the customers. For example:

- Under a law like the Ordinance, in New Mexico, a wedding photographer was found guilty of engaging in “sexual orientation” discrimination and fined $6,000 by a court. Her crime? She politely declined to photograph a same-sex “commitment ceremony.” The same-sex couple easily found a photographer to help them, but then used the law in an effort to punish the photographer who declined.
- Under a law like the Ordinance, in Virginia, a county government’s human rights commission ordered a small video-duplication business to make copies of videos that promoted homosexual behavior, even though the owner felt that doing so would violate his conscience and deeply held beliefs. Several video-duplication businesses were available to make copies of videos, but this particular business was singled out so that it would be forced to do something it did not want to do.
- Under a law like the Ordinance, in Vermont, a small, family-owned inn was sued by a same-sex couple when an employee refused to host the couple’s wedding reception without even discussing the refusal with the inn’s owners. Of course, there were hundreds of inns in Vermont for the same-sex couple, but the particular inn at issue was targeted for legal retribution.
- Under a law like the Ordinance, in California, a same-sex couple sued fertility doctors that respectfully refused to inseminate them, believing that every child they helped bring into the world was entitled to both a mother and a father. The same-sex couple easily found doctors to help them, subsequently bore three beautiful children, but then sought to target the doctors that declined with their lawsuit.
The Ordinance undermines the idea of the free market and may force many business owners to choose between their deeply held religious or moral beliefs and legal punishment. Faced with that grim choice, business owners may close down their business or relocate to another city with more business-friendly requirements.

8. Will The Ordinance impact large businesses?

Yes. The Ordinance will impact large businesses in the same way it impacts small businesses. The boards and corporate structures that govern large businesses would be restricted by the Ordinance in the business decisions that they make, both as to internal policies and employment benefits, as well as how they interact with the public and the greater business community.

9. Will The Ordinance impact employees?

Yes. In order to ensure compliance with the Ordinance, many businesses may feel compelled to adopt company-wide policies that strictly regulate what employees may say, wear, place within their workspaces, or even celebrate at the office. Beyond these changes in internal policies, potential changes or reductions in employment benefits prompted by the Ordinance will also impact employees.

10. Does the Ordinance allow employers and operators of public accommodations to enforce dress codes?

This is unclear. There is no specific provision in the Ordinance covering dress codes, and this lack of clarity could easily lead to costly litigation for Jacksonville employers and business owners.

11. Will The Ordinance impact day care centers?

Yes. Owners and operators of day care centers subject to the hiring requirements of the Ordinance, whether private or public, would lose control over who they may hire to protect and supervise the children entrusted to their care.

12. Will The Ordinance affect landlords?

Yes, although the extent of the Ordinance’s effect is not clear. While limited exemptions exist for residential landlords of single-family dwellings, or certain multi-family dwellings in which the landlord also resides, for many landlords the Ordinance will eliminate the discretion that they currently possess in determining to whom they should lease their properties. And it is likely that the public accommodation provisions of the Ordinance would be used against commercial landlords who, based on sincerely held religious beliefs, want to limit the types of businesses to which they lease their properties.

13. Will The Ordinance impact schools and children?
Yes. The Ordinance treats public schools like any other business. Thus, schools would be required to employ, for example, a male kindergarten teacher whose “gender identity or expression” has him wearing makeup and female clothing. Students could also claim a “gender identity or expression” and use the restrooms or locker rooms of the opposite sex. And as more athletes are advocating that their “gender identity or expression” permits them to compete on teams or in leagues of the opposite sex, the potential impact upon Jacksonville’s school system is obvious. Under the guise of laws like the Ordinance, school districts across the country have implemented curriculums and policies that teach children, as young as kindergarten, about homosexual behavior, same-sex families, and that children may choose their own gender when they grow up.

14. Does the Ordinance accommodate sincerely held religious beliefs?

No. The Ordinance does nothing to preserve the constitutional religious freedoms of individuals and their businesses. While the Ordinance offers certain exemptions for distinctively religious organizations, such as churches and church-owned schools, the Ordinance disregards the sincere religious and moral beliefs of business owners and other individuals.

15. Does The Ordinance guarantee different restrooms for men and women?

No. Because of its protections for “gender identity or expression” in the use of “facilities,” anyone who perceives that they are the opposite sex can lawfully enter the restroom of the opposite sex. This means that men who merely perceive themselves to be women can lawfully enter a women’s restroom, and the women (and girls) have no say over it. Moreover, it may be unlawful for (1) a merchant to maintain dressing rooms for different sexes, (2) a gym to maintain locker rooms for different sexes, or (3) a college or university to maintain dormitories for different sexes. However, even if separate dressing rooms, locker rooms, or dormitories were allowed, because of one’s “gender identity or expression,” no merchant, gym, or university could actually keep the sexes reasonably separated.

16. Does the Ordinance undermine Florida’s Marriage Amendment?

Yes. Although the Florida Marriage Amendment preserves marriage as the union of one man and one woman, the Ordinance would allow any woman to claim to be a man, as her “gender identity or expression,” and then seek to marry another woman (and vice versa). This potential perversion of the Marriage Amendment could result in costly legal battles for Jacksonville public officials subject to the Ordinance.

17. Does voting NO on the Ordinance endorse discrimination?

No. To the contrary, a “no” vote on the Ordinance endorses that most American of ideals—freedom. Nobody should be forced to violate their own conscience or beliefs. The Ordinance seeks only to elevate the agenda of a few over the freedoms of all. Jacksonville already treats its citizens with dignity and does not need the Ordinance.
18. When will Jacksonville voters get to vote on the Ordinance?

Jacksonville voters will not get to vote on the Ordinance! The measure will be considered by two City Council committees before being voted on by the full City Council. But voters can demonstrate their disapproval of the Ordinance—and the Councilmembers who support it—by showing up for the committee meetings and full Council meeting, and by speaking against the Ordinance during the public comment portions of those meetings. The current schedule for the meetings in which the Ordinance will be considered is as follows:

- June 4, 2012  10:00 AM  Rules Committee
- June 5, 2012  2:00 PM  RCDPHS Committee
- June 12, 2012  5:00 PM  Full City Council Vote

Save the dates! These meetings may offer your only opportunity to preserve the freedoms of Jacksonville’s citizens, as well as Jacksonville’s role as a truly business-friendly city.