(passed 9-0)

ORDINANCE 06-07

TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "ADMINISTRATION AND PERSONNEL"
Re: Amending Chapter 2.21 Entitled "Department of Law" to Include "Gender Identity" as a Protected Class

Whereas, the City of Bloomington seeks to protect its citizens in the enjoyment of civil rights and to promote mutual understanding and respect among all who live and work within the City; and

Whereas, prejudice, intolerance and discriminatory practices directly and profoundly threaten the rights and freedom of City of Bloomington residents; and

Whereas, the City of Bloomington has passed ordinances to protect the civil rights of those who live and work within the City, including the prohibition of discrimination based on sex and sexual orientation; and

Whereas, despite these protections, there are still citizens who are denied their civil rights because their gender identity, appearance or behavior differs from that traditionally associated with their sex at birth; and

Whereas, for these reasons, the City of Bloomington Human Rights Commission recommended that the Common Council amend the municipal code in order to include "gender identity" as a protected class and provide for the remediation of those complaints in the same voluntary manner as complaints based upon sexual orientation; and

Whereas, in *Price Waterhouse v. Hopkins*, the U.S. Supreme Court ruled that sex stereotyping is a form of sex discrimination prohibited by the 1964 Civil Rights Act; and

Whereas, while the Supreme Court has made this determination, the Court has not ruled on whether discrimination based upon gender identity or sexual orientation are forms of sex discrimination; and

Whereas, the lower courts disagree whether gender identity discrimination is a form of sex discrimination and no court has held that sexual orientation discrimination is a form of sex discrimination; and

Whereas, the City looks to interpretations of the 1964 Civil Rights Act in interpreting State and local civil rights law; and

Whereas, the City of Bloomington intends to provide the greatest level of protection possible to those who are discriminated against based upon either their gender identity or sexual orientation, or both; and

Whereas, § I.C. 22-9-1-12.1(b) specifically authorizes cities to create ordinances to effectuate within their jurisdiction the State's public policy to provide equal education and employment opportunities and equal access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin or ancestry;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA:

SECTION 1. Section 2.21.020 entitled "Public policy and purpose" shall be amended by deleting the phrase "race, religion, color, sex, national origin, ancestry, sexual orientation or disability" and replacing it with the phrase "race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or disability" wherever it appears in the section.

SECTION 2. Part (10) of Section 2.21.030 entitled "Definitions" shall be amended by inserting the phrase ", gender identity" after the term "sexual orientation" wherever it appears in this section.

SECTION 3. Part (11) of Section 2.21.030 entitled "Definitions" shall be amended by striking the term "(24)" and replacing it with the term "(25)".

SECTION 4. Part (13) of Section 2.21.030 entitled "Definitions" shall be amended by striking the term "(24)" and replacing it with the term "(25)".

SECTION 5. Part (26) of Section 2.21.030 entitled "Definitions" shall be inserted and shall read as follows:

> (26) "Gender identity" means a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth.

SECTION 6. Section 2.21.080 entitled "Educational program" shall be amended by adding the term "gender identity," after the term "sexual orientation" so that the section now reads:

> **2.21.080 Educational Program**
>
> In order to eliminate prejudice among the various groups in the city and to further goodwill among such groups, the commission may prepare educational programs designed to emphasize and remedy the denial of equal opportunity because of a person's race, religion, color, sex, national origin, ancestry, sexual orientation, gender identity, or disability, its harmful effects, and its incompatibility with the principles of equality.

SECTION 7. Section 2.21.140 entitled "Hate crime statistics" shall be amended by adding the term "gender identity," after the term "sexual orientation" so that the section now reads:

> **2.21.140 Hate crime statistics.**
>
> The Bloomington Human Rights Commission may collect data and issue reports on the incidence of hate crimes in the city. Hate crimes include verbal or physical abuse directed at individuals or groups because of their race, sex, color, disability, age, sexual orientation, gender identity, ancestry, religion or national origin.

SECTION 8. Section 2.21.150 entitled "Complaints of sexual orientation discrimination" shall be amended by: (a) inserting the phrase "and gender identity" after the term "sexual orientation" in the title; (b) inserting the phrase "gender identity, or both" after the term "sexual orientation" in the first sentence; (c) inserting the word "typically" after the phrase "the Commission's authority shall" in the first sentence; and (d) inserting the following second sentence "However, the Commission attorney may also, with the consent of the complainant, pursue complaints of sexual orientation discrimination, gender identity discrimination, or both, as forms of sex discrimination if warranted by the circumstances and the state of the law." The entire section shall now read as follows:

> **2.21.150 Complaints of sexual orientation and gender identity discrimination.**
>
> In complaints of discrimination on the basis of sexual orientation, gender identity, or both, the Commission's authority shall typically be limited to voluntary investigations and voluntary mediation. However, the Commission attorney may also, with the consent of the complainant, pursue complaints of sexual orientation discrimination, gender identity discrimination, or both, as forms of sex discrimination if warranted by the circumstances and the state of the law.

SECTION 9. The term "gender identity" shall also be inserted in the title of Section 2.21.150 as it appears in the table of contents at the beginning of Chapter 2.21 (Department of Law).

SECTION 10. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given

effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 11. This ordinance shall be in full force and effect from and after its passage and signing by the Mayor.

PASSED AND ADOPTED by the Common Council of the City of Bloomington on the 19th day of APRIL, 2006.

CHRIS STURBAUM, President
Bloomington Common Council

Attest:

REGINA MOORE, Clerk
City of Bloomington

Presented by me to the Mayor of the City of Bloomington, Indiana, this 20th day of APRIL, 2006.

REGINA MOORE, Clerk
City of Bloomington

Signed and approved by me, the Mayor of the City of Bloomington, Indiana, this 20th day of APRIL, 2006.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance is co-sponsored by Councilmembers Sabbagh and Sturbaum. It amends Chapter 2.21 of the Bloomington Municipal Code entitled "Department of Law" to recognize "gender identity" and to protect this class from discriminatory practices. The ordinance does this by adding "gender identity" to the list of protected classes which currently include the following: race, religion, color, sex, national origin, ancestry, sexual orientation, and disability. The term "gender identity" is defined as "a person's actual or perceived gender-related attributes, self-image, appearance, expression or behavior, whether or not such characteristics differ from those traditionally associated with the person's assigned sex at birth." This class will be subject to voluntary remediation in the same manner as a discrimination complaint based upon sexual orientation. However, in regard to both of these classes, the Commission Attorney and complainant may agree to file complaints as forms of sex discrimination if the facts of the complaint and state of the law warrant it. The ordinance also corrects two citations within Section 2.21.030 (Definitions).

Note: This ordinance was amended with the adoption of Am 1 at the Regular Session on April 19, 2006 to correct the title.

Signed copies to:

legal (5)	clerk 3
code holders	file
city departments	BLC files (2)
HR ordinance files	CA/CA (3)
HR Commission	