



Restrooms for All: A Plan to Expand Gender Neutral Restrooms in NYC

Office of the New York City Comptroller
Scott M. Stringer

BUREAU OF POLICY & RESEARCH

JUNE 2015

Transgender individuals and people who are gender non-conforming—or perceived as such—face significant discrimination.¹ A recent survey found that 90 percent of transgender individuals have experienced harassment, mistreatment, or discrimination on the job, or have been forced to take actions, such as hiding who they are, in order to feel safe at their place of employment.²

In that same survey, nearly 50 percent of transgender people said they have experienced an adverse job outcome—such as a denied promotion—because of their gender identity, with over half of these people reporting that they had lost a job because of it.³

Earlier this month, the New York State Assembly passed the Gender Expression Non-Discrimination Act (GENDA) for the *eighth* time—a law that would bar, once and for all, discrimination on the basis of gender identity and expression in big cities and small towns throughout the Empire State.

However, the State Senate has refused to bring GENDA to the floor, let alone pass this historic legislation that would bring New York law in line with 19 states, the District of Columbia, and Puerto Rico in protecting the rights of transgender New Yorkers.

New York City must not continue to wait for Albany to act. The City's Human Rights Law

already offers protection against discrimination on the basis of gender identity and expression, but more can be done to make the five boroughs more welcoming to all New Yorkers.

In addition to outright discrimination in employment and housing, transgender, gender non-conforming, and questioning individuals can endure damaging prejudice around something as simple and necessary as using a restroom.

Indeed, many transgender New Yorkers are forced to choose between using a space that matches either their gender identity or the sex they were assigned at birth. The Chelsea-based Transgender Legal Defense and Education Fund has fielded calls from individuals across





the country—including in New York City—who were either barred from using the bathroom appropriate to their gender identity or attacked for doing so.⁴

This mirrors the findings of a 2011 survey by the National Center for Transgender Equality and the National Gay and Lesbian Task Force, which found that 26 percent of transgender students had been denied restroom access in educational settings, and 22 percent of transgender employees reported being denied restroom access at work.⁵

Because transgender and gender non-conforming individuals are so often met with vocal or physical resistance in their attempts to access gender-appropriate restroom facilities, it is important to provide non-gender-specific restrooms where practical. Whatever the circumstances, restroom access is a necessity for everyone, and lack of accessible restroom facilities can lead to injury and/or illness.

The U.S. Occupational Safety and Health Administration (OSHA) recently took action on this issue by releasing new guidance forbidding employers from placing “unreasonable” restrictions on restroom access and urging employers to provide single-occupancy, gender-neutral facilities.⁶

While many entities—from the White House⁷ to many of New York’s great universities⁸—have adopted gender-neutral bathrooms, New York City itself has done little to advance the cause.

Comptroller Scott M. Stringer is proposing City Council legislation that takes a pragmatic approach to providing access to gender-neutral bathrooms by:

- **Requiring existing single-occupancy, publically-accessible restrooms to become gender-neutral, in both public and private buildings; and**
- **Changing City codes to give more building owners the opportunity to designate gender-neutral bathrooms.**

This critical legislation reflects efforts that have been undertaken in cities across the country and will help ensure that all New Yorkers have access to a safe restroom.⁹

GENDER-NEUTRAL LEGISLATION ACROSS THE COUNTRY

From Washington, D.C. and Philadelphia to Austin and West Hollywood—cities have shown how simple and cost-effective proposals regarding restroom access can help provide safe spaces for all persons.

Washington, D.C. led the way in 2006, with a broad non-discrimination bill that included a mandate for businesses within the District of Columbia to mark existing single-stall restrooms as gender-neutral and required new construction to also include them.¹⁰ Similar laws went into effect in Austin and West Hollywood earlier this year.¹¹

These models are designed to impose a minimal financial burden on cities and private building owners and businesses, rather than mandating a third set of bathrooms to existing buildings.

In 2013, Philadelphia passed legislation requiring new or renovated city-owned buildings to include gender-neutral bathrooms in addition to men’s and women’s restrooms.¹² Other states have undertaken similar initiatives to promote gender-neutral bathrooms.



Delaware's human resource guidance states that, whenever practical, a single stall or gender-neutral restroom may be provided, which all employees may use.¹³

Similarly, both Washington State and the New York City Commission on Human Rights recommend that where single-occupancy restrooms are available, they should be designated gender-neutral.¹⁴

In addition to state and city reform, over 150 college and universities across the nation have incorporated gender-neutral bathrooms into their institutions.¹⁵

While the aforementioned series of laws passed in recent years to protect the transgender community is encouraging, many states and cities are going in the opposite direction.

Opponents of transgender equality in Arizona, Texas, Florida, and Kentucky have supported measures that criminalize the use of single-sex public facilities designated for or restricted to persons of other biological sex. These measures are often introduced under the guise of protecting people against sexual predators.¹⁶

In New York, our values of equality and opportunity for all dictate another path, one that welcomes all people.

The Comptroller's proposal is designed to do just that.

COMPTROLLER STRINGER'S PROPOSAL

The Comptroller's proposed legislation consists of two parts:

1. A requirement that existing single-occupancy, publically-accessible

restrooms become gender-neutral, in both public and private buildings; and

2. A series of amendments to existing codes to give more building owners the opportunity to designate gender-neutral bathrooms.

The first component is similar to legislation in Washington D.C. and elsewhere, requiring public buildings and private businesses within the five boroughs (with certain exceptions) to designate single-occupancy restrooms as gender-neutral. Beyond the nominal cost of signage, this change would not impose any additional burden on businesses.

The second component of the Comptroller's plan could have even longer-lasting effects on availability of gender-neutral bathrooms in New York.

Thirteen years ago, Mayor Michael Bloomberg signed a law eliminating gender-based terminology in all documents, materials and laws generated by the City of New York. However, even today, City rules continue to mandate sex-specific bathrooms throughout the five boroughs.¹⁷

For example, the Plumbing Code states that "[w]here plumbing fixtures are required, **separate** facilities shall be provided for each sex."¹⁸ Similarly, the code governing employment agencies states that, "Where both males and females are employed or dealt with in such agency, **separate** facilities shall be provided for each sex."¹⁹

These provisions should be replaced with gender-neutral language stating that facilities must be provided for all individuals, regardless of their gender identity or expression—thereby



giving private building owners the **option** of designating gender-neutral bathrooms instead of, or in addition to, sex-specific facilities—something most are now prohibited from doing.²⁰

Indeed, under the existing building code, as updated in 2012, only restaurants and coffee shops with a total occupancy of 30 or fewer with just two bathrooms are allowed to make those facilities gender-neutral. Larger businesses or businesses with more bathrooms

are still required to provide sex-specific facilities.²¹

CONCLUSION

By promoting the creation of gender-neutral bathrooms, New York City can speed the advancing tide of embracing diversity and equality for the over 25,000 transgender individuals who call the five boroughs home and the millions more who seek to live in a city where all feel welcome and safe.²²



ENDNOTES

¹ http://transequality.org/federal_gov.html

² http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_summary.pdf.

³ http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_summary.pdf.

⁴ <http://www.dnainfo.com/new-york/20121001/greenwich-village/transgender-new-yorkers-face-scorn-violence-using-public-restrooms>.

⁵ http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf;

<http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Gendered-Restrooms-and-Minority-Stress-June-2013.pdf>; A 2013 survey by the Williams Institute at the University of California-Los Angeles School of Law found that 70 percent of transgender individuals reported denial of access to facilities, verbal harassment, or physical assault when they sought access to gender-segregated public restrooms.

⁶ <http://www.dol.gov/asp/policy-development/TransgenderBathroomAccessBestPractices.pdf>.

⁷ <http://www.politico.com/story/2015/04/white-house-gender-neutral-bathroom-116779.html>.

⁸ <http://www.nyu.edu/life/student-life/student-diversity/lesbian-gay-bisexual-transgender-and-queer-student-center/restroom-list.html>; <http://www.newschoolfreepress.com/2012/03/30/gender-inclusive-bathrooms-arrive-at-the-new-school/>; <http://jstop.jjay.cuny.edu/lgbtq/>.

⁹ While beyond the scope of this report, it is important to note that the concept of gender neutrality goes far beyond bathrooms. Indeed, the very paradigm of the two-gender society is being much more carefully scrutinized. For example, many universities have begun to recognize “neutral” as a gender for the purpose of demographic data. *See*: <http://www.nytimes.com/2015/02/08/education/edlife/a-university-recognizes-a-third-gender-neutral.html>.

¹⁰ Rule 4-802 of the D.C. Municipal Regulations (available: <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=4-802>).

¹¹ <http://kxan.com/2015/01/16/austins-gender-neutral-bathroom-rules-go-into-effect/>;

<http://www.latimes.com/local/lanow/la-me-ln-weho-gender-neutral-restroom-20150113-story.html>.

¹² <http://www.nbcphiladelphia.com/news/local/LGBT-Gender-Neutral-Restrooms-206932591.html>.

¹³ <http://www.delawarepersonnel.com/policies/documents/sod-eeoc-guide.pdf>.

¹⁴ <http://www.hum.wa.gov/Documents/Guidance/GuideSO20140703.pdf>

<http://www.nyc.gov/html/imm/downloads/pdf/ROM-2013Update.pdf>.

¹⁵ <http://www.newyorklawjournal.com/home/id=1202725244319/Addressing-Sex-and-Gender-in-the-Changing-Workplace?mcode=1202615326010&curindex=1>.

¹⁶ <http://aiclegal.org/i-really-have-to-go/>.

¹⁷ Local Law 42 of 2002, available:

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=437048&GUID=88A3AB81-FFC7-4A57-A1CF-66354854A828&Options=ID|Text|&Search=0027>.

¹⁸ NYC Administrative Code SECTION PC 403.2 (emphasis added); These facilities must be designated “by a legible sign for each sex.” *Id.* at 403.7.

¹⁹ 6 RCNY 5-245; *see also* 24 RCNY 167.39(b)(2) (“All bathing beach facilities shall be provided with an adequate number of toilets and handwashing facilities...Separate toilet facilities shall be provided for each sex”).

²⁰ Implementing this change will necessitate other revisions to the code, including but not limited to, addressing sex-specific ratios outlined in the Plumbing Code. *See* NYC Administrative Code SECTION PC 403.1.1.

²¹ NYC Administrative Code SECTION PC 403.2 [see exceptions].

²² The Williams Institute published a report in 2011 estimating the total transgender population as being 0.3 percent of the U.S. population. If this estimate is used for New York City’s estimated population (8.4 million in 2013), that suggests just over 25,000 New Yorkers identify as transgender.