

**CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum**

TO: Mayor and City Council
FROM: Robert E. Hagemann, City Attorney *REK*
DATE: February 3, 2016
RE: Non-Discrimination

In November 24, 2014, the Human Rights Campaign made a presentation to the City Council requesting that marital status, familial status, sexual orientation, gender identity, and gender expression be added to the list of protected characteristics in several City non-discrimination ordinances.

On March 2, 2015, a motion to approve an ordinance adding this list of characteristics failed by a vote of 5-6. Prior to that vote, the proposed ordinance was amended to add the following to the non-discrimination in public accommodations ordinance: "(c) Notwithstanding the forgoing, this section shall not, with regard to sex, sexual orientation, gender identity, and gender expression, apply to rest rooms, locker rooms, showers, and changing facilities."

Recently Mayor Roberts asked that this matter be placed on your February 8, 2016 Dinner Meeting agenda. The following is the same background I provided the Mayor and Council last year.

History of Protected Characteristics

The Civil Rights Act of 1964 provided, among other things, broad federal protections against discrimination in public accommodations based on race, color, religion, and national origin (Title II) and in employment based on race, color, religion, sex, and national origin (Title VII). Protections against employment discrimination based on age (1967) and disability (1990) were subsequently enacted.

There are no federal laws that expressly prohibit discrimination based on sexual orientation, gender expression, or gender identity. However beginning with an ordinance adopted by the City of Minneapolis in 1975, seventeen states (North Carolina is not one of them), the District of Columbia, and more than 225 cities and counties have passed laws or ordinances prohibiting discrimination in public accommodations based on sexual orientation and gender identity.

City Ordinances

1. Public Accommodations

In 1968 the Charlotte City Council adopted an ordinance prohibiting discrimination in public accommodations. Like the 1964 federal law, the ordinance covered race, color, religion, and national origin. In 1972, the Council amended the ordinance to include sex.

As part of the 1985 recodification of the entire City Code, the public accommodations ordinance was modified to treat sex differently than race, color, religion, and national origin, establishing protections only in restaurants, hotels, and motels, and even then carving out restrooms, bathhouses and similar facilities which are in their nature distinctly private, as well as dormitory lodging facilities such as the YMCA and YWCA.

While we have been unable to find any documentation that clearly states the reasons for this change in approach, the City Attorney at the time believes it was recommended by the contractor for the recodification likely due to lingering concerns stemming from the debate over the Equal Rights Amendment which some argued would do away with single sex restrooms.

The public accommodations ordinance does not specify an enforcement mechanism, but pursuant to state law, a violation of the ordinance is enforceable as a misdemeanor (fine up to \$500, no active time unless three previous violations) or through equitable relief (*i.e.*, a court order directing a cessation of the violation). In practice, the Community Relations Committee typically seeks voluntary compliance through a conciliation process.

2. Community Relations Committee

At the same time the 1968 public accommodations ordinance was adopted, Council established the Community Relations Committee. Among the Committee's duties is a charge to provide an annual report that may include "recommendations of the committee for legislation or other actions to eliminate or reduce discrimination with respect to [the protected characteristics]". In addition, through the conciliation process, the Committee is authorized to "[a]pprove or disapprove plans to eliminate or reduce discrimination with respect to [the protected characteristics]".

3. Passenger Vehicles for Hire

The passenger vehicles for hire ordinance provides that "[n]o company operating certificate holder, vehicle operating permit holder, or driver shall refuse or neglect to transport any person on the basis of race, color, religion, sex or national origin". The ordinance is enforced through civil penalties and revocation of operating certificates and permits.

4. Commercial Non-Discrimination

The commercial non-discrimination ordinance was adopted in 2003 as part of the Council's response to the dismantling of the woman and minority business development program after the City was sued in federal court. The ordinance prohibits businesses that seek to contract with the City from "discriminating in the solicitation, selection, hiring or treatment of vendors,, suppliers, subcontractors or commercial customers on the basis of race, gender, religion, national origin, ethnicity, age, or disability." The ordinance provides for enforcement through the rescission, suspension or termination of a current contract, and the disqualification from bidding and contract awards for a period of not more than two years.

Description of Proposed Amendments

The proposed amendments, which are identical to those presented to Council last year, would simply add "marital status, familial status, sexual orientation, gender identity, and gender expression" to the list of protected characteristics in the passenger vehicles for hire and commercial non-discrimination ordinances as well as the list of protected characteristics that the Community Relations Committee is authorized to make recommendations for legislation or other actions to eliminate or reduce discrimination and to approve or disapprove plans to eliminate discrimination through the conciliation process.

With regards to the public accommodations ordinance, the proposed amendments would not only add these five characteristics to the general prohibition of discrimination, but would also add "sex" to the general prohibition and delete the separate section dealing with sex. This would bring the City's ordinance in line with the trend across the country of not carving out "sex" in an attempt to preserve the right of businesses to provide separate restroom facilities (*i.e.*, it is not discriminatory to provide separate men's and women's restroom facilities).