

NORMAN HUMAN RIGHTS COMMISSION MINUTES

November 28, 2011

The Norman Human Rights Commission of the City of Norman, Cleveland County, State of Oklahoma, met in the Study Session Room located at 201 W. Gray Street on November 28, 2011, at 5:30 p.m., and notice and agenda of the meeting were duly posted 24 hours prior to the beginning of the meeting.

PRESENT: Commissioners Jose Dela Cruz, Mary Drywater, Kay Ham, Tamara Pullin, Lisa Schmidt, Marjaneh Seirafi-Pour and Cheryl Wattlely

ABSENT: Commissioners Robert Ruiz and Teresa Turner

STAFF PRESENT: Carol Coles

OTHERS PRESENT: Rick Knighton, Assistant City Attorney  
Jeff Bryant, City Attorney

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Item 2, being:

APPROVAL OF THE AGENDA OF THE NOVEMBER 28, 2011, MEETING.

Commissioner Schmidt moved to approve the agenda of the November 28, 2011, meeting of the Norman Human Rights Commission, which motion was duly seconded by Commissioner Dela Cruz, and the question being approving the agenda of the November 28, 2011, meeting of the Norman Human Rights Commission, a vote was taken with the following result:

YEAS: Commissioners Dela Cruz, Drywater, Ham, Pullin, Schmidt, Seirafi-Pour and Wattlely

NAYES: None

The Chair declared the motion carried; and the agenda of the November 28, 2011, meeting of the Norman Human Rights Commission was approved.

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Item 3, being:

APPROVAL OF THE MINUTES OF THE OCTOBER 24, 2011, NORMAN HUMAN RIGHTS COMMISSION MEETING.

Commissioner Pullin moved that the minutes of the October 24, 2011, Human Rights Commission meeting be approved, which motion was duly seconded by Commissioner Drywater;

Items submitted for the record

1. Norman Human Rights Commission minutes of October 24, 2011

and the question being upon approving the minutes of the October 24, 2011 meeting, a vote was taken with the following result:

YEAS: Commissioners Dela Cruz, Drywater, Ham, Pullin, Schmidt, Seirafi-Pour and Wattlely

NAYES: None

The Chair declared the motion carried; and the minutes of the October 24, 2011, meeting were approved.

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Item 4, being:

DISCUSSION OF ADDITION OF SEXUAL ORIENTATION AND GENDER IDENTITY AS A PROTECTED CLASS IN THE CITY OF NORMAN PERSONNEL MANUAL WITH RICK KNIGHTON, ASSISTANT CITY ATTORNEY.

Rick Knighton, Assistant City Attorney, presented information regarding proposed amendments to the City of Norman Personnel Manual. The proposed changes were in Section 100 and Section 300 of the Personnel Manual.

Commissioner Pullin asked if harassment and discrimination were treated differently in the Personnel Manual and if arbitration was based on federal or state law.

Mr. Knighton replied that both have the same remedy – the right to file a grievance and that generally arbitration was based on labor law but it really depended on the issue.

Commissioner Pullin asked if there was a conflict because the City Charter was referenced in the Personnel Manual.

Mr. Knighton said that the City had considered taking the mention of the Charter out of the Personnel Manual.

Commissioner Pullin asked why the addition of Sexual Orientation was not considered for inclusion in the Equal Opportunity Statement.

Commissioner Schmidt asked if the addition of Sexual Orientation in Section 300 also provided protection in all other sections.

Mr. Knighton stated that it was not clear legally what burden of proof would be, however the employee would have the remedy of filing a grievance.

Commissioner Wattley stated that normally what is set out in the introduction, like Section 100, is what the organization hopes for or hopes to achieve, not necessarily actual policy

Mr. Knighton said that the City's policy was that all decisions regarding employment would be based on merit that would protect all classes whether specifically mentioned or not.

Commissioner Wattley stated that with the enumeration of groups in Section 200 – this was recognition of the obligation to comply with Title 7. She is concerned that Sexual Orientation is enumerated in the harassment policy but not in the discrimination portion.

Mr. Knighton repeated that this is appropriate because the concept is that all decisions regarding employment are made on an appropriate basis.

Commissioner Wattley asked if there could be a subsection to Section 200 adding Sexual Orientation.

Mr. Knighton said that additional language adding Sexual Orientation was considered.

Commissioner Ham asked if including Sexual Orientation in Section 200 would give employees the idea that they were considered a legally protected class.

Mr. Knighton explained that Tulsa, Oklahoma City and Norman Public Schools, even with the addition of Sexual Orientation to their policies limited protection to employees not applicants.

Commissioner Schmidt expressed appreciation for the addition of Sexual Orientation to the harassment policy, but still would like for Gender Identity to be added as well.

Mr. Knighton discussed several legal cases that he thought would offer protection to gender stereotyping.

Commissioner Schmidt indicated that gender identity and gender stereotyping are not the same thing.

Commissioner Wattley asked how would an employee know that they could file a grievance if they were discriminated against based on Sexual Orientation if the term Sexual Orientation was not mentioned in the policy.

Mr. Knighton responded that training would provide that knowledge. The City of Norman is committed to training employees as to what actions are appropriate. Once the amendments are

complete, then the training process will be reviewed and updated.

Commissioner Pullin asked why Sexual Orientation could not be added to Section 200.

Mr. Knighton said that the City had looked at where others had added sexual orientation to their policies and that was a factor in not adding it to Section 200.

The Commission then opened the discussion to audience members.

Steve Davis read a statement on behalf of PFLAG. "PFLAG of Norman asserts that Sexual Orientation and Gender Identity must be included in both the employee non-discrimination policy and the harassment policy."

Tamya Cox, ACLU said that Sexual Orientation and Gender Identity should be included in both the harassment and discrimination policies. When they are not provided, adequate notice is not given to employees.

Councilmember Tom Kovach stated that the Human Rights Commission had been discussing this issue for 18 months. He feels that City Council should look at this policy. He feels it should definitely be included in Section 200. This discussion actually began with the Inclusive Community Discussion process. He then read from the City of Norman's preamble that talks about promoting and protecting the civil rights of all persons. He requested that the Human Rights Commission end this discussion and move it to Council. He also asked that the Commission reaffirm their motion of the October, 2010 meeting calling for the addition of Sexual Orientation and Gender Identity to the Personnel Manual.

Laura Belmonte with the Equality Network said she is troubled by not including Gender Identity. Gender Identity is not the same as Sexual Orientation. Homelessness and violence against transgendered people is on the rise. The exclusion from the discrimination policy says that the City will provide protection from them, but not for them. There is nothing in federal or state law that would preclude having a more inclusive policy. She encouraged the City staff to honor the intent of the Human Rights Commission.

Nancy Harrington asked that the City Manager honor the request of the Commission. She felt that by including Sexual Orientation in the harassment policy but not the discrimination policy was basically talking the talk, but not walking the walk.

Mr. Knighton felt that just putting it in a policy but not supplying the training to change the behavior was more of talking the talk.

City Attorney Jeff Bryant said that he and Mr. Knighton would relay these comments to the City Manager. He said that the City Manager was not comfortable with adding the language to the Discrimination Section of the Personnel Manual because it could be argued or perceived that the City is adding a protected class beyond that recognized under Federal Law in Title VII.

Don Holladay said that members of the GLBT community are in the minority with a long history of discrimination. They are at the top of the list of hate crimes and they do not have protection under Title VII. The City of Norman can make an affirmative statement about this community by adding Sexual Orientation and Gender Identity to the Personnel Manual.

Sara French said that she was saddened with this discussion. The Norman that she knew valued human dignity and she does not believe that the personal level of discomfort of the City Manager should dictate the policy. She said that policy and training should be congruent and clear.

Van Harrington said that the City Manager had an opportunity to make Norman a place to welcome all people.

Connie Andrus said that merit is not universally interpreted the same way.

Warren Jensen with the United Church of Norman said that sexual orientation must be in the manual, that training reflects and reinforces policy, and policy must be clearly spelled out in the manual or people would not be trained if it was not in the manual.

Scott Hamilton with the Cimarron Alliance said that he appreciated the hours that have been devoted to this issue. He realizes that the issue is political and very sensitive. He feels that recently there was a good result in Oklahoma City and he is hopeful that positive change is coming for everyone.

Councilmember Dillingham asked if we include Sexual Orientation and Gender Identity in our personnel policies, would that create problems in other areas.

Mr. Bryant said that if you start having lists of protected classes, there is always concern about who has been left out or if you add to a list, then whether you have created additional substantive rights not available under existing law. His job is to provide legal advice, and the most conservative approach is to stick with a merit based policy.

Commissioner Dela Cruz stated that if the necessary skill/ability for the merit principal was not clearly defined, then it would be open for subjective interpretation.

Mr. Bryant stated the Human Resources Department maintains job descriptions that detail necessary skills, knowledge and abilities for each City position.

Commissioner Seirafi-Pour said that she was disappointed that the Commission was still discussing an issue on which they had given a clear recommendation and nothing was done.

Commissioner Ham and Schmidt both stated that progress had been made, just not to the extent that the Commission had originally hoped for.

Commissioner Schmidt moved to reaffirm the recommendation made at the October 2010 Human Rights meeting to include Sexual Orientation and Gender Identity in the Equal Employment

Opportunity and Sexual Harassment policy section of the Personnel Manual of the City of Norman, which motion was duly seconded by Commissioner Drywater; the question being upon reaffirming the recommendation made at the October 2010 Human Rights meeting to include Sexual Orientation and Gender Identity in the Equal Employment Opportunity and Sexual Harassment policy section of the Personnel Manual of the City of Norman, a vote was taken with the following result:

YEAS: Commissioners Dela Cruz, Drywater, Ham, Pullin, Schmidt, Seirafi-Pour and Wattlely

NAYES: None

The Chair declared the motion carried; and the Human Rights Commission reaffirmed the recommendation made at the October 2010 meeting to include Sexual Orientation and Gender Identity in the Equal Employment Opportunity and Sexual Harassment sections of the Personnel Manual.

Commissioner Schmidt moved to recommend adoption of the proposed amendments to Section 100 and Section 300 of the Personnel Manual presented by the City Attorney's office at the 11/28/11 meeting, which motion was duly seconded by Commissioner Dela Cruz; the question being upon recommending adoption of the proposed amendments to Section 100 and Section 300 of the Personnel Manual presented by the City Attorney's office at the 11/28/11 meeting, a vote was taken with the following result:

YEAS: Commissioners Dela Cruz, Drywater, Ham, Schmidt, Seirafi-Pour and Wattlely

NAYES: Commissioner Pullin

The Chair declared the motion carried; and the Human Rights Commission recommends adoption of the proposed amendments to Section 100 and Section 300 of the Personnel Manual presented by the City Attorney's office at the 11/28/11 meeting.

Commissioner Wattlely moved that due to the fact that the proposed amendments addressed harassment but did not adequately address discrimination, the Human Rights Commission expressly directs the City Manager's attention to including provisions of discrimination based on Sexual Orientation and Gender Identity in the City of Norman's personnel policies, which motion was duly seconded by Commissioner Seirafi-Pour; the question being upon directing the City Manager's attention to including provisions of discrimination based on Sexual Orientation and

NAYES:                   None

The Chair declared the motion carried; and Kara Joy McKee will be awarded the 2011 Norman Human Rights Award at the December 12<sup>th</sup> City Council Meeting.

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Item 6 being:

MISCELLANEOUS DISCUSSION.

The Commission discussed the 2012 Interfaith Breakfast for Martin Luther King Day. Commissioner Ham agreed to head up the effort.

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Item 7 being:

ADJOURNMENT.

Commissioner Schmidt moved that the November 28, 2011, meeting of the Norman Human Rights Commission be adjourned, which motion was duly seconded by Commissioner Drywater; the question being upon adjourning the November 28, 2011, meeting of the Norman Human Rights Commission, a vote was taken with the following result:

YEAS:                   Commissioners Dela Cruz, Drywater, Ham, Pullin, Schmidt, Seirafi-Pour and Wattley

NAYES:                   None

The Chair declared the motion carried; and the November 28, 2011, meeting of the Norman Human Rights Commission was adjourned at 8:45 p.m.

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