

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA
HUMAN RESOURCES COMMITTEE
Monday, April 30, 2018
(May Committee Meetings)
Municipal Complex, Committee Meeting Room, 3rd Floor
100 Ann Edwards Lane, Mount Pleasant, SC 29464**

MINUTES

PRESENT: Kathy Landing, Chair, Bob Brimmer and Guang Ming Whitley

STAFF PRESENT: Eric DeMoura, Town Administrator and Meghan Kelly, Human Resource Director

Ms. Landing called the meeting to order at 10:39 a.m.

1. Approval of Minutes from the April 2, 2018 meeting

Mr. Brimmer moved for approval; seconded by Ms. Whitley. All present voted in favor.

2. Public Comments

[None]

3. Review of Town non-discrimination policies

Ms. Landing stated that she would like to thank Ms. Whitley for bringing this topic to the forefront.

Mr. DeMoura stated that most of the non-discrimination references occur in our Human Resource Guidelines. He stated that the language comes directly from what is currently existing in Title VII. He said it prohibits discrimination on race, color, religion, gender, national origin, disability, age, genetic information or any other status protected by law. He stated that references do not go as far as to include some items that others have; other states, other cities, that go as far as to include sexual

orientation and gender identity, which are not included. He said internally, this is how, in general, the Town's regulations are set up. He said externally, the Town does not extend the same protections for those two classifications when it comes to public accommodations or housing.

Chase Glen, Executive Director of the Alliance for Full Acceptance, which is a Charleston County based non-profit that works with the Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Community. He stated that he is not a Town resident. He said he is here to speak in favor of updating language within hiring policies within the Town of Mount Pleasant, as well as non-discrimination policies around housing and public accommodations. He said that he has personally heard stories from members of the LGBT community where they have experienced discrimination. He said anytime they are able to put policies and ordinances in place that support non-discrimination, it is good for business, prospective homebuyers, and he is happy that the Town is considering this.

Mr. Brimmer asked Mr. Glen if any of the stories regarding discrimination referenced Mount Pleasant.

Mr. Glen stated that they were across the lowcountry; however, he did not gather specific details. He said they were in Charleston County.

Ms. Whitley stated that looking at this language, there is non-discrimination language in the Town's ordinance for public assemblies and parades and it does include the language "sexual orientation and gender identity." She believes there is a missing place in the Town's ordinance where the Human Resource policy can actually be codified to include the non-discrimination language that is already in our code which is broader. She said currently, there is ambiguity at the State and Federal level, it has not been litigated in this jurisdiction, and that the term "sex" includes sexual orientation and gender identity. She said to clarify this for the Town the City of Charleston, North Charleston, Folly Beach and Columbia have all adopted more expansive language that removes any ambiguity that these categories are protected classes. She said her recommendation would be to move forward with language in our

ordinance that removes any ambiguity as to whether these are protected classes for the Town of Mount Pleasant.

Ms. Landing stated that she knows the Town is already looking to change the language regarding ADA (Americans with Disabilities Act), which will also be codified. She suggested including the clarification of sexual orientation and gender identity in the update to the ordinance at the same time the ADA changes are made, which may be ready in June.

Mr. Brimmer stated that he does not support any type of discrimination at all. He said his questions primarily are of legal concern. He stated that currently, the Town does not recognize those two classes specifically. He asked if there was a particular reason why. He asked if it was an oversight or is there a reason why the Town does not include those classes.

Mr. DeMoura stated that it goes without saying here at the Town of Mount Pleasant that, included or not included, it is not how the Town operates. He said as to the reasons why, there was a major revision done in 2012 and at the time, the Town had some assistance from an outside professional HR legal consultant. He said the recommendation at that time, was to keep it as is. He said this is how the Town proceeded forward and nothing has changed since.

Mr. Brimmer asked what was behind that recommendation. Were there some specific reasons why that recommendation was made, as there may be some legitimate reasons why.

Mr. DeMoura stated that he does not know why.

Mr. Brimmer said this may be more of a legal question. He asked if there is a reason why, at the Federal or State level, these classes are not included and are there any concerns or comments about whether having the Town's language here really provides additional protection if it is not recognized at a higher level.

Ms. Julia Copeland, Legal Counsel, stated that from a Federal perspective, Title VII gives someone a private right of action, so a lawsuit could be filed using Title VII. She said federally, the US Supreme Court has refused to hear a case recently out of Georgia because that exact topic of sexual

orientation falls under the category of sex and is already given Title VII protection. Hence, there is no federal review or decision that drives how to proceed forward. She said in that respect, states and local ordinances on municipalities have been taking matters into their own hands and providing these levels of protections. She said under the ordinance that will be discussed now, it does not provide someone a private right of action. You could not file a lawsuit and use this ordinance as a basis, but you could come to the Town with a complaint and the Town could issue a fine, trial an action in Civil Court, or pursue an injunction to stop that kind of behavior if it is, indeed, considered discriminatory. She said currently, there is no guidance from the federal government as to whether sexual orientation should fall under a protected class.

Mr. Brimmer asked about the State level.

Ms. Copeland stated that at the State level, there is no action.

Mr. Brimmer asked for an example, if this were in place in the Town, how this would be used or referenced. He is not clear on what would happen at the Town level as opposed to, if the protections did not extend beyond the Town, what would that really mean other than just having the verbiage in. He asked what action could be taken.

Ms. Copeland stated that it would give someone the right to file a complaint to the Town and the Town would investigate it if they determined "the bank" was refusing to issue a loan based on sexual orientation or gender identity. The Town could issue a fine or file an action in civil court and require that the bank provide that loan, if it is not based on some legitimate reason and simply on sexual orientation.

Mr. Brimmer said if the Town did this, it could be appealed beyond the Town and "the bank" could say it is the Town's rule, but it is not supported by the state or federal governments. He asked what it changes if someone does something that is deemed discriminatory.

Ms. Copeland stated that civilly, if the Town files an action for declaratory judgment or an injunction, and the court issues a declaratory judgment that it was discriminatory and requires that "the bank"

provide the funding, “the bank” could appeal the judgment and it could go to the Court of Appeals and the State Supreme Court. She said this simply provides more “teeth” than what they have now. She said there is no “teeth” provided by Title VII.

Mr. Brimmer asked if this language was in our HR Guidelines or ordinances, would it require the Town to amend any other ordinances, such as putting fines in place or consequences. Would this have to be necessary to put some “teeth” behind having a non-discrimination ordinance in place? He asked if the Town wanted to levy a fine against someone, would the Town need to have a new ordinance written for the Town to dictate what that violation is and what the fines are?

Ms. Copeland stated that she does not believe the Town necessarily needs an ordinance. She said the Municipal Court would have to be able to provide some cause of action to levy the fine against a party if deemed discriminatory. She said she does not believe a change to an ordinance will be required.

Mr. Brimmer stated that his concern is to have an ordinance without a method of enforcement if it is enforced locally, but not at levels beyond, because it is in the State or Federal law. He is wondering what the protection really gives the Town.

Ms. Landing stated that she needs to clarify that this could be going beyond the purpose of bringing this up today. She said what this Committee is attempting to do is to ensure that what is already in place, which is already anti-discriminatory, is clearer that the term sex also refers to sexual identity or preference and not that we would attempt to figure out a way to impose more fines or create a new ordinance. She said it is specific to hiring within the Town personnel and specific to fair housing, which includes loans and/or being able to purchase real estate.

Ms. Whitley added “public accommodations.”

Ms. Landing stated that public accommodations would mean consideration for someone that wanted to rent Alhambra Hall.

Ms. Whitley stated that the language that is more expansive is already in the Town's ordinance as it relates to public assemblies and parades, so this would simply be filling in the gaps in the system. She said this is not adding something completely new and foreign to the code. She stated that it has not been an issue but is there as a protection.

Mr. Brimmer asked what the context is that the Town currently has.

Ms. Whitley stated that if someone comes to the Town wanting to have a public assembly or a parade, the non-discrimination language, which is a repeat of Title VII, is present with the addition of sexual orientation and gender related issues. She said her proposal would be to take that exact language already in our ordinance and create new ordinances with respect to public accommodations and fair housing and codify the Town's non-discrimination policy within the Town, so it is clear to perspective employees and businesses who are coming to Mount Pleasant, as well as individuals. With this revision, we are choosing to say there is no ambiguity.

Mr. Brimmer stated that he does not have an issue with this; however, his concern is that we are expanding the rights under Title VII within the Town and he would like to have more conversations about the legalities of expanding rights. He said having a parade is one thing but talking about loans and contracts is something that needs more discussion. He said he has some discomfort.

Ms. Landing said when Ms. Whitley approached her regarding this issue, she asked staff what would be different from what the Town already has in place. She said it was really an expansion of what that one word means. She said it is already there, so it is not being redefined, but ensuring that in today's world when people are more sensitive to others' overall needs and concerns. She said what we currently have in place now does not allow the Town to discriminate based on a number of things that were already listed, and this would be simply taking that one word and making sure that it is also included.

Mr. DeMoura stated that internally, the Town does this as a matter of behavior rather than ordinance; therefore, including it throughout the Town's internal documents gives it the power of our ordinance, meaning this is what Council says will be and staff is obligated to carry this out. He said he also understands Mr. Brimmer's concerns about how far this applies outside.

Ms. Whitley said the fact that our peer cities have gone ahead and done this, the Town would simply be following their lead and adding the Town of Mount Pleasant to the list of Towns that have taken that step to reduce any ambiguity and add clarity. She said it is currently an open interpretation and all courts thus far at the lower level, have held that it does include sexual orientation and gender identity, but it has never been litigated in our circuit.

Mr. Brimmer asked what the intent would be today.

Ms. Whitley stated that it would be to task Legal Counsel with drafting language that would go into multiple places in the code and bring that back next month for Committee's review.

Ms. Landing asked if this would need to go to Council first.

Mr. DeMoura stated that Committee may initiate this process for Council's consideration, it would be appropriate. However, it would take an action of Committee to move this forward.

Ms. Landing stated that she is aware that Legal is already working diligently on the new draft for ADA compliance and clarification and asked if this could be combined with it.

Mr. DeMoura suggested that, if it is agreeable, to wait a few more weeks, and then consider them all at one time.

Ms. Whitley tasked Legal with drafting updated ordinance language with regards to a non-discrimination policy, as discussed; seconded by Mr. Brimmer with a comment that his support would depend on what the product is and would welcome a conversation with Mr. Glen as well to

have some of his questions answered in terms of what is happening locally here as well, but is happy to move it forward.

All present voted in favor.

Ms. Copeland stated for clarification, is this also on fair housing, as well as equal privilege to public accommodation.

Ms. Whitley responded in the affirmative and added personnel at the Town.

All present voted in favor.

4. Adjourn

There being no further business, meeting was adjourned at 11:00 a.m.

Respectfully submitted,
Barbara Ashe
April 30, 2018