



## Legislation Text

File #: O-1920-2, Version: 1

CONSIDERATION OF ORDINANCE O-1920-2 UPON SECOND AND FINAL READING: AN ORDINANCE OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AMENDING SECTION 4-1001 OF CHAPTER 4 OF THE CODE TO CLARIFY THE DUTIES OF THE HUMAN RIGHTS COMMISSION CONSISTENT WITH THE DUTIES LISTED IN CHAPTER 7 OF THE CODE; AMENDING SECTIONS 7-101 THROUGH 7-128 OF CHAPTER 7 OF THE CODE TO ADD SPECIFIC PROTECTIONS AGAINST DISCRIMINATION AND RETALIATION ON THE BASIS OF SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, OR MARITAL STATUS, INCLUDING MARRIAGE TO A PERSON OF THE SAME SEX, IN THE AREAS OF EMPLOYMENT, HOUSING, AND PUBLIC ACCOMMODATIONS; AMENDING SECTION 7-102 TO ADD PROVISION AND PROMOTION OF EDUCATION AND AWARENESS OF THE RIGHTS PROVIDED IN THE CODE AND SUBMISSION OF AN ANNUAL REPORT OF COMPLAINTS TO CITY COUNCIL TO THE DUTIES OF THE HUMAN RIGHTS COMMISSION; AMENDING SECTION 7-103 TO MODIFY THE DEFINITION OF AGE AND ADD NEW LANGUAGE TO THE DEFINITION OF SEXUAL HARASSMENT; ADD DEFINITIONS OF DISABILITY, DISCRIMINATE OR DISCRIMINATION, GENDER IDENTITY OR EXPRESSION, AND SEXUAL ORIENTATION; REMOVE DEFINITIONS OF DWELLING, EMPLOYMENT, HOUSING ACCOMMODATION, LENDING INSTITUTION, REAL ESTATE BROKER, AND HANDICAPPED PERSON; AND AMEND THE DEFINITION OF EMPLOYER TO REMOVE THE MINIMUM NUMBER OF EMPLOYEES; AND RENUMBER REMAINING DEFINITIONS; ADD A NEW AND RENUMBERED SECTION 7-104 TO PROVIDE A GENERAL PROHIBITION OF DISCRIMINATION AND RETALIATION; DELETE SECTIONS 7-104 THROUGH 7-118; ADD A NEW AND RENUMBERED SECTION 7-105 TO PROVIDE SPECIFIC EMPLOYMENT AND HOUSING EXCEPTIONS; AMEND AND RENUMBER SECTION 7-119 REGARDING THE FILING OF COMPLAINTS TO PROVIDE FOR FILING IN THE CITY CLERK'S OFFICE ON A FORM APPROVED BY THE HUMAN RIGHTS COMMISSION; AMENDING AND RENUMBERING SECTIONS 7-120 THROUGH 7-121 TO CLARIFY AND STREAMLINE THE HUMAN RIGHTS COMMISSION'S ADMINISTRATIVE REVIEW AND RESOLUTION OF COMPLAINTS PROCESS; DELETING SECTIONS 7-122 THROUGH 7-127; ADDING A NEW SECTION 7-110 TO PRESERVE A COMPLAINANT'S RIGHT TO PURSUE OTHER ADMINISTRATIVE REMEDIES AND/OR A PRIVATE CIVIL ACTION; RENUMBERING SECTIONS NOT DELETED; AND PROVIDING FOR THE SEVERABILITY THEREOF.

**BACKGROUND:** On December 22, 2015, the Norman City Council passed Resolution R-1516-65, which provides that the City's prohibition of sex discrimination included in the City's personnel policies and Civil Rights Ordinance in Chapter 7 be interpreted and administered to guard against the use of assumptions and stereotypes associated with sexual orientation and gender identity.

Members of the local LGBTQ community, including the local advocacy group Norman United, have requested that the City add "sexual orientation" and "gender identity or expression" as specifically identified protected classes in the City's Civil Rights Ordinance. Staff has worked with local civil rights attorney Don Holladay to review the City's Civil Rights Ordinance and has identified other areas that need to be updated as well.

Staff presented proposed ordinance amendments to the Norman Human Rights Commission (HRC)

at its January 28, 2019, meeting. On April 22, 2019, Staff presented a few additional modifications that were requested by the HRC. The HRC unanimously recommended that the proposed ordinance amendments be presented to the Council Oversight Committee for review and consideration.

Staff presented the proposed ordinance amendments to the Council Oversight Committee on May 9, 2019. The Oversight Committee directed Staff to prepare the amendments for full Council review and discussion. City Council reviewed and discussed the proposed amendments at its July 16, 2019, Study Session, and directed Staff to prepare the proposed amendments for formal Council consideration.

**DISCUSSION:** On August 19, 1986, the City of Norman adopted Ordinance O-8687-2 prohibiting discrimination against citizens based on race, color, religion, ancestry, sex, national origin, age, place of birth, handicap, and familial status. Substantive changes to the ordinance (other than increasing the penalty ranges) have not been made since May 14, 1996, over twenty years ago, when City Council adopted Ordinance O-9798-58, at which time “familial status” was added as a protected class based on the recommendation of the United States Department of Housing and Urban Development (“HUD”).

The proposed amendments include Norman United’s initial request to add “sexual orientation,” and “gender identity or expression” as separate protected classes. The amendments also add “marital status, including marriage to a person of the same sex” as a protected class in light of the United States Supreme Court’s decision in *Obergefell v. Hodges*, 135 S.Ct. 2584 (U.S. 2015), that the right to marry is a fundamental right inherent in the liberty of the person and that under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same sex may not be deprived of that right and liberty. The Supreme Court also held that States must recognize lawful same-sex marriages performed in other States. These rulings led to the legalization of same-sex marriage throughout the country.

The proposed amendments also simplify and modernize the ordinance (for example, replacing the term “handicap” with the term “disability” and adding language referencing the City’s Americans with Disabilities Act Accessibility and Inclusion Statement) as well as streamline the HRC complaint process. The ordinance still addresses three specific areas of protection: employment, housing, and public accommodations.

#### **A. LGBTQ Protections**

“Sexual orientation,” “gender identity or expression,” and “marriage to a person of the same sex,” have been added as specific additional protected classes throughout the ordinance. They are included in the Declaration of policy and objectives in § 7-101 and in the general Prohibition of Discrimination and Retaliation in § 7-104. Corresponding definitions for “gender identity or expression” and “sexual orientation” have been added as re-numbered definition subsections (7) and (13) in § 7-103, respectively.

#### **B. Clarification of HRC Role and Streamlining of HRC Complaint Process**

The HRC is an advisory board, and the proposed amendments clarify this role, particularly as it relates to the receipt and resolution of complaints. The current ordinance language bestows upon the HRC the power to take testimony, issue subpoenas, and conduct a formal hearing. The reality of the HRC, however, is that it consists of citizen volunteers who do not necessarily have the training or financial resources to conduct such a formal adversarial hearing. The purpose of the complaint

process is to find an amicable resolution that offers a real remedy to the aggrieved individual. The proposed ordinance amendments streamline this process, providing both the aggrieved individual (the Complainant) and the individual or entity against whom a complaint is made (the Respondent) an opportunity to have notice, be heard, and be represented by legal counsel if they choose. See §§ 7-107(c) and (d).

The proposed amendments provide an Administrative Review process that allows the HRC to review the complaint and any information provided by the Complainant or Respondent and then make a written recommendation to the City Attorney's Office for further investigation and/or further action, if appropriate, including, but not limited to, referral of the Complainant to other local, state, or federal entities (such as the Equal Employment Opportunity Commission ("EEOC") or the Oklahoma Attorney General's Office of Civil Rights Enforcement for employment issues or HUD for housing issues); mediation of the matter between the involved parties, prosecution of the Respondent in Municipal Court (criminal prosecution); filing of injunctive relief in state or federal district court, or a determination that no further action should be taken. See proposed § 7-108. The ordinance still allows the HRC to dismiss a complaint if it determines by a majority vote that the complaint is unfounded, that no further action is warranted, or that the issue has been resolved. See proposed § 7-108. The proposed amendments also make clear that the City Attorney, the Commission Chair, and/or their designees can also contact the Complainant and Respondent to attempt facilitation of mediation or other informal resolution of the complaint prior to the complaint being heard by the HRC. See proposed § 7-107(b). Under the proposed revisions, the Complainant still retains the right to pursue other administrative remedies and/or a private civil action. See proposed § 7-110.

Complaints must be filed on a form approved by the HRC. See proposed § 7-106(a). The amendments clarify that the form must be filed in the City Clerk's Office like other official forms and notices. See proposed § 7-106(a). Complaints must be filed within ninety (90) days after the alleged act of discrimination or retaliation, and the HRC shall review and discuss the complaint at its next regularly scheduled or special meeting that is at least thirty (30) days after receipt of the complaint. See proposed §§ 7-106(a) and 7-107(a).

The proposed amendments also include the additional duty of the HRC to "provide and promote education and awareness of the rights provided in this Code." See proposed § 7-102(7). They also include a new reporting duty for the HRC to submit to City Council an annual report of complaints filed and their resolution but notes that no report is required if no complaints are filed during a particular year. See proposed § 7-102(16).

### **C. Simplification of Substantive Protections**

The substantive anti-discrimination and anti-retaliation protections did not really change, but instead of having multiple separate sections for employment, housing, and public accommodations, the protections are combined in a shorter, simpler prohibition section contained in proposed § 7-104. Section 7-105 outlines the same exceptions to the general prohibition which were in the current ordinance but combines them into this one new section with subsections for each category of employment, housing, and public accommodations.

### **D. Changes Requested by the HRC**

#### **1. Removal of Minimum Employee Number Requirement**

The current ordinance provides that an employer must have five (5) or more employees to fall under

the purview of the ordinance. See § 7-103(5). Minimum employee number requirements are common in anti-discrimination laws. Most of the federal laws the EEOC enforces require a minimum of fifteen (15) (such as Title VII claims for race, color, sex, religion, or national origin discrimination and disability discrimination arising under the Americans with Disabilities Act (“ADA”)) or twenty (20) (such as age discrimination under the Age Discrimination in Employment Act (“ADEA”)). There is no minimum employee number requirement under the state definition of employer contained in 25 O.S. § 1301. Citizen advocates, particularly those in the LGBTQ community, have expressed concern that some citizens working in Norman would otherwise not have protection if they work for smaller employers that are not governed by the provisions of the EEOC. The HRC requested removal of this minimum employee number requirement. The proposed amendments remove that minimum number and use the definition of “employer” that is used in the state definition contained in 25 O.S. § 1301.

## **2. Definition of Domestic Service**

The HRC also requested a definition and/or clarification of what is meant by the existing exclusion for “domestic service.” Staff drafted language to clarify that the definition of “employer” contained in § 7-103(5) excluded the “employment of individuals in domestic service as private household workers employed in a private home, such as nannies, housekeepers, and elder caregivers.” At the July 16, 2019, Study Session, City Council requested that Staff remove this exception, so it is no longer included as an exception to the definition of employer

## **3. Electronic Communications**

The HRC requested that the discrimination publication prohibition in § 7-104 specifically include electronic communication in light of new modern improvements, such as e-mail and social media.

## **E. Section 4-1001 Amendments**

Also include in this Ordinance are amendments to § 4-1001 of the Code (Boards and Commissions) which clarify the duties of the Human Rights Commission to be consistent with the duties in § 7-102 as proposed in these amendments to Chapter 7.

**RECOMMENDATION:** The proposed amendments are submitted for City Council’s consideration.