

LEGISLATIVE REVIEW COMMITTEE

Thursday, May 20, 2021

Committee Members Present:

Commissioner Allison Wright, Chair
Commissioner Jesse Houle
Commissioner Carol Myers
Commissioner Mariah Parker
Commissioner Ovita Thornton

Committee Members Absent:

Staff:

Sherrie Hines, Chief Assistant Attorney
Austin Jackson, Attorney's Office
Krystle Cobran, Inclusion Office
Gavin Hassemer, Central Services

Angel Helmly, Central Services
Sarah George, Recorder

Commissioner Wright called the meeting to order at 1:02 p.m.

Commissioner Myers made a motion to amend the agenda to pick a date for the July meeting at the end of the meeting. Commissioner Houle seconded the motion. The motion passed unanimously.

A. **Approval of Minutes:**

Commissioner Houle made a motion to approve the April 1, 2021 minutes. Commissioner Parker seconded. The motion passed unanimously.

Commission Identified Items of Interest:

B. **Examine opportunities for local civil rights legislation, modelled on the recent Brookhaven ordinance, and utilizing the Municipal Court and ACC Attorney's Office as support for the prospective ordinance. (Mayor Girtz assigned to LRC on March 3, 2020)**

Sarah George summarized past discussion. She explained that the topic was last discussed in Committee at the April 1, 2021 meeting, and staff was asked to research and revise the draft ordinance to capture the Committee's suggested changes. Following that meeting, the Attorney's Office and Inclusion Office collaborated to update the draft ordinance based on the discussion. Sherrie Hines shared the updated draft ordinance and noted that Krystle Cobran had made several additions to the recitals section, including updating the language to capture the goal to embrace inclusion and diversity and increase equity throughout the government.

Sherrie Hines also explained that, in the last meeting, the Committee had expressed a desire to change references from "citizen" to "resident". She noted that this was updated throughout the document; however, she left "citizens" in the recitals section, because it references specific constitutional protections and rights. Commissioner Wright noted that "resident" can also be limiting, because it would not capture visiting community members. She asked the Committee if they would prefer changing these references to "community member" rather than "resident". Commissioner Parker explained that she would be in favor of the change, given people may work but not reside in the county and may seek out remedy under the ordinance. The Committee agreed to modify the reference to "community member" throughout the document, wherever appropriate. Sherrie Hines expressed a concern that "community member" might still not capture

the intent of the Committee, as there is an argument that someone traveling to Athens for a weekend or a couple of hours may not necessarily be a community member. She suggested to modify it to say “community members and/or visitors” to make sure to capture everyone. The Committee agreed.

In sec. 6-20-1, Sherrie Hines explained that there was discussion about racial identity or ethnicity in the last meeting, and she did not have a clear understanding as to the preference of the Committee. Commissioner Houle explained that they recall discussion regarding including the term “racial identity”, and they remain in favor of including it. Commissioner Myers explained that she believes the question from her perspective is whether or not the Committee would like to add language within the ordinance that they believe in and agree on but that may have difficulty standing up in court, if challenged. Commissioner Wright reiterated that there are limitations to what can be done locally and the educational toolkit would help community members access the resources available at the federal level. She also noted that she believed Sherrie Hines was going to research further regarding Commissioner Parker’s question in the last meeting regarding dreadlocks. Sherrie Hines explained she had researched it further, and there is not a more recent case than the 2017 case referenced in the last meeting. Under current law, if it is based on the actual characteristics of a person’s hair based on their racial identity or their national origin, it would constitute discrimination; however, if it is a style in which the hair can be worn, it would not constitute illegal discrimination. Commissioner Parker explained that she had the discussion in the previous meeting was pertaining to sec. 6-20-4. She recalled that she had been making reference to the language in this section that notes the ordinance does not prohibit an employer from requiring an employee to adhere to reasonable and equitable dress or grooming standards provided that all employees are permitted to dress in a manner consistent with their gender identity. She explained she also would like to include “racial and/or ethnic identity”, but, based on discussion to this point, she understood there is not more recent case law to support that legally. Commissioner Thornton explained that it seemed like mixed-messaging, but she did not want to go down the path of putting in words into an ordinance, because they hope it will change in the future; rather, she thinks that they should work to make that change.

Commissioner Houle inquired as to whether there would be a way to recognize a polyamorous relationship as an actual relationship in the way others are considered. They explained their understanding is that there is not specific case law against it, but there is not specific case law permitting it. Commissioner Houle expressed interest in including it, but they would defer to the Sherrie Hines on whether it fit better, under marital or familial status. Commissioner Wright explained that she believes there are already challenges with family definition with existing ordinances. She also noted that she believes the Committee may want to capture the category of both marital and familial status broadly rather than attempt to describe every version of it. Commissioner Wright inquired as to whether any type is covered under the description of both statuses. Sherrie Hines explained that the case law is not available yet on this matter; however, the way familial status has traditionally been applied is in reference to discrimination against families, because they have children, or against a single woman as a parent, because she does not have a spouse. She further noted that she is unaware of where it has been applied to polyamorous families. She advised that if they were to pass an ordinance that said it was unlawful to discriminate against polyamorous couples, as an example, then it would run contradictory to the definition of family that is currently used for zoning purposes.

Commissioner Wright explained that, in her perspective, familial status should incorporate all the different versions that are out there, but she wondered what was being left out in pursuit of being specific about this one type. Commissioner Myers requested clarification from Commissioner Houle on where the specific change should be made within the document. Commissioner Houle agreed that they believe it would be within the definitions. Commissioner Myers noted that, in the

definitions section, items 6 and 8 do not make any reference to the number of people involved or gender; she inquired as to what wording Commissioner Houle would ideally recommend. Commissioner Houle explained they would like it to say “relationship status”, which would encompass the variety of ways people can be in a relationship that may or may not be related to marriage. They requested clarification on whether, for legal purposes, if, instead of giving relationship status its own additional category, they could use the term relationship status as part of the definition under “marital status” or under “familial status”. Sherrie Hines explained that, at this time, relationship status is not a legally protected class and marital status is part of the established protected class.

Commissioner Houle inquired as to why schools would not apply under this ordinance, and if it was because the license for schools is not a local licensure. Sherrie Hines confirmed that they were correct. Commissioner Houle also inquired as to whether the schools that get business licenses would fall under the purview of this ordinance. Sherrie Hines explained that she believes they would. Commissioner Houle asked if any additional information had been obtained to provide clarity on why some private schools have business licenses and others do not, and they also questioned if there was anywhere within the ordinance that would apply to those that do not have business licenses. Sherrie Hines explained that she did not have any additional clarity from the Finance Department, and she is unsure why some do and others do not have business licenses. She advised that she could try to reach out to them to get more direction on it. She also explained that, because the proposed definition includes “which is required to obtain a license or permit,” if the ordinance were to pass as is, and we were able to later determine that these schools are required to get an occupational tax certificate and just have not been doing it, this would still apply to them; if we are able to later determine that they are not required to obtain one, then there is nothing that we could have done with them under this ordinance as it stands regardless. Commissioner Houle advised that they are comfortable leaving it as is in regards to the schools question.

Commissioner Houle inquired as to whether or not it would make sense to include polyamory in the listing under sexual orientation, as it is often how it gets discussed in other places. Commissioner Wright requested clarification from Sherrie Hines, because it is not one of the protected classes. Sherrie Hines advised that she would stand by the confidential memo that she previously sent to the Committee about the issue; however, the Committee can add it if that is their desire, and it would just be up to the Committee as to how far they want to go with additions.

Commissioner Parker shared that she had previously spoken with a woman that had been involved in writing these ordinances all over the state to obtain some input from some various other ordinances that have recently passed. She noted that two things were brought up, including potentially eliminating “where preempted by State and Federal law” under sec. 6-20-5 to avoid redundancy. Sherrie Hines explained that this portion was something they believed was really important to include. One reason for this is that she does not believe that pursuing an ordinance violation in any way, shape, or form precludes someone’s right to pursue relief in any other court. Secondly, it is designed to provide the government and entities to work with some protections in the sense that, if the Administrative Officer reviews the facts and determines that this should be preempted by Federal or State law, then the Administrative Officer would dismiss the case, and it would not move forward. Commissioner Parker noted this phrase is also repeated in the recitals section in paragraph 11; she inquired if it would be necessary there as well. Sherrie Hines advised that she does believe it is necessary there as well.

Commissioner Parker also inquired about the definition of religious organizations in sec. 6-20-4; the draft ordinance references religious associations and societies, which are not necessarily the

same thing. She expressed concern that someone could say that they discriminated against someone, because they are a religious society while not technically being a religious organization by law. Sherrie Hines suggested removing “association, or society” from this section, given “religious organization” is already a defined term within the document. Commissioner Parker agreed.

Commissioner Myers noted one suggested revision in item number 3 under sec. 6-20-5. She explained that staff could review this later to determine if it is appropriate, but she believed the sentence with the phrase “the County Attorney is authorized to utilize alternative enforcement measures” may be out of order. She noted it may fit better after the first sentence on this item. Commissioner Myers inquired about the definition of a “bona fide nonprofit, private club”. Sherrie Hines explained that she believes it would be anything that is a nonprofit entity that also has a private membership. Commissioner Myers requested clarification on what the legal precedence is for excluding them. Sherrie Hines advised that she would have to do more research on it, but she believes it is likely that there is State or Federal law that exempts these organizations.

Commissioner Houle made a motion to amend the draft ordinance under the definitions in sec. 6-20-2 for “familial status” to say “means an individual’s past, current, or prospective status as having multiple intimate relationships and/or as a parent”. Commissioner Parker seconded. The motion passed 3-2, with Commissioners Wright and Thornton opposed.

Commissioner Myers made a motion to move the recommendation forward to the full Mayor and Commission in the next agenda cycle. Commissioner Houle seconded. The motion passed unanimously.

C. **Examine opportunities for an educational tool kit for local civil rights legislation**

Commissioner Wright asked the Committee if they would prefer to put this topic on hold until the proposed nondiscrimination ordinance is reviewed by the full Mayor and Commission. Commissioner Myers explained that she believes staff could flesh out a process for making it clear online and in communications reaching out to the community; it seemed to be procedural and not policy. She asked for clarification as to why this would need to be discussed by the Committee rather than having staff work on it. Commissioner Parker advised that she also had the same question.

Sarah George summarized the history on this topic and explained that, based on discussion during the LRC meeting in February 2021, the Committee requested the topic be divided to allow them to continue to move the draft ordinance forward while also exploring opportunities to make the complaint process more accessible and inclusive for community members. Mayor subsequently approved splitting the topic.

Commissioner Myers made a motion to request the Manager to continue to explore making the complaint process more accessible, develop processes, and prepare a presentation for the full Mayor and Commission at a Work Session, with a possible vote by the Commission subsequently. Commissioner Parker seconded. The motion passed unanimously.

D. **Review and make recommendations regarding current alcohol serving opportunities for Special Events on public properties and public rights-of-way (both free public activities and ticketed events), including flexibility regarding shape and size requirements of drinking areas, food service requirements, furniture requirements, and consideration of the ratio of police officers required per physical size or occupancy, as well as review of areas managed by Leisure Services that may be available for Special Events that serve alcohol. (Mayor Girtz assigned to LRC on February 4, 2020)**

Sarah George summarized discussion on the topic. Gavin Hassemer explained that COVID-19 has caused some changes to special events over the past year, and he requested some direction and clarification from the Committee on what information would be helpful for staff to prepare as the topic moves forward.

Angel Helmly explained that, for the purposes of this topic, it would only apply to typically around five events a year. She further explained that they usually permit about 55 events a year, but the majority of them do not involve alcohol and some are very small. She explained that some of the issues that were discussed previously were that the current ordinance requires seating for the number of people that are allowed into the beer garden. It also requires food service to be available. The ordinance is also very specific about the shape of the beer garden and requires them to be rectangular. She also explained that they are beginning to issue special event permits again, based on the Notice of Proposed Administrative Action guidelines.

Commissioner Myers requested clarification about the name of the five events Angel Helmly referenced. Angel Helmly explained that she provided an average number, but it typically would include Twilight and AthFest. In previous years, there has also been a St. Patrick's Day festival, and Creature Comforts has also hosted an event. Commissioner Myers inquired about the specifics of the seating policy. Angel Helmly explained it is one seat for every one person permitted in the beer garden. She noted that there are two different size beer gardens, one that would allow 150 people and another that would accommodate 300 people. Commissioner Myers inquired about the food policy. Angel Helmly advised that it is required under the current ordinance for food service to be available; this does not mean that food has to be inside the beer garden, but there must be food available for people to eat. Commissioner Myers also requested clarification on the reasoning for the requirement for the beer gardens to be rectangular and abut the curb. Gavin Hassemer explained that it cannot be in the middle of the street, because they have to keep those clear for emergency vehicles.

Angel Helmly also noted that some of the event sponsors had requested that open container be considered for an event. She explained that she believes we would need to obtain input from the Police Department if that is desired. Commissioner Wright requested feedback from staff on a recommendation on event size. Commissioner Myers inquired as to whether or not it would be possible to hear from some of the event organizers as well.

E. **Schedule/Agenda Changes**

The next LRC meeting is scheduled for June 3, 2021 at 1:00 p.m. and will be held remotely via WebEx.

**Note: The June 3, 2021 LRC meeting was subsequently cancelled due to a scheduling conflict.*

The July meeting of the LRC will be rescheduled to July 22, 2021 at 1:00 p.m.

Commissioner Thornton made a motion to adjourn. Commissioner Myers seconded the motion. The motion passed by unanimous vote. The meeting adjourned at 2:35 p.m.